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QUINTILIAN
THE ORATOR'S EDUCATION

BOOKS 6-8



Edited and Translated by
DONALD A. RUSSELL

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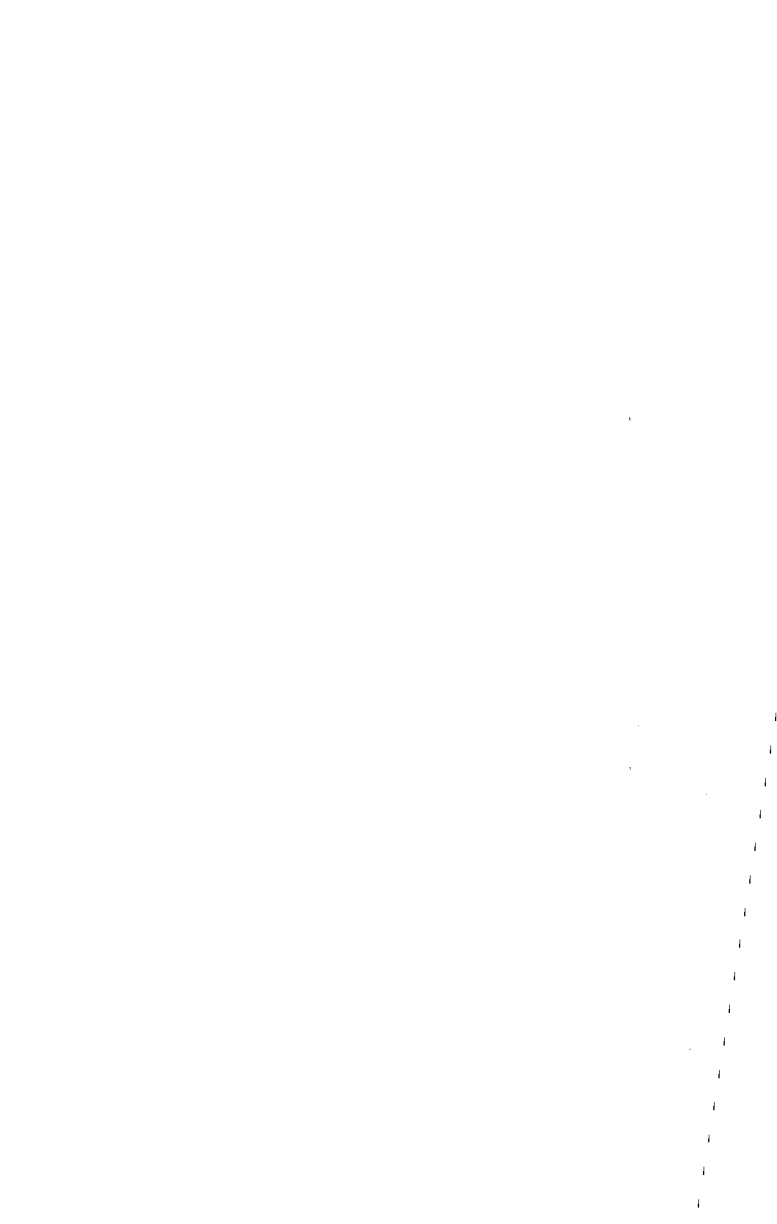
EDITOR EMERITUS

G. P. GOOLD

QUINTILIAN

III

LCL 126



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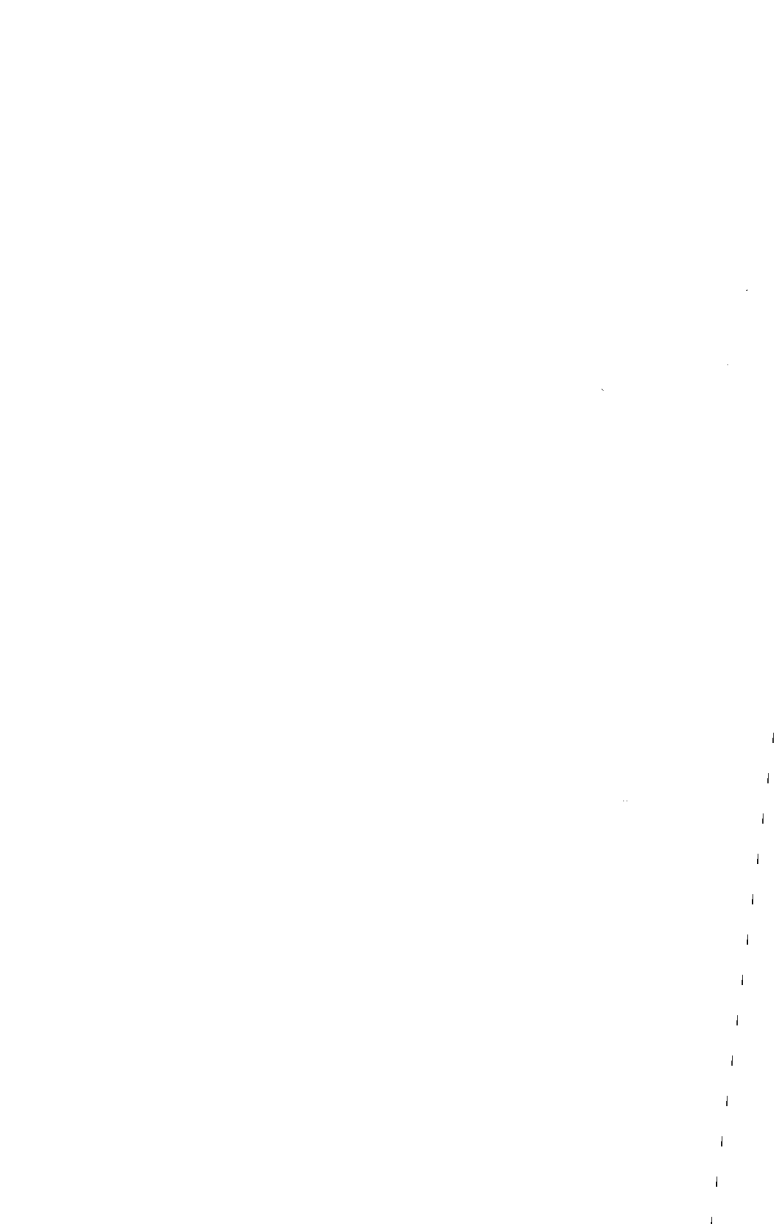
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INSTITUTIO ORATORIA
THE ORATOR'S EDUCATION



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.
OCD³ *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. Leipzig, 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).

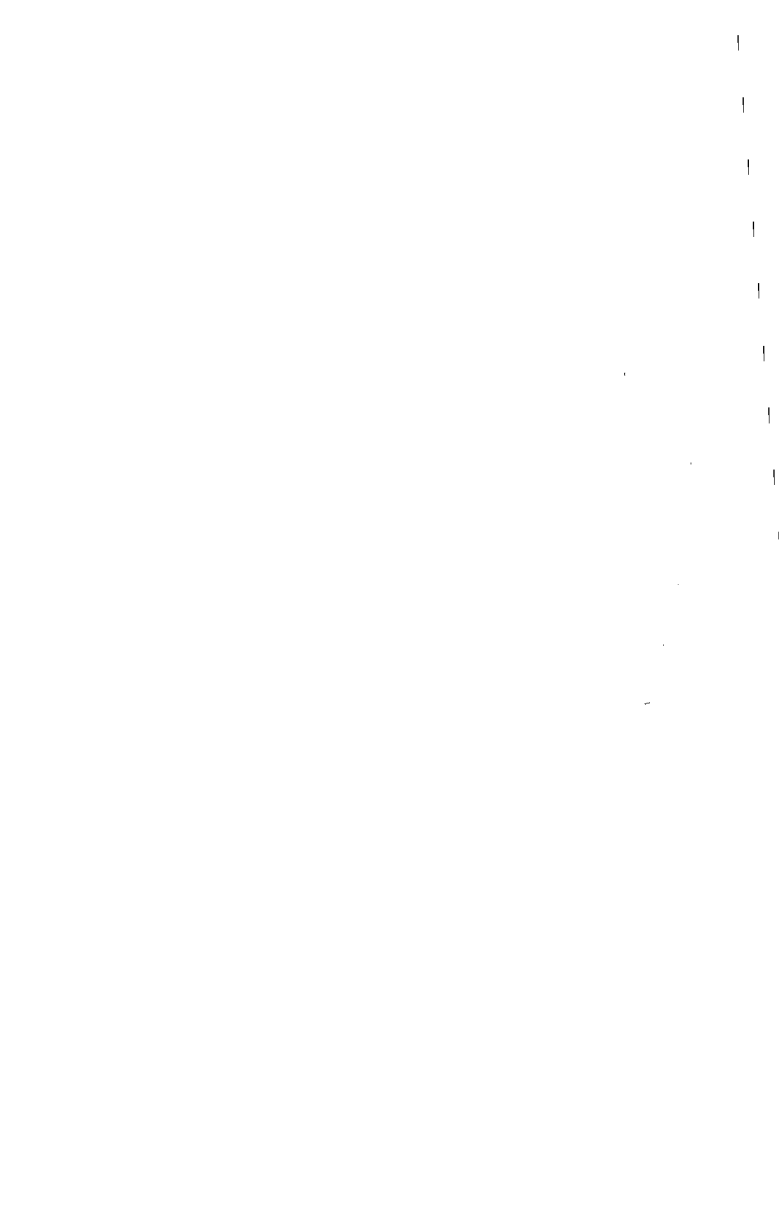
SIGLA

- 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
G	The later part of Bambergensis M.4.14
N	Parisinus lat. 18527
J	Cantabrigiensis Ioannensis 91
E	Parisinus lat. 14146 (Breviarium of Stephen of Rouen)
D	Parisinus lat. 7719
K	Parisinus lat. 7720 (corrected by Petrarch)
H	Harleianus 2664
T	Turicensis 288 (corrected (= <i>t</i>) by Ekkehard IV of St. Gall, c. 1050)
X	Parisinus lat. 7696
Y	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 SIX



INTRODUCTION

The masterpiece of emotional writing concerning Quintilian's bereavements forms an appropriate preface to the book on "emotions." Its appropriateness argues deliberate choice: we should not infer that the final crushing blow struck just as Quintilian got to this point in his work.

We are still pursuing the Parts of a Speech, and have come to the Epilogue (*peroratio*). Almost all rhetors discuss this: *Rhetorica ad Alexandrum* 36; Aristotle, *Rhetoric* 3.19 (and 2.2, 2.8 on the emotions principally involved, anger and pity); *Ad Herennium* 2.47 (with Caplan); Cicero, *De inventione* 1.98, *Partitiones oratoriae* 52–60; Anonymus Seguerianus §§ 203–239; Apsines 10; Julius Victor 79–80 Giomini–Celentano = 429–431 Halm. The function of the epilogue is both factual (as recapitulation) and emotional (involving amplification of the facts, and appeals to pity or indignation as the case may be). Lausberg §§ 431–442.

Quintilian deals first with the recapitulatory function (6.1.1–8), then with emotional appeals, with reference both to the needs of the prosecution (1.12–20) and to those of the defence (1.21–30). His practical concerns then come to the fore; he tells us (1.32–35) about various tricks of the trade, discusses the place for emotion in private Causes (1.36), and has much to say (1.37–42) about

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problems produced by the attitude of the client. Declamation (once again!) can be a bad teacher for real life (1.43–45). Appeals to pity can be subverted (1.46–49). Epilogues are not always emotional, and emotional appeals are in place also in other parts of the speech (1.51–54).

This leads (6.2) to Quintilian's more general discussion of *pathos*, one of the most interesting parts of the work. Here, as so often, he is much indebted to Cicero (*De oratore* 2.178–216, well set in context by Leeman–Pinkster–Rabbie *ad loc.*, and by W. Wisse, *Ethos and Pathos from Aristotle to Cicero* (Amsterdam, 1989)), who also stresses the dominant power of emotion. For Quintilian, as for Cicero, *pathos* and *ēthos* (i.e. attractiveness of character) are complementary means of achieving rhetorical success; the speaker must be able to adopt different tones and levels of intensity as his subject requires (see in general Lausberg § 257; C. Gill, *Classical Quarterly* 34 (1984) 149–166). But it is natural also to think of “Longinus,” quite possibly Quintilian's contemporary: but “Longinus”' agenda is different, for he is more concerned with the psychological basis of “sublimity,” and sees *pathos* and *ēthos* as fundamentally opposed to each other. And later in our chapter, after he has dealt with the general uses of emotion and the particular *pathē* of fear and indignation (2.8–24), Quintilian proceeds to a discussion which very strongly recalls “Longinus” (15): he advances a theory of *how* we can come to feel the emotions ourselves (which everyone agrees we should do), namely by utilizing our natural capacity, idly displayed in daydreaming, for imagining or visualizing situations (*phāntasia*, *enargeia*).

The following very long chapter—*caput vel Iliade pro-*

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lixius (Erasmus, *Encomium Moriae* 50)—is on laughter. This is associated with emotion by “Longinus” (38.5), who calls it *πάθος ἐν ἡδονῇ*, “emotion in pleasure,” meaning that when a pleasurable effect reaches a certain intensity it passes over into something we can no longer control. Quintilian’s view is somewhat different: concentrating as he does on the value of laughter to the pleader, he regards it as a solvent of emotion, which can be used to counter the feelings of pity or anger which the other side has aroused. He has many predecessors, both Greek and Latin. Aristotle’s work on comedy is lost, though opinions can be gleaned from *Ethics* and *Poetics* (see also R. Janko, *Aristotle on Comedy* (1984)); lost also, apart from a few fragments (710–711 Fortenbaugh), is Theophrastus’ *περὶ γελοίου*. Demetrius’ discussion of “charm” (*χάρης*) is important (§§ 128–172), though it goes well beyond the limits of practical rhetoric. However, it is not clear that Quintilian made any use of Greek sources. His main model is Cicero (*De oratore* 2.216–290: full commentary in Leeman–Pinkster–Rabbie, 1989; *Orator* 87–90), from whom he takes many details while (as it seems) modifying the order and classification (Kühnert, *Philologus* 106 (1962) 29–59; 305–314). It should be remembered that Cicero was celebrated for his wit, and that wit, particularly of a mordant kind, was much appreciated in the Roman courts.

6.3.1–21 is introductory, and begins (1–16) by making just these two points; Quintilian then (17–21) proceeds to an interesting discussion of terminology, discriminating between *venustus*, *salsus*, *facetus*, *dicax*, *urbanus*, and *iocus*.

He then briefly states some distinctions. (1) Like ora-

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tory in general, the "ridiculous" may be seen as dependent either on things or on words (22). (2) It can be used against our opponents, to induce a favourable view of ourselves, or to add a nuance to matters which are not directly connected with either party (23–24). (3) It can be expressed by action (25–26) or by words (26). Circumstances matter; the orator in particular needs to be very careful not to go too far or make jokes at the cost of giving offence or losing his dignity (27–35).

The topics or sources (*loci*) of jests are many; in fact they reflect the sources of *sententiae*, and involve Invention, Elocution, and Figures (35–36). Thus (37), since ridicule is related to invective, and invective follows the same principles as praise, objects of laughter can be classified as derived from body, mind, or externals. They can be either pointed out, narrated, or marked by a clever word: examples of each follow (38, 39–44, 45–56).

Jokes based on reality are better than those which are purely verbal (57). They can be classified (and Quintilian gives examples) on principles rather like those of argument: similarity (57–63), dissimilarity (63–65), definitions, genus and species, and so on (65–69). Tropes and Figures generate another group of jokes (69–71). Next (72–84) follow various kinds of humorous refutation corresponding roughly to the various Issues. Best of all (84–92) are jokes which depend on surprise or a fresh interpretation of some word. Good temper is important; and there are occasions when one can make a jest against oneself (94–95), or exploit some quotation or learned allusion (96–98). Pretending to be a fool—the "subabsurd"—can also be effective (99); and wit will often allow us to escape embarrassment or respond neatly to insult (100). In 101–102, Quintilian

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apologizes for all this detail, which cannot of course be exhaustive; what is really important is the use made of jokes and the moderation shown in them.

Finally (102–112), Quintilian takes issue with Domitius Marsus on the meaning and scope of *urbanitas*; Marsus had given the word far too wide a range.

It has to be said that many of the jokes in this chapter are obscure, and Quintilian's grouping of them under his various rhetorical categories can be puzzling.

"Altercation," the subject of 6.4, is not a topic of the Greek rhetoricians. In Roman courts, this kind of debate followed the set speeches and examination of witnesses, and was sometimes left to junior or specialist advocates. A classic description of the altercation of Cicero and Clodius in the Senate, May 61 BC, is in Cicero, *Ad Atticum* 1.16.10. See in general Crook, *Advocacy*, 129, 184, and the papyrus examples, *ibid.* 76. This is therefore a practical chapter. After justifying his discussion of this subject under Invention, and drawing attention to its connection with the examination of witnesses (already handled in 5.7), Quintilian shows how vital it is in all cases which depend on non-technical proofs (1–7). A quick, acute, but cool mind is needed (8–13). Prepare beforehand (14–16). Practice is useful (21).

Finally (6.5), "strategy" and "judgement." Here again Quintilian is on ground not much covered by others—naturally enough, since this process of sifting and selecting the results of Invention comes with practice and experience, working on natural abilities rather than on any body of precept: so also Sulpicius Victor (320 Halm). Lausberg §§ 1153–1154.

LIBER SEXTUS

<PROHOEMIUM>

- 1 Haec, Marce¹ Vitori, ex tua voluntate maxime ingressus, tum si qua ex nobis ad iuvenes bonos pervenire posset utilitas, novissime paene etiam necessitate quadam officii delegati mihi sedulo laborabam, respiciens tamen illam curam meae voluptatis, quod filio, cuius eminens ingenium sollicitam quoque parentis diligentiam merebatur, hanc optimam partem relicturus hereditatis videbar, ut, si me, quod aecum et optabile fuit, fata intercepissent, praeceptore tamen patre uteretur. At me fortuna id agentem diebus ac noctibus festinantemque metu meae mortalitatis ita subito prostravit ut laboris mei fructus ad neminem minus quam ad me pertineret. Illum enim de quo summa conceperam, et in quo spem unicam senectutis reponebam, repetito vulnere orbitatis amisi. Quid nunc agam? aut quem ultra esse usum mei dis repugnantibus credam? Nam ita forte accidit ut eum quoque librum quem de causis corruptae eloquentiae emisi iam scribere adgressus ictu

¹ Marcelle *edd.*: see on 1 *proem.* 6

¹ I.e. his tutorship of the two sons of Flavius Clemens, Domitian's intended heirs. General Introduction, vol. I.

BOOK SIX

PROOEMIUM

I began this work, Marcus Vitorius, principally at your desire, but also in the hope of making some useful information available to deserving students; latterly, too, my efforts have been stimulated by the almost imperative demands of the duty which has been entrusted to me.¹ All the time, however, I was considering also my own pleasure, because I hoped to leave this, as the best part of his inheritance, to my own son, whose outstanding abilities justified even obsessive care on a father's part. I intended that, if fate cut me off—and this would have been fair and greatly to be wished—he would still have his father as his teacher. Day and night I worked at it, hastened by the fear of my own mortality, until Fortune so laid me low in an instant that the fruit of my labours came to matter to no one less than to me. Bereavement struck me a second time; I lost the child of whom I had such expectations, and in whom I rested the sole hope of my old age. What am I to do now? What service am I to think that I can still do when the gods so fight against me? For it happened that I had been struck by a like blow when I began to write my book on the "Causes of the Decadence of Eloquence." Only one right

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- simili ferirer. Unum² igitur optimum fuit, in faustum opus et quidquid hoc est in me infelicium litterarum super in-
maturum funus consumpturis viscera mea flammis inicere
neque hanc impiam vivacitatem novis insuper curis fati-
4 gare. Quis enim mihi bonus parens ignoscat si studere am-
plius possum, ac non oderit hanc animi mei firmitatem si
quis in me alius usus vocis quam ut incusem deos superstes
omnium meorum, nullam in terras despiciere providen-
tiam tester?—si non meo casu, cui tamen nihil obici nisi
quod vivam potest, at illorum certe quos utique inmeritos
mors acerba damnavit, erepta prius mihi matre eorundem,
quae nondum expleto aetatis undevicesimo anno duos
enixa filios, quamvis acerbissimis rapta fatis, <non>³ infelix
5 decessit. Ego vel hoc uno malo sic eram adfflictus ut me iam
nulla fortuna posset efficere felicem. Nam cum, omni
virtute quae in feminas cadit functa, insanabilem attulit
marito dolorem, tum aetate tam puellari, praesertim meae
comparata, potest et ipsa numerari inter vulnera orbitatis.
6 Liberis tamen superstibus et—quod nefas erat sed opta-
bat ipsa—me salvo, maximos cruciatus praecipiti via ef-
fugit. Mihi filius minor quintum egressus annum prior
7 alterum ex duobus eruit lumen. Non sum ambitiosus in
malis nec augere lacrimarum causas volo, utinamque esset
ratio minuendi: sed dissimulare qui possum quid ille
gratae in vultu, quid iucunditatis in sermone, quos ingenii
igniculos, quam substantiam placidae et (quod scio vix
posse credi) iam tum altae mentis ostenderit? Qualis amo-

² *Radermacher*: num A

³ *add. Halm*

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course remained: to cast this ill-fated work and whatever wretched learning I have upon that untimely pyre whose flames were to consume the issue of my loins, and not to aggravate by fresh labours the offence of my continuance in life. What good parent could forgive me for finding the strength to go on with my studies? Who would not feel disgust at my insensitivity, if I could find any use for my voice except to blame the gods for letting me survive all those I loved, and to bear witness that no Providence looks down on earth? My own destiny may indeed not give rise to any such thoughts (for my only crime is that I am still alive) but the fate of those condemned undeservedly to a premature death most surely does. I had lost their mother first: before even her nineteenth year had passed, having borne two sons, she was snatched away by a cruel and untimely fate. Yet she did not die unhappy; it was I who was so laid low just by this one misfortune that no subsequent chance could make me happy. Not only did her death bring her husband incurable grief, for she possessed every virtue that woman can have, but also, given her age (especially compared with mine), her loss too could be thought of as like the loss of a child. Yet, since her children survived her and I was in good health—it was very wrong, but it was what she herself prayed for—her premature end saved her from terrible afflictions. My younger son, just past his fifth year, went first, and took away one of the two lights of my life. I have no desire to flaunt my troubles or exaggerate the causes of my tears: I only wish there were some way of making them less! But how can I conceal what beauty he showed in his face, what charm in his talk, what flashes of intellect, what solid possession of a calm and even at that age almost unbelievably lofty mind? This was a child who

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- 8 rem quicumque alienus infans mereretur. Illud vero insidiantis quo me validius cruciaret fortunae fuit, ut ille mihi blandissimus me suis nutricibus, me aviae educanti, me
 9 omnibus qui sollicitare illas aetates solent anteferret. Quapropter illi dolori quem ex matre optima atque omnem laudem supergressa paucos ante menses ceperam gratulor. Minus enim est quod flendum meo nomine quam quod illius gaudendum est.

- 10 Una post haec Quintiliani mei spe ac voluptate nitebar, et poterat sufficere solacio. Non enim flosculos, sicut prior, sed iam decimum aetatis ingressus annum certos ac deformatos fructus ostenderat. Iuro per mala mea, per infelicem conscientiam, per illos manes, numina mei doloris, has me in illo vidisse virtutes, non ingenii modo ad percipiendas disciplinas, quo nihil praestantius cognovi plurima expertus, studiique iam tum non coacti (sciunt praeceptores), sed probitatis pietatis humanitatis liberalitatis, ut prorsus posset hinc esse tanti fulminis metus, quod observatum fere est celerius occidere festinatam maturitatem, et esse nescio quam quae spes tantas decerpat invidiam, ne videlicet ultra quam homini datum est nostra provehantur.
 11 Etiam illa fortuita aderant omnia, vocis iucunditas claritasque, oris suavitas et in utracumque lingua, tamquam ad eam demum natus esset, expressa proprietas omnium litterarum. Sed hae spes adhuc: illa matura, constantia,

² Compare Statius, *Silvae* 5.5.50 (a funeral poem of the same period): *dignumque nihil mens fulmine tanto repperit*, "The mind found nothing to deserve such a thunderbolt."

³ I.e. Greek and Latin: compare 1.1.12.

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would have deserved love, even if he had been another's. It was a further trick of Fortune, meant to torment me even more, that this delightful child preferred me to his nurses, preferred me to the grandmother who brought him up, preferred me to all those who commonly win the affections of little children. This is why I have reason to be grateful for the grief I had suffered, a few months before, in the death of his excellent mother, who was indeed beyond all praise. I have, you see, less cause for weeping on my own account than for feeling glad on hers.

Henceforward, I depended entirely on the hopes and delights given to me by my little Quintilian. He could be comfort enough. He had shown not just promising flowers, like his brother, but, by the time he entered his tenth year, sure and well-formed fruits. I swear by my own troubles, by the misery that my heart knows, by those spirits of the departed who are the gods of my grief, that I saw in him excellences not only of natural capacity for learning (and I never saw anything more outstanding in all my experience) and of application, which even at that age needed no compulsion (as his teachers know), but also of honesty, piety, humanity, and generosity, such that one might indeed have found in them cause to fear the lightning stroke;² for it has often been observed that early ripening means a quicker fall, and that there is some envious power that cuts short great promise, presumably to prevent our blessings being prolonged beyond what man is allowed to enjoy. He had all the fortuitous advantages too: a clear and pleasant voice, a sweetness of speech, and an exact pronunciation of every letter in either of the two languages,³ as though it was the one he was born to. All this was still only promise: he had other qualities already ripe—constancy, dignity, strength



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gravitas, contra dolores etiam ac metus robur. Nam quo ille animo, qua medicorum admiratione mensum octo valetudinem tulit! Ut me in supremis consolatus est! Quam etiam deficiens iamque non noster ipsum illum alienatae mentis errorem circa scholas, litteras habuit!

- 12 Tuosne ego, o meae spes inanes, labentis oculos, tuum fugientem spiritum vidi? Tuum corpus frigidum exsanguie complexus, animam recipere auramque communem haurire amplius potui, dignus his cruciatibus quos fero, dignus
- 13 his cogitationibus? Tene consulari nuper adoptione ad omnium spes honorum propius⁴ admotum, te avunculo praetori generum destinatum, te [omnium spes]⁵ avitae⁶ eloquentiae candidatum, superstes parens tantum <in>⁷ poenas: et si non cupido lucis, certe patientia vindicet te reliqua mea aetate; nam frustra mala omnia ad crimen fortunae relegamus. Nemo nisi sua culpa diu dolet.

- 14 Sed vivimus et aliqua vivendi ratio quaerenda est, credendumque doctissimis hominibus, qui unicum adversorum solacium litteras putaverunt. Si quando tamen ita resederit praesens impetus ut aliqua tot luctibus alia cogitatio inseri possit, non iniuste petierim morae veniam. Quis enim dilata studia miretur quae potius non abrupta

⁴ Buecheler: prius A ⁵ del. Spalding

⁶ Erasmus: acutis A ⁷ add. Winterbottom. A verb (e.g. amisi or luxi—'have I lost?' or 'have I mourned?') is either missing (perhaps after tene) or to be understood

⁴ Compare Cicero, *In Verrem* 5.118. For the practice and implied belief, see Vergil, *Aeneid* 4.684 with A. S. Pease's rich commentary (1935); also R. B. Onians, *The Origins of European Thought* (Cambridge, 1951) 171–173.

BOOK 6

to face even pain and fear. With what courage, with what admiration on the part of his doctors, did he bear his eight months of illness! How he comforted me in his last hours! How, when he was failing and no longer part of our world, did the wanderings of his delirium dwell on school and on his studies!

O my unfulfilled hope, did I indeed see your fading eyes, your fleeting breath? Did I have strength to embrace your cold and lifeless body, to receive your last breath,⁴ and still myself breathe the common air, I who deserve to bear these torments and to think these thoughts? <Have I then lost> you, when your recent adoption into a consular family brought you nearer to hopes of the highest offices, when you were destined to be the son-in-law and nephew of a praetor, when you were a candidate for your grandfather's⁵ eloquence—I, your father, who live on only to suffer? May my endurance of life—not indeed my wish for it—make reparation to you for the rest of my days! It is in vain that we shift all our troubles on to Fortune. No one mourns long save by his own fault.

But I live on, and I must find some reason for living, and must believe those learned men who have held that literature is our only solace in trouble.⁶ Yet, if ever my present emotions subside enough to allow other thoughts to find a place amid all these griefs, I should have some justification for asking pardon for my delay. For who could be surprised at the postponement of a work when the wonder is that it

⁵ If Erasmus' conjecture is right (see text note), the allusion is to Q.'s father. For *candidatus* in this metaphorical sense, see 12.2.27.

⁶ Compare Cicero, *Pro Archia* 16.

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- 15 esse mirandum est? Tum si qua fuerint minus effecta iis quae levius adhuc adflicti coeperamus, imperitanti⁸ fortunae remittantur, quae si quid mediocrium alioqui in nostro ingenio virium fuit, ut non extinxerit, debilitavit tamen. Sed vel propter hoc nos contumacius erigamus, quod illam ut perferre nobis difficile est, ita facile contemnere. Nihil enim sibi adversus me reliquit, et infelicem quidem sed certissimam tamen attulit mihi ex his malis securitatem.
- 16 Boni autem consulere nostrum laborem vel propter hoc aecum est, quod in nullum iam proprium usum perseveramus, sed omnis haec cura alienas utilitates, si modo quid utile scribimus,⁹ spectat. Nos miseri sicut facultates patrimonii nostri, ita hoc opus aliis praeparabamus, aliis relinquemus.

1

- 1 Peroratio sequebatur, quam cumulum quidam, conclusionem alii vocant. Eius duplex ratio est, posita aut in rebus aut in adfectibus.

Rerum repetitio et congregatio, quae Graece dicitur ἀνακεφαλαίωσις, a quibusdam Latinorum enumeratio, et memoriam iudicis reficit et totam simul causam ponit ante oculos, et, etiam si per singula minus moverat, turba

⁸ *Lochmann*: imperi aut A: imperio *Winterbottom*

⁹ *t*: scribi A

¹ Thus Apsines 10.2 (= 192 Dilts-Kennedy) explains that, though the Epilogue, like the Prooemium, is strictly "emotional," it is also "pragmatic," because it includes a recapitulation of facts.

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was not broken off altogether? And if some parts of it are less finished than the parts that I had begun when my afflictions were less, let this be set down to the tyranny of Fortune, who has at any rate weakened, even if she has not extinguished, whatever modest powers my talents had. It is hard to bear Fortune, but easy to despise her; and this is yet another reason why I should show more defiance, and pull myself to my feet. She has left herself nothing more to do to me; indeed, out of these troubles, she has brought me an unhappy, but completely certain, freedom from anxiety.

It is only fair that my labours should be well thought of, if only because I persevere in them for no useful purpose of my own. All this effort is directed to the service of others—if, that is, there is anything serviceable in what I write. Like my estate, this is something I shall leave to others than those for whom I was getting it ready.

CHAPTER 1

The Peroration or Epilogue

My next subject was to be the Peroration, which some call the Culmination, some the Conclusion. There are two aspects of it: the factual and the emotional.¹

The recapitulation and assemblage of facts, which in Greek is called *anakephalaiōsis*,² and by some Latin writers “enumeration,” both refreshes the memory of the judge, and places the whole Cause before his eyes at once; even if this had not made much impression when the points were made individually, it is cumulatively powerful.

² *Anakephalaiōsis* is from *kephalaion*, “heading,” and so means “going over the headings.”

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- 2 valet. In hac quae repetemus quam brevissime dicenda sunt, et, quod Graeco verbo patet, decurrendum per capita. Nam si morabimur, non iam enumeratio, sed quasi altera fiet oratio. Quae autem enumeranda videntur, cum pondere aliquo dicenda sunt et aptis excitanda sententiis et figuris utique varianda: alioqui nihil est odiosius recta
- 3 illa repetitione velut memoriae iudicum diffidentis. Sunt autem innumerabiles,¹ optimeque in Verrem Cicero: 'si pater ipse iudicaret, quid diceret cum haec probarentur?' et deinde subiecit enumerationem; aut cum idem et in eundem per invocationem deorum spoliata a praetore templa dinumerat. Licet et dubitare num quid nos fugerit, et quid responsurus sit adversarius his et his, aut quam
- 4 spem accusator habeat omnibus ita defensis. Illa vero iucundissima, si contingat aliquod ex adversario ducere argumentum, ut si dicas: 'reliquit hanc partem causae', aut 'invidia premere maluit', aut 'ad preces confugit merito,
- 5 cum sciret haec et haec.' Sed non sunt singulae species persequendae, ne sola videantur quae forte nunc dixerō, cum occasiones et ex causis et ex dictis adversariorum et ex quibusdam fortuitis quoque oriantur.

- 6 Nec referenda modo nostra, sed postulandum etiam ab adversariis ut ad quaedam respondeant: id autem si et

¹ innumerabiles <species> *Halm*

³ *In Verrem* 5.136: a prosopopoeia.

⁴ *Ibid.* 184.

⁵ Compare 5.13.10.

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The points to be recapitulated here must be treated as briefly as possible and (as the Greek word shows) we must run quickly through all the "headings," for if we spend too much time, it will become almost a second speech rather than an "enumeration." On the other hand, the points which we think should be enumerated must be treated with a certain weight, enlivened by apt *sententiae*, and of course diversified by Figures; otherwise, nothing is more off-putting than the straightforward repetition of facts, which suggests a lack of confidence in the judges' memory. Possible Figures are innumerable. Cicero has an excellent one in the speech against Verres:³ "If your father were sitting in judgement, what would he say when these facts were proved?"—and he then tacked the enumeration on to this. In the same prosecution, again,⁴ Cicero uses an invocation of the gods to shape his list of the temples despoiled by the governor. We can also ask ourselves whether we have forgotten something,⁵ how our opponent will answer this or that, or what hope the prosecution can have when all the charges have been so thoroughly countered. The most satisfactory thing is if you are in a position to derive an Argument from your opponent: for example, "he left out this part of the Cause," or "he preferred to harry us by rousing hostile feelings," or "he was right to beg for mercy, when he knew this or that." But I must not list the individual varieties, lest those I happen to mention now are thought to be the only possible ones; the fact is rather that opportunities arise out of Causes, opponents' remarks, and even some accidental circumstances.

We need not confine ourselves to going over our own speech; we can ask our opponent to answer some points, though this is only possible if there is still time for him to

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actioni² supererit locus et ea proposuerimus quae refelli non possint; nam provocare quae inde sint fortia non arguentis est sed monentis.

- 7 Id unum epilogi genus visum est plerisque Atticorum, et philosophis fere omnibus qui de arte oratoria scriptum aliquid reliquerunt. Id sensisse Atticos credo quia Athenis adfectus movere etiam per praeconem prohibebatur orator. Philosophos minus miror, apud quos vitii loco est adfici, nec boni moris videtur sic a vero iudicem averti, nec convenire bono viro vitiiis uti. Necessarios tamen adfectus fatebuntur si aliter optineri vera et iusta et in commune
8 profutura non possint. Ceterum illud constitit inter omnes, etiam in aliis partibus actionis, si multiplex causa sit et pluribus argumentis defensa, utiliter ἀνακεφαλαίωσιw fieri solere, sicut nemo dubitaverit multas esse causas in quibus nullo loco sit necessaria, si breves et simplices fuerint.

Haec pars perorationis accusatori patronoque ex aequo communis est.

- 9 Adfectibus quoque isdem fere utuntur, sed aliis hic, aliis ille saepius ac magis; nam huic concitare iudices, illi flectere convenit. Verum et accusator habet interim lacrimas ex miseratione eius quem ulciscitur, et reus de indignitate calumniae conspiracyve³ vehementius interim queritur. Dividere igitur haec officia commodissimum,

² *Spalding*: actionis A

³ *Gertz*: conspiracy A

⁶ See 2.16.4, 12.10.26. This seems to apply strictly to the Areopagus only, not to other courts. Compare Lucian, *Anacharsis* 19, "If anyone gives a Prooemium or an emotional Epilogue, the herald (κῆρυξ, Q.'s *praeco*) comes forward and silences them."

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speaking, and if we have put forward points which cannot be refuted, since to provoke a reply which puts the other side in a strong position is to prompt him rather than confute him.

Most of the Attic orators, and almost all philosophers who have left writings concerning the art of rhetoric, have held that this is the only form of Peroration. I imagine that the Attic orators thought this because, at Athens, appeals to the emotions were actually forbidden by public announcement.⁶ I am less surprised by the philosophers, in whose minds emotion is a vice, and it seems immoral for a judge to be distracted from the truth, and inappropriate for a good man to take advantage of vices. None the less, they will admit that emotional appeals are necessary if truth, justice, and the common good cannot be secured by other means. What everyone agrees is that a Recapitulation is often useful in other parts of the speech as well, if the Cause is a complex one and defended by a number of different Arguments; nor would anyone doubt that there are many Causes, if they are short and simple, in which no Recapitulation is needed anywhere.

This part of the Peroration is equally available to both prosecution and defence.

Both sides also use much the same emotional appeals, but they employ particular emotions with different degrees of frequency and emphasis: the prosecution has to stir up the judges, the defence has to make them sympathetic. Yet the prosecutor sometimes excites tears of pity for the victim whose wrongs he seeks to avenge, while the defendant sometimes complains vehemently of the injustice of the calumny or the conspiracy against him. It will therefore be most convenient to treat the two roles sepa-

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- 10 quae plerumque sunt, ut dixi, prohoemio similia, sed libera
riora plenioraque. Inclinatio enim iudicum ad nos petitur
initio parcius, cum admitti satis est et oratio tota superest:
in epilogo vero est qualem animum iudex in consilium
ferat, cum⁴ iam nihil amplius dicturi sumus, nec restat quo
11 reservemus. Est igitur utrisque commune conciliare sibi,
avertere ab adversario iudicem, concitare adfectus et com-
ponere. Et brevissimum quidem hoc praeceptum dari
utrique parti potest, ut totas causae suae vires orator ponat
ante oculos, et cum viderit quid invidiosum favorabile
invisum miserabile aut sit in rebus aut videri possit, ea
dicat quibus, si iudex esset, ipse maxime moveretur. Sed
certius est ire per singula.
- 12 Et quae concilient quidem accusatorem in praeceptis
exordii iam diximus. Quaedam tamen, quae illic ostendere
sat est, in peroratione implenda sunt magis, si contra inpo-
tentem invisum perniciosum suscepta causa est, si iudici-
bus ipsis aut gloriae damnatio rei aut deformitati futura
13 absolutio. Nam egregie in Vatinius Calvus ‘factum’ inquit
‘ambitum scitis omnes, et hoc vos scire omnes sciunt.’ Ci-
cero quidem in Verrem etiam emendari posse infamiam
iudiciorum damnato reo dicit, quod est unum ex supra dic-
tis. Metus etiam, si est adhibendus, ut facit ibidem,⁵ hunc

⁴ Watt 1988: et A

⁵ Winterbottom: idem A

⁷ See 4.1.28.

⁸ See *ORF* p. 497 (fr. 22). Calvus made three speeches against Vatinius (58–54 BC; see 12.6.1) and these seem to have been well known.

⁹ *Actio prima* 43.

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rately. As I have said, they are much the same as in the Prooemium,⁷ but freer and more extensive, because we court the judges' favour in a more restrained manner at the outset, since at this stage it is enough to get a foot in the door, and the whole speech is still to come. On the Epilogue, on the other hand, depends the mood in which the judge retires to consider his verdict; we are not now going to say anything more, and there is no further stage to which we can put things off. It is therefore the common task of each side to win the judge's good will, alienate him from the other party, and excite and assuage his emotions. The shortest rule that can be given for both parties is that the orator should visualize the full strength of his Cause, and, when he has seen what features of the facts give grounds, or seem to give grounds, for envy, good will, dislike, or pity, he should dwell on the things by which, were he in the judge's place, he would himself be most moved. But it is safer to go into detail.

The features likely to win acceptance for the prosecutor have already been discussed in my suggestions for the Prooemium. However, some things, which it is sufficient to outline in that part, need filling out more in the Peroration: for instance, if the object of the prosecution is a man of violent, odious, or dangerous character, or if a conviction will be an honour to the judges or an acquittal a disgrace. Calvus,⁸ in his prosecution of Vatinius, admirably says "You all know that bribery took place, and everyone knows you know it." Cicero in his prosecution of Verres⁹ also says that the bad reputation of the courts can actually be effaced by condemning the defendant, and this is one of the moves mentioned above. Fear too, if it has to be used (as Cicero uses it in the same context), has a more effec-

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habet locum fortiorem quam in prohoemio. Qua de re quid sentirem, alio iam libro exposui.

- 14 Concitare quoque invidiam odium iram liberius in peroratione contingit: quorum invidiam gratia, odium turpitudine, iram offensio iudici facit, si contumax adrogans securus sit: quae non ex facto modo dictove aliquo sed vultu habitu aspectu moveri solent,⁶ egregieque nobis adulescentibus dixisse accusator Cossutiani Capitonis videbatur, Graece quidem, sed in hunc sensum: 'erubescis Caesarem timere?'
- 15 Summa tamen concitandi adfectus accusatori in hoc est, ut id quod obiecit aut quam atrocissimum aut etiam, si fieri potest, quam maxime miserabile esse videatur. Atrocitas crescit ex his: quid factum sit, a quo, in quem, quo animo, quo tempore, quo loco, quo modo; quae omnia
- 16 infinitos tractatus habent. Pulsatum querimur: de re primum ipsa dicendum, tum si senex, si puer, si magistratus, si probus, si bene de re publica meritus, etiam si percussus sit a vili aliquo contemptoque vel ex contrario a potente nimium vel ab eo quo minime oportuit, et si die forte sollemni aut iis temporibus cum iudicia eius rei maxime exercerentur, aut in sollicito civitatis statu; item in theatro, in

⁶ *Spalding*: solet A

¹⁰ 4.1.20. ¹¹ Perhaps ἐρυθριᾶς Καίσαρα φοβούμενος; But the point is not very clear, nor is it easy to decide whether the sentence is interrogative or not. Capito was accused of extortion by the province of Cilicia in AD 57, and tried before the senate. He got his own back on one of his accusers (Paetus Thrasea) in 66 (Tacitus, *Annales* 16.21). See also Juvenal 8.92–94. Valerius Maximus 2.2.3 complains about the use of Greek in the senate,

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tive place here than in the Prooemium. I have already explained my view about this in another book.¹⁰

The Peroration also provides freer opportunities for arousing envy, loathing, and anger. It is undue influence that makes a judge envious, moral turpitude that makes him hate, and disrespect that makes him angry if the defendant is obstinate, arrogant, or too self-confident; and all these feelings are aroused not only by actions and words but by expression, bearing, and appearance. When I was a young man, we greatly admired the remark of the prosecutor of Cossutianus Capito; it was in Greek, but the sense was "Do you blush to be afraid of Caesar?"¹¹

However, the chief way for the prosecution to arouse emotion is to make the charge seem as outrageous or even, if possible, as pitiable as possible. (1) Outrage is enhanced by considering what was done, by whom, against whom, with what intention, when, where, and how:¹² all of which admit an infinite variety of treatment. Suppose we are complaining of an assault: we must first speak of the act itself, then, if the victim was old, a child, a magistrate, a good man, or one who had done the state good service, say so; likewise, if he was attacked by a worthless and despicable character or (at the other extreme) by a person of great power, or by the very man who should have been the last to do such a thing; then, if it was on a festival day, or at a time when the courts were particularly employed on this sort of case, or in a time of public anxiety; or again, if it was in the theatre or a temple or a public assembly. Ill-feeling is fur-

and says it was first allowed to Cicero's tutor Molon. What we have here is not necessarily from a set speech; it is perhaps just a piece of repartee. ¹² Compare 5.10.32.

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- 17 templo, in contione; crescit invidia et si non errore nec ira (vel etiam, si forte ira, sed iniqua, quod patri adfuisset, quod respondisset, quod honores contra peteret) et si plus etiam videri potest voluisse quam fecit; plurimum tamen adfert atrocitatis modus si graviter, si contumeliose, ut Demosthenes ex parte percussi corporis, ex vultu ferientis, ex
- 18 habitu invidiam Midiae quaerit. Occisum queror:⁷ ferro an igne an veneno, uno vulnere an pluribus, subito an expectatione tortus, ad hanc partem maxime pertinet.

- Utitur frequenter accusator et miseratione, cum aut eius casum quem ulciscitur aut liberorum ac parentium
- 19 solitudinem conqueritur. Etiam futuri temporis imagine iudices movet, quae maneant eos qui de vi et iniuria questi sunt nisi vindicentur: fugiendum de civitate, cedendum bonis, aut omnia quaecumque inimicus fecerit perferenda.
- 20 Sed saepius id est accusatoris, avertere iudicem a miseratione qua reus sit usus, atque ad fortiter iudicandum concitare. Cuius loci est etiam occupare quae dicturum facturumve adversarium putes. Nam et cautiores ad custodiam suae religionis iudices facit, et gratiam responsuris aufert cum ea quae praedicta sunt ab accusatore iam, si pro reo repetentur,⁸ non sint nova, ut Servium Sulpicium <Messala>⁹ contra Aufidiam ne signatorum, ne ipsius dis-

⁷ occisum queror *Winterbottom*; cf. 6.2.31: occisus vero A

⁸ *Spalding*: petentur A

⁹ *add. Schoell*: Servius Sulpicius A

¹³ Demosthenes, *Against Midias* 72. The blow was on the temples (ἐπὶ κόρρης) and the assailant's attitude, eyes, and voice were offensive. The passage was much admired: "Longinus" 26.1-2.

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ther enhanced if the attack was not a mistake or a blow in anger (or, if in anger, the anger was unjustified, because the victim had only tried to help his father, had merely answered back, or was a rival for office) and if the attacker seems to have wanted to do more damage than he did. But it is the manner of the act that contributes most to its outrageousness, if the blow was violent or insulting: thus Demosthenes seeks to arouse feelings against Midias from the part of the body struck, and from the expression and bearing of the assailant.¹³ Or suppose I am complaining of a homicide: what matters most from our present point of view is whether the victim was killed by sword or fire or poison, by one wound or several, suddenly or after being tortured by the suspense.

(2) The prosecutor often also makes use of pity, by complaining of the misfortune of the victim whom he seeks to avenge, or of the desolation of his children and parents. He may also move the judges by a picture of the future, of everything which awaits those who have complained of violence and wrong if they do not secure justice: exile from their city, loss of property, the necessity of enduring whatever their enemy does to them. More often, however, it is the prosecutor's business to make the judge reject any appeal to pity that the defendant may be going to make, and incite him to give a strong verdict. This move includes also anticipating what you think the opponent will say or do. It both strengthens the judges' scruples about observing their oath and at the same time robs the coming reply of its appeal, because points which have been anticipated by the prosecution and later come to be repeated by the defence are now no longer new. Thus <Messala> speaking against Aufidia warns Servius Sulpicius not to use against him the

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crimen obiciatur sibi praemonet. Nec non ab Aeschine quali sit usus Demosthenes actione praedictum est.

Docendi quoque interim iudices quid rogantibus respondere debeant, quod est unum repetitionis genus.

- 21 Periclitantem vero commendat dignitas et studia fortia et susceptae bello cicatrices et nobilitas et merita maiorum. Hoc quod proxime dixi Cicero atque Asinius certatim
- 22 sunt usu, pro Scauro patre hic, ille pro filio. Commendat et causa periculi, si suscepisse inimicitias ob aliquod factum honestum videtur, praecipue bonitas humanitas misericordia; iustius enim petere ea quisque videtur a iudice quae aliis ipse praestiterit. Referenda pars haec quoque ad utilitatem rei publicae, ad iudicum gloriam, ad exemplum, ad
- 23 memoriam posteritatis. Plurimum tamen valet miseratio, quae iudicem non flecti tantum cogit, sed motum quoque animi sui lacrimis confiteri. Haec petetur aut ex iis quae passus est reus, aut iis quae cum maxime patitur, aut iis quae damnatum manent: quae et ipsa duplicantur cum dicimus ex qua illi fortuna et in quam recidendum sit.
- 24 Adfert in his momentum et aetas et sexus et pignora, liberi, dico, et parentes et propinqui. Quae omnia tractari varie solent. Nonnumquam etiam ipse patronus has partes subit (ut Cicero pro Milone: 'O me miserum! O me infelicem!

¹⁴ In this inheritance case (see 4.2.106, 10.1.22; *ORF* p. 531) Servius spoke for Aufidia; so, though the circumstances are obscure, Schoell's suggestion (here translated), which makes Mes-sala the prosecutor, is plausible, but not certain.

¹⁵ Aeschines, *Against Ctesiphon* 207.

¹⁶ Compare 4.1.69: see *ORF* pp. 519–520.

¹⁷ *Pro Milone* 102.

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argument of the jeopardy of the signatories and of Aufidia herself.¹⁴ Aeschines also foretells the line of defence that Demosthenes is going to use.¹⁵

Judges sometimes have also to be instructed as to what answer they should make to particular questions; this is itself one form of Recapitulation.

As for the defendant, he gets credit from his standing, his bravery, his battle scars, his birth, and the services of his ancestors. Cicero and Asinius competed on this last-mentioned theme,¹⁶ Cicero defending the elder Scaurus, Asinius the son. Credit comes too from the reasons for the defendant's present jeopardy (if for example it is thought that he incurred enmities because of some honourable action) and particularly from his goodness, humanity, or mercy; the justice of a claim seems greater if a man is asking the judge for what he has himself granted to others. Public advantage, the reputation of the judges, the power of precedent, and the judgement of posterity are also relevant in this connection. But what carries most weight is the appeal to pity, which obliges the judge not only to be moved, but to reveal his own feelings by his tears. Such appeals will be based either on what the accused has suffered, or what he is suffering at the moment, or on what awaits him if he is convicted. The effect of this is doubled when we contrast his former situation with that to which he must now be reduced. Age, sex, and his "pledges"—that is to say, his children, parents, and relatives—all add force to this. There are various ways in which these matters are commonly treated. Sometimes the advocate himself takes on this role: Cicero in *Pro Milone*:¹⁷ "O, how wretched and

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Revocare tu me¹⁰ in patriam, Milo, potuisti per hos, ego te in patria per eosdem retinere <non potero>^{11?}) maximeque si, ut tum accidit, non conveniunt ei qui accusatur
 25 preces; nam quis ferret Milonem pro capite suo supplican-
 tem qui a se virum nobilem interfectum quia id fieri oportuisset fateretur? Ergo et illi captavit ex ipsa praestantia animi favorem et in locum lacrimarum eius ipse successit.

His praecipue locis utiles sunt prosopopoeiae, id est fictae alienarum personarum orationes. Quando enim <pro> litigatore dicit patronus,¹² nudae tantum res movent: at cum ipsos loqui fingimus, ex personis quoque tra-
 26 hitur adfectus. Non enim audire iudex videtur aliena mala deflentis, sed sensum ac vocem auribus accipere miserorum, quorum etiam mutus aspectus lacrimas movet: quantoque essent miserabiliora si ea dicerent ipsi, tanto sunt quadam portione ad adficiendum potentiora cum velut ipsorum ore dicuntur, ut scaenicis actoribus eadem vox eademque pronuntiatio plus ad movendos adfectus sub
 27 persona valet. Itaque idem Cicero, quamquam preces non dat Miloni eumque potius animi praestantia commendat, accommodavit tamen ei [verba]¹³ convenientis etiam forti viro conquestiones: 'Frustra' inquit 'mei suscepti labores! O spes fallaces! O cogitationes inanes meas!'

Numquam tamen debet longa esse miseratio. Nec sine causa dictum est nihil facilius quam lacrimas inarescere.

¹⁰ *edd.* (*Cic. Pro Milone* 102): te infelicem revocare me tum A

¹¹ *add. rec.* (*Cic. loc. cit.*) ¹² Quando . . . patronus
Winterbottom: quale litigatore dicit patronum A

¹³ *del. Winterbottom*

¹⁸ *Ibid.* 94.

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unhappy I am! You, Milo, with these men's help, were able to restore me to my country; shall not I, also with their help, be able to keep you here in yours?" This is particularly appropriate if, as on that occasion, pleas for mercy are not in keeping with the character of the accused. Who would have tolerated a Milo begging for his own life, when he had admitted that he had killed a man of noble birth because it had been right to do so? Thus Cicero sought good will for his client on the ground of his lofty character, and then came forward to shed the tears in his place.

It is in these passages particularly that good service is done by *Prosopopoeiae*, that is to say fictitious speeches of other persons. When an advocate speaks for a client, the bare facts produce the effect; but when we pretend that the victims themselves are speaking, the emotional effect is drawn also from the persons. The judge no longer thinks that he is listening to a lament for somebody else's troubles, but that he is hearing the feelings and the voice of the afflicted, whose silent appearance alone moves him to tears; and, as their pleas would be more pitiful if only they could make them themselves, so to a certain extent the pleas become more effective by being as it were put into their mouths, just as the same voice and delivery of the stage actor produces a greater emotional impact because he speaks behind a mask. Cicero again, though he does not put entreaties into Milo's mouth, and prefers to stress his high courage, has nevertheless given him a complaint which is not inappropriate even to a brave man: "So my labours were undertaken in vain! O my deceitful hopes! O my fruitless plans!"¹⁸

Appeals to pity, however, must never be long. There is good reason for the saying that nothing dries as easily

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- 28 Nam cum etiam veros dolores mitiget tempus, citius evanescat necesse est illa quam dicendo effinximus imago: in qua si moramur, fatigatur lacrimis auditor et requiescit et
- 29 ab illo quem ceperat impetu ad rationem redit. Non patiamur igitur frigescere hoc opus, et adfectum cum ad summum perduxerimus relinquamus, nec speremus fore ut aliena mala quisquam diu ploret, ideoque cum in aliis, tum in hac maxime parte crescere debet oratio, quia quidquid non adicit prioribus etiam detrahere videtur, et facile deficit adfectus qui descendit.
- 30 Non solum autem dicendo, sed etiam faciendo quaedam lacrimas movemus, unde et producere ipsos qui periclitentur squalidos atque deformes et liberos eorum ac parentis institutum, et ab accusatoribus cruentum gladium ostendi et lecta e vulneribus¹⁴ ossa et vestes sanguine perfusas videmus, et vulnera resolvi, verberata corpora nudari.
- 31 Quarum rerum ingens plerumque vis est velut in rem praesentem animos hominum ducentium, ut populum Romanum egit in furorem praetexta C. Caesaris praelata in funere cruenta. Sciebatur interfectum eum, corpus denique ipsum impositum lecto erat, vestis tamen illa sanguine madens ita repraesentavit imaginem sceleris ut non occisus esse Caesar sed tum maxime occidi videretur.

¹⁴ funeribus *Burman*

¹⁹ Compare *Ad Herennium* 2.50, Cicero, *De inventione* 1.109 (attributing the saying to Apollonius), *Partitiones oratoriae* 57.

²⁰ Greek orators did this (Hyperides, *For Euxenippus* 41, says that it is time to "call in friends and produce the children"; Aristophanes parodies the practice, *Wasps* 975, where the dog Labes' puppies are produced in court) and Cicero (*Orator* 131) tells of

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as tears.¹⁹ When time eases even real sorrows, the image of sorrow that we make by our words must vanish more quickly still. If we linger over this image, the listener grows tired of the tears, takes a rest, and returns from his temporary excitement to a rational frame of mind. So let us not let the effect go cold, but abandon the pathos once we have brought it to its highest point, and not expect anyone to grieve long for the troubles of others. This is why the tone of our speech should rise particularly (but not exclusively) in this part, because any failure to enhance what went before seems rather to weaken it; declining emotion easily disappears altogether.

Not only words, but some actions are used to produce tears. Hence the practice of bringing the accused into court dirty and unkempt, and their children and parents with them,²⁰ while we see the prosecution displaying the bloody sword, the bits of bone taken from the wound, the blood-bespattered clothing, the unbandaging of the wounds, the stripped bodies with the marks of the scourge. These things commonly make an enormous impression, because they confront people's minds directly with the facts. This is how Caesar's toga, carried in his funeral, covered in blood, drove the Roman people to fury.²¹ It was known that he had been killed; his body lay on the bier; but it was the clothing, wet with blood, that made the image of the crime so vivid that Caesar seemed not to have been murdered, but to be being murdered there and then.

carrying a child in his arms: cf. *De oratore* 1.228, *Pro Flacco* 102, *Pro Fonteio* 46, *Brutus* 90.

²¹ See Plutarch, *Caesar* 68, *Brutus* 20; Suetonius, *Divus Iulius* 84.

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- 32 Sed non ideo probaverim, quod factum et lego et ipse aliquando vidi, depictam in tabula sipariove¹⁵ imaginem rei cuius atrocitate iudex erat commovendus: quae enim est actoris infantia qui mutam illam effigiem magis quam
- 33 orationem pro se putet locuturam? At sordes et squalorem et propinquorum quoque similem habitum scio profuisse, et magnum ad salutem momentum preces attulisse; quare et obsecratio illa iudicum per carissima pignora, utique si
- 34 et reo sint liberi coniux parentes, utilis erit. Et deorum etiam invocatio velut ex bona conscientia profecta videri solet, stratum denique iacere et genua complecti, nisi si tamen persona nos et ante acta vita et rei condicio prohibebit; quaedam enim tam fortiter tuenda quam facta sunt. Verum sic habenda est auctoritatis ratio ne sit invisa securitas. Fuit quondam inter haec omnia potentissimum quo
- 35 L. Murenam Cicero accusantibus clarissimis viris eripuisse praecipue videtur, persuasitque nihil esse ad praesentem rerum statum utilius quam duos¹⁶ Kal. Ian. ingredi consulatum. Quod genus nostris temporibus totum paene sublatum est, cum omnia curae tutelaeque unius innixa periclitari nullo iudicii exitu possint.
- 36 De accusatoribus et reis sum locutus quia in periculis maxime versatur adfectus. Sed privatae quoque causae

¹⁵ in tabula sipariove *Conrad*: tabulam supra iovem A

¹⁶ *Stroux*: pridie *codd.*

²² *Pro Murena* 4, 79. Pointless under the Empire, as Q. goes on to say, because the consulship was a briefly held honorific appointment of little power.

²³ I.e. the thought that public affairs may be seriously damaged by the conviction of an individual.

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I would not however, for this reason, approve a practice of which I have read—and indeed have occasionally seen—of having a picture painted on a board or a canvas, depicting the horrible event of which the judge is to be reminded. What depths of incompetence must there be in a pleader who thinks a dumb image will speak for him better than his own words! Mourning clothes, an unkempt appearance, and relatives similarly attired have, I know, proved of use, and prayers have been known to weigh heavily for an acquittal; therefore appeals to the judges by “all that is near and dear,” especially if the defendant has children, wife, and parents, will also be of service. An invocation to the gods too is generally thought a sign of a good conscience; likewise, prostrating oneself and grasping the judges’ knees—unless indeed the character, past life, and status of the defendant make that impossible for us, for some acts need to be defended just as boldly as they were committed. (However, the authoritative stance needs careful handling, so as not to seem offensively over-confident.) At one time the most potent of these methods was that which was Cicero’s main resource in rescuing Lucius Murena from his distinguished accusers, and convincing the judges that nothing was so important in the current political circumstances as that two consuls should take up office on the first of January.²² In our day, all this sort of thing²³ has almost vanished, since everything rests on the care and protection of a single person and cannot be endangered by the outcome of any trial.

I have spoken of accusers and accused because emotion is most involved where there is personal danger. Private

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utrumque habent perorationis genus, et illud quod est ex enumeratione probationum et hoc quod ex lacrimis, si aut statu periclitari aut opinione litigator videtur. Nam in parvis quidem litibus has tragoedias movere tale est quasi si personam Herculis et coturnos aptare infantibus velis.

- 37 Ne illud quidem indignum est admonitione, ingens in epilogis meo iudicio verti discrimen quo modo se dicenti qui excitatur accomodet. Nam et imperitia et rusticitas et rigor et deformitas adferunt interim frigus, diligen-
- 38 terque sunt haec actori providenda. Equidem repugnantis patrono et nihil vultu commotos et intempestive reidentis¹⁷ et facto aliquo vel ipso vultu risum etiam moventis saepe vidi; praecipue vero cum aliqua velut scaenice fiunt
- 39 aliter¹⁸ cadunt. Transtulit aliquando patronus puellam, quae soror esse adversarii dicebatur (nam de hoc lis erat), in adversa subsellia, tamquam in gremio fratris relicturus; at is a nobis praemonitus discesserat. Tum ille, alioqui vir facundus, inopinatae rei casu obmutuit et infantem
- 40 suam frigidissime reportavit. Alius imaginem mariti pro rea proferre magni putavit, at ea risum saepius fecit. Nam et ii quorum officii erat ut traderent eam, ignari quid¹⁹ esset epilogus, quotiens respexisset patronus offerebant palam, et prolata novissime deformitate ipsa (nam senis cadaveri <cera erat>²⁰ infusa) praeteritam quoque orationis
- 41 gratiam perdidit. Nec ignotum quid Glyconi, cui Spyri-

¹⁷ *Spalding*: residentis A ('sitting down')

¹⁸ *Halm* (cf. *OLD* s.v. aliter 5): aliam A: aliam cadunt *del.*

Regius ¹⁹ *M.W.*: qui A

²⁰ *add. Halm*

²⁴ Compare "Longinus" 30.2, Lucian, *How to write history* 23.

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Causes however also have both varieties of Peroration, both the one that enumerates Proofs and this tearful kind, if the litigant risks status or reputation. In trivial cases, of course, to raise such tragic storms is like putting Hercules' mask and buskins on a baby.²⁴

It is also worth pointing out that, in my opinion, it makes a crucial difference to an Epilogue how the client who is being put on display adapts himself to his advocate. Sometimes his ignorance, lack of sophistication, stiffness, and uncouthness make the whole thing a disaster, and the speaker must take care to guard against this. I have often seen clients resisting their advocate, showing no emotion in their faces, grinning at the wrong moments, and sometimes even raising a laugh by some action or expression of the face. It is particularly when things are done for dramatic effect that they turn out badly. On one occasion, an advocate arranged for a girl who was said to be the sister of the opponent (this was the point in dispute) to move over to the opposite benches. He intended to leave her in her brother's arms; but I had warned the brother in advance, and he had left the court. The advocate, normally at no loss for words, was struck dumb by this unexpected turn of events, and moved his little girl back again, with disastrous effect. Another advocate, defending a woman, thought it a good idea to display a portrait of her husband; this repeatedly raised a laugh, because the persons entrusted with handing him the portrait, not knowing what was the Epilogue, let it be seen whenever he turned their way, and when it was finally put on display it proved so hideous (it was the old man's wax death mask) that it ruined also the effect of the preceding speech. And there is a well-known story of what happened to Glycon, also called Spy-

dion fuit cognomen, acciderit. Huic puer, quem is productum quid fleret interrogabat, a paedagogo se vellicari respondit. Sed nihil illa circa Caepasios Ciceronis fabula efficacius ad pericula epilogorum.

42 Omnia tamen haec tolerabilia iis quibus actionem mutare facile est: at qui a stilo non recedunt aut conticescunt ad hos casus aut frequentissime falsa dicunt. Inde est enim 'tendit ad genua vestra supplices manus' et 'haeret in complexu liberorum miser' et 'revocat ecce me' etiam si nihil
43 horum is de quo dicitur faciat. Ex scholis haec vitia, in quibus omnia libere fingimus et inpune, quia pro facto est quidquid volumus; non admittit hoc idem veritas, egregieque Cassius dicenti adulescentulo: 'quid me torvo vultu intueris, Severe?' 'non mehercule' inquit 'faciebam, sed <si>²¹ sic scripsisti, ecce!' et quam potuit truculentissime eum aspexit.

44 Illud praecipue monendum, ne qui nisi summis ingenii viribus ad movendas lacrimas adgredi audeat; nam ut est longe vehementissimus hic cum invaluit adfectus, ita si nil efficit tepet; quem melius infirmus actor tacitis iudicum
45 cogitationibus reliquisset. Nam et vultus et vox et ipsa illa excitati rei facies ludibrio etiam plerumque sunt homini-

²¹ *add. Burman*

²⁵ A Greek declaimer mentioned by the elder Seneca (e.g. *Suasoriae* 1.11, 2.14): see Bornecque (1902) 169.

²⁶ *Pro Cluentio* 58–59; see 6.3.39–40. The incompetence of these advocates damaged their client.

²⁷ I.e. Cassius Severus, the orator whom Tacitus (*Dialogus* 19) regards as initiating the decadence of oratory. Q. is critical of him (10.1.116, 11.1.57). For a general discussion, see Heldemann

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ridion.²⁵ He asked a boy whom he produced in court why he was crying; the boy replied that he was being pinched by his *paedagogus*. But the most effective warning of the dangers of Epilogues is Cicero's story about the Caepasius brothers.²⁶

All these difficulties can be borne if a speaker finds it easy to change the course of his pleading; those who are incapable of departing from their written text are either reduced to silence by such accidents or, very often, find themselves saying what is not true: "He stretches out his hands in supplication to clasp your knees" or "The wretched man clings to the embrace of his children" or "Look, he is calling me back . . ."—even if the client is doing none of these things! These faults come from the schools, where we invent everything freely and with impunity, because anything we choose can be taken for a fact. Real life does not allow this, and Cassius²⁷ made a good point, when the young man said "Why are you scowling at me, Severus?" and he retorted "Indeed I'm not, but if that's what you've written, here you are," and fixed him with the most ferocious scowl he could muster.

I must issue a particular warning against venturing to arouse tears, unless one has a really powerful talent. This emotion, when successfully aroused, is far the most effective of all; but if the attempt fails it is a lukewarm business, and a weak performer would do better to leave it all to the silent thoughts of the judges. The face, the voice, and the whole look of a defendant whom one has displayed to the court often seem ridiculous to judges whom they have

(1982) 163–198. The young man appears to make a point by using the name Severus of his "scowling" opponent.

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bus quos non permoverunt. Quare metiatur ac diligenter aestimet vires suas actor, et quantum onus subiturus sit intellegat: nihil habet ista res medium, sed aut lacrimas meretur aut risum.

- 46 Non autem commovere tantum miserationem sed etiam discutere epilogi est proprium, cum oratione continua, quae motos lacrimis iudices ad iustitiam reducat, tum etiam quibusdam urbane dictis, quale est 'date puero pa-
- 47 nem, ne ploret', et corpulento litigatori, cuius adversarius, item puer, circa iudices erat ab advocatione latus: 'Quid faciam? Ego te baiulare non possum.' Sed haec tamen non debent esse mimica. Itaque nec illum probaverim, quamquam inter clarissimos sui temporis oratores fuit, qui pueris in epilogum productis talos iecit in medium, quos illi diripere coeperunt; namque haec ipsa discriminis sui
- 48 ignorantia potuit esse miserabilis: neque illum qui, cum esset cruentus gladius ab accusatore prolatus, quo is hominem probabat occisum, subito ex subselliis ut territus fugit, et capite ex parte velato, cum ad agendum <vocatus>²² ex turba prospexisset, interrogavit an iam ille cum gladio recessisset. Fecit enim risum, sed ridiculus fuit. Discutiendae tamen oratione eius modi scaenae, egregieque Cicero, qui contra imaginem Saturnini pro Rabirio graviter, et contra iuvenem cuius subinde vulnus in iudicio resolve-
- 49

²² *add. Schenkl*: ad cavendum Watt 1993 ('to see if the coast was clear')

²⁸ Unknown. ²⁹ His trick was to give the children something to play with. The game consists in throwing the *astragali* (sheep's or goat's knucklebones, or ivory or other models of these) up in the air and catching them on the back of the hand.

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failed to move. So the pleader should measure and estimate his strength with care, and understand the size of the task he is to undertake. There is no halfway house in this; the reward is either tears or laughter.

The special task of the Epilogue includes not only exciting pity but also dispelling it, both by a set speech meant to recall judges who have been moved by tears to a sense of justice, and by the occasional touch of humour, like "Give the child a piece of bread, to stop him crying!" or "What am I to do? *I can't hump you around!*" as the advocate said to the fat client whose opponent, a young child, had just been carted round the jury by his counsel. But these things must not be farcical. I cannot approve of the orator (though he was one of the most famous of his day)²⁸ who, when some children were produced for the purposes of an Epilogue, threw some knucklebones to them, which they proceeded to scramble for.²⁹ In fact, their ignorance of the danger they were in might itself have aroused pity. Nor do I think much of the advocate who, when the prosecutor exhibited a bloody sword with which he was proving the victim had been killed, fled instantly from the benches, pretending to be terrified, and then, when he was <called upon> to speak, peeped out of the crowd with his head partly muffled up, and asked whether the man with the sword had gone. He raised a laugh, but he made himself ridiculous. Such theatrical effects should be neutralized by pure oratory. Cicero illustrates this admirably, both in *Pro Rabirio*,³⁰ where he attacks the portrait of Saturninus with dignity, and in *Pro Vareno*,³¹ where he has a number of humorous comments

³⁰ *Pro Rabirio perduellionis reo* 31.

³¹ *Fr. orat.* II.17 Schoell = T 8 Crawford (1994) p. 13.

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batur pro Vareno multa dixit urbane.

- 50 Sunt et illi leniores epilogi, quibus adversario satisfaci-
mus, si forte sit eius persona talis ut illi debeatur reveren-
tia, aut cum amice aliquid commonemus et ad concordiam
hortamur. Quod est genus egregie tractatum a Passieno,
cum in Domitiae uxoris suae pecuniaria lite adversus fra-
trem eius Aenobarbum ageret; nam cum de necessitudine
multa dixisset, de fortuna quoque, qua uterque abundabat,
adiexit: 'nihil vobis minus deest quam de quo contenditis.'
- 51 Omnis autem hos adfectus, etiam si quibusdam viden-
tur in prohoemio atque in epilogo sedem habere, in quibus
sane sint frequentissimi, tamen aliae quoque partes reci-
piunt, sed breviores, ut cum ex iis plurima sint reservanda.
At hic, si usquam, totos eloquentiae aperire fontes licet.
- 52 Nam et, si bene diximus reliqua, possidebimus iam iudi-
cum animos, et e confragosis atque asperis evecti tota
pandere possumus vela, et, cum sit maxima pars epilogi
amplificatio, verbis atque sententiis uti licet magnificis et
ornatis. Tunc est commovendum theatrum cum ventum
est ad ipsum illud quo veteres tragoediae comoediaeque
cluduntur 'plodite'.
- 53 In aliis autem partibus tractandus erit adfectus ut
quisque nascetur; nam neque exponi sine hoc res atroces

³² Husband of the sister of Nero's father. Passienus' father was a well known rhetor (Seneca, *Controversiae* 3 *praef.* 10).

³³ All the plays of Terence, and many of Plautus, end with some such formula: see Horace, *Ars Poetica* 155, where Porphyrio comments that this is true also of tragedy. It was Greek comedy practice too: e.g. Menander, *Dyscolos* 966-967.

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on the young man whose wound was repeatedly unbound during the trial.

There is also a less intense type of Epilogue, in which we make it up with our adversary, if he is the sort of person who deserves respect, or give him some friendly advice and urge him to come to terms. This method was used to excellent effect by Passienus,³² when he was pleading in a financial case brought by his wife Domitia against her brother Ahenobarbus. Having said much about the family relationship, he went on to say of their fortune (both were very rich), "There is nothing either of you needs less than that over which you are in contention."

All these appeals to emotion, though some think their proper home is in the Prooemium and the Epilogue (where indeed we may allow them to be commonest), nevertheless have a place in other parts of the speech as well, though in a shorter form, because the greater part of them must be held in reserve. But here, if anywhere, we are allowed to release the whole flood of our eloquence. If we have spoken the rest well, we shall by now be in possession of the hearts of the judges; having escaped the reefs and shoals, we can spread our sails; and, as the main business of an Epilogue is Amplification, we can use grand and ornate words and thoughts. The moment to move the audience is when we come to the phrase with which the old tragedies and comedies end: "Now give us your applause."³³

In other parts of the speech, we should touch on emotions wherever they arise naturally. Outrageous or pitiable events ought not to be handled without this element, and

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- et miserabiles debent, <et>²³ cum de qualitate alicuius rei quaestio est [et]²⁴ probationibus unius cuiusque rei recte
54 subiungitur. Ubi vero coniunctam ex pluribus causam agimus, etiam necesse erit uti pluribus quasi epilogis, ut in Verrem Cicero fecit; nam et Philodamo et nauarchis et cruci civis Romani et aliis plurimis suas lacrimas dedit.
55 Sunt qui hos *μερικους ἐπιλόγους* vocent, quo partitam perorationem significant. Mihi non tam partes eius quam species videntur, si quidem et epilogi et perorationis nomina ipsa aperte satis ostendunt hanc esse consummationem orationis.

2

- 1 Quamvis autem pars haec iudicialium causarum summa praecipue¹ constet adfectibus et aliqua de iis necessario dixerim, non tamen potui ac ne debui quidem istum locum in unam speciem concludere. Quare adhuc opus superest cum ad optinenda quae volumus potentissimum, tum supra dictis multo difficilius, movendi iudicum animos atque in eum quem volumus habitum formandi et velut
2 transfigurandi. Qua de re pauca quae postulabat materia sic attingi ut magis quid oporteret fieri quam quo id modo consequi possem ostenderem. Nunc altius omnis rei repetenda ratio est.

Nam et per totam, ut diximus, causam locus est adfecti-

²³ *add. Spalding* ²⁴ *del. Spalding*

¹ *Winterbottom: praecipueque A*

³⁴ 1.75, 5.117, 5.162.

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when the Question is one of the Quality of something, Emotion is justifiably combined with the Proofs of each fact. When we are pleading a Cause which is a complex of several Causes, it will be necessary also to have several quasi-epilogues, as Cicero does in the Verrines,³⁴ where he sheds tears over Philodamus, the ship's captains, the crucified Roman citizen and many other victims. Some call these *merikoi epilogoi*, meaning a "divided peroration." I think they are not so much parts of the Peroration as distinct species, because the terms "Peroration" and "Epilogue" themselves plainly indicate that this is the final conclusion of the speech.

CHAPTER 2

More on emotions

Although this final part of forensic causes consists mainly in emotional appeals, and I have been obliged to say something about these, I did not find it possible, or indeed right, to bring the whole topic of emotions together under this single head. Thus we have still before us a subject which both offers the most powerful means of securing our aims, and is much more difficult than anything we have discussed above: I mean the business of affecting the judges' minds, shaping them to our wishes, and, one might say, transfiguring them. I have touched on the few aspects of this subject which my material made necessary, more to show what ought to be done than to show how it could be attained. I must now go into the theory of the whole thing more deeply.

There is scope for the emotions, as I said, throughout

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- bus, et eorum non simplex natura nec in transitu tractanda.
- 3 Quo nihil adferre maius vis orandi potest: nam cetera forsitan tenuis quoque et angusta ingeni vena, si modo vel doctrina vel usu sit adiuta, generare atque ad frugem aliquam perducere queat: certe sunt semperque fuerunt non parum multi qui satis perite quae essent probationibus utilia reperirent. Quos equidem non contemno, sed hactenus utiles credo, ne quid per eos iudici sit ignotum, atque (ut dicam quod sentio) dignos a quibus causam deserti docerentur: qui vero iudicem rapere et in quem vellet habitum animi posset perducere, quo dicente flendum irascendum
- 4 esset, rarus fuit. Atqui hoc est quod dominatur² in iudiciis: haec³ eloquentia regnat. Namque argumenta plerumque nascuntur ex causa, et pro meliore parte plura sunt semper, ut qui per haec vicit tantum non defuisse sibi advocatum sciat: ubi vero animis iudicum vis adferenda est et ab ipsa veri contemplatione abducenda mens, ibi proprium oratoris opus est. Hoc non docet litigator, hoc causarum libellis non continetur. Probationes enim efficiant sane ut causam nostram meliorem esse iudices putent, adfectus praestant ut etiam velint; sed id quod volunt credunt quoque.
- 6 Nam cum irasci favere odisse misereri coeperunt, agiam rem suam existimant, et, sicut amantes de forma iudicare non possunt quia sensum oculorum praecipit animus,⁴ ita omnem veritatis inquirendae rationem iudex

² *edd.*: dominetur A

³ hic *Halm*

⁴ praecipit amor *t.* praecurrit animus *M. W.*

¹ Compare 4.2.86.

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the Cause, and their nature is very complex and cannot be treated *en passant*. Oratory has no more important contribution to make than this. Even a thin and limited vein of talent, given the assistance either of learning or of practice, can produce all the other effects and bring them to a certain fruition. At any rate there are, and always have been, a fair number of speakers capable of discovering with some skill what it is that their Proofs require. I do not despise them, but I think that the limit of their usefulness is to ensure that the judge is not ignorant of anything.¹ If I may speak my mind, they are very proper people to instruct real orators in the facts of the case. But the man who can carry the judge with him, and put him in whatever frame of mind he wishes, whose words move men to tears or anger, has always been a rare creature. Yet this is what dominates the courts, this is the eloquence that reigns supreme. Arguments, for the most part, spring out of the Cause, and the better side always has more of them, so that a man who wins on Arguments knows only that his advocate has not failed him. But where force has to be brought to bear on the judges' feelings and their minds distracted from the truth, there the orator's true work begins. This is not something on which the litigant instructs him, or which is contained in the notes for the Cause. Of course, Proofs may lead the judges to *think* our Cause the better one, but it is our emotional appeals that make them also *want* it to be so; and what they want, they also believe. For as soon as they begin to be angry or to feel favourably disposed, to hate or to pity, they fancy that it is now their own case that is being pleaded, and just as lovers cannot judge beauty because their feelings anticipate the perception of their eyes, so also a judge who is overcome by his emotions gives up any

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- omittit occupatus adfectibus: aestu fertur et velut rapido
 7 flumini obsequitur. Ita argumenta ac testes quid egerint
 pronuntiatio ostendit, commotus autem ab oratore iudex
 quid sentiat sedens adhuc atque audiens confitetur. An
 cum ille qui plerisque perorationibus petitur fletus erupit,
 non palam dicta sententia est? Huc igitur incumbat orator,
 hoc opus eius, hic labor est, sine quo cetera nuda ieiuna
 infirma ingrata sunt: adeo velut spiritus operis huius atque
 animus est in adfectibus.
- 8 Horum autem, sicut antiquitus traditum accepimus,
 duae sunt species: alteram Graeci *πάθος* vocant, quod
 nos vertentes recte ac proprie adfectum dicimus, alteram
ἦθος, cuius nomine, ut ego quidem sentio, caret sermo
 Romanus: mores appellantur, atque inde pars quoque illa
 9 philosophiae *ἠθικὴ* moralis est dicta. Sed ipsam rei natu-
 ram spectanti mihi non tam mores significari videntur
 quam morum quaedam proprietas; nam ipsis quidem
 omnis habitus mentis continetur. Cautiores voluntatem
 complecti quam nomina interpretari maluerunt. Adfectus
 igitur hos concitatos, illos⁵ mites atque compositos esse
 dixerunt: in altero vehementes motus, in altero lenes, de-
 nique hos imperare, illos persuadere, hos ad perturbatio-
 10 nem, illos ad benivolentiam praevalere. Adiciunt quidam
ἦθος perpetuum, *πάθος* temporale esse. Quod ut accidere
 frequentius fateor, ita nonnullas credo esse materias quae

⁵ hos . . . illos] *πάθος* . . . *ἦθος* *Radermacher*

² Vergil, *Aeneid* 6.129.

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idea of inquiring into truth; he is swept along by the tide, as it were, and yields to the swift current. Thus it is only the final verdict that reveals how effective the Arguments and witnesses have been; but the judge confesses the impact made by the orator on his emotions while he is still sitting in court and listening. When the tears, which are the aim of most perorations, start from his eyes, is not the decision given for all to see? So let the orator concentrate on this, "this is the task, this the toil";² without this everything else is bare, thin, weak, and charmless. The life and soul of oratory, we may say, is in the emotions.

Pathos and Ethos

However, as we learn from our ancient authorities, there are two kinds of emotions. One is called *pathos* by the Greeks, and we correctly and properly translate this as "emotion" (*adfectus*). The second kind they call *ēthos*; in my view, Latin lacks any equivalent. People use *mores*, and the "ethical" division of philosophy is therefore called "moral." But looking at the nature of the thing, I think *ēthos* means not so much *mores* as a certain special aspect of *mores*, because *mores* itself covers all mental attitudes. More cautious writers have preferred to express the sense rather than translate the word. They have therefore spoken of one of the sets of emotions as violent, and the other as gentle and steady; in the one (they say) the passions are vehement, in the other subdued; the former command, the latter persuade; the former are powerful agents of disturbance, the latter of good will. Some say also that *ēthos* is permanent, *pathos* temporary. While admitting that this is commonly so, I think there are some subjects which re-

continuum desiderent adfectum. Nec tamen minus artis
aut usus hi leniores habent, virium atque impetus non tan-
tundem exigunt. In causis vero etiam pluribus versantur,
11 immo secundum quendam intellectum in omnibus, [nam]
cum ex illo ethico⁶ loco nihil non ab oratore tractetur.
<Nam>⁷ quidquid de honestis et utilibus, <iustis et inius-
tis,>⁸ denique faciendis ac non faciendis dicitur, ἦθος
vocari potest.

Quidam commendationem atque excusationem pro-
pria huius officii putaverunt, nec abnuo esse ista in hac
12 parte, sed non concedo ut sola sint. Quin illud adhuc
adicio, πάθος atque ἦθος esse interim ex eadem natura, ita
ut illud maius sit, hoc minus, ut amor πάθος, caritas ἦθος,
interdum diversa inter se, sicut in epilogis; nam quae
πάθος concitavit, ἦθος solet mitigare.

Proprie tamen mihi huius nominis exprimenda natura
est, quatenus appellatione ipsa non satis significari videtur.
13 ἦθος, quod intellegimus quodque a dicentibus desi-
deramus, id erit quod ante omnia bonitate commendabi-
tur, non solum mite ac placidum, sed plerumque blandum
et humanum et audientibus amabile atque iucundum, in
quo exprimendo summa virtus ea est, ut fluere omnia ex
natura rerum hominumque videantur, quo⁹ mores dicen-
tis ex oratione perluceant et quodam modo agnoscantur.
14 Quod est sine dubio inter coniunctas maxime personas,
quotiens ferimus ignoscimus satisfacimus monemus, pro-
cul ab ira, procul ab odio. Sed tamen alia patris adversus

⁶ *Halm*: et hoc A: ἦθους D.A.R.

⁷ D.A.R. (Nam cum . . . tractetur quidquid A)

⁸ *add.* D.A.R.

⁹ utque *Halm*.

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quire continuous emotion. However, the gentler feelings do not need less skill or experience, though they do not make the same demands on strength and drive. They are in fact involved in more Causes, indeed in one sense they are involved in all, because everything within this sphere of ethics is a subject for the orator. For whatever is said about the honourable and the expedient, <the just and the unjust,> or in short about what should and what should not be done, can be called *ēthos*.

Some have held that recommendation and excuse are the special sphere of this function. I do not deny that they do fall within it; but neither do I grant that they are its only spheres. Indeed, I am prepared to add that *pathos* and *ēthos* are sometimes of the same nature, and differ only in degree (for example, love is *pathos*, affection is *ēthos*), but sometimes also incompatible, as in Epilogues, because *ēthos* often calms what *pathos* has stirred up.

I think I had better give a special explanation of the nature of *ēthos*, because the word itself does not seem to express the meaning clearly.

The *ēthos* which I mean, and which I want to see in a speaker, will be that which is recommended primarily by goodness: not only mild and calm, but usually attractive and polite, and pleasing and delightful to the listeners. The great virtue in expressing it lies in making it seem that everything flows from the nature of the facts and the persons, so that the speaker's character shines through his speech and is somehow recognized. It does of course occur most of all between persons closely connected with each other, whenever we put up with someone, forgive, apologize, or warn, with no trace of anger or hatred anywhere near. But the moderation shown by a father to his son, a guardian to

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filium, tutoris adversus pupillum, mariti adversus uxorem moderatio est (hi enim praeferunt eorum ipsorum a quibus laeduntur caritatem, neque alio modo invisos eos faciunt quam quod amare ipsi videntur), alia cum senex adulescentis alieni convicium, honestus inferioris fert; hic enim tantum concitari, illic etiam adfici dedecet.¹⁰

15 Sunt et illa ex eadem natura, sed motus adhuc minoris, veniam petere adulescentiae, defendere amores. Nonnumquam etiam lenis caloris alieni derisus ex hac forma venit, sed is non ex iocis tantum. Verum aliquanto magis propria fuerit virtutis simulatio satisfaciendi rogandi, et *εἰρωνεία*, quae diversum ei quod dicit intellectum petit.

16 Hinc etiam ille maior ad concitandum odium nasci adfectus solet, cum hoc ipso quod nos adversariis summittimus intellegitur tacita inpotentiae exprobratio: namque eos gravis et intolerabiles id ipsum demonstrat, quod cedimus. Et ignorant cupidi maledicendi aut adfectatores libertatis plus invidiam quam convicium posse; nam invidia adversarios, convicium nos invisos facit.

17 Ille iam paene medius adfectus est ex amoribus, ex desideriiis amicorum et necessariorum; nam et hoc maior est et illo minor.

Non parum significanter etiam illa in scholis ἡθῆ diximus, quibus plerumque rusticos superstitiosos avaros timidos secundum condicionem positionum effingimus;

¹⁰ *Winterbottom*: debet A: tantum <non> (*Kiderlin*) concitari, illic <vix> etiam adfici debet *Watt* 1988 ('in the latter case, one ought simply not to be unduly worked up, in the former one scarcely ought to be affected at all')

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his ward, or a husband to his wife is one thing (for these persons emphasize their affection for the very people who wrong them, and stir up ill feeling against them solely by being seen to love them), and that of an old man putting up with the rudeness of a young stranger, or a man of rank with that of an inferior, is quite another. In the latter case, it is improper to get worked up; in the former, it is improper even to feel the emotion at all.

Of the same kind, though involving even less emotion, are excuses made for the young and the defence of their love affairs. Sometimes also gentle ridicule of another's ardour comes in this form, but it should not consist solely of jokes. Somewhat more closely linked with this quality is the pretence of making an apology or a request, and also Irony, which asks to be understood in a sense other than that of the actual words. This is also a source from which a more powerful emotion for exciting hatred often derives, namely when giving way to our opponents is itself taken to imply a tacit rebuke of their domineering ways, because the very fact of our giving way shows how arrogant and insupportable they are. Orators who have a passion for abuse or affect free speech fail to realize that prejudice is more effective than abuse, since prejudice makes our opponents hated, while abuse does the same for ourselves.

There is also a sort of intermediate emotion, arising out of the love and longing of friends and close connections; this is less than *pathos* and more than *ēthos*.

It is quite right also to use the word *ēthos* of the sort of school exercises in which we often represent countrymen, superstitious men, misers, and cowards according to the

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nam si ῥῆθῆ mores sunt, cum hos imitamur ex his ducimus orationem.

- 18 Denique ῥῆθος omne bonum et comem virum poscit. Quas virtutes cum etiam in litigatore debeat orator, si fieri potest, adprobare, utique ipse aut habeat aut habere credatur. Sic proderit plurimum causis, quibus ex sua bonitate faciet fidem. Nam qui dum dicit malus videtur utique male dicit [non enim videtur iusta dicere, alioqui ῥῆθος non videretur].¹¹ Quare ipsum etiam dicendi genus in hoc placidum esse debet ac mite, nihil superbum, nihil elatum saltem ac sublime desiderat: proprie iucunde credibiliter dicere sat est, ideoque ei medius ille orationis modus maxime convenit.

- 20 Diversum est huic quod πάθος dicitur quodque nos adfectum proprie vocamus, et, ut proxime utriusque differentiam signem, illud comoediae, hoc tragoediae magis simile. Haec pars circa iram odium metum invidiam miserationem fere tota versatur, quae quibus ex locis ducenda sint et manifestum omnibus et a nobis in ratione prohoemii atque epilogi dictum est.

- 21 Et metum tamen duplicem intellegi volo, quem patimur et quem facimus, et invidiam: namque altera invidum, altera invidiosum facit. Hoc autem hominis, illud <et>¹² rei est; in quo [et]¹³ plus habet operis oratio; nam

¹¹ *del. Radermacher*

¹² *add. Shackleton Bailey*

¹³ *del. D.A.R.: <minus> et plus Kiderlin*

³ For this type of declamation (often humorous, largely inspired by comedy, and more characteristic of Greek than of Roman practice) see *GD* 86–105.

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terms of our theme.³ For if *ēthos* means *mores*, then when we imitate *mores* we base our speech on *ēthos*.

Finally, *ēthos* in all its forms requires a good and even-tempered person. Since the orator needs to demonstrate these qualities, if he can, in his client too, he must at any rate possess, or be thought to possess, them himself. He will thus do the best service to his Causes, as his own good character will lend them credibility. For the man who seems bad when he speaks must inevitably speak badly [for he does not seem to be saying what is just, and even if he did, it would not seem to be *ēthos*]. Hence the actual style of all this should be calm and gentle. It needs no pride, and certainly no elevation or sublimity. It is enough to speak appropriately, pleasantly, and credibly, and therefore the Middle Style⁴ is the most suitable.

Pathos, which we call "emotion" (*adfectus*) in the strict sense, is very different. To indicate the difference by the closest parallel I can, let me say that the one is nearer to comedy, and the other to tragedy.⁵ *Pathos* is almost entirely concerned with anger, hatred, fear, envy, and pity. The topics from which these can be derived are obvious to all, and I have given them in connection with the Prooemium and the Epilogue.

Fear, however, is to be understood in two ways: fear which we feel and fear which we cause in others. Likewise envy: one kind makes a person "envious," the other "invidious," though the first applies rather to persons and the second <also> to things; it is with the latter that oratory has

⁴ See 12.10.58–60.

⁵ Compare "Longinus" 9.15, where *pathos* is associated with the *Iliad*; and *ēthos* with the *Odyssey* and comedy.

22 quaedam videntur gravia per se, parricidium caedes veneficium, quaedam efficienda sunt. Id autem contingit cum magnis alioqui malis gravius esse id quod passi sumus ostenditur, quale est apud Vergilium:

o felix una ante alias Priameia virgo,
hostilem ad tumulum Troiae sub moenibus altis
iussa mori—

23 (quam miser enim casus Andromachae si comparata ei felix Polyxena!): aut cum ita exaggeramus iniuriam nostram ut etiam quae multo minora sunt intoleranda dicamus: 'si pulsasses, defendi non poteras: vulnerasti.' Sed haec diligentius cum de amplificatione dicemus.

24 Interim notasse contentus sum non id solum agere adfectus, ut quae sunt ostendantur acerba ac luctuosa, sed etiam ut quae toleranda haberi solent gravia videantur, ut cum in maledicto plus iniuriae quam in manu, in infamia plus poenae dicimus quam in morte. Namque in hoc eloquentiae vis est, ut iudicem non in id tantum compellat in quod ipsa rei natura ducetur, sed aut qui non est aut maiorem quam est faciat adfectum. Haec est illa quae dinosis vocatur, rebus indignis asperis invidiosis addens vim oratio, qua virtute praeter alias plurimum Demosthenes valuit.

25 Quod si tradita mihi sequi praecepta sufficeret, satisfaceram huic parti nihil eorum quae legi vel didici, quod

⁶ *Aeneid* 3.321–323.

⁷ 8.4.9ff.

⁸ Compare e.g. Demetrius 136; Anonymus Seguierianus 243, 252; Lausberg § 438.

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most work to do, because some things are seen to be grave in themselves—parricide, murder, poisoning—whereas others have to be made out to be so. This happens: (1) when we show that what we have suffered is worse than things which are anyway great evils; thus Vergil:

O blest beyond all others, Priam's maiden,
upon an enemy's tomb, by Troy's high walls,
bidden to die,⁶

for how grievous must Andromache's lot be if Polyxena is happy compared with her! (2) when we endeavour to exaggerate our wrongs by saying that other far lesser troubles are intolerable: "If you had so much as hit him, it could not have been justified; but you wounded him." I shall discuss this in more detail when I speak of Amplification.⁷

Meanwhile, I content myself with observing that the aim of appeals to the emotions is not only to display the bitter and melancholy nature of troubles that indeed are so, but also to make experiences which are commonly thought tolerable seem grievous: for instance, when we say that there is more injury done by an insult than by a blow, or that disgrace is a heavier penalty than death. The power of eloquence in fact lies not only in driving the judge to the conclusion towards which he will be led by the nature of the facts, but either in arousing emotion which is not there or in making an existing emotion more intense. This is called *deinōsis*,⁸ that is to say language that adds force to facts which are disgraceful, cruel, or odious. Demosthenes was even stronger in this quality than in others.

If I felt it was sufficient to follow traditional rules, I should have done enough for this topic if I simply left out nothing that I had read or learnt, so long as it was sound

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modo probabile fuit, omittendo: sed eruere¹⁴ in animo est quae latent et penitus ipsa huius loci aperire penetralia, quae quidem non aliquo tradente sed experimento meo ac natura ipsa duce accepi.

- 26 Summa enim, quantum ego quidem sentio, circa movendos adfectus in hoc posita est, ut moveamur ipsi. Nam et luctus et irae et indignationis aliquando etiam ridicula fuerit imitatio, si verba vultumque tantum, non etiam animum accommodarimus. Quid enim aliud est causae ut lugentes utique in recenti dolore disertissime quaedam exclamare videantur, et ira nonnumquam indoctis quoque eloquentiam faciat, quam quod illis inest vis mentis et
- 27 veritas ipsa morum? Quare, in iis quae esse veri similia volumus, simus ipsi similes eorum qui vere patiuntur adfectibus, et a tali animo proficiscatur oratio qualem facere iudici volet. An ille dolebit qui audiet, me, qui in hoc dicam, non dolente?¹⁵ Irascetur, si nihil ipse qui in iram concitat ei quod exigit simile patietur? Siccis agentis oculis
- 28 lacrimas dabit? Fieri non potest: nec incendit nisi ignis nec madescimus nisi umore 'nec res ulla dat alteri colorem | quem non ipsa habet.' Primum est igitur ut apud nos valeant ea quae valere apud iudicem volumus, adficiamurque antequam adficere conemur. At quo modo fiet ut
- 29 adficiamur? Neque enim sunt motus in nostra potestate. Temptabo etiam de hoc dicere. Quas *φαντασίας* Graeci

¹⁴ *Burman*: mere A: promere *Meister*

¹⁵ *Shackleton Bailey*: dolentem A

⁹ Not at all an original thought: Aristotle, *Poetics* 17, Horace, *Ars Poetica* 101–107, Cicero, *De oratore* 2.189.

¹⁰ Hendecasyllables, it seems, and perhaps by Ovid (Courtney (1993) p. 310): see also 12.10.75, probably from the same poem.

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doctrine. However, my intention is to unearth what is hidden, and reveal the inner secrets of a subject which I have mastered not as a result of anyone's teaching but by my own experience and with the guidance of nature.

The heart of the matter as regards arousing emotions, so far as I can see, lies in being moved by them oneself.⁹ The mere imitation of grief or anger or indignation may in fact sometimes be ridiculous, if we fail to adapt our feelings to the emotion as well as our words and our face. Why else should mourners, at least when their grief is fresh, seem sometimes to show great eloquence in their cries? Why should anger sometimes make even the uneducated eloquent, if not because they have vigour of mind and genuine personality? Consequently, where we wish to give an impression of reality, let us assimilate ourselves to the emotions of those who really suffer; let our speech spring from the very attitude that we want to produce in the judge. Will the hearer feel sorrow, when I, whose object in speaking is to make him feel it, feel none? Will he be angry, if the person who is trying to excite his anger suffers nothing resembling the emotions he is calling for? Will he weep when the speaker's eyes are dry? Impossible! Nothing but fire can burn, nothing but water can make us wet, and "nothing gives colour but what colour has."¹⁰ The first thing, then, is that those feelings should be strong in us which we want to be strong in the judge, and that we should ourselves be moved before we try to move others. But how can we come to be moved? Emotions, after all, are not in our own power. Well, I will try to explain this too. The person who will show the greatest power in the expression of emotions will be the person who has properly

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- vocant (nos sane visiones appellemus), per quas imagines rerum absentium ita repraesentantur animo ut eas cernere oculis ac praesentes habere videamur, has quisquis bene
 30 ceperit is erit in adfectibus potentissimus. Quidam dicunt *εὐφαντασιώτων* qui sibi res voces actus secundum verum optime finget: quod quidem nobis volentibus facile continget; nisi vero inter otia animorum et spes inanes et velut somnia quaedam vigilantium ita nos hae de quibus loquor imagines prosequuntur ut peregrinari navigare proeliari, populos adloqui, divitiarum quas non habemus usum videamur disponere, nec cogitare sed facere, hoc animi vitium ad utilitatem non transferemus [ad hominem].¹⁶
- 31 Occisum queror: non omnia quae in re praesenti accidisse credibile est in oculis habebō? non percussor ille subitus erumpet? non expavescet circumventus, exclamabit vel rogabit vel fugiet? non ferientem, non concidentem videbō? non animo sanguis et pallor et gemitus, extremus denique expirantis hiatus insidet?
- 32 Insequetur *ἐνάργεια*, quae a Cicerone inlustratio¹⁷ et evidentia nominatur, quae non tam dicere videtur quam ostendere, et adfectus non aliter quam si rebus ipsis intersimus sequentur. An non ex his visionibus illa sunt:

¹⁶ *del. Winterbottom*

¹⁷ illustris oratio *Kayser* (cf. *Cic. Partit. orat.* 20)

¹¹ See "Longinus" 15.2 (with Russell (1964) and Mazzucchi (1992) ad loc.); Plutarch, *Amatorius* 759B.

¹² Regularly defined (e.g. Anonymus Seguiarianus 95, 111) as "an expression which brings the object signified under our eyes" (*λόγος ὑπ' ὅψιν ἄγων τὸ δηλούμενον*). Greek synonyms are

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formed what the Greeks call *phantasiai* (let us call them "visions"),¹¹ by which the images of absent things are presented to the mind in such a way that we seem actually to see them with our eyes and have them physically present to us. Some use the word *euphantasiōtos* of one who is exceptionally good at realistically imagining to himself things, words, and actions. We can indeed easily make this happen at will. When the mind is idle or occupied with wishful thinking or a sort of daydreaming, the images of which I am speaking haunt us, and we think we are traveling or sailing or fighting a battle or addressing a crowd or disposing of wealth which we do not possess, and not just imagining but actually doing these things! Can we not turn this mental vice to a useful purpose? Surely we can. Suppose I am complaining that someone has been murdered. Am I not to have before my eyes all the circumstances which one can believe to have happened during the event? Will not the assassin burst out on a sudden, and the victim tremble, cry for help, and either plead for mercy or try to escape? Shall I not see one man striking the blow and the other man falling? Will not the blood, the pallor, the groans, the last gasp of the dying be imprinted on my mind?

The result will be *enargeia*,¹² what Cicero calls *illustratio* and *evidentia*, a quality which makes us seem not so much to be talking about something as exhibiting it. Emotions will ensue just as if we were present at the event itself. Is it not from such "visions" that we get

hypotypōsis, *diatypōsis*; Latin *evidentia*, *illustratio*, and also *demonstratio* (*Ad Herennium* 4.68, with Caplan's note), and *imaginatio*: Lausberg §§ 810-819.

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excussi manibus radii revolutaque pensa,

<et>¹⁸

levique patens in pectore vulnus,

<et> equus¹⁹ ille in funere Pallantis 'positis insignibus'?

- 33 Quid? non idem poeta penitus ultimi fati cepit imaginem, ut diceret:

et dulcis moriens reminiscitur Argos?

- 34 Ubi vero miseratione opuserit, nobis ea de quibus queremur accidisse credamus, atque id animo nostro persuadeamus. Nos illi simus quos gravia indigna tristia passos queremur, nec agamus rem quasi alienam, sed adsumamus parumper illum dolorem: ita dicemus quae in nostro simili

- 35 casu dicturi essemus. Vidi ego saepe histriones atque comodos, cum ex aliquo graviore actu personam deposuissent, flentes adhuc egredi. Quod si in alienis scriptis sola pronuntiatio ita falsis accendit adfectibus, quid nos faciemus, qui illa cogitare debemus ut moveri periclitantium vice possimus?

- 36 Sed in schola quoque rebus ipsis adfici convenit, easque veras sibi fingere, hoc magis quod illic ut litigatores loquimur frequentius quam ut advocati: orbum agimus et naufragum et periclitantem, quorum induere personas quid attinet nisi adfectus adsumimus?

¹⁸ *add. edd.* ¹⁹ et equus *recc.*: et quos A

¹³ *Aeneid* 9.476. ¹⁴ *Aeneid* 11.40. ¹⁵ *Aeneid* 11.89.

¹⁶ *Aeneid* 10.782. ¹⁷ Cicero, *De oratore* 2.192 similarly says he has "often seen" the actor's eyes "burning" under his mask.

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The shuttle flew from her hand, the thread
unravelling,¹³

and

On his smooth breast, the gaping wound,¹⁴
and the horse at Pallas' funeral "his trappings laid aside"¹⁵
And how profoundly the same poet imagined the last moment of death, with the words:

And as he dies remembers his sweet Argos.¹⁶

Again, when pity is needed, let us believe that the ills of which we are to complain have happened to us, and persuade our hearts of this. Let us identify with the persons of whose grievous, undeserved, and lamentable misfortunes we complain; let us not plead the case as though it were someone else's, but take the pain of it on ourselves for the moment. We shall thus say what we would have said in similar circumstances of our own. I have frequently seen tragic and comic actors, having taken off their masks at the end of some emotional scene, leave the stage still in tears.¹⁷ And if the mere delivery of the written words of another can so kindle them with imagined emotions, what shall *we* be capable of doing, we who have to imagine the facts in such a way that we can feel vicariously the emotions of our endangered clients?

Even in school, it is proper that the student should be moved by his subject and imagine it to be real—all the more indeed because we speak in school more often as litigants than as advocates. We play the part of an orphan, a shipwrecked man, or someone in jeopardy: what is the point of taking on these roles if we do not also assume the emotions?

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Haec dissimulanda mihi non fuerunt, quibus ipse, quantuscumque sum aut fui, pervenisse me ad aliquod nomen ingeni credo: frequenter <ita.>²⁰ motus sum ut me non lacrimae solum deprenderent, sed pallor et veri similis dolor.

3

- 1 Huic diversa virtus quae risum iudicis movendo et illos tristes solvit adfectus et animum ab intentione rerum frequenter avertit et aliquando etiam reficit et a satietate vel a fatigatione renovat. Quanta sit autem in ea difficultas vel duo maximi oratores, alter Graecae, alter Latinae
- 2 eloquentiae princeps, docent: nam plerique Demostheni facultatem defuisse huius rei credunt, Ciceroni modum. Nec videri potest noluisse Demosthenes, cuius pauca admodum dicta nec sane ceteris eius virtutibus respondentia palam ostendunt non displicuisse illi iocos sed non contigisse.
- 3 Noster vero non solum extra iudicia sed in ipsis etiam orationibus habitus est nimius risus adfectator. Mihi quidem, sive id recte iudico sive amore inmodico praecipui in eloquentia viri labor, mira quaedam in eo videtur
- 4 fuisse urbanitas. Nam et in sermone cotidiano multa et in altercationibus et interrogandis testibus plura quam quisquam dixit facete, et illa ipsa quae sunt in Verrem dicta fri-

²⁰ *add. Halm*

¹ See Cicero, *Orator* 90, "Longinus" 34.3.

² See Plutarch, *Cicero* 25–26, 28. Cicero was *consularis scurra* to his opponents (Macrobius, *Saturnalia* 2.1). His jokes (*facete*

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I felt I must not keep these observations to myself; I believe they have enabled me, whatever my abilities are or have been, to achieve a certain reputation for talent. I have certainly often been moved, to the point of being overtaken not only by tears but by pallor and by a grief which is very like the real thing.

CHAPTER 3

Laughter

A very different quality is the one which arouses the judge's laughter and so dispels these gloomy emotions, frequently diverts his attention from the facts, and sometimes also refreshes or restores him when he is bored or tired. How difficult this quality is to acquire is best shown by the two leading masters of Greek and Roman oratory. Many think that Demosthenes had no capacity for it, and Cicero no discrimination in the use of it. It cannot be thought that Demosthenes deliberately rejected laughter, because his few jests, which are not at all on the level of his other excellences, demonstrate that he did not dislike jokes, but had no success with them.¹ The Roman, on the other hand, was held to be only too keen to raise a laugh, not only out of court, but also in his speeches.² Personally—whether I am right about this, or have been led astray by my great passion for this supreme orator—I think he had a really remarkable quality of urbanity. Both in his daily conversation and in his court debates and examinations of witnesses, he produced more witty remarks than anybody; the more

dicta) were collected by Trebatius (Cicero, *Ad familiares* 15.21) and Cicero's freedman Tiro (see § 5, below).

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gidius aliis adsignavit et testimonii loco posuit, ut, quo sunt magis vulgaria, eo sit credibilis illa non ab oratore ficta
 5 sed passim esse iactata. Utinamque libertus eius Tiro, aut alius, quisquis fuit, qui tris hac de re libros edidit, parcius dictorum numero indulgissent et plus iudicii in eligendis quam in congerendis studii adhibuissent: minus obiectus calumniantibus foret, qui tamen nunc quoque, ut in omni eius ingenio, facilius quod reici quam quod adici possit invenient.

6 Adfert autem rei summam difficultatem primum quod ridiculum dictum plerumque falsum est [hoc semper humile], saepe ex industria depravatum, praeterea <semper humile,>¹ numquam honorificum: tum varia hominum iudicia in eo quod non ratione aliqua sed motu animi quodam nescio an enarrabili iudicatur. Neque enim ab ullo satis explicari puto, licet multi temptaverint, unde risus, qui non solum factu aliquo dictove sed interdum quodam etiam corporis tactu lacessitur. Praeterea non una ratione moveri solet: neque enim acute tantum ac venuste, sed stulte iracunde timide dicta ac facta ridentur, ideoque anceps eius rei ratio est, quod a derisu non procul abest risus.
 7
 8 Habet enim, ut Cicero dicit, sedem in deformitate aliqua et turpitudine: quae cum in aliis demonstrantur, urbanitas, cum in ipsos dicentis reccidunt, stultitia vocatur.

Cum videatur autem res levis, et quae a scurris, mimis, insipientibus denique saepe moveatur, tamen habet vim nescio an imperiosissimam et cui repugnari minime potest. Erumpit etiam invitis saepe, nec vultus modo ac vocis
 9

¹ D.A.R.: hoc semper humile *after* falsum est A, *del.* Vollmer

³ See *In Verrem* 1.121.

⁴ *De oratore* 2.236.

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forced jokes against Verres³ he attributed to others, and treated as pieces of evidence, so that, the more banal these jokes are, the more likely they are to have been in general circulation and not invented by the orator himself. If only his freedman Tiro, or whoever it was who published the three books on this subject, had been less generous with the number of jokes, and shown more discretion in choosing than enthusiasm in collecting them! Cicero would then have been less exposed to his calumniators, who nevertheless (and this is true of all his qualities) will even now find it easier to discover things to reject than things to add.

A great difficulty in this is, first, that a joke is commonly untrue, often deliberately distorted, and moreover <always undignified and> never complimentary; and secondly, that people's judgements differ over a matter which is judged not on rational principles but by a feeling which cannot be put into words. Though many have tried, I do not think anyone gives a satisfactory account of the causes of laughter, which is stimulated not only by certain actions or words, but sometimes also just by physical contact. Again, there is no one principle by which laughter is aroused; we laugh not only at acute or witty sayings and actions, but at stupid, angry, or frightened ones. There is thus an ambivalence about it: laughter is not far from derision. As Cicero says,⁴ it has its basis in a certain deformity and ugliness. Pointing out these in others is called "urbanity"; when it rebounds upon the speaker, it is called foolishness.

Now, though laughter may seem to be a trivial matter, aroused often by buffoons (*scurrae*), actors of farce, or indeed fools, it nevertheless possesses perhaps the most commanding and irresistible force of all. It often breaks out against our will, and not only forces the face and the

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- exprimit confessionem, sed totum corpus vi sua concutit. Rerum autem saepe, ut dixi, maximarum momenta vertit, ut cum odium iramque frequentissime frangat. Documento sunt iuvenes Tarentini, qui multa de rege Pyrrho sequius inter cenam locuti, cum rationem facti reposerentur et neque negari res neque defendi posset, risu sunt et oportuno ioco elapsi. Namque unus ex iis 'immo', inquit, 'nisi lagona defecisset, occidissemus te', eaque urbanitate tota est invidia criminis dissoluta.
- 11 Verum hoc quidquid est, ut non ausim dicere carere omnino arte, quia nonnullam observationem habet suntque ad id pertinentia et a Graecis et a Latinis composita praecepta, ita plane adfirmo praecipue positum esse in natura et in occasione. Porro natura non tantum in hoc valet, ut acutior quis atque habilior sit ad inveniendum (nam id sane doctrina possit augeri), sed inest proprius quibusdam decor in habitu ac vultu, ut eadem illa minus alio dicente urbana esse videantur. Occasio vero et in rebus est, cuius est tanta vis ut saepe adiuti ea non indocti modo sed etiam rustici salse dicant, et in eo, quid aliquis dixerit prior; sunt enim longe venustiora omnia in respondendo quam in provocando.
- 14 Accedit difficultati quod eius rei nulla exercitatio est, nulli praeceptores. Itaque in conviviis et sermonibus multi dicaces, quia in hoc usu cotidiano proficimus: oratoria urbanitas rara, nec ex arte propria sed ab hac² consuetudine

² ab hac *D.A.R.*: ad hanc *A*

⁵ 6.3.1. ⁶ See also Valerius Maximus 5.11 ext. 3, Plutarch, *Pyrrhus* 8.12 (but not localized at Tarentum). *Q.*'s version is somewhat different from the others.

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voice to confess it, but convulses the whole body with its violence. And (as I said)⁵ it often turns the scale in very important matters, as it frequently dispels hatred and anger. A proof of this is the story of the young men of Tarentum,⁶ who had said a lot of bad things about King Pyrrhus at dinner. Called upon to explain themselves, as the offence could be neither denied nor justified, they escaped by means of a laugh and a timely joke. One of them said "To tell you the truth, if there had been any more in the bottle, we should have killed you," and this witticism made all the animosity of the charge evaporate.

Whatever this quality is, however, though I should not dare to say that it is entirely without art (for it does involve some observance of principles, and rules relating to it have been drawn up by both Greek and Latin writers), I am quite clear that it mainly depends on nature and on opportunity. (1) The effect of nature is not only that one person is more acute or more inventive than another (this of course could be developed by teaching) but that some people have a particular grace of bearing or countenance, so that the same remarks made by others seem less witty. (2) Opportunity (which is so powerful that it often helps not only the unlearned but simple country folk to say witty things) depends both on situations and on what a previous speaker has said; for all these things have much more charm as repartees than as challenges.

The difficulty is increased by the fact that there are no exercises and no teachers of this subject. Many people therefore display their wit at dinner parties and in conversation, because we may progress in this by daily practice, whereas specifically oratorical wit is rare, for it does not come from any special skill, but is borrowed from this

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- 15 commodata. Nihil autem vetabat et componi materias in
hoc idoneas, ut controversiae permixtis salibus fingeren-
tur, vel res proponi singulas ad iuvenum talem exercitatio-
nem. Quin ipsae illae (dicta sunt ac³ vocantur) quas certis
16 diebus festae licentiae dicere solebamus, si paulum adhi-
bita ratione fingerentur aut aliquid in his serium quoque
esset admixtum, plurimum poterant utilitatis adferre:
quae nunc iuvenum vel sibi⁴ ludentium exercitatio est.
- 17 Pluribus autem nominibus in eadem re vulgo utimur:
quae tamen si diducas, suam quandam propriam vim os-
tendent. Nam et urbanitas dicitur, qua quidem significari
video sermonem praeferentem in verbis et sono et usu⁵
proprium quandam gustum urbis et sumptam ex conver-
satione doctorum tacitam eruditionem, denique cui con-
18 traria sit rusticitas. Venustum esse quod cum gratia qua-
dam et venere dicatur apparet. Salsum in consuetudine
pro ridiculo tantum accipimus: natura non utique hoc est,
quamquam et ridicula esse oporteat salsa. Nam et Cicero
omne quod salsum sit ait esse Atticorum non quia sunt
maxime ad risum compositi, et Catullus, cum dicit:

nulla est in corpore mica salis,

³ *dicae* sunt ac *Radermacher* ('law-suits'): *diasyrtae* M. L. Clarke, *Class. Rev.* 27 (1977) 468 ('exercises in ridicule,' cf. *Aquila Romanus* 26.20 Halm)

⁴ vel sibi A: verbis or versibus Watt 1988

⁵ sensu Cousin, *Revue des Etudes Latines* 49 (1971) 61

⁷ Apparently a piece of "school slang." Radermacher's *dicae* ("cases") is no improvement. M.L. Clarke's *diasyrtae* for *dicta sunt ac* is from *διασύρω* "disparage by ridicule"; the suggestion

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everyday habit. However, there was nothing to forbid the composition of themes giving scope for this—that is, the invention of *controversiae* with humorous elements—or the setting of special topics to exercise students in this way. The exercises we used to deliver on certain days of holiday licence (they are “sayings,”⁷ and that is what they are called), if constructed somewhat more systematically or with an admixture of seriousness, could have been very useful; as it is they are simply a game for students or persons amusing themselves.⁸

We have several names in common use for this concept; considered separately, each will reveal a particular aspect. (1) One name is “urbanity,” by which I find is meant language displaying a taste of the city (*urbs*) in words, accent, and usage, and a sort of unobtrusive learning derived from the conversation of the educated; in a word, it is that of which the opposite is “rusticity.” (2) The meaning of *venustus* is obvious; it denotes that which is said with a certain grace and charm (*venus*). (3) *Salsus* (“salty”) is used in ordinary speech only of the laughable; but it is not by nature necessarily laughable, though anything laughable ought also to be “salty.” For Cicero⁹ says that everything which is “salty” is a special feature of the Attic writers, but this is not because they are particularly inclined to laughter. And when Catullus¹⁰ says “there’s not a grain of salt in

gains plausibility from the fact that *vocantur* and the like in Q. very often introduce a *Greek* term.

⁸ *vel sibi* is suspect. Watt’s conjectures (“by words” or “in verses”) at least point to the difficulty.

⁹ *Orator* 90: “Whatever is *salsum* or *salubre* in speech is a special feature of the Attic people.” ¹⁰ 86.4.

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- 19 non hoc dicit, nihil in corpore eius esse ridiculum. Salsum igitur erit quod non erit insulsum, velut quoddam simplex orationis condimentum, quod sentitur latente iudicio velut palato, excitatque et a taedio defendit orationem. Sales enim, ut ille in cibis paulo liberalius adpersus, si tamen non sit inmodicus, adfert aliquid propriae voluptatis, ita hi quoque in dicendo habent quiddam quod nobis faciat audiendi sitim. Facetum quoque non tantum circa ridicula opinor consistere; neque enim diceret Horatius facetum carminis genus natura concessum esse Vergilio. Decoris hanc magis et excultae cuiusdam elegantiae appellationem puto. Ideoque in epistulis Cicero haec Bruti refert verba: 'ne illi sunt pedes faceti ac per delicias ingredientis⁶ mollius'. Quod convenit cum illo Horatiano:

molle atque facetum | Vergilio.

- 21 Iocum vero id accipimus quod est contrarium serio . . .⁷ nam et fingere et terrere et promittere interim iocus est. Dicacitas sine dubio a dicendo, quod est omni generi commune, ducta est, proprie tamen significat sermonem cum risu aliquos incessentem. Ideo Demosthenen urbanum fuisse dicunt, dicacem negant.
- 22 Proprium autem materiae de qua nunc loquimur est ridiculum, ideoque haec tota disputatio a Graecis *περὶ γε-*

⁶ per delicias ingredientis Watt (*Ciceronis epistulae III* (1958) 175): deliciis ingredienti A

⁷ Lacuna marked by Spalding and Halm

¹¹ *Satires* 1.10.44–5: *molle atque facetum Vergilio annuerunt gaudentes rure Camenae*, with reference to the *Eclogues*. Q.'s explanation is probably right.

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her body," he does not mean that there is nothing ridiculous in her body. So "salty" will denote what is "not insipid," a sort of simple seasoning of speech, perceived by an unconscious judgement—by the palate as it were—which stimulates and saves a speech from becoming tedious. For, just as salt generously sprinkled over food, if not in excess, gives a pleasure all its own, so this "salt" of speech has a quality which gives us a thirst for listening. (4) I do not think either that *facetus* applies only to the ridiculous. If it did, Horace would not have said that the Muses had given Vergil the gift of *facetum* in poetry.¹¹ I think it means rather a certain grace and polished elegance. Thus Cicero, in a letter,¹² reports Brutus as saying "Truly the feet are *faceti*, the feet of one walking too softly in his delicate way"; and this fits in with Horace's use of *facetum* and *molle* of Vergil. (5) By *iocus*, "joke," we understand the opposite of "serious" . . . For¹³ pretending, frightening, and promising can all be forms of joke. (6) *Dicacitas* doubtless comes from *dicere* (to speak), which is a common factor in all forms of wit, but it denotes more particularly remarks which attack people in a laughing way. This is why people say that Demosthenes was *urbanus* but not *dicax*.¹⁴

The particular quality of the subject we are now discussing, however, is the laughable. The whole topic is

¹² *Fr. epist.* XVII.2 Watt; compare Varro, *De lingua latina* 9.10. In Cicero the "feet" are presumably those of prose rhythm.

¹³ Connection of thought unclear; there is probably something missing, to the effect that *iocus* (like *sales*) does not always raise laughter, because it takes other forms as well.

¹⁴ Cicero, *Orator* 90.

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- 23 $\lambda\acute{o}\iota\omicron\upsilon$ inscribitur. Eius prima divisio traditur eadem quae est omnis orationis, ut sit positum in rebus ac verbis. Usus autem maxime triplex: aut enim ex aliis risum petimus aut ex nobis aut ex rebus mediis. Aliena aut reprimimus aut refutamus aut elevamus aut repercutimus aut eludimus. Nostra ridicule indicamus et, ut verbo Ciceronis utar, dicimus aliqua subabsurda. Namque eadem quae si imprudentibus excidant stulta sunt, si simulamus venusta creduntur.
- 24 Tertium est genus, ut idem dicit, in decipiendis expectationibus, dictis aliter accipiendis, ceteris, quae neutram personam contingunt ideoque a me media dicuntur.
- 25 Item ridicula aut facimus aut dicimus. Facto risus conciliatur interim admixta gravitate, ut M. Caelius praetor, cum sellam eius curulem consul Isauricus fregisset, alteram posuit loris intentam (dicebatur autem consul a patre flagris aliquando caesus): interim sine respectu pudoris, ut in illa pyxide Caeliana, quod neque oratori neque ulli viro gravi conveniat. Idem autem de vultu gestuque ridiculo dictum sit: in quibus est quidem sua⁸ gratia, sed maior cum captare risum non videntur; nihil

⁸ *Spalding*: summa A

¹⁵ The title, e.g., of a book by Theophrastus; frs. 710–711 Fortenbaugh.

¹⁶ So in Cicero's account, e.g. *De oratore* 2.239.

¹⁷ *De oratore* 2.289. ¹⁸ *Ibid.*

¹⁹ Caelius, as *praetor peregrinus* in 48 B.C., quarrelled with the consul P. Servilius Isauricus, who barred him from the senate, assigned his duties to another praetor, and broke his curule chair (Cassius Dio 42.23–25).

²⁰ Cicero, *Pro Caelio* 69. We do not know what the indecency

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therefore entitled *Peri geloiou* by the Greeks.¹⁵ The primary division of the subject, as of oratory in general, is into a part about things and a part about words.¹⁶ It has in general three practical uses, for we seek to raise a laugh either (1) at the expense of others, or (2) at our own, or (3) out of neutral circumstances. (1) The other side's words can be chided, refuted, disparaged, turned back on them, or side-stepped. (2) Our own position can be indicated in a humorous way, and, as Cicero puts it, we can say things that are "subabsurd,"¹⁷ for some remarks which are foolish if made inadvertently appear charming if they are a deliberate pretence. (3) The third category, as Cicero also says,¹⁸ consists in deceiving expectations, taking words in a perverse sense, and other procedures which do not affect either party, and so are called by me "neutral."

Again, the ridiculous may come from actions or from words.

(1) With reference to an action, laughter is aroused sometimes (a) by including an element of seriousness; when Marcus Caelius was praetor,¹⁹ the consul Isauricus broke his curule chair; Caelius had another one put in its place, strung with leather straps (the consul was said to have been flogged at one time by his father); and sometimes (b) without any regard to modesty, as in the matter of Caelius' box,²⁰ which is quite unsuitable for an orator or indeed any serious man. The same may be said about ridiculous expressions or gestures, which do indeed have their attraction, but this is greater when they do not seem to be

was. There is clearly an allusion to Caelius' own speech; see R. G. Austin on *Pro Caelio*, loc. cit., and T. P. Wiseman, *Cinna the Poet* (1974) 170-175.

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enim est iis quae sicuti⁹ salsa dicuntur insulsus. Quamquam autem gratiae plurimum dicentis severitas adfert, fitque ridiculum id ipsum, quod qui dicit illa non ridet, est tamen interim et aspectus et habitus oris et gestus non inurbanus, cum iis modus contigit.

- 27 Id porro quod dicitur aut est lascivum et hilare, qualia Gabbae¹⁰ pleraque, aut contumeliosum, qualia nuper Iuni Bassi, aut asperum, qualia Cassi Severi, aut lene, qualia
- 28 Domiti Afri. Refert his ubi quis utatur. Nam in convictibus et cotidiano sermone lasciva humilibus, hilaria omnibus convenient. Laedere numquam velimus, longeque absit illud propositum, potius amicum quam dictum perdendi. In hac quidem pugna forensi malim mihi lenibus uti licere. Nonnumquam et contumeliose et aspere dicere in adversarios permissum est, cum accusare etiam palam et caput alterius iuste petere concessum sit. Sed hic quoque tamen inhumana videri solet fortunae insectatio, vel quod culpa caret vel quod reccidere¹¹ etiam in ipsos qui obiecerunt potest. Primum itaque considerandum est et quis et in qua causa et apud quem et in quem et quid dicat.
- 29 Oratori minime convenit distortus vultus gestusque, quae in mimis rideri solent. Dicacitas etiam scurrilis et

⁹ *Winterbottom after Gesner: dicenti A*

¹⁰ *Buecheler: Galbae A*

¹¹ *Regius: redire A*

²¹ A well-known *scurra* (i.e. a man about town who dined out on his jokes, a professional buffoon) of the Augustan period, apparently still famous in Q.'s time: see Juvenal 5.4, Martial 1.41, 10.101, Plutarch, *Amatorius* 760A (γελωτοποιός).

²² See below §§ 57, 74.

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seeking a laugh: nothing is less witty than what is spoken as witty. Still, although the speaker's gravity adds greatly to the charm, and the words raise a laugh just because he does not laugh, there is also, on occasion, a look, an expression of the face, or a gesture which is not without urbanity, so long as proper limits have been observed.

(2) A spoken jest is either (a) risqué and comical like most of Gabba's,²¹ or (b) insulting, like those of Junius Bassus²² in recent times, or (c) bitter, like Cassius Severus',²³ or (d) mild, like Domitius Afer's.²⁴ What matters is where they are used. On social occasions and in daily conversation, risqué jokes will suit the lower ranks of society, comical jokes will suit everybody. Let us never wish to hurt, and have nothing to do with the notion that it is better to lose a friend than lose a jest.²⁵ In our court battles, I would prefer to be allowed to use mild jests. It is allowable sometimes to attack an opponent with insults and hard words, seeing that it is also permitted to make accusations openly, and legitimately demand a capital sentence. Yet even here, attacking someone's fortune generally seems inhumane, either because it is not the person's fault, or because this may all recoil on the attackers. The first point therefore is to consider who is saying what, in what Cause, before what court, and against whom.

Exaggerated features and gestures (the sort of thing which raises a laugh in a mime) are quite unsuitable to an

²³ See 6.1.43.

²⁴ See 5.7.7, 5.10.79.

²⁵ Compare Horace, *Sermones* 1.4.34–35, Seneca, *Controversiae* 2.4.13; Ben Jonson, *The Poetaster* 4.1, "He . . . will sooner lose his best friend than his least jest."

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scaenica huic personae alienissima est: obscenitas vero non a verbis tantum abesse debet, sed etiam a significatione. Nam si quando obici potest, non in ioco exprobranda
30 est. Oratorem praeterea ut dicere urbane volo, ita videri adfectare id plane nolo. Quapropter ne dicet quidem salse quotiens poterit, et dictum potius aliquando perdet quam
31 minuet auctoritatem. Nec accusatorem autem atroci in causa nec patronum in miserabili iocantem feret quisquam. Sunt etiam iudices quidam tristiores quam ut risum libenter patiantur.

32 Solet interim accidere ut id quod in adversarium dicimus aut in iudicem conveniat aut in nostrum quoque litigatorem, quamquam aliqui reperiuntur qui ne id quidem quod in ipsos reccidere possit evitent. Quod fecit Longus Sulpicius, qui, cum ipse foedissimus esset, ait eum contra quem iudicio liberali aderat ne faciem quidem habere liberi hominis: cui respondens Domitius Afer 'ex tui' inquit 'animi sententia, Longe, qui malam faciem habet liber non est?'

33 Vitandum etiam ne petulans, ne superbum, ne loco, ne tempore alienum, ne praeparatum et domo allatum videatur quod dicimus: nam adversus miserós, sicut supra dixeram, inhumanus est iocus. Sed quidam ita sunt receptae auctoritatis ac notae verecundiae ut nocitura sit in eos dicenti¹² petulantia; nam de amicis iam praeceptum est.

34 Illud non ad oratoris consilium, sed ad hominis pertinet: lacessat hoc modo quem laedere sit periculosum, ne

¹² *Gesner*: dicendi A

²⁶ Not identified.

²⁷ 6.3.28.

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orator. Totally foreign to his personality also is the rough humour of the buffoon or the stage. As for obscenity, it should not only be banished from his language, but should not even be hinted at. If there is ever ground for making a charge of obscene behaviour, this is a reproach not to be made in the form of a joke. Again, while I want my orator to speak "urbanely," I do not at all want him to seem to be striving for this. He will therefore not make witty remarks whenever he can, and will sacrifice a jest rather than diminish his authority. No one will tolerate a prosecutor who makes jokes in a horrendous case, or a defence advocate who does so in one that commands pity. Some judges also are too serious to be willing to allow laughter.

It sometimes happens that something said against an opponent applies to the judge or also to our own client; yet one finds people who do not even avoid jests which can recoil upon themselves. Sulpicius Longus,²⁶ who was a hideous man, once said that his opponent, in a case concerning his status as a free man, "did not so much as have the face of a free man"; Domitius Afer's reply was "Then, Longus, in your judgement, is a man who has an ugly face not a free man?"

Also to be avoided is any sign of insolence or arrogance in our words, any inappropriateness of time or place, any hint of premeditation or of the ready-made speech. As for attacking the unfortunate, any joke is cruel, as I said; but there are also some people of such established authority and acknowledged respectability that any aggressive language used against them will do the speaker harm. As to friends, I have already given advice.²⁷

My next suggestion is relevant not so much to an orator as to any human being: if you provoke someone whom it is

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aut inimicitiae graves insequantur aut turpis satisfactio.

Male etiam dicitur quod in pluris convenit, si aut nationes totae incessantur aut ordines aut condicio aut studia
35 multorum. Ea quae dicet vir bonus omnia salva dignitate ac verecundia dicit: nimium enim risus pretium est si probitatis inpendio constat.

Unde autem concilietur risus et quibus ex locis peti so-
leat, difficillimum dicere. Nam si species omnis persequi
velimus, nec modum reperiemus et frustra laborabimus.
36 Neque enim minus numerosi sunt loci ex quibus haec dicta quam illi ex quibus et¹³ quas sententias vocamus ducuntur, neque alii. Nam hic quoque est inventio et elocutio, atque ipsius elocutionis vis alia in verbis, alia in figuris.

37 Risus igitur oriuntur aut ex corpore eius in quem dicimus, aut ex animo, qui factis ab eo dictisque colligitur, aut ex iis quae sunt extra posita; intra haec enim est omnis vituperatio: quae si gravius posita sit, severa est, si levius, ridicula. Haec aut ostenduntur aut narrantur aut dicto notantur.

38 Rarum est ut oculis subicere contingat, ut fecit C. Iulius: qui cum Helvio Manciae saepius obstrepenti sibi

¹³ *D.A.R.*: eas *A*: eae *recc.*: ea *edd.*

²⁸ This division corresponds to the standard philosophical distinction of three types of "goods"—of the body, of the soul, and of external things—as (e.g.) in Aristotle, *Nicomachean Ethics* 1.8, 1098b12, *Rhetoric* 1.5, 1360b25. For its application to encomia, see (e.g.) Aphthonius, *Progymnasmata* 22,6 Rabe; above 3.7.10–25; Lausberg § 245. ²⁹ See Cicero, *De oratore* 2.266. "Julius" is the speaker in Cicero, C. Julius Caesar Strabo Vopiscus, a victim of Marius and Cinna in 87 BC. Helvius Mancianus was the son of a

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dangerous to offend, do it in such a way that no serious enmity or grovelling apology has to follow.

Remarks which apply to groups of people, when whole nations or classes or ranks or popular pursuits are attacked, are also bad. What a good man says, he will always say without endangering his dignity or modesty. We pay too dear for the laugh if it costs us our integrity.

Methods of arousing laughter

The ways of arousing laughter and the areas in which it may be sought are very hard to define. If we try to cover all possible varieties, we shall never get to the end and our labour will be in vain. In fact, the areas in which jests may be found are precisely as many as those in which what we call *sententiae* may also be found; indeed they are the same areas. Here too we have Invention and Elocution, the latter comprising both Words and Figures.

Laughter arises then either (1) from the physical appearance of our opponent, or (2) from his mental attitude, which is inferred from his actions and words, or (3) from external circumstances.²⁸ All forms of Invective fall under these heads; if it is uttered seriously, it is brutal; if more light-heartedly, it is funny. The absurdity may be either (1) physically demonstrated, or (2) told in a narrative, or (3) characterized by some clever remark.

(1) The possibility of ocular demonstration is rare: but Gaius Julius once had the opportunity.²⁹ Helvius Mancina

freedman. Q.'s source is Cicero; Pliny (*Naturalis Historia* 35.25) has a variant in which the Gaul portrayed on the shield is putting out his tongue. The "Cimbric" shields are trophies of Marius' victory over the Cimbri.

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diceret: 'iam ostendam qualis sis', isque plane instaret interrogatione qualem tandem se ostensurus esset, digito demonstravit imaginem Galli in scuto Cimbrico pictam, cui Mancina tum¹⁴ similis est visus: tabernae autem erant circa forum ac scutum illud signi gratia positum.

- 39 Narrare quae salsa sint in primis est subtile et oratorium, ut Cicero pro Cluentio narrat de Caepasio atque Fabricio aut M. Caelius de illa D. Laeli collegaeque eius in provinciam festinantium contentione. Sed in his omnibus cum elegans et venusta exigitur tota expositio, tum id festivissimum est quod adicit orator. Nam et a Cicerone sic est
- 40 Fabrici fuga illa condita: 'itaque cum callidissime se putaret dicere et cum illa verba gravissima ex intimo artificio deprompsisset: "respicite, iudices, hominum fortunas, respicite C. Fabrici senectutem," cum hoc "respicite" ornandae orationis causa saepe dixisset, respexit ipse: at Fabricius a subselliis demisso capite discesserat', et cetera quae adiecit (nam est notus locus), cum in re hoc solum es-
- 41 set, Fabricium a iudicio recessisse; et Caelius cum omnia venustissime finxit, tum illud ultimum: 'hic subsecutus quo modo transierit, utrum rati an piscatorio navigio, nemo sciebat: Siculi quidem, ut sunt lascivi et dicaces, aiebant in delphino sedisse et sic tamquam Ariona transvectum.'

¹⁴ vultu Watt 1988 ('in his face')

³⁰ 58. Compare 4.2.19. ³¹ A supporter of Pompey who made his peace with Caesar after Pharsalus. See *ORF* p. 489.

³² *Ibid.* The story of Arion and the dolphin is classical: e.g. Herodotus 1.23, Pliny, *Naturalis Historia* 9.28, Plutarch, *Banquet of the Seven Wise Men* 18, 161A–162B. Its use suggests that Laelius was on his way to Sicily, perhaps therefore with Cato in 49 BC. If this is so, the speech belongs to the last year of Caelius' life.

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was repeatedly and noisily attacking him, and he retorted "Now I'll show what you're like"; whereupon Mancina actually pressed him in his questioning to say what he was going to show he was like, and Julius pointed to the painting of a Gaul on a Cimbric shield, to which indeed Mancina was then seen to possess a strong resemblance. (There were shops around the forum, and this shield was set up by way of a sign.)

(2) To narrate humorous stories is a particularly subtle rhetorical move; for example, Cicero's narrative in *Pro Cluentio*³⁰ about Caepasius and Fabricius, or Caelius' story of the quarrel between Decimus Laelius³¹ and his colleague as they both hurried off to their province. But in all these cases, the whole narrative is executed with elegance and charm, and the orator's own contribution to it is the most felicitous part. Consider the flavour Cicero gives to Fabricius' sudden departure: "So, just when he thought he was speaking particularly well, and had produced from the depths of his learning the weighty words 'Members of the jury, look now upon the fortunes of humanity, look upon the aged form of Gaius Fabricius'—just when he repeated 'look upon' several times to give his speech some embellishment, he 'looked upon' the scene himself; Fabricius, keeping his head down, had slipped away from the bench . . ."—and so on (the passage is well known): yet all that had really happened was that Fabricius had left the court. The whole of the picture that Caelius gives is delightful, but especially the end: "He followed; but how he crossed over, by raft or by fishing boat, nobody knew. The Sicilians, with their naughty sense of humour, said he rode on a dolphin, and so made the crossing like Arion."³²

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- 42 In narrando autem Cicero consistere facetias putat, dicacitatem in iaciendo. Mire fuit in hoc genere venustus Afer Domitius, cuius orationibus complures huius modi narrationes insertae reperiuntur, sed dictorum quoque ab
43 eodem urbane sunt editi libri. Illud quoque genus est, positum non in hac veluti iaculatione dictorum et inclusa breviter urbanitate, sed in quodam longiore actu, quod de L. Crasso contra Brutum Cicero in secundo de Oratore
44 libro et aliis quibusdam locis narrat. Nam cum Brutus in accusatione Cn.¹⁵ Planci excitatis duobus lectoribus ostendisset contraria L. Crassum patronum eius in oratione quam de colonia Narbonensi habuerat suasisse iis quae de lege Servilia dixerat,¹⁶ tris excitavit et ipse lectores, iisque patris eius dialogos dedit legendos: quorum cum in Priver-nati unus, alter in Albano, tertius in Tiburti sermonem habitum complecteretur, requirebat ubi essent eae possessiones. Omnis autem illas Brutus vendiderat, et tum pater-na emancupare praedia turpius habebatur.

Similis in apologis quoque et quibusdam interim etiam historiis exponendis gratia consequi solet.

- 45 Sed acutior est illa atque velocior in urbanitate brevitatis. Cuius quidem duplex forma est, dicendi ac respondendi,

¹⁵ *edd.*: C. A

¹⁶ *Regius*: dixerit A

³³ *Orator* 87.

³⁴ *De oratore* 2.223, *Pro Cluentio* 140–141: see also *ORF* pp. 208, 254. M. Junius Brutus prosecuted Plancus, who was defended by Crassus, in 91 BC; charge and details unknown.

³⁵ Crassus' speech, delivered in 118 BC when he was only 22, prevailed upon the senate to approve the *colonia* at Narbo: *ORF* p. 241.

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Cicero associates *facetiae* with narrative, *dicacitas* with repartee.³³ Domitius Afer had great charm in the former; there are many narratives of this type to be found inserted in his speeches, though books have also been published of his witty sayings. There is also another kind, not seen in these brief exchanges of verbal missiles and highly concentrated wit but developed at greater length; this is illustrated by the story which Cicero, in Book Two of *De oratore* and elsewhere, tells about Lucius Crassus' handling of Brutus.³⁴ Brutus, in his accusation of Gnaeus Plancus, had produced two readers to show that Plancus' advocate, Crassus, in his speech on the colony of Narbo,³⁵ had urged measures contrary to those which he had urged when speaking of the *Lex Servilia*.³⁶ Crassus thereupon produced three readers, and gave them the Dialogues of Brutus' father to read out.³⁷ One of these covered a conversation on an estate at Privernum, one at Alba, one at Tibur. Crassus proceeded to ask where all these estates were. Now Brutus had sold them all, and in those days it was thought more disgraceful to sell family properties than it is now.

Similar attractive effects follow from expounding fables or sometimes even some episodes from history.

(3) But it is brevity that gives "urbane" wit more point and speed. There are two forms—making a point and re-

³⁶ See *ORF* pp. 243–245 for Crassus' speech on this law (106 BC), which concerned the restoration of the courts to the senators, or to senators and *equites* jointly.

³⁷ Q. means the three books *De iure civili*, in which (it seems) the father is represented as instructing the son: Cicero, *De oratore* 2.223. See R. Hirzel, *Der Dialog* (1895) 428–432.

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46 sed ratio communis in parte; nihil enim, quod in lacessen-
do dici potest, non etiam in repercutiendo: at quaedam
propria sunt respondentium. Illa parata atque cogitata¹⁷
adferri solent, haec plerumque in altercatione aut in
rogandis testibus reperiuntur.

Cum sint autem loci plures ex quibus dicta ridicula
ducantur, repetendum est mihi non omnis eos oratoribus
47 convenire, in primis ex amphibolia, neque illa obscura
quae Atellanio more captant, nec qualia vulgo iactantur a
vilissimo quoque, conversa in maledictum fere ambigui-
tate: ne illa quidem quae Ciceroni aliquando sed non in
agendo exciderunt, ut dixit, cum is candidatus qui coci
filius habebatur coram eo suffragium ab alio peteret: 'ego
48 quoque tibi favebo'; non quia excludenda sint omnino ver-
ba duos sensus significantia, sed quia raro belle respon-
deant, nisi cum prorsus rebus ipsis adiuvantur. Quare non
hoc modo <sed>¹⁸ paene et ipsum scurrile [Ciceronis]¹⁹ est
in eundem de quo supra dixi Isauricum: 'miror quid sit
quod pater tuus, homo constantissimus, te nobis varium
49 reliquit.' Sed illud ex eodem genere praeclarum: cum ob-
iceret Miloni accusator, in argumentum factarum Clodio

¹⁷ parata atque (*Watt* 1988) cogitata (*Becher*): etiam itaque
concitati A ¹⁸ *add. D.A.R.*: non hoc modo *del. Halm*

¹⁹ *del. Winterbottom*

³⁸ *Fabulae Atellanae* (named from Atella in Campania) were farces allowing a good deal of improvisation, and featuring stock characters (fool, glutton, clown, old man). Pomponius, Novius, and others wrote literary versions in verse: fragments ed. P. Frassinetti (1967). See P. G. M. Brown in *OCD*³.

³⁹ Hardly distinguishable in pronunciation from *coque*, vocative of *coquus*.

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plying to one—but the principle is in part the same in both; for nothing which can be said in the challenge cannot also be said in the riposte. There are however some features peculiar to replies. The remarks of the challenger tend to be prepared and thought out beforehand, whereas the response is generally improvised in the course of the debate or the examination of witnesses.

But though there are many areas from which jokes may be drawn, I must emphasize again that they are not all suitable for orators: in particular any kind of *double entendre*, either the obscure variety, pursued in Atellan fashion,³⁸ or the vulgar sort which the lowest of the low bandy around, and in which the ambiguity commonly turns into abuse, or even the kind which sometimes escaped from Cicero's lips, though never in court: for example, when a candidate, said to be the son of a cook (*coquus*), solicited someone else's vote in his presence, Cicero said "I too (*quoque*)³⁹ will support you." I do not mean that words that have a double meaning should be banned altogether, but they rarely fit the situation neatly, unless they are decisively supported by the actual facts. So not only this, but also the remark [of Cicero] against Isauricus, whom I mentioned above⁴⁰—"I wonder why your father, a man of unvarying steadiness, left us someone like you, so variously coloured"⁴¹—is almost scurrilous. On the other hand the following example of this type is really very good indeed: when Milo's accuser, in order to prove that he had ambushed Clodius, alleged

⁴⁰ 6.3.25. ⁴¹ I.e. black and blue with the beatings his father gave him. Compare Plautus, *Pseudolus* 145, *ita ego vostra latera loris faciam ut valide varia sint*, "I'll flog the lot of you till your sides are all the colours of the rainbow."

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insidiarum, quod Bovillas ante horam nonam devertisset, ut expectaret dum Clodius a villa sua exiret, et identidem interrogaret quo tempore Clodius occisus esset, respondit 'sero': quod vel solum sufficit ut hoc genus non totum repudietur.

- 50 Nec plura modo significari solent, sed etiam diversa, ut
 Nero de servo pessimo dixit: 'nulli plus apud se fidei habe-
 51 ri, nihil ei nec oclusum²⁰ neque signatum esse'. Pervenit
 res usque ad aenigma, quale est Ciceronis in Plaetorium
 Fonteii accusatorem, cuius matrem dixit dum vixisset lu-
 dum, postquam mortua esset magistros habuisse (diceban-
 tur autem, dum vixit, infames feminae convenire ad eam
 solitae, post mortem bona eius venierant): quamquam hic
 'ludus' per tralationem dictum est, 'magistri' per ambigui-
 52 tatem. In metalempsin quoque cadit eadem ratio dicto-
 rum, ut Fabius Maximus, incusans Augusti congiariorum
 quae amicis dabantur exiguitatem, heminaria esse dixit
 (nam congiarium commune liberalitatis atque mensurae)
 53 a mensura ducta inminutione rerum. Haec tam frigida
 quam est nominum fictio adiectis detractis mutatis litteris,
 ut Acisculum, quia esset pactus, 'Pacisculum', et Placidum
 nomine, quod is acerbus natura esset, 'Acidum', et Tul-

²⁰ So *Cic. De oratore* 2.248: nec lusum A

⁴² I.e. too late: *OLD* s.v. *sero* 1 b.

⁴³ Probably C. Claudius Nero, consul 207 BC; the story is in Cicero, *De oratore* 2.248 in a more pointed form.

⁴⁴ Not in the extant parts of *Pro Fonteio*. *Ludus* means (1) school, (2) brothel; *magister* means (1) schoolmaster, (2) official liquidator of debtors' property. ⁴⁵ See 8.6.39.

⁴⁶ Paullus Fabius Maximus (consul 11 BC) was a great figure of

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that he had stopped at Bovillae before the ninth hour, so as to wait for Clodius to leave his villa, and repeatedly asked him when Clodius was killed, Cicero replied "Late"⁴² This one answer is enough to prevent us from putting a ban on all such witticisms.

Words often have not only more than one meaning, but meanings which are opposite. Nero⁴³ said of a dishonest slave that there was no one in his household more trusted, for nothing was barred or sealed to him. These things sometimes reach the status of riddles, like Cicero's remark against Plaetorius, Fonteius' prosecutor, "whose mother kept a school (*ludus*) while she was alive, and masters when she was dead."⁴⁴ Now it was said that, in her lifetime, women of bad repute used to meet at her house, while after her death her property was sold. Here however *ludus* is used metaphorically, the ambiguity is in "masters." The same sort of joke also falls under *metalēpsis*,⁴⁵ as when Fabius Maximus complained of the smallness of the *congiaria* which Augustus gave his friends, calling them *heminnaria*: for *congiarium* means both a gift and a certain measure, and the depreciation of the gifts comes from referring to the measure.⁴⁶ Equally feeble is the trick of inventing names by adding, removing, or changing letters: I note "Pacisculus" for "Acisculus" because he made a "pact," "Acidus" for "Placidus" because of his acid temper,

Augustan times; see Syme, *The Augustan Aristocracy* (1986) 403–420. A *congiarium* is (1) a vessel holding one *congius* (about six pints), (2) a gift or donation. A *heminnarium* (not a coined word: see W. D. Lebek, *Harvard Studies in Classical Philology* 82 (1978) 271–275) is a vessel holding one eighth of a *congius*: Paullus uses it to show the ungenerosity of the gift.

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- 54 lium, cum fur esset, 'Tollium' dictos invenio. Sed haec eadem genera commodius in rebus quam in nominibus respondent. Afer enim venuste Manlium Suram multum in agendo discursantem salientem, manus iactantem, togam deicientem et reponentem, non agere dixit sed satagere. Est enim dictum per se urbanum 'satagere', etiam si
 55 nulla subsit alterius verbi similitudo. Fiunt et adiecta et detracta adspiratione et divisio coniunctisque verbis similiter saepius frigida, aliquando tamen recipienda: eademque condicio est in iis quae a nominibus trahuntur. Multa ex hoc <genere>²¹ Cicero in Verrem, sed ut ab aliis dicta: modo futurum ut omnia verberet [cum diceretur Verres],²² modo Herculi, quem expilaverat, molestiorem quam aprum Erymanthium fuisse, modo malum sacerdotem qui tam nequam verrem reliquisset, quia Sacerdoti Verres
 56 successerat. Praebet tamen aliquando occasionem quaedam felicitas hoc quoque bene utendi, ut pro Caecina Cicero in testem Sex. Clodium Phormionem: 'nec minus niger' inquit 'nec minus confidens quam est ille Terentianus Phormio'.
 57 Acriora igitur sunt et elegantiora quae trahuntur ex vi

²¹ *add. Spalding* ²² *del. Gesner*

⁴⁷ *Tollere*, "lift," is a common word for "steal." The source of these examples is not known. ⁴⁸ 11.3.126.

⁴⁹ *Agere* means both "to act" and "to plead a case"; *satagere* is "to bustle around"—"like a mouse in a chamber pot," says Petronius (58.9). ⁵⁰ *In Verrem* 2.18, 4.95, 1.121; *verres* is a synonym of *aper* "boar."

⁵¹ This perhaps means that the "priest" failed to reject an imperfect animal presented for sacrifice, but left him in the batch.

and "Tollius" for "Tullius" because he was a thief.⁴⁷ This sort of joke answers better with things than with names. It was clever of Afer to say of Manlius Sura,⁴⁸ who used to run around, leap about, throw up his hands, and keep dropping and putting back his toga while he was speaking, that he was not acting for his client but over-acting. "Over-acting" (*satagere*) is an "urbane" word by itself, even if there were no play on the other word.⁴⁹ Similar jokes (usually feeble, but occasionally acceptable) are produced by adding or removing an aspirate or dividing or joining words. Jokes drawn from names follow the same pattern. Cicero has much of this kind in his attack on Verres,⁵⁰ but always as quotations from someone else: "he would *sweep* (*verreret*) all away," "he had given Hercules"—whose temple he had robbed—"more trouble than the *boar* of Erymanthus," "it was a bad *priest* who left such a worthless *boar* behind" (Verres' predecessor was Sacerdos, "priest").⁵¹ Occasionally however a lucky chance provides an opportunity of making good use even of this trick: Cicero in *Pro Caecina*⁵² says of the witness Sextus Clodius Phormio "No less black and no less confident than Phormio in Terence."⁵³

Jokes which turn on the actual meaning of things are

⁵² 27. This witness was a banker (*argentarius*).

⁵³ The *parasitus* who is the chief character of Terence's *Phormio* is certainly "confident" (e.g. 122–134), but why is he "black"? Perhaps simply because *niger* (like Greek μέλας) denotes bad character (*OLD* s.v. 9), or because the character wore a dark mask (so Cousin); as "black" is associated with the stain from copper coins (e.g. Martial 1.99), there may also be a further point applying to the banker-witness.

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- rerum. In iis maxime valet similitudo, si tamen ad aliquid inferius leviusque referatur: qualia veteres illi iocabantur, qui Lentulum 'Spintherem' et Scipionem 'Serapionem' esse dixerunt. Sed ea non ab hominibus modo petitur, verum etiam ab animalibus, ut nobis pueris Iunius Bassus,
- 58 homo in primis dicax, 'asinus albus' vocabatur, et Sarmenus <Messium Cicirrum equo fero similem dixit, et ab inanimis ut>²³ P. Blessius Iulium, hominem nigrum et macrum et pandum, 'fibulam ferream' dixit. Quod nunc risus
- 59 petendi genus frequentissimum est. Adhibetur autem similitudo interim palam, interim more²⁴ parabola: cuius est generis illud Augusti, qui militi libellum timide porrigenti 'noli' inquit 'tamquam assem elephanto des.'
- 60 Sunt quaedam vi²⁵ similia, unde Vatinius dixit hoc dictum, cum reus agente in eum Calvo frontem candido sudario tergeret idque ipsum accusator in invidiam vocaret:

²³ *suppl. D.A.R. (e.g.), after Radermacher: A has Sarmentus seu P. Blessius etc.*

²⁴ *D.A.R.: solet A: sicut parabole Winterbottom*

²⁵ *suspect: perhaps some words are lost (Winterbottom)*

⁵⁴ P. Cornelius Spinther, consul 57 BC, was so nicknamed because he resembled an actor called Spinther (Valerius Maximus 9.14.4).

⁵⁵ P. Cornelius Scipio Nasica, consul 138 BC, was supposed to resemble a sacrifice-assistant (*victimarius*) called Serapio (Valerius Maximus 9.14.3, Pliny, *Naturalis Historia* 7.54).

⁵⁶ The supplement (after Radermacher) provides Sarmentus (a *scurra* of the Augustan period) with a saying, and makes a transition to "inanimate" objects; it is based on Horace, *Sermones* 1.5.51. ⁵⁷ P. Blessius is not known, and Julius (if the text is right) can hardly be a complete name.

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more pointed and more elegant. Similitude is the most important element, but the comparison must be with something humbler or more trivial, as in the jokes made by our ancestors in calling Lentulus "Spinther"⁵⁴ and Scipio "Serapio."⁵⁵ Similitude may be sought in animals as well as in men—when I was a boy, Junius Bassus, who had a biting wit, was called "the white donkey"; and Sarmentus <compared Messius Cicirrus to a wild horse—and also in inanimate objects⁵⁶ as Publius Blessius called Julius,⁵⁷ who was dark, thin, and round-shouldered, "the iron buckle." This is now a very common way of looking for a laugh. The Similitude is sometimes introduced openly, sometimes in the form of an analogy,⁵⁸ as in the remark of Augustus to the soldier who presented a petition timidly: "Don't do it as if you were giving an elephant a penny."⁵⁹

Some similarities depend on the qualities of things:⁶⁰ when Vatinius was being prosecuted by Calvus, he wiped his forehead with a white handkerchief; Calvus tried to make capital out of this, but Vatinius had an answer—

⁵⁸ Text and interpretation uncertain. At 5.11.23 Q. takes *parabola* to be a more far-fetched type of similitude; so also perhaps at 8.3.77. In other rhetors it commonly means a comparison taken not from history but from ordinary life: Lausberg § 422. On the difficulties of this passage, see McCall (1969) 213–214.

⁵⁹ A similar anecdote in Suetonius, *Augustus* 53, Macrobius, *Saturnalia* 2.4.3; for 'Augustus' *dicta* see Malcovati (1947) 152–174. ⁶⁰ Text and interpretation again uncertain. The point of the example is that the defendant's use of a white handkerchief (when he ought to be in dark clothes, as befits his sad situation) is defended by pointing out that there is nothing wrong with his eating white bread. For the occasion (Calvus' accusation of P. Vatinius) see 6.1.13, *ORF* pp. 494–498.

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‘quamvis reus sum’, inquit, ‘et panem tamen²⁶ candidum edo.’

61 Adhuc est subtilior illa ex simili tralatio, cum quod in alia re fieri solet in aliam mutuamur; ea dicatur sane fictio: ut Chrysippus, cum in triumpho Caesaris eborea oppida essent tralata et post dies paucos Fabi Maximi lignea, thecas esse oppidorum Caesaris dixit. Et Pedo de myrmillone qui retiarium²⁷ conseqebatur nec feriebat ‘vivum’ inquit ‘capere vult.’

62 Iungitur amphiboliae similitudo, ut a L. Galba,²⁸ qui pilam neglegenter petenti ‘sic’ inquit ‘petis tamquam Caesaris candidatus.’ Nam illud ‘petis’ ambiguum est, securitas similis. Quod hactenus ostendisse satis est.

63 Ceterum frequentissima aliorum generum cum aliis mixtura est, eaque optima quae ex pluribus constat.

Eadem dissimilium ratio est. Hinc eques Romanus, ad quem in spectaculis bibentem cum misisset Augustus qui ei diceret: ‘ego si prandere volo, domum eo’, ‘tu enim’ inquit ‘non times ne locum perdas.’

64 Ex contrario non una species. Neque enim eodem

²⁶ panem tamen *Winterbottom*: parentem *A*: panem *recc.*

²⁷ de retiario qui myrmillonem *Leemans*

²⁸ Gabba *Buecheler*

⁶¹ Of Caesar’s five triumphs in 46–45 BC, it was the African one that displayed ivory artefacts (Velleius Paterculus 2.56.2). Q. Fabius Maximus had been legate in Spain; his triumph was on October 13, 45 BC (Caesar’s own Spanish triumph featured silver, Velleius Paterculus loc. cit.). Chrysippus is probably Vettius Chrysippus, an architect employed by Cicero (*Ad Atticum* 14.9.1).

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"Though I may be on trial, I still eat white bread."

Still more ingenious is the shift from like to like, when we borrow for one object circumstances which normally belong to another. This may of course be called fiction. For example, when ivory models of towns were carried in Caesar's triumph, and a few days later wooden models were carried in Fabius Maximus', Chrysippus said that these were the boxes for Caesar's towns.⁶¹ Similarly Pedo on the swordsman who was chasing the netman but failed to strike him: "He wants to catch him alive."⁶²

Similitude may be combined with Ambiguity: for example, Lucius Galba said to the man who took no trouble to run for the ball: "You're running like a Caesar's candidate." The Ambiguity is in "run," the resemblance lies in the self-confidence.⁶³ These indications should suffice.

Furthermore, the combination of various kinds of humorous points is very common, and the best combination is the one that has a large number of elements.

With Dissimilarities, the principle is the same. A Roman *equus* was drinking in the theatre, and Augustus sent him a message to say "If I want lunch, I go home." "Of course," said the *equus*, "you are not afraid of losing your place."

Contraries produce several varieties. Augustus was giv-

⁶² Presumably the poet Albinovanus Pedo (Courtney (1993) 315–319). Normally, the netman chases the swordsman, who wears the figure of a fish on his helmet; Leemans' conjecture would restore this situation.

⁶³ The emperor's chosen candidates did not need to canvass. "Run" luckily gives us the same ambiguity as *petis* (literally "seek"). It seems unsafe to accept Buecheler's *Gabba* here, though of course it may be right: see 6.3.27.

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modo dixit Augustus praefecto quem ignominia mittebat, subinde interponenti precibus: 'quid respondebo patri meo?' 'dic me tibi displicuisse', quo Gabba paenulam roganti: 'non possum commodare, domi maneo', cum cenaculum eius perplueret. Tertium adhuc illud, nisi quod ut ne auctorem ponam verecundia ipsius facit: 'libidinosior es quam ullus spado', quo sine dubio et opinio decipitur, sed ex contrario. Et hoc ex eodem loco est, sed nulli priorum simile, quod dixit M. Vestinus cum ei nuntiatum esset . . .²⁹

65 'aliquando desinet putere.' Onerabo librum exemplis, similemque iis qui risus gratia componuntur efficiam, si persequi voluero singula veterum.

Ex omnibus argumentorum locis eadem occasio est. Nam et finitione usus est Augustus de pantomimis duobus qui alternis gestibus contendebant, cum eorum alterum saltatorem dixit, alterum interpellatorem, et partitione Gabba, cum paenulam roganti respondit: 'non pluit, non opus est tibi: si pluet, ipse utar.' Proinde genere specie propriis differentibus iugatis adiunctis consequentibus antecedentibus repugnantibus causis effectis, comparatione parium maiorum minorum similis materia praebetur, sicut
66 in tropos quoque omnis cadit. An non plurima dicuntur
67 <per hyperbolen ridicula? ut>³⁰ quod refert Cicero de homine praelongo, caput eum ad fornicem Fabium offen-

²⁹ Lacuna marked by Burman: we expect to be told what the news was ³⁰ add. Radermacher

⁶⁴ I.e. *παρὰ προσδοκίαν*: see Demetrius 152, Tiberius, *On Figures* 16 (3.66 Spengel); below, § 84. ⁶⁵ Consul AD 65: see Tacitus, *Annales* 15.48. He has presumably learned that someone who had a bad body odour has now died.

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ing a discharge with ignominy to an officer, who kept saying, in the course of a plea for mercy, "What shall I tell my father?" "Tell him I failed to please you," was the answer. This is different from Gabba's remark to the man who asked for his rain-cloak, "I can't lend it to you, I am staying at home," the point being that the rain was pouring through the roof of his garret. There is yet a third kind (my respect for the author prevents me from naming him): "You are more lustful than any eunuch" is certainly also a "disappointment of expectation"⁶⁴ but it depends on a Contrary. Under the same heading, though quite different from all the above, is the remark of Marcus Vestinus,⁶⁵ when he was told . . . "Some day he will cease to stink." But I shall overload this book with examples, and make it like those which are written simply to amuse, if I choose to record the witticisms of the ancients individually.

All topics of Argument give equal opportunity for jests. Thus Augustus used Definition in his comment on the two pantomime actors who were having a sort of dialogue of gestures: he said one was the dancer, the other the interrupter; and Partition is the principle behind Gabba's answer to the man who asked for his rain cloak: "It's not raining, so you don't need it; if it rains, I shall be using it myself." Similar material is provided by Genus, Species, Properties, Differences, Conjugates, Adjuncts, Consequences, Antecedents, Contraries, Causes, Effects, and Comparisons with greater, lesser, or equal things.⁶⁶

Similarly, jests may take the form of any Trope. (1) Do not many take the form of <Hyperbole>, like Cicero's remark about the very tall man: "He hit his head on the Arch

⁶⁶ See 5.10.

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- disse, et quod P. Oppius dixit de genere Lentulorum, cum
 68 assidue minores parentibus liberi essent, nascendo interi-
 turum. Quid ironia? nonne etiam quae severissime fit ioci
 paene genus est? Qua urbane usus est Afer, cum Didio
 Gallo, qui provinciam ambitiosissime petierat, deinde,
 impetrata ea, tamquam coactus querebatur: 'age' inquit
 'aliquid et rei publicae causa'. Metaphora quoque Cicero
 lusit, cum Vatini morte nuntiata, cuius parum certus dice-
 69 batur auctor: 'interim' inquit 'usura fruar.' Idem per al-
 legorian M. Caelium, melius obicientem crimina quam
 defendentem, bonam dextram, malam sinistram habere
 dicebat. Emphasi A. Villius dixit ferrum in Tuccium inci-
 disse.
- 70 Figuras quoque mentis, quae σχήματα διανοίας di-
 cuntur, res eadem recipit omnis, in quas nonnulli divise-
 runt species dictorum. Nam et interrogamus et dubitamus
 et adfirmamus et minamur et optamus; quaedam ut mise-
 rantes, quaedam ut irascentes dicimus. Ridiculum est
 autem omne quod aperte fingitur.
- 71 Stulta reprehendere facillimum est, nam per se sunt
 ridicula; sed rem urbanam facit aliqua ex nobis adiectio.

⁶⁷ The version in *De oratore* 2.267 is neater: Memmius has to bend down to get under the arch (which was built in 121 BC to commemorate victory over the Allobroges).

⁶⁸ This Oppius is not identified. Similar jokes in Macrobius, *Saturnalia* 2.3.3: Cicero makes fun of his tiny son-in-law Lentulus by asking "who has tied him to a sword?"

⁶⁹ Legate in Britain AD 53–58.

⁷⁰ See 6.3.84: this episode probably relates to the time when Vatinius was opposed to Cicero over the trial of Sestius (56 BC).

⁷¹ Compare Cicero, *Brutus* 273.

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of Fabius,⁶⁷ or Publius Oppius' comment on the family of the Lentuli, in which the children were always less tall than the parents: "They will die out by being born"⁶⁸ (2) Irony too: is not this even in its severest form almost a kind of joke? Afer used it with great urbanity in his reply to Didius Gallus,⁶⁹ who had intrigued very hard to be given a province, and, when he got one, complained as if he had been forced to accept it: "Well then, do something for the country too." (3) Cicero also used Metaphor in a joke, when he heard on uncertain authority that Vatinius was dead, and remarked "Well, I will use the income for the time being."⁷⁰ (4) He also used Allegory, when he said of Marcus Caelius, who performed better in prosecution than in defence, that he had a strong right arm, and a weak left.⁷¹ (5) Emphasis is seen in the saying of Aulus Villius, "Tuccius' sword fell on him."⁷²

All the Figures of Thought (what are called *schēmata dianoias*) are also available for this purpose, and some people have used them to make classifications of jokes. Certainly we can make a joke by asking a question, hesitating, affirming, threatening, wishing, and saying things as though we were moved by pity or anger. An obvious fiction is also a source of the laughable.

It is very easy to take folly to task, because folly is itself ridiculous: but it takes some contribution of our own to make the result "urbane." Titus Maximus once stupidly

⁷² For "emphasis," see 9.2.64. Here A. Villius Annalis (see below, n. 93, for another member of this family) seems to refer to a cowardly attempt at suicide by Tuccius (mentioned by Caelius in *Ad Familiares* loc. cit.) who lets his sword fall on him instead of falling on it.

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Stulte interrogaverat exeuntem de theatro Campatium Titius Maximus an spectasset. Fecit Campatius dubitationem eius stultiorem dicendo: ‘non, >³¹ sed in orchestra pila lusi.’

- 72 Refutatio cum sit in negando redarguendo defendendo elevando <transferendo>,³² ridicule negavit Q.³³ Curius; nam cum eius accusator in sipario omnibus locis aut nudum eum in nervo aut ab amicis redemptum ex alea
- 73 pinxisset, ‘ergo ego’ inquit ‘numquam vici?’ Redarguimus interim aperte, ut Cicero Vibium Curium multum de annis aetatis suae mentientem: ‘tum ergo cum una declamabamus non eras natus’, interim et simulata adsensione, ut idem Fabia Dolabellae dicente triginta se annos habere: ‘verum est’, inquit, ‘nam hoc illam iam viginti annis audio.’
- 74 Belle interim subicitur pro eo quod neges aliud mordacius, ut Iunius Bassus, querente Domitia Passieni quod incusans eius sordes calceos eam veteres diceret vendere solere, ‘non mehercules’ inquit ‘hoc umquam dixi, sed dixi emere te solere.’ Defensionem imitatus est eques Romanus, qui obicienti Augusto quod patrimonium comedisset, ‘meum’ inquit ‘putavi’. Elevandi ratio est duplex, ut aut va-

³¹ *add. Regius* ³² *add. D.A.R., cf. §78*

³³ *N. Purcell: Manius A*

⁷³ The persons of this story are unknown.

⁷⁴ Compare 6.1.32 for such visual aids. Our MSS have Manius Curius: but (as N. Purcell suggests) the person meant should be the notorious gambler Q. Curius (Asconius, *In orationem in toga candida* 93.21 Clark). The error seems more likely to be a scribe's than Q.'s, and may be due to the familiarity of the historical character M'. Curius Dentatus.

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asked Campatius as he left the theatre whether he had seen the play: "No," he replied, "I was playing ball in the orchestra," which made the question even stupider.⁷³

Refutation consists in Denial, Rebuttal, Justification, Extenuation, <or Transference>. (1) A humorous Denial is seen in a repartee by Quintus Curius. His accuser had painted a picture of him on canvas,⁷⁴ in which he was shown in every scene as either naked in prison or just rescued by his friends from his gaming debts. He simply said, "Well then, did I never win?" (2) A humorous Rebuttal may be (a) open, as when Cicero refuted Vibius Curius⁷⁵ gross lies about his age by saying "In that case, when you and I were declaiming together, you had not been born," or (b) in the form of a pretended agreement, as when Cicero observed, when Dolabella's wife Fabia said she was thirty, "It's true; I've heard her say so these twenty years."⁷⁶ It is sometimes a neat idea to substitute for a charge you are denying something more biting; thus when Domitia, the wife of Passienus, complained that Junius Bassus, in attacking her miserliness, had said she used to sell old shoes, he replied, "No, I never said that; I said you used to *buy* them."⁷⁷ (3) Justification is the model for the remark by the Roman *eques* who, accused by Augustus of having squandered his inheritance, replied "I thought it was mine." (4) Extenuation takes two forms: (a) cutting down a boastful

⁷⁵ Perhaps the Caesarian officer known from Caesar, *De bello civili* 1.24.3.

⁷⁶ P. Cornelius Dolabella divorced this Fabia and married Cicero's daughter Tullia.

⁷⁷ See 6.1.50, 6.3.27.

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- nam³⁴ quis iactantiam minuat (quem ad modum C. Caesar Pomponio ostendenti vulnus ore exceptum in seditione Sulpiciana, quod is se passum pro Caesare pugnantem gloriabatur, 'numquam fugiens respexeris' inquit) aut crimen obiectum, ut Cicero obiurgantibus quod sexagenarius
- 76 Publiliam virginem duxisset 'cras mulier erit' inquit. Hoc genus dicti consequens vocant quidam, estque³⁵ illi simile quod Cicero Curionem, semper ab excusatione aetatis incipientem, facilius cotidie prohoemium habere dixit, quia
- 77 ista natura sequi et cohaerere videantur. Sed elevandi genus est etiam causarum relatio, qua Cicero est usus in Vatinius. Qui pedibus aeger cum vellet videri commodioris valetudinis factus et diceret se iam bina milia passuum ambulare, 'dies enim' inquit 'longiores sunt.' Et Augustus, nuntiantibus Terraconensibus palmam in ara eius enatam,
- 78 'apparet' inquit 'quam saepe accendatis.' Transtulit crimen Cassius Severus; nam cum obiurgaretur a praetore quod advocati eius L. Vario³⁶ Epicureo, Caesaris amico, convicium fecissent, 'nescio' inquit 'qui conviciati sint, et puto Stoicos fuisse.'

³⁴ *Watt* 1993: veniam A: nimiam *Dettner*

³⁵ *Radermacher*: atque A

³⁶ *Koerte*: Vareo A: Varo *recc.*

⁷⁸ Again C. Julius Caesar Strabo Vopiscus (see on 6.3.38); the occasion is the disturbances of 88 BC, partly caused by his irregular candidature for the consulship. Same anecdote told of Augustus: Macrobius, *Saturnalia* 2.4.7.

⁷⁹ Compare Plutarch, *Cicero* 41.5–6. For this sense of *mulier*, see *OLD* s.v. 2.

⁸⁰ Generally taken to be C. Scribonius Curio (consul 76 BC,

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statement, as in the riposte of Gaius Caesar⁷⁸ to Pomponius, who had exhibited a wound on his face received in Sulpicius' insurrection and boasted of having suffered it while fighting for Caesar: "Never look round when you are running away"; (b) cutting down the actual charge, as Cicero did, when people reproached him for marrying the virgin Publilia when he was sixty, by observing "She will be a woman tomorrow."⁷⁹ Some people call this type "a Consequence"; very similar to it is Cicero's remark about Curio,⁸⁰ who always began his speech by apologizing for his youth: "his Prooemium gets easier every day," because this seems a natural consequence. Alleging reasons is also a form of Extenuation. Cicero uses this against Vatinius, who was lame, and, wanting to show that he was better, said he now walked two miles a day. "Yes," said Cicero, "the days are getting longer."⁸¹ Again, Augustus remarked, when the citizens of Tarraco reported that a palm tree had grown on his altar, "Now we know how often you light the fire on it."⁸² (5) Humorous Transference of a charge is illustrated by Cassius Severus' remark, on being reproved by the praetor because his advocates had insulted Lucius Varius, the Epicurean friend of Caesar:⁸³ "I don't know who the people were who insulted him, but I take it they were Stoics."

died 53 BC); but the joke implies that Curio was young, and a son of the same name (trib. pleb. 50 BC, later legate of Caesar in Africa) seems more probable. See *ORF* n. 47 (father), n. 170 (son).

⁸¹ Also told of Augustus: Macrobius, *Saturnalia* 2.4.16.

⁸² See Tacitus, *Annales* 1.78.

⁸³ I.e. Augustus. See Courtney (1993) 270 for Varius' Epicureanism and the text and interpretation of this passage.

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Repercutiendi multa sunt genera, venustissimum quod etiam similitudine aliqua verbi adiuvatur, ut Trachalus dicenti Suillio³⁷ 'si hoc ita est, is in exilium', 'si non est ita, redis' inquit.

79 Elusit Cassius Severus, obiciente quodam quod ei domo sua Proculcius interdixisset, respondendo 'numquid ergo illuc accedo?' Sed eluditur et ridiculum ridiculo (ut divus Augustus, cum ei Galli torque aureum centum pondo dedissent, et Dolabella per iocum, temptans tamen ioci sui eventum, dixisset: 'imperator, torque me dona',
80 'malo' inquit 'te civica donare'), mendacium quoque mendacio, ut Gabba, dicente quodam victoriato se uno in Sicilia quinque pedes longam murenam emisse, 'nihil' inquit 'mirum; nam ibi tam longae nascuntur ut iis piscatores pro restibus cingantur.'

81 Contraria est neganti confessionis simulatio, sed ipsa quoque multum habet urbanitatis. Sic Afer, cum ageret contra libertum Claudii Caesaris et ex diverso quidam condicionis eiusdem cuius erat litigator exclamasset: 'praeterea tu semper in libertos Caesaris dicis', 'nec mehercule'

³⁷ *Cousin*: Suclio A: Suelio *recc.*

⁸⁴ M. Galerius Trachalus, consul AD 68, a supporter of Otho (and his speech-writer, Tacitus, *Historiae* 1.90), admired by Q. as an orator (10.1.119).

⁸⁵ Cousin's suggestion must be right: P. Suillius Rufus had been exiled under Tiberius, was a formidable prosecutor under Claudius, and was exiled a second time in AD 58 (Tacitus, *Annales* 13.42): see Syme, *RP* 2, 806-809.

⁸⁶ Probably the *eques*, close friend of Augustus, who is praised by Horace (*Carmina* 2.2) for his generosity to his brothers.

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There are many types of humorous retorts, but the most attractive is that which is supported by some verbal likeness: an example is Trachalus⁸⁴ answer to Suillius:⁸⁵ Suillius says "If this is true, you go into exile"; Trachalus replies "If it is not true, you go back."

Humorous evasion is illustrated by the answer given by Cassius Severus when someone reproached him with the fact that Proculeius⁸⁶ had banned him from his house: "Do I ever go there?" he replied. But (a) a joke may be evaded by a joke: the emperor Augustus was given a golden torque weighing a hundred pounds by the Gauls, and Dolabella, joking but with an eye to the outcome of his joke, said "General, present me with a torque"; whereupon Augustus replied "I would rather present you with a civic crown."⁸⁷ (b) A lie may be evaded by a lie: thus when someone said he had bought a murry five feet long in Sicily for one victoriate,⁸⁸ Gabba retorted, "I'm not surprised; they grow so long there that the fishermen use them as belts instead of rope."

The opposite to a denial is a pretended confession; this too can be very witty. Afer was once acting against a freedman of the emperor Claudius; another person of the same status, on the opposite side, called out "Besides, you are always speaking against the freedmen of Caesar"; "Yes, but I

⁸⁷ P. Cornelius Dolabella, consul AD 10, later legate in Dalmatia. The *corona civica*, awarded for saving a citizen's life in battle, was a rare honour, but not expensive—oak leaves, not gold.

⁸⁸ A coin stamped with an image of Victory, worth half a denarius. Large *muraenae* (big predatory eels) were found especially in Sicilian waters (D'ArcyThompson, *A Glossary of Greek Fishes* (1947) 162–164).

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inquit 'quicquam proficio'.

Cui vicinum est non negare quod obicitur, cum et id palam falsum est et inde materia bene respondendi datur, ut Catulus dicenti Philippo: 'quid latras?' 'furem video' inquit.

82 In se dicere non fere est nisi scurrarum et in oratore utique minime probabile: quod fieri totidem modis quot in alios potest, ideoque hoc, quamvis frequens sit, transeo.

83 Illud vero, etiam si ridiculum est, indignum tamen est homine liberali, quod aut turpiter aut impotenter³⁸ dicitur: quod fecisse quendam scio qui humiliori libere adversus se loquenti 'colaphum' inquit 'tibi ducam, et formulam scribam³⁹ quod caput durum habeas.' Hic enim dubium est utrum ridere audientes an indignari debuerint.

84 Superest genus decipiendi opinionem aut dicta aliter intellegendi, quae sunt in omni hac materia vel venustissima. Inopinatum et a lacescente poni solet, quale est quod refert Cicero: 'quid huic abest nisi res et virtus?' aut illud Afri: 'homo in agendis causis optime vestitus': et in occurrendo, ut Cicero audita falsa Vatini morte, cum obvium libertum eius interrogasset 'rectene omnia?' dicenti 'recte', 'mortuus est' inquit.

85 Plurimus autem circa simulationem <et dissimulatio-

³⁸ *edd.*: potenter A: petulanter Watt 1993

³⁹ *edd.*: scribes A

⁸⁹ Claudius' support of his freedmen was notorious (Suetonius, *Claudius* 29).

⁹⁰ Cicero, *De oratore* 2.220, 2.255. L. Marcius Philippus was thought by Cicero (*Brutus* 173) to be next to Crassus and Antonius as an orator, but "a long way behind." See *ORF* pp. 265–269.

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don't get very far," replied Afer.⁸⁹

A related trick is not to deny the charge, when it is patently false and offers material for a good reply: when Philippus says "What are you barking at?" Catulus answers "I can see a thief."⁹⁰

To make a joke against oneself is normally a matter for the professional jester (*scurra*), and is at any rate not to be approved in an orator. There are as many forms of this as there are of jokes against others, and I therefore pass it over, common though it is.

On the other hand, foul or brutal language, however funny, is unworthy of a decent citizen. I know a case of this, when a man said to an inferior who had spoken freely against him, "I will give you a clout on the head, and then bring an action against you for having such a hard head." Here it is doubtful whether the audience ought to have laughed or been angry.

There remain the methods of "disappointing expectation" or "taking words in a different sense." These are the most elegant devices in this whole area. The "unexpected" may be used (1) by the challenger, as in the example quoted by Cicero, "What does this man lack except wealth and virtue?"⁹¹ or in Afer's "for pleading Causes, he's very well . . . dressed," or (2) in reply, as when Cicero, who had heard a false report of Vatinius' death and then met one of the latter's freedmen, asked "Is everything all right?" and, being told that it was, said "So he's dead, then."

Simulation <and Dissimulation>, however, are the

There must here be an allusion to some financial charge against him; there is also a play on the name of Catulus ("puppy").

⁹¹ *De oratore* 2.281.

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nem⁴⁰ risus est, quae sunt vicina et prope eadem, sed simulatio est certam opinionem animi sui imitantis, dissimulatio aliena se parum intellegere fingentis. Simulavit Afer cum in causa subinde dicentibus Celsinam de re cognovisse (quae erat potens femina) 'quis est' inquit
 86 'iste?' Celsinam enim videri sibi virum finxit. Dissimulavit Cicero cum Sex. Annalis testis reum laesisset et instaret identidem accusator: 'dic, M. Tulli, si quid potes de Sexto Annali'; versus enim dicere coepit de libro Enni Annali sexto:

quis potis ingentis causas⁴¹ evolvere belli?

87 Cui sine dubio frequentissimam dat occasionem ambiguitas, ut Cascellio, qui consultatori dicenti 'navem dividere volo' 'perdes'⁴² inquit. Sed averti intellectus et aliter solet, cum ab asperioribus ad leniora deflectitur: ut qui, interrogatus quid sentiret de eo qui in adulterio deprehensus esset, tardum fuisse respondit. Ei confine est quod
 88 dicitur per suspicionem, quale illud apud Ciceronem querenti quod uxor sua ex fico se suspendisset: 'rogo des mihi surculum ex illa arbore ut inseram'; intellegitur enim quod
 89 non dicitur. Et hercule omnis salse dicendi ratio in eo est,

⁴⁰ *suppl. edd.*

⁴¹ oras *Ennius*

⁴² *recc.*: pedes A

⁹² Some masculine names (*Caecina, Murena*) do end in *-a*, like women's names.

⁹³ Fr. 174 Vahlen = 173 Warmington (*ROL* 1, 66) = 164 Skutsch. Sextus Villius Annalis owed his cognomen to an ancestor who established a *lex annalis*, i.e. a law regulating the age of eligibility for various offices (*Livy* 40.44).

⁹⁴ Eminent lawyer: cf. Horace, *Ars Poetica* 37.

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greatest sources of laughter. The two are closely related, indeed almost identical; but Simulation amounts to faking an opinion of one's own, Dissimulation to pretending not to understand what others mean. (1) Simulation is illustrated by Afer's remark, when his opponents kept saying that Celsina (an influential lady) had decided the case: "Who is *he*?" he asked. (He pretended to think Celsina was a man.)⁹² (2) Dissimulation is the point in Cicero's response, when a witness called Sextus Annalis had damaged his client, and the prosecutor kept pressing him, and saying "Marcus Tullius, can you say anything of Sextus Annalis?" He began to quote lines from Ennius, *Annals* Six:

Who can the causes vast of war unroll?⁹³

Ambiguity undoubtedly gives the most frequent opportunities for this: when a client said to Cascellius⁹⁴ "I want to split my ship in two," the lawyer replied "You will sink it then." Another way of turning the meaning round is to move from the serious to the less grave, like the man who was asked what he thought of the man caught in the act of adultery, and answered "Too slow." Related to this are remarks that depend on insinuation: when a man complained to Cicero that his wife had hanged herself from a fig tree, Cicero replied "I wish you would give me a slip of that tree to graft"; what is unsaid here is understood.⁹⁵ Indeed, the whole principle of witty speech consists in ex-

⁹⁵ *De oratore* 2.278. For this use of a fig tree, compare Plutarch, *Antony* 70, where the misanthrope Timon offers the use of his to the people for this purpose before he cuts it down. Grafting (*insitio*) was practised with figs: Palladius 4.10.31-32.

90 ut aliter quam est rectum verumque dicatur: quod fit totum fingendis aut nostris aut alienis persuasionibus aut dicendo quod fieri non potest. Alienam finxit Iuba, qui querenti quod ab equo luto⁴³ esset adpersus 'quid? tu' inquit 'me Hippocentaurum putas?' Suam C. Cassius, qui militi sine gladio decurrenti 'heus, commilito, pugno bene uteris' inquit, et Gabba de piscibus, qui, cum pridie ex parte adesi et versati postera die positi essent, 'festinemus, alii subcenant' inquit. Tertium illud Cicero, ut dixi, adversus Curium; fieri enim certe non poterat ut cum declamaret natus non esset.

91 Est et illa ex ironia fictio, qua usus est C. Caesar. Nam cum testis diceret a reo femina sua ferro petita, et esset facilis reprehensio, cur' illam potissimum partem corporis vulnerare voluisset, 'quid enim faceret', inquit, 'cum tu galeam et loriam haberes?'

92 Vel optima est autem simulatio contra simulantem, qualis illa Domiti Afri fuit. Vetus habebat testamentum, et unus ex amicis recentioribus, sperans aliquid ex mutatione tabularum, falsam fabulam intulerat, consulens eum an primipilari seni intestato⁴⁴ suaderet ordinare suprema iudicia: 'noli' inquit 'facere; offendis illum.'

⁴³ *Winterbottom*: suo A: sputo *recc.* ⁴⁴ *Winterbottom*:
intestator A: iam testato (*Obrecht*) <rursus> *Spalding*

⁹⁶ Juba is the prince of Mauritania brought to Rome by Caesar, educated and restored to his kingdom by Augustus: historian (*F Gr Hist* 275) and man of letters. ⁹⁷ Obscure: others interpret "are waiting for their turn to dine." ⁹⁸ 6.3.72.

⁹⁹ Probably again the witty C. Julius Caesar Strabo Vopiscus.

¹⁰⁰ *Obrecht's* conjecture, which means "having already made

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pressing things in a way other than the direct and truthful one. This comes entirely from inventing opinions of our own or of others or from saying the impossible. (1) Juba invented the opinion of another, when he said to the man who complained of being bespattered with mud by his horse, "What? Do you take me for a Centaur?"⁹⁶ (2) Gaius Cassius invented an opinion of his own when he said to the soldier who was drilling without his sword, "You will have to use your fists well, comrade!" So did Gabba, when served with some fish that had been partially eaten the previous day and had been put on the table with the whole side uppermost: "Let us make haste," he said, "there are others having dinner downstairs."⁹⁷ (3) The third type is shown in Cicero's remark against Curius, which I quoted above:⁹⁸ it was certainly impossible that he should not have been born at the time when he was practising declamation.

There is also a form of invention based on Irony. Gaius Caesar⁹⁹ used this: when a witness said that the accused had aimed at his thigh with his sword, and it would have been easy to ask why he should want to strike him there, Caesar said only "What else could he have done, when you were wearing a helmet and a breastplate?"

Simulation is most effective when used against simulation, as once by Domitius Afer. He had an old will, and one of his more recent friends, hoping for something from a change of his dispositions, made up a story, and consulted Afer as to whether one should advise an elderly senior centurion, who had not made a will,¹⁰⁰ to put his final wishes in order. "Don't do it," said Afer, "you offend him."

his will," makes the centurion's position more closely parallel to Afer's.

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- 93 Iucundissima sunt autem ex his omnibus lenta et, ut sic dixerim, boni stomachi: ut Afer idem ingrato litigatori conspectum eius in foro vitanti per nomenclatorem missum ad eum 'amas me', inquit, 'quod te non vidi?' et dispensatori, qui, cum reliqua non reponeret,⁴⁵ dicebat subinde 'non comedi; pane et aqua vivo', 'passer, redde
94 quod debes': quae ὑπονοητόν⁴⁶ vocant. Est gratus iocus qui minus exprobrat quam potest, ut idem dicenti candidato 'semper domum tuam colui', cum posset palam negare, 'credo' inquit 'ut⁴⁷ verum.'

- Interim de se dicere ridiculum est: et, quod in alium si absentem diceretur urbanum non erat, quoniam ipsi
95 palam exprobratur movet risum; quale Augusti est cum ab eo miles nescio quid improbe peteret et veniret contra Marcianus, quem suspicabatur et ipsum aliquid iniuste rogaturum: 'non magis' inquit 'faciam, commilito, quod petis quam quod Marcianus a me petiturus est.'

- 96 Aduvant urbanitatem et versus commode positi, seu toti ut sunt (quod adeo facile est ut Ovidius ex tetrastichon Macri carmine librum in malos poetas composuerit), quod fit gratius si qua etiam ambiguitate conditur, ut Cicero in

⁴⁵ Seeck: responderet A: reponderent Obrecht ('when the balance did not correspond') ⁴⁶ D.A.R.: ὑπὸ τὸ ἦθος A

⁴⁷ Shackleton Bailey: et A: et verum del. Murgia

¹⁰¹ The *nomenclator* is the slave who is responsible for telling his master the names of people they meet (especially useful to politicians). ¹⁰² The Greek phrase in our MSS is obscure (? "under the character") and probably corrupt: I think some derivative of ὑπόνοια "innuendo" is meant, and hesitantly conjecture ὑπονοητόν, though there is no evidence for this word used in a technical sense.

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The most agreeable examples of all these types are the relaxed and, so to speak, good-tempered ones. Afer again: an ungrateful client avoided him in the forum, and he sent his attendant¹⁰¹ to him to say "Are you grateful to me for not having seen you?" And when his steward failed to pay back the balance on his account and kept saying "I didn't eat it; I live on bread and water," Afer said "Sparrow, pay what you owe." They call such things "innuendo."¹⁰² A joke which reproaches a person less than it might is well received. Afer again: a candidate said "I have always respected your family"; Afer could well have denied it openly, but he said "I believe it as if it was true."

It is sometimes a good joke to speak about yourself, but you can also raise a laugh by saying openly about someone else something that would not be at all witty if said in his absence. For example: Augustus was dealing with a soldier who was making an improper request, when Marcianus,¹⁰³ whom he expected also to make some irregular demand upon him, appeared on the scene. "Comrade," said Augustus to the soldier, "I shall no more grant what you are asking, than I shall grant what Marcianus is going to ask me."

Apt verse quotations also contribute to wit. (1) One may quote whole lines (this is so easy that Ovid composed a whole book against bad poets out of Macer's *Tetrasticha*),¹⁰⁴ and this device is even more acceptable if there is a touch of ambiguity; as when Cicero quoted against

¹⁰³ Perhaps the senator Granius Marcianus of Tacitus, *Annales* 6.38. ¹⁰⁴ Aemilius Macer, Pompeius Macer, and Licinius Macer are all Augustan men of letters: this may be any of them (Courtney (1993) 292). *Tetrasticha* are four-line epigrams, like the *Caesares* of Ausonius.

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Lartium, hominem callidum et versutum, cum is in quadam causa suspectus esset:

nisi si qua Ulixes lintre evasit⁴⁸ Lartius:

- 97 seu verbis ex parte mutatis, ut in eum qui, cum antea stultissimus esset habitus, post acceptam hereditatem primus sententiam rogabatur:

hereditas est quam vocant sapientiam

- 98 pro illo 'felicitas est': seu ficti notis versibus similes, quae *παρρηδία* dicitur: et proverbia oportune aptata, ut homini nequam lapso et ut adlevaretur roganti 'tollat te qui non novit.'

Ex historia etiam ducere urbanitatem eruditum est, ut Cicero fecit cum ei testem in iudicio Verris roganti dixisset Hortensius: 'non intellego haec aenigmata'; 'atqui debes,' inquit 'cum Sphingem domi habeas'; acceperat autem ille a Verre Sphingem aeneam magnae pecuniae.

- 99 Subabsurda illa constant stulti simulatione: quae nisi

⁴⁸ lintre evasit *Spalding*: intervasit *A*

¹⁰⁵ From an unknown tragedy (Klotz, *Fr. Trag. Incert.* XLVII, Warmington, *ROL* 2, p. 606). Ulysses is the son of Laertes, Lartius is a Roman name.

¹⁰⁶ This line (with *felicitas*) is probably from a comedy (*Fr. Com. Incert.* 35 Ribbeck). Compare Menander, *Monosticha* 726 (= Euripides fr. 1017 Nauck): τὸν εὐτυχοῦντα καὶ φρονεῖν νομίζομεν, "We hold the happy man also to be wise". See Demetrius 150 for this humorous use of parody.

¹⁰⁷ Compare Horace, *Epistulae* 1.17.62 "crudeles, tollite claudum!" "quaere peregrinum" vicinia rauca reclamat ("You

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Lartius, a sharp-witted and cunning person who was under suspicion in a certain case, the line

Unless he had a raft like that by which
Ulysses Lartius escaped.¹⁰⁵

(2) Alternatively, the words may be altered in part, as in the line quoted against the man who had previously been regarded as utterly stupid, but, on coming into his legacy, was asked his opinion first in the senate:

What they call wisdom is a legacy¹⁰⁶—

instead of “felicity.” (3) Again, lines can be invented resembling well-known ones (this is called “parody”).

Proverbs which are to the point also make a contribution. A bad character falls down and asks to be helped up; someone says “Let someone help you up who doesn’t know you.”¹⁰⁷

It shows learning also to take a joke from history, as Cicero did when Hortensius said to him as he was examining a witness in the trial of Verres “I don’t understand these riddles”; “You ought to, however,” said Cicero, “because you’ve got a Sphinx in your house.” (Hortensius had been given a very valuable bronze Sphinx by Verres.)¹⁰⁸

The “subabsurd”¹⁰⁹ depends on a simulated stupidity; if

cruel people, pick the lame man up!” “Look for a stranger” cries the hoarse-voiced neighbourhood): Otto (1891) 350.

¹⁰⁸ Compare Pliny, *Nat. Hist.* 34.48 (sphinx); Plutarch, *Cicero* 7.8 (an ivory sphere). Note that the reference to the mythological Sphinx is said to be “from history.”

¹⁰⁹ Cicero, *De oratore* 2.274.

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fingantur stulta sunt, ut qui mirantibus quod humile candelabrum emisset 'pransorium erit' inquit. Sed illa similia absurdis sunt acria quae tamquam sine ratione dicta feruntur, ut servus Dolabellae, cum interrogaretur an dominus eius auctionem proposuisset, 'domum' inquit 'vendidit'.

100 Deprensi interim pudorem suum ridiculo aliquo explicant, ut qui testem dicentem se a reo vulneratum interrogaverat an cicatricem haberet, cum ille ingentem in femine ostendisset, 'latus' inquit 'oportuit'.

Contumeliis⁴⁹ quoque uti belle datur: ut Hispo obicienti atrociora⁵⁰ crimina accusatori '<me ex te>⁵¹ metiris?' inquit. Et Fulvius Propinquus⁵² legatario⁵³ interroganti an in tabulis quas proferebat chirographus esset 'et verus,' inquit 'domine'.

101 Has aut accepi species aut inveni frequentissimas ex quibus ridicula ducerentur; sed repetam necesse est infinitas esse tam salse dicendi quam severe, quas praestat persona locus tempus, casus denique, qui est maxime varius.

102 Itaque haec ne omisisse viderer attigi: illa autem quae

⁴⁹ *edd.*: umis A: verbis *Murgia*

⁵⁰ *Halm*: obicientibus arbore A

⁵¹ *add. Buttman*

⁵² *Gesner*: propincus A

⁵³ *Winterbottom*: legato A: <litigatori de> legato *Murgia*

¹¹⁰ Romanus Hispo, declaimer (Seneca, *Controversiae* 9.3.11), perhaps the *delator* of Tacitus, *Annales* 1.74.

¹¹¹ Perhaps from Saetabis in Tarraconensis (Q.'s home province): *CIL* 2, 5978, Syme, *RP* 4, 632. With *Murgia*'s readings, the sentence would mean: "F. P. replied to a litigant, who asked about

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it is not a pretence, it is indeed stupid. For example, a man bought a very short candlestick, and people wondered why: "It will do for lunch," he replied. Some apparent absurdities which seem to have been spoken without any reason are in fact very pointed: thus when Dolabella's slave was asked whether his master had advertised a sale of his goods, he said, "He has sold his house."

When people are caught napping, they sometimes try to save face by a joke. A witness said he had been wounded by the accused. He was asked if he had a scar. He displayed a huge one on his thigh. "You ought to have shown me your side" said the prosecutor.

Insults also can be neatly used. When Hispo¹¹⁰ was charged with particularly outrageous crimes, he said to his accuser "Are you measuring me by your own standards?" When Fulvius Propinquus¹¹¹ was asked by a legatee whether the documents he was producing were an autograph, he replied "Yes, sir, and it is genuine!"

Conclusion: critique of Domitius Marsus

Such are the species of things which I have learned or myself discovered to be the commonest sources of the ridiculous. I must repeat that the number of species of speaking wittily is as infinite as those of speaking seriously, for they depend on persons, places, times, and finally chance, which is most variable of all. I have therefore touched on these matters because I did not want to be criticized for leaving them out; on the other hand, what I said

a legacy . . ." The implication of *domine* may be that F. P. ironically plays the part of a slave producing his accounts to his master.

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de usu ipso et modo iocandi complexus sum adfirmarim
 <esse>⁵⁴ plane necessaria.

His adicit Domitius Marsus, qui de urbanitate diligen-
 tissime scripsit, quaedam non ridicula, sed cuilibet seve-
 rissimae orationi convenientia eleganter dicta et proprio
 quodam lepore iucunda: quae sunt quidem urbana, sed
 103 risum tamen non habent. Neque enim ei de risu sed de
 urbanitate est opus institutum, quam propriam esse
 nostrae civitatis <ait>⁵⁵ et sero sic intellegi coeptam, post-
 quam urbis appellatione, etiam si nomen proprium non
 104 adiceretur, Romam tamen accipi sit receptum. Eamque sic
 finit: 'urbanitas est virtus quaedam in breve dictum coacta
 et apta ad delectandos movendosque homines in omnem
 adfectum animi, maxime idonea ad resistendum vel laces-
 sendum, prout quaeque res ac persona desiderat.' Cui si
 brevitatis exceptionem detraxeris, omnis orationis virtutes
 complexa sit. Nam si constat rebus et personis, quod in
 105 utrisque oporteat dicere perfectae eloquentiae est. Cur
 autem brevem esse eam voluerit, nescio, cum idem atque
 in eodem libro dicat fuisse et in multis narrandi urba-
 nitatem. Paulo post ita finit, Catonis, ut ait, opinionem
 secutus: 'Urbanus homo erit cuius multa bene dicta re-
 sponsaque erunt, et qui in sermonibus circulis convivii,
 item in contionibus, omni denique loco ridicule commo-

⁵⁴ adfirmarim <esse> *Winterbottom*: adeo infirmare A

⁵⁵ *add. Regius*

¹¹² Augustan poet, notable epigrammatist: Courtney (1993) 300-305.

¹¹³ Compare 8.2.8. ¹¹⁴ Which Cato? Q. was clearly un-
 able to check Celsus' reference.

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above about the actual uses and limits of jokes, I venture to call indispensable.

Domitius Marsus,¹¹² who wrote a very scholarly work on Urbanity, includes also several types of saying which are not ridiculous but elegant, having a certain grace and charm of their own, and not out of place in the most austere speech. These are "urbane," but they do not raise a laugh. He includes them because the subject of his work is not "Laughter" but "Urbanity," which he says is a peculiarity of our city, though (as he says) the word was not understood in this sense till a late period, when the term *urbs*, even without the addition of a proper noun, came to mean Rome.¹¹³ He defines it thus:

Urbanity is a virtue of language concentrated in a brief saying, and adapted to delight men and move them to any kind of emotion, but especially suitable for resisting or challenging according to the needs of individual circumstances or persons.

If you take away the notion of brevity, this definition covers all the virtues of oratory. For if it depends on "circumstances" and "persons," then it takes perfect eloquence to meet the requirements of both. But why he insisted on brevity I do not know, because he also says, and in the same book, that there is also, in many authors, Urbanity to be found in Narrative. He proceeds a little later to define it, following (as he says) Cato's¹¹⁴ opinion, as follows:

A man will be urbane who utters many good sayings and replies, and who speaks amusingly and with appropriateness in conversation, social gatherings, and dinners, and also in public meetings: in a word,

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deque dicet.' [Risus erit quicumque haec faciet orator.]⁵⁶
 106 Quas si recipimus finitiones, quidquid bene dicetur et
 urbane dicti nomen accipiet. Ceterum illi qui hoc propo-
 suerat consentanea fuit illa divisio, ut dictorum urba-
 norum alia seria, alia iocosa, alia media faceret: nam est
 eadem omnium bene dictorum. Verum mihi etiam iocosa
 107 quaedam videntur posse in non satis urbana referri. Nam
 meo quidem iudicio illa est urbanitas, in qua nihil ab-
 sonum, nihil agreste, nihil inconditum, nihil peregrinum
 neque sensu neque verbis neque ore gestuve possit de-
 preendi, ut non tam sit in singulis dictis quam in toto colore
 dicendi, qualis apud Graecos atticismos ille reddens Athe-
 108 narum proprium saporem. Ne tamen iudicium Marsi, ho-
 minis eruditissimi, subtraham, seria partitur in tria genera,
 honorificum contumeliosum medium. Et honorifici ponit
 exemplum Ciceronis pro Q. Ligario apud Caesarem: 'qui
 109 nihil soles oblivisci nisi iniurias', et contumeliosi quod Atti-
 co scripsit de Pompeio et Caesare: 'habeo quem fugiam,
 quem sequar non habeo', et medii, quod ἀποφθρευματικόν
 vocat, ut est in Catilinam cum dixit⁵⁷ neque gravem mor-
 tem accidere viro forti posse nec in maturam consulari nec
 miseram sapienti. Quae omnia sunt optime dicta, sed cur
 110 proprie nomen urbanitatis accipiant non video. Quod si
 non totius, ut mihi videtur, orationis color meretur, sed
 etiam singulis dictis tribuendum est, illa potius urbana

⁵⁶ *del. Winterbottom* ⁵⁷ ut est in Catilinam cum dixit
Halm after Regius and Spalding: et est ita cum dixerit A

¹¹⁵ The bracketed sentence is certainly no part of the quota-
 tion from Marsus; but it just might be Q.'s comment.

¹¹⁶ 35. ¹¹⁷ *Ad Atticum* 8.7.2. ¹¹⁸ 4.3.

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on every occasion. [If anyone does this as an orator, he will be ridiculed.]¹¹⁵

If we accept these definitions, whatever is well said will also count as “urbanely” said. It was natural therefore that the propounder of this view should classify “urbane” sayings into “serious,” “humorous,” and “intermediate”; that division holds of all good sayings. However, it seems to me that even some jokes can be classed as not sufficiently “urbane.” This is because, to my thinking, Urbanity means something in which nothing that is incongruous, coarse, unpolished, or exotic can be detected in meaning, words, pronunciation, or gesture. Thus it resides not so much in individual words as in the whole tone of speech, just as for the Greeks “Atticism” conveys the whole flavour of Athens. However—so as not to suppress the learned Marsus’ opinion—let me say that he divides serious utterances into three classes, the honorific, the derogatory, and the neutral. Of the honorific, he gives as an example Cicero’s remark before Caesar in *Pro Ligario*:¹¹⁶ “You who never forget anything except injuries.” For the derogatory, he gives what Cicero wrote to Atticus about Pompey and Caesar:¹¹⁷ “I know whom to avoid, I don’t know whom to follow.” For the neutral (which he calls “apophthegmatic”), he quotes *In Catilinam*,¹¹⁸ where Cicero says that “death can never be grievous to the brave, nor premature to a former consul, nor unhappy to a philosopher.” All these remarks are admirable; but I do not see why they should particularly be classed as Urbanity. If it is not the tone of the whole speech which deserves this name (as I believe), but it can be claimed for individual sayings, I should be inclined to use “urbane” of sayings which come

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- esse dixerim quae sunt generis eiusdem ex quo ridicula ducuntur et tamen ridicula non sunt, ut de Pollione Asinio seriis iocisque pariter accommodato dictum est esse eum
 111 omnium horarum, et de actore facile dicente ex tempore, ingenium eum in numerato habere: etiam Pompei, quod refert Marsus, in Ciceronem diffidentem partibus: 'transi ad Caesarem, me timebis.' Erat enim, si de re minore aut alio animo aut denique non ab ipso dictum fuisset, quod
 112 posset inter ridicula numerari. Etiam illud quod Cicero Caerelliae scripsit, reddens rationem cur illa C. Caesaris tempora tam patienter toleraret: 'haec aut animo Catonis ferenda sunt aut Ciceronis stomacho'; stomachus enim ille habet aliquid ioco simile.

Haec quae <me>⁵⁸ movebant⁵⁹ dissimulanda mihi non fuerunt: in quibus ut erraverim, legentis tamen non decepi, indicata et diversa opinione, quam sequi magis probantibus liberum est.

⁵⁸ *add. Spalding*

⁵⁹ *monebam Halm*

¹¹⁹ See 10.1.113 (*ORF* p. 517 omits this testimony to Asinius Pollio). "A man for all hours" means a man equally well equipped for business and for pleasure, which occupies the later part of the day, from the seventh (or the ninth) hour onwards: see, e.g., *Anthologia Palatina* 10.43, where the letters of the word ζῆσι "live" are given their numerical value: 7, 8, 9, 10.

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from the same class as the laughter-producing, but which do not actually produce laughter. For example: it was said of Asinius Pollio, who had equal talents for the serious and the humorous, that he was "a man for all hours,"¹¹⁹ and of a pleader who was a fluent extempore speaker that he kept his talents "in ready cash." There is also a remark of Pompey, reported by Marsus, concerning Cicero, when the latter was losing faith in the party: "Go over to Caesar, you will have me to be afraid of."¹²⁰ If this had been said on a less serious subject, or in another spirit, or indeed not by Pompey, it might have counted as a joke. Compare also what Cicero wrote to Caerellia,¹²¹ explaining why he bore life under Caesar so patiently: "It has to be endured either with the courage of a Cato or with the stomach of a Cicero"—the word "stomach" has something funny about it.¹²²

I felt I could not suppress thoughts which so stimulated me; I may have been wrong in them, but I have not misled my readers, since I have also given the contrary view, which they are at liberty to follow if they prefer it.

¹²⁰ Macrobius, *Saturnalia* 2.2.8 reports Pompey as saying "I wish Cicero would go over to the enemy, so that he could be afraid of us."

¹²¹ *Fr. epist.* XII.1 Watt. Cicero's letters to Caerellia are mentioned by Ausonius (*Cento Nuptialis* p. 139, 8 Green) as displaying *petulantia*, "sauciness." Cassius Dio 46.18 reports a speech accusing Cicero of adultery with her, though she was 70.

¹²² So Horace (*Carmina* 1.6.6) plays down "the wrath of Achil-les" by calling it *Pelidae stomachum*: see Nisbet-Hubbard *ad loc.*

- 1 Altercationis praecepta poterant videri tunc inchoanda cum omnia quae ad continuam orationem pertinent pergissem: nam est usus eius ordine ultimus; sed cum sit posita in sola inventione neque habere dispositionem possit nec elocutionis ornamenta magnopere desideret aut circa memoriam et pronuntiationem laboret, prius quam secundam quinque partium hanc quae tota ex prima pendet tractaturus non alieno loco videor. Quam scriptores alii fortasse ideo reliquerunt quia satis ceteris praeceptis in
- 2 hanc quoque videbatur esse prospectum. Constat enim aut intentione aut depulsione, de quibus satis traditum est, quia quidquid in actione perpetua circa probationes utile est, idem in hac brevi atque concisa prosit necesse est. Neque alia dicuntur in altercatione, sed aliter, aut interrogando aut respondendo. Cuius rei fere omnis observatio in illo testium loco excussa nobis est.
- 3 Tamen quia latius hoc opus adgressi sumus neque perfectus orator sine hac virtute dici potest, paulum inpendamus huic quoque peculiaris operae, quae quidem in quibusdam causis ad victoriam vel plurimum valet. Nam ut in
- 4 qualitate generali, in qua rectene factum quid an contra sit quaeritur, perpetua dominatur oratio, et quaestionem finitionis actiones plerumque satis explicant et omnia paene in quibus de facto constat aut coniectura artificiali ratione colligitur: ita in iis causis, quae sunt frequentissimae, quae

1 5.7.

² Q. seems to mean *status qualitatis* in general; but the phrase is not a normal one, although *constitutio generalis* sometimes means the Issue of Quality (*De inventione* 1.10). Compare 7.4.1.

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CHAPTER 4

Altercation

The place to outline the rules of Altercation might seem to be after I had finished dealing with everything related to the set speech, for the use of Altercation comes last. However, since Altercation is entirely a matter of Invention, cannot involve Disposition, has no great need of the ornaments of Elocution, and has no problems with Memory or Delivery, it seems reasonable to treat this topic, which depends wholly on the first part of Rhetoric, before proceeding to the second. Other writers have left it alone, perhaps because they thought they had taken care of it sufficiently by their other precepts. Altercation indeed consists in attack or rebuttal and these have already been adequately treated, since whatever is useful in the set speech with regard to Proofs must also be useful in this brief and fragmented form. We do not say different things in Altercation, but we say them in a different way, namely by question or answer. My observations on this are practically all included in my discussion of witnesses.¹

However, given the broad scope of my present undertaking, and since no one can be called a perfect orator without this skill, let us devote a little special attention to it also; in some Causes, indeed, it is the decisive element in success. For, while the set speech is the dominant factor in General Quality,² where the question is whether an act was right or not, and the formal pleadings generally set out questions of Definition adequately—as indeed they do in all cases in which the facts are admitted or the Conjecture is based on Technical Proofs—on the other hand, in the

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- vel solis extra artem probationibus vel mixtis continentur, asperrima in hac parte dimicatio est, nec alibi dixeris magis
- 5 mucrone pugnari. Nam et firmissima quaeque memoriae iudicis inculcanda sunt et praestandum quidquid in actione promissimus et refellenda mendacia: nusquam est denique qui cognoscit intentior. Nec inmerito quidam quamquam in dicendo mediocres hac tamen altercandi
- 6 praestantia meruerunt nomen patronorum. At quidam, litigatoribus suis illum modo ambitiosum declamandi sudorem praestitisse contenti, cum turba laudantium destituunt subsellia, pugnamque illam decretoriam imperitis ac
- 7 saepe pullatae turbae relinunt. Itaque videas alios plerumque in iudiciis privatis ad actiones advocari, alios ad probationem. Quae si dividenda sunt officia, hoc certe magis necessarium est, pudendumque dictu si plus litigantibus prosunt minores. In publicis certe iudiciis vox illa praeconis inter¹ patronos ipsum qui egerit citat.
- 8 Opus est igitur in primis ingenio veloci ac mobili, animo praesenti et acri. Non enim cogitandum, sed dicendum statim est et prope sub conatu adversarii manus exigenda. Quare cum omni parte huiusce officii plurimum facit totas non diligenter modo sed etiam familiariter nosse causas, tum in altercatione maxime necessarium est omnium personarum instrumentorum temporum locorum habere notitiam: alioqui et tacendum erit saepe et aliis subicientibus

¹ *Spalding*: praeter A

³ I.e. not wearing the toga. Augustus (Suetonius, *Augustus* 40) tried to compel all citizens present in the forum to wear the toga, but this was clearly ineffective, even as regards those taking part in legal proceedings.

BOOK 6.4

very common cases which depend solely or partly on Non-technical Proofs, the fiercest battle is in the Altercation; nowhere else, one might say, is there so much hand-to-hand fighting. We have to impress our strongest points on the judge's memory, make good any promises made in our formal pleading, and refute false statements. Nowhere is the judge more attentive than here. Even mediocre orators have quite properly acquired a reputation as advocates simply by this excellence in Altercation. Some, on the other hand, content to have served their clients with a strenuous and showy exhibition of declamation, leave the benches empty, taking their crowd of admirers with them, and leave the decisive battle to the unskilled, and often to the men in the drab clothes.³ Consequently, in private cases, you often find different advocates used for the pleading and for the Proof. If these functions are to be divided, the second is certainly the more necessary, and it is a disgrace if the less qualified do the greater service to the client. In public cases, at any rate, the voice of the court usher calls on the one among the advocates who has made the main speech.

What is most needed is a quick and nimble mind and prompt and penetrating thought. There is no time to think; one has to speak there and then, and make one's thrust almost at the same moment as the adversary makes his. Consequently, while it is of course very important in every part of the advocate's duty that he should have not only a thorough but a really intimate knowledge of the Cause, in the Altercation it is absolutely vital for him to have an understanding of all the persons, documents, times, and places involved. Otherwise, he will frequently have to hold his tongue and have recourse to the suggestions of others—

QUINTILIAN

- (plerumque autem studio loquendi fatue) [modo]² accedendum: quo nonnumquam accidit ut nostra credulitate
 9 aliena stultitia erubescamus. Neque tamen cum his ipsis monitoribus clam res erit: quidam faciunt ut aperte quoque rixemur. Videas enim plerosque ira percitos exclamantis, ut iudex audiat contrarium id esse quod admoneatur,³ sciatque ille qui pronuntiaturus est in causa malum quod
 10 tacetur. Quare bonus altercator vitio iracundiae careat; nullus enim rationi magis obstat adfectus et fert extra causam plerumque et deformia convicia facere ac mereri cogit et in ipsos nonnumquam iudices incitat. Melior moderatio ac nonnumquam etiam patientia; neque enim refutanda tantum quae ex contrario dicuntur, sed contemnenda elevanda ridenda sunt, nec usquam plus loci recipit urbanitas. Hoc dum ordo est et pudor: contra turbantis
 11 audendum et impudentiae fortiter resistendum. Sunt enim quidam praeduri in hoc oris, ut obstrepant ingenti clamore et medios sermones intercipient et omnia tumultu confundant, quos ut non imitari, sic acriter propulsare oportebit, et ipsorum improbitatem retundendo et iudices vel praesidentis magistratus appellando frequentius ut loquendi vices serventur. Non est res animi iacentis et mollis supra modum frontis, fallitque plerumque quod probitas vocatur quae est inbecillitas.
- 12 Valet autem in altercatione plurimum acumen, quod sine dubio ex arte non venit (natura enim non docetur),

² *del. D.A.R.*: modo <monent> *Winterbottom*

³ *t.*: admoneant A

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often foolish suggestions at that, and made only because they want to hear themselves speak—with the result that we sometimes find ourselves blushing for our own credulity and someone else's stupidity. Nor shall we simply be having a quiet consultation with these prompters; some behave in such a way that we come to open brawling. You may see many people angry and shouting, so that the judge can hear that the advice which is being given is damaging, and the very person who is going to give judgement in the Cause becomes aware of a weakness being covered up. A good altercator must therefore be free of the vice of irascibility. No passion is a greater enemy of reason than anger. It often carries you away beyond the needs of the Cause, forces you to launch and to deserve ugly abuse, and sometimes even stirs you up against the judges. Moderation, sometimes indeed long suffering, is a better policy, for the other side's arguments have not only to be refuted but despised, disparaged, and ridiculed; nowhere else is there more scope for wit. At least, this applies so long as order and decency prevail; but brawlers have to be met with boldness, and impudence resisted with courage. Some are so brazen-faced that they make a lot of noise and bluster, interrupt when others are talking, and throw everything into confusion. We are not to imitate them, of course, but we must repel them sharply, both by blunting the edge of their outrageous attacks and by repeatedly appealing to the judges or presiding magistrates to uphold the proper order of speaking. This is not a task for the passive spirit or the thin-skinned; it is a common mistake to take weakness for decency.

The most important quality in Altercation is sharpness of mind; this of course does not come from art (natural

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- 13 arte tamen adiuvatur. In qua praecipuum est semper id in oculis habere de quo quaeritur et quod volumus efficere: quod propositum tenentes nec in rixam ibimus nec causae debita tempora conviciando conteremus, gaudebimusque si hoc adversarius facit.
- 14 Omnia semper⁴ fere praeparanda⁵ sunt meditatis diligenter quae aut ex adverso dici aut responderi a nobis possunt. Nonnumquam tamen solet hoc quoque esse artis genus, ut quaedam in actione dissimulata subito in altercando proferantur (est inopinatis eruptionibus aut incursionibus ex insidiis factae simillimum); id autem tum faciendum est cum est aliquid cui responderi non statim possit, potuerit autem si tempus ad disponendum fuisset. Nam quod fideliter firmum est, a primis statim actionibus arripere optimum est, quo saepius diutiusque dicatur. Illud vix saltem praecipendum videtur, ne turbidus et clamorosus tantum sit altercator, et quales saepe⁶ sunt qui litteras nesciunt. Nam improbitas, licet adversario molesta⁷ sit, iudici invisibilis est. Nocet etiam diu pugnare in iis quae optinere non possis. Nam ubi vinci necesse est, expedit cedere, quia, sive plura sunt de quibus quaeritur, facilior erit in ceteris fides, sive unum, mitior solet poena inrogari verecundiae. Nam culpam, praesertim deprehensam, pertinaciter tueri culpa altera est.
- 16
- 17 Dum stat acies, multi res⁸ consilii atque artis est ut errantem adversarium trahas et ire quam longissime cogas,

⁴ *Watt* 1988: tempore *A*

⁵ *Radermacher*: parata *A*

⁶ *Watt* 1988: facti *A*: fere *edd.*

⁷ <non> molesta *Watt*

⁸ *Spalding*: in re *A*: *del. Radermacher*

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ability is not something that is taught), but it can be helped by art. In this connection, the main thing is always to keep in view both the question at issue and our own purpose. With this firmly in mind, we shall not descend to brawling nor waste on abuse the time which ought to be given to the Cause, and we shall be only too happy if our opponent does just this.

Everything should always be prepared in advance, by carefully rehearsing the possible moves of the other party and our own possible replies. But there is a further device sometimes used, which consists in bringing out suddenly in the Altercation points which were concealed during the main pleading. This is like a surprise breakout or an attack from an ambush. It is to be done when there is a point which it is impossible to answer on the spot, but which might have been answered if there had been time to consider it. Solid, reliable arguments are best taken up right from the beginning of the pleading, so that they can be emphasized repeatedly and at greater length. I imagine I scarcely need advise against an altercator who is simply violent and noisy, as the illiterate often are. Unreasonable behaviour may of course distress the opponent, but it makes an enemy of the judge. It is also damaging to fight for long over points you cannot win. Where defeat is inevitable, the best policy is to give way: if there are more points in dispute, you will be more easily believed on these; if there is only the one, modest submission usually earns a lighter sentence. To defend an offence obstinately (especially if it has been detected) amounts to a second offence.

While the battle is on, it takes much planning and skill to entice the opponent further into error and force him to go as far down the road as possible, so as to give him the

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- ut vana interim spe exultet. Ideo quaedam bene dissimulantur instrumenta; instant enim et saepe discrimen omne committunt <in id>⁹ quod deesse nobis putant et faciunt
- 18 probationibus nostris auctoritatem postulando. Expedi etiam dare aliquid adversario quod pro se putet, quod apprehendens maius aliquid cogatur dimittere: duas interim res proponere quarum utramlibet male sit electurus, quod in altercatione fit potentius quam in actione, quia in illa nobis ipsi respondemus, in hac adversarium quasi confessum tenemus.
- 19 Est in primis acuti videre quo iudex dicto moveatur, quid respuat: quod et vultu saepissime et aliquando etiam dicto aliquo factove eius deprehenditur. Et instare proficientibus et ab iis quae non adiuvent quam mollissime pedem oportet referre. Faciunt hoc medici quoque, ut remedia proinde perseverent adhibere vel desinant ut illa recipi vel respui vident.
- 20 Nonnumquam, si rem evolvere propositam facile non sit, inferenda est alia quaestio, atque in eam iudex, si fieri potest, avocandus. Quid enim, cum respondere non possis, agendum est nisi ut aliud invenias cui adversarius respondere non possit?
- 21 In plerisque idem est, ut dixi, qui circa testes locus, et personis modo distat, quod hic patronorum inter se certamen, illic pugna inter testem et patronum. Exercitatio vero huius rei longe facilior. Nam est utilissimum frequenter

⁹ *add. Winterbottom*

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temporary joys of a vain hope. It is therefore well to conceal some of the documents available to us. Opponents often press for these, stake everything on something they believe we do not have, and lend weight to our proofs by their very insistence on our producing them. It is good policy also to give the opponent something which he can think is to his advantage, in grasping which he may be forced to let go something more significant; or again, sometimes, to give him a choice of two alternatives, either of which will be a bad choice for him. This is more effective in the Altercation than in the set speech, because in the latter we answer ourselves, but here we have our opponent, as it were, held fast by his own confession.

It takes a very sharp mind to see what remarks will impress the judge, and what he will reject; this is often discernible from his face and occasionally also from something he says or does. We should both press home points which help, and retreat as quietly as possible from those which do not. Doctors too do this; they either continue with a treatment or stop it, according to whether they see it accepted or rejected.

Sometimes, if it is not easy to clear up a point which has been put forward, we should introduce another Question and, if possible, divert the judge's attention to it. For what else can you do when you cannot answer, except think of something which your opponent cannot answer?

In most ways, as I said, the scope of Altercation is the same as that of handling witnesses; it differs only in respect of the persons, because here we have a competition between advocates, and there it was a battle between advocate and witness. Practising Altercation, however, is much easier. It is very useful to make a frequent habit of cooper-

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cum aliquo qui sit studiorum eorundem sumere materiam vel verae vel etiam fictae controversiae et diversas partes altercationis modo tueri: quod idem etiam in simplici genere quaestionum fieri potest.

- 22 Ne illud quidem ignorare advocatum volo, quo quaeque ordine probatio sit apud iudicem proferenda, cuius rei eadem <quae>¹⁰ in argumentis ratio est, ut potentissima prima et summa ponantur; illa enim ad credendum praeparant iudicem, haec ad pronuntiandum.

5

- 1 His pro nostra facultate tractatis non dubitasset transire protinus ad dispositionem, quae ordine ipso sequitur, nisi vererer ne, quoniam fuerunt qui iudicium inventioni subiungerent, praeterisse hunc locum quibusdam viderer: qui mea quidem opinione adeo partibus operis huius omnibus conexus ac mixtus est ut ne a sententiis quidem aut verbis saltem singulis possit separari, nec magis arte traditur
- 2 quam gustus aut odor. Ideoque nos quid in quaque re sequendum cavendumque sit docemus ac deinceps docemus, ut ad ea iudicium derigatur. Praecipiam igitur ne quod effici non potest adgrediamur, ut contraria vitemus et communia, ne quid in eloquendo corruptum obscurum sit? Referatur oportet ad sensus, qui non docentur.

¹⁰ *add. Spalding*

⁴ E.g. a Thesis or discussion of a law.

⁵ Compare 5.12.14.

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ating with a student of the same attainments in choosing a subject, a real or even an imaginary case, and then taking the two sides as in an Altercation. The same thing can also be done with simple Questions.⁴

I want the advocate to understand also in what order his Proof should be presented to the judge. The principle here is the same which applies in Arguments: the strongest should be placed first and last, because the first prepare the judge to believe us, and the last prepare him to pronounce in our favour.⁵

CHAPTER 5

Judgement and Strategy

Having dealt with these matters to the best of my ability, I should have had no hesitation about proceeding at once to Disposition, which comes next in order, were I not afraid that, as some scholars have included Judgement under Invention, I might be thought by some to have left this out. My own view is that it is so inextricably involved in every part of our work that it cannot be separated from the study of individual thoughts and even single words; and it can no more be taught by art than taste or a sense of smell. All I can do, therefore, now and in what follows, is to show what should be pursued or avoided in particular cases, so that Judgement may be guided accordingly. Am I to recommend not attempting the impossible, avoiding anything that runs counter to our Cause or can equally well be used on the other side, and ensuring that there is nothing decadent or obscure in the style? All this has to be referred to the senses, and they cannot be taught.

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- 3 Nec multum a iudicio credo distare consilium, nisi
quod illud ostendentibus se rebus adhibetur, hoc latentibus
et aut omnino nondum repertis aut dubiis: et iudicium
frequentissime certum est, consilium vero ratio est quaedam
4 alte petita et plerumque plura perpendens et comparans
habensque in se et inventionem et iudicationem. Sed ne de hoc
quidem praecepta in universum expectanda sunt: nam ex re
sumitur. Cuius locus ante actionem est frequenter (nam Cicero
summo consilio videtur in Verrem vel contrahere tempora
dicendi maluisse quam in eum annum quo erat Q. Hortensius
5 consul futurus incidere), et in ipsis actionibus primum
ac potentissimum optinet locum: nam quid dicendum, quid
tacendum, quid differendum sit exigere consilii est: negare
sit satius an defendere, ubi prohoemio utendum et quali,
narrandumne et quo modo, iure prius pugnandum an aequo,
6 qui sit ordo utilissimus, tum omnes colores, aspere an
leniter an etiam summisse loqui expediat. Sed haec quoque
ut quisque passus est locus monuimus, idemque in reliqua
parte faciemus; pauca tamen exempli gratia ponam, quibus
manifestius appareat quid sit quod demonstrari posse
praeceptis non arbitror.
- 7 Laudatur consilium Demosthenis, quod, cum suaderet
bellum Atheniensibus parum id prospere expertis, nihil

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There is not much difference, in my opinion, between Judgement and Strategy, except that the former deals with matters which manifest themselves, and the latter with matters which are hidden, and either as yet entirely undiscovered or doubtful. Again, Judgement is most often certain, and Strategy is a sort of reasoning which has deep roots, generally weighs and compares various possibilities, and contains in itself both Invention and the power of judging. But here too you must not expect universal rules, because Strategy depends on circumstances. The place for it is often before the actual pleading (in the prosecution of Verres, Cicero seems to have shown great strategic ability in preferring even to cut down the time allowed him for speaking rather than spill over into the year in which Quintus Hortensius was to be consul). At the same time it is also the first and most important element in the pleading itself. It is Strategy's business to decide what is to be said, what omitted, and what postponed; whether a denial of the fact or a justification is the best course; whether a Prooemium is to be used and of what kind; whether and in what form there is to be a Narrative; whether the legal question or the question of equity should be treated first; what is the most expedient order, what are the possible "colours"; and whether a harsh, a smooth or even an unpretending style is required. I have given advice on all these matters wherever the context allowed, and I shall do the same in the rest of my work. However, I shall make a few points here, by way of example, to clarify what it is that I think cannot be covered by rules.

Demosthenes' Strategy is praised, because, when he was urging a war policy upon the Athenians when their experience of war had been unfortunate, he demonstrated

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- adhuc factum esse ratione monstravit: poterat enim emendari negligentia, at si nihil esset erratum, melioris in posterum spei non erat ratio. Idem cum offensam vereretur si obiurgaret populi segnitiam in adserenda libertate rei publicae, maiorum laude uti maluit, qui rem publicam fortissime administrassent; nam et faciles habuit aures et natura sequebatur ut meliora probantis peiorum paeniteret.
- 8
- 9 Ciceronis quidem vel una pro Cluentio quamlibet multis exemplis sufficiet oratio. Nam quod in eo consilium maxime mirer? primamne expositionem, qua matri, cuius filium premebat auctoritas, abstulit fidem? an quod iudicii corrupti crimen transferre in adversarium maluit quam negare propter inveteratam, ut ipse dicit, infamiam? an quod in re invidiosa legis auxilio novissime est usus?—quo genere defensionis etiam offendisset nondum praemollitas iudicum mentes; an quod se ipsum invito Cluentio <id>¹ facere testatus est?
- 10 Quid pro Milone? quod non ante narravit quam praeiudiciis omnibus reum liberaret? quod insidiarum invidiam in Clodium vertit, quamquam re vera fuerat pugna fortuita? quod factum et laudavit et tamen a voluntate Milonis removit? quod illi preces non dedit et in earum locum ipse successit?

¹ *add. Winterbottom*

¹ *Philippics* 1.2–3.

² Q. is thinking particularly of *Pro Cluentio* 1, 4, 17, 143–144, 148–149.

³ On this see Stroh (1975) 204ff., who is critical of Q. as an interpreter of Cicero.

⁴ Compare Q.'s remarks in 4.2.25, 4.2.57.

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that nothing hitherto had been done systematically.¹ This neglect could indeed still be put right; but if there had been no mistakes, there would have been no grounds for hoping for better things in future. Again, since he feared he might offend if he taxed the people with laziness in defending the liberty of their country, he chose instead to enlarge on the praises of their ancestors, who (he showed) had managed their affairs with very great courage. By this means, he earned a ready hearing, and it followed naturally that in thinking well of those better days they came to repent of their degeneration.

As for Cicero, the *Pro Cluentio* alone will supply any number of examples.² What Strategy should I most admire in it? The initial Narrative, in which he discredited the mother whose authority weighed so heavily upon her son?³ Or his decision to shift the charge of having bribed the jury on to his opponent, rather than deny it, having regard, as he says himself, to the deep-seated infamy of the verdict? Or his postponement, in such an odious case, of his appeal to the law? Such a mode of defence would have set the judges against him had they not been thoroughly softened up first. Or finally, his assertion that he adopted this procedure on his own responsibility against Cluentius' wishes?

And what of the *Pro Milone*?⁴ Should it be the fact that he postponed the Narrative until he had cleared the defendant of all the prejudice from earlier trials? Or the way in which he threw the odium of the ambush on Clodius, although in fact the fight had been the result of pure chance? Or his way of praising the action and at the same time distancing it from Milo's intention? Or that he refrained from putting a plea for mercy into Milo's mouth, but took all that upon himself?

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Infinitum est enumerare ut Cottae detraxerit auctoritatem, ut pro Ligario se opposuerit, Cornelium ipsa confessionis fiducia eripuerit.

- 11 Illud dicere satis habeo, nihil esse non modo in orando sed in omni vita prius consilio, frustra sine eo tradi ceteras artis, plusque vel sine doctrina prudentiam quam sine prudentia facere doctrinam. Aptare etiam orationem locis temporibus personis est eiusdem virtutis. Sed hic quia latius fusus est locus mixtusque cum elocutione, tractabitur cum praecipere de apte dicendo coeperimus.

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It would be an endless task to list such things: how he discredited Cotta,⁵ how he put himself in the front line to defend Ligarius,⁶ how he rescued Cornelius by the frankness of his confession.⁷

I think it is enough to say that there is nothing in oratory, or indeed in life in general, more important than Strategy. Without this, other skills are taught in vain. Good sense without learning is worth more than learning without good sense. Good sense is the virtue which enables us to adapt our speech to places, times, and persons. But since that topic covers a wider field, and is bound up with Elocution, I shall deal with it when I come to give instructions on appropriateness in speaking.⁸

⁵ In *Pro Oppio: Fr. orat.* III. 8 Schoell; Crawford (1994) p. 28.

⁶ Cicero begins *Pro Ligario* by admitting his client's guilt and resting his case largely on Caesar's clemency.

⁷ In *Pro Cornelio: Fr. orat.* VIII inc. 3 Schoell; Crawford (1994) p. 73.

⁸ In 11.1.



BOOK SEVEN

INTRODUCTION

This book covers Disposition, the second of the “five parts” of rhetoric. But what precisely is this? The doctrine of the “parts of a speech,” which in Aristotle (*Rhetoric* 3, 1414a29) was a matter of “order” (*taxis*), has already been treated (and Quintilian was not original in this) under “invention.” (For the history of this development, see W. Wuellner, *CRHP* 31–87.) What we have in Book Seven is in effect a supplement to the Theory of Issues outlined in Book Three, and it is unintelligible without this (see Introduction to Book Three for parallels and background). Quintilian now concentrates on the *divisio* (*diaeresis*), by which he means the main lines of argument which are to be followed; he has already given the analysis of the case in terms of the Issue and the types of Proof available. Such *divisiones* are given by the elder Seneca (*Controversiae* 1.1.13–14 is a good example), and later rhetoric systematized the theory much more than Quintilian has done: the best accounts (all post-Hermogenes, and thus using a Theory of Issues somewhat more sophisticated than Quintilian’s) are in Sulpicius Victor (325–352 Halm), Julius Victor (385–395 Halm = 19–31 Giomini–Celentano), and the Greek Sopatros (8. 2–384 Walz; with Innes and Winterbottom (1988)). An overview of the subject is in Martin (213ff.), but Lausberg § 139 gives no separate treatment of

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the detail (he does however give an original discussion in *Elemente* (1963) §§ 46–90, and this part of Quintilian is extensively used in *Handbook* §§ 149–223).

7.1 gives general rules which apply to all Issues. One must know the Cause well and look at the problems from the opponent's point of view also (1–8). Defence and prosecution have different requirements, which affect the order in which charges should be handled (9–12), while complex cases also raise problems of Disposition (13–22). In what follows (23–39), Quintilian refers a good deal to his own practice, both in declamation and in real cases, and concludes (40–64) with a complex example worked in great detail, which gives a good (and perhaps disconcerting) idea of how Quintilian taught declamation.

The Issues are now treated in turn. Conjecture (7.2) comes first. The chapter is very concise, and not at all easy to analyse. The basic distinctions on which the discussion is based are (1) between Conjecture of Fact and Conjecture of Intention; (2) between Conjectures relating to past, present, and future, the past being of course the most important because this is what legal cases are usually about; (3) between situations in which the act is denied, and those in which the act is admitted but said to be done by someone else. Quintilian deals at length (27–43) with the handling of character, motive, and intention. Once again (54) he is at pains to point out respects in which declamation practice is damaging if carried over into real situations. Compared with Cicero (*De inventione* 2.14–49), all this is quite detailed; compared, e.g., with Sulpicius Victor, it is unsystematic.

7.3 is on Definition (see Cicero, *De inventione* 2.52–56; Sulpicius Victor 336–338 Halm, Julius Victor 388–389

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Halm = 23 Giomini–Celentano; Hermogenes 59,11ff. Rabe (Heath (1995) 43ff.); Lausberg §§ 166–170). Definition is the next resource of the defendant who cannot deny the fact (1–2); all Definitions comprise Genus, Species, Differentia, and Properties (3). The Question may be either what should fall under a certain name, or what name a certain thing should be given (4). It may be related to Conjecture or to Quality (5–6)—indeed (13) some scholars deny the separate existence of this Issue altogether. Quintilian himself (9–11) distinguishes three types: Is the word applicable? Which of two terms is applicable? Should two things differing in species be given the same generic name? Some think (14) that the whole business is for philosophical debaters, not for pleaders in court; and Quintilian so far agrees with this as to warn that a Definition must be quite impregnable (18) if it is to be any use. The *divisio* falls into two: “what a thing is” (19–27) and “whether it is this” (28–30). The chapter concludes (30–34) with one of Quintilian’s more amusing declamation themes—the young men who build a mock tomb on the beach—and with a transition (35) to the discussion of Quality.

Quality (7.4) covers many different types of case. Outline in Lausberg §§ 174–195; important texts include *Ad Herennium* 2.19–26, Cicero, *De inventione* 2.69–115, Hermogenes 65–76 Rabe (with Heath (1995) 46–49, who calls this Issue “Counterplea”). Quintilian’s treatment is fairly methodical. After a brief introduction (1–3), discussing Quality in deliberative and epideictic oratory, he turns (4–6) to the first main branch, *qualitas absoluta* (Greek *antilēpsis*), i.e. the claim that the act alleged is honourable. The second type (*qualitas assumptiva*: Greek *antithesis*)

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comes next (7–20); it is subdivided into justification (a) by motive (8), (b) by advantageous result (9–11), (c) by transferring blame to others (13–15); it also includes “extenuation” and “pleas for mercy” (15–20). We have next a section on claims for reward (21–23), and (24–40) a list of types of cases which normally come under Quality: e.g. disowning children, wrongful treatment, lunacy cases. Quintilian has already drawn attention to the fact that some common declamation themes, though not precisely applicable to Roman law, have some relevance to court practice (see 7.4.11), and his list of themes is a mixture of school fictions and possible actions in court. He ends (41–44) with a discussion of Quantity, opposing what he thinks the wrong views of some scholars.

Prescription or Demurrer (*paragraphē*), the next matter to be considered, has an intermediate place between rational and legal issues: some later rhetors (e.g. Julius Victor 392–395 Halm = 28–31 Giomini–Celentano) accordingly make two species of it. For Quintilian (7.5.2) it is not a distinct Issue, but an integral part of all legal Issues. These are now discussed in turn:

- 7.6 Letter and Spirit (see Hermogenes 82–83 Rabe (55 Heath (1995)), *Ad Herennium* 2.13–14, Cicero, *De inventione* 2:121–143; Lausberg §§ 214–217).
- 7.7 Conflict of Laws (see Hermogenes 83–88 Rabe (56 Heath), *Ad Herennium* 2.15, Cicero, *De inventione* 2.144–147; Lausberg §§ 218–220).
- 7.8 Syllogism (see Hermogenes 88–90 Rabe (58 Heath), *Ad Herennium* 2.18, Cicero, *De inventione* 2.148–153; Lausberg § 221).
- 7.9 Ambiguity (see Hermogenes 90–92 Rabe (59 Heath),

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Ad Herennium 2.16, *De inventione* 2.116–121; Lausberg §§ 222–223).

In 7.10, Quintilian seeks to define the differences between these various Issues (1–4), but his emphasis in concluding the book is once again to point out that theory cannot do everything; good sense and a right judgement of the individual case are vital. There is a lot to learn, mainly by practice and experience. At 7.10.17 he introduces the analogy between Disposition and arrangement of words; this is a contrived transition to *elocutio*, which begins with the next book.

LIBER SEPTIMUS

<PROHOEMIUM>

- 1 De inventione, ut arbitrator, satis dictum est: neque enim ea demum quae ad docendum pertinent executi sumus, verum etiam motus animorum tractavimus. Sed ut opera extruentibus satis non est saxa atque materiam et cetera aedificanti utilia congerere nisi disponendis eis conlocandisque artificium manus adhibeatur, sic in dicendo quamlibet abundans rerum copia cumulum tantum habeat atque congestum nisi illas eadem dispositio in ordinem digestas
- 2 atque inter se commissas devinxerit. Nec inmerito secunda quinque partium posita est, cum sine ea prior nihil valeat. Neque enim quamquam fusiis omnibus membris statua sit nisi conlocentur,¹ et si quam in corporibus nostris aliorumve animalium partem permutes et transferas, licet habeat eadem omnia, prodigium sit tamen: et artus etiam leviter loco moti perdunt quo vignerunt usum, et turbati
- 3 exercitus sibi ipsi sunt impedimento. Nec mihi videntur errare qui ipsam rerum naturam stare ordine putant, quo confuso peritura sint omnia. Sic oratio carens hac virtute tumultuetur necesse est et sine rectore fluitet nec cohae-

¹ *edd.*: conlocetur A

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PROOEMIUM

Enough, I imagine, has now been said about Invention. I have dealt not only with what is relevant to imparting information, but also with the emotions. But just as it is not enough in erecting a building simply to collect the stone and the timber and the other building materials, unless the hands of craftsmen are put to work to dispose and assemble them, so also in speaking, however rich the material, it will be nothing but a random accumulation unless Disposition organizes it, links it all up, and binds it together. It is not without good reason that this is taken to be the second of the five Parts of Rhetoric, since without it the first is useless. That all the limbs have been cast does not make a statue, unless they are put together; and if you were to take some part of our bodies or those of other animals and exchange it with another, the result would be a monster, though the body would have all the same parts as before. Even the slight dislocation of a limb destroys its former use and vigour, and armies in disorder are a hindrance to themselves. Some hold that the universe itself depends on order, and that if this is disturbed everything will perish; I do not think they are wrong. Similarly, if oratory lacks this virtue, it is bound to be in turmoil, drifting without a pilot,

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reat sibi, multa repetat, multa transeat, velut nocte in ignotis locis errans, nec initio nec fine proposito casum potius quam consilium sequatur.

- 4 Quapropter totus hic liber serviat divisioni, quae quidem, si certa aliqua via tradi in omnis materias ullo modo posset, non tam paucis contigisset. Sed cum infinitae litium formae fuerint futuraeque sint et tot saeculis nulla reperta sit causa quae esset tota alteri similis, sapiat oportet actor et vigilet et inveniat et iudicet et consilium a se ipso petat. Neque infitias eo quaedam esse quae demonstrari possint, eaque non omittam.

1

- 1 Sit igitur, ut supra significavi, divisio rerum plurium in singulas, partitio singularum in partis discretio, ordo recta quaedam conlocatio prioribus sequentia adnectens, dispositio utilis rerum ac partium in locos distributio. Sed meminerimus ipsam dispositionem plerumque utilitate mutari, nec eandem semper primam quaestionem ex utraque parte tractandam. Cuius rei, ut cetera exempla praeteream, Demosthenes quoque atque Aeschines possunt esse documento, in iudicio Ctesiphontis diversum secuti ordinem, cum accusator a iure, quo videbatur potentior,

¹ 5.10.63.

² See 6.1.20; Aeschines is the prosecutor.

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incoherent, repetitive, incomplete, wandering in the dark, as it were, in unknown places, with no fixed beginning or end, and guided by chance rather than by design.

This entire book, therefore, is to be devoted to Division; if this could be taught by some definite method which made it applicable to any material, the skill would not have been as rare as it is. But since there always has been and always will be an infinite variety of lawsuits, and in all the centuries there has never been found one Cause exactly like another in every respect, the pleader must use his good sense, be watchful, exercise Invention and Judgment, and seek his strategy in his own resources. I do not deny, of course, that some things are capable of demonstration, and I shall not omit these.

CHAPTER 1

How to make a Division

Let us take Division to be, as I have said above,¹ the breaking up of a group of things into its individual members, Partition to be the breaking up of the individuals into their parts, Order to be the correct placing of things, linking what follows with what precedes, and Disposition to be the expedient distribution both of things and of parts under their appropriate heads. We must remember however that Disposition itself is often subject to change for reasons of expediency, and that the same Question will not always be discussed first by both parties. Even Demosthenes and Aeschines² (to quote no other examples) can illustrate this, because, in the trial of Ctesiphon, each followed a different order, the accuser beginning with the legal question

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- 3 coeperit, patronus omnia paene ante ius posuerit, quibus iudicem quaestioni legum praepararet. Aliud enim alii docere prius expedit, alioqui semper petitoris arbitrio diceretur: denique in accusatione mutua, cum se uterque defendat priusquam adversarium arguat, omnium rerum necesse est ordinem esse diversum. Igitur quid ipse sim secutus, quod partim praeceptis partim usu partim¹ ratione cognoveram, promam nec umquam dissimulavi.
- 4 Erat mihi curae in controversiis forensibus nosse omnia quae in causa versarentur: nam in schola certa sunt et pauca et ante declamationem exponuntur, quae themata Graeci vocant, Cicero proposita. Cum haec in conspectu quodam modo conlocaveram, non minus pro adversa
- 5 parte quam pro mea cogitabam. Et primum, quod non difficile dictu est sed tamen ante omnia intuendum, constituebam quid utraque pars vellet efficere, tum per quid, hoc modo. Cogitabam quid primum petitor diceret. Id aut confessum erat aut controversum. Si confessum, non poterat ibi esse quaestio. Transibam ergo ad responsum partis alterius, idem intuebar: nonnumquam etiam quod inde optinebatur confessum erat. Ubi primum coeperat non convenire, quaestio oriebatur. Id tale est: ‘occidisti hominem’, ‘occidi’. Convenit, transeo. Rationem reddere debet reus quare occiderit. ‘Adulterum’ inquit ‘cum adultera occidere licet.’ Legem esse certum est. Tertium iam aliquid
- 6
- 7

¹ *Winterbottom*: usurpatim A

³ *Topica* 79.

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(where he thought he was stronger), and the defence putting before the legal aspect almost everything else which might help to prepare the judges for the question of the law. Different speakers need to put different things first; otherwise the proceedings would always be determined by the decision of the prosecution. In fact, in a case of mutual accusation, when both parties defend themselves before refuting their opponents, the order of everything is necessarily different. I shall therefore set out my own method, derived partly from teaching, partly from practice, partly from theory; I have never made a mystery of it.

In forensic Controversies, I always made it a point to make myself familiar with all the matters connected with the Cause. In the schools, of course, these are well defined, few in number, and set out before the declamation in the form of what the Greeks call "themes" (Cicero translates this as *proposita*).³ Having arranged all these in a sort of general picture, I used then to reflect on them from the other side's point of view no less than from my own. First (easily said, but the primary point to consider) I would determine what both parties aimed to prove, and then by what means. My method was as follows. I would ask myself what the prosecutor would put first. This was either an agreed point, or a disputed one. If agreed, there could be no Question here. So I would pass to the other side's answer and look at this in the same way. Sometimes, even there, what I found was an agreed point. The Question arose at the first stage at which I found no agreement. For example: "You killed a man": "I did." Agreed: so I pass on. The defendant has to give a reason why he killed him. "It is lawful to kill an adulterer with the adulteress." There is no question that this is the law. So we have to look for a third

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videndum est in quo pugna consistat. 'Non fuerunt adulteri': 'fuerunt'; [quaestio]² de facto ambigitur, coniectura est.

- 8 Interim et hoc tertium confessum est, adulteros fuisse: 'sed tibi' inquit accusator 'illos non licuit occidere: exul enim eras' aut 'ignominiosus'. De iure quaeritur. At si protinus dicenti 'occidisti' respondeatur 'non occidi', statim pugna est.

- Si explorandum est ubi controversia incipiat, considerari debet quae <sit intentio quae>³ primam quaestionem facit. Intentio simplex: 'occidit Saturninum Rabirius', coniuncta: 'lege de sicariis commisit L. Varenum: nam et C. Varenum occidendum et Cn. Varenum vulnerandum et Salarium item occidendum curavit'—nam sic diversae propositiones erunt: quod idem de petitionibus dictum sit. Verum ex coniuncta [propositione]⁴ plures esse quaestiones ac status possunt, si aliud negat reus, aliud defendit, aliud a iure actionis excludit. In quo genere est agenti dispiciendum quid quoque loco diluat.

- 10 Quod pertinet ad actorem, non plane dissentio a Celso, qui sine dubio Ciceronem secutus instat tamen huic parti vehementius, ut putet primo firmum aliquid esse ponendum, summo firmissimum, inbecilliora media, quia et ini-

² *del. Radermacher*

³ *add. Kiderlin*

⁴ *del. Shackleton Bailey*

⁴ See Cicero, *Pro Rabirio perduellionis reo*. See below, § 16.

⁵ See 4.1.74; *Fr. orat.* II Schoell, Crawford (1994) pp. 7–18.

⁶ I.e. we should have Issues of Conjecture, Quality, and Transference within one case.

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stage, where the conflict may be found. "They were not committing adultery": "They were." This is a dispute about fact: it is a Conjecture. Sometimes even this third stage, that they were adulterers, is agreed. "But it was not lawful for you to kill them," says the prosecution, "because you were an exile" or "had lost your citizen's rights." Now it is a question of Law. On the other hand, if, when the one side says "You killed," the answer is "I did not," the conflict arises straight away.

If we have to dig deeper in order to find where the controversy begins, it becomes necessary to consider what <the charge is which> produces the first Question. Simple charge: "Rabirius killed Saturninus."⁴ Complex: "Lucius Varenus has committed an offence under the law of murder, because he arranged for Gaius Varenus to be killed, Gnaeus Varenus to be wounded, and Salarius also to be killed."⁵ In this case there will be distinct propositions (and let us take it that this applies also in civil suits). In a complex charge, however, there may be a number of Questions and Issues, if the defendant denies one fact, seeks to justify another, and seeks to show that a third is not actionable.⁶ In these cases, the pleader will have to discover what he should refute in each place.

As regards the prosecutor, I am in general agreement with Celsus,⁷ who (doubtless following Cicero) nevertheless insists somewhat too vehemently on the principle that a strong point should be put at the beginning, the strongest of all at the end, and the weaker points in between, on the ground that the judge has to be moved at the beginning

⁷ *Fr. rhet.* 11 Marx: compare Cicero, *De oratore* 2.314, *Orator* 50.

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- 11 tio movendus sit iudex et summo inpellendus. At pro reo plerumque gravissimum quidque primum amovendum⁵ est, ne illud spectans iudex reliquorum defensioni sit aversior. Interim tamen et hoc mutabitur, si leviora illa palam falsa erunt, gravissimi defensio difficilior, ut detracta prius accusatoribus fide adgrediamur ultimum, iam iudicibus omnia esse vana credentibus. Opus erit tamen praefatione, qua et ratio reddatur dilati criminis et promittatur defensio, ne id quod non statim diluemus timere videamur. Ante actae vitae crimina plerumque prima purganda sunt, ut id de quo laturus est sententiam iudex audire propitius incipiat. Sed hoc quoque pro Vareno Cicero in ultimum distulit, non quid frequentissime sed quid tum expediret intuitus.
- 12
- 13 Cum simplex intentio erit, videndum est unum aliquid respondeamus an plura. Si unum, in re quaestionem instituamus an in scripto: si in re, negandum sit quod obicitur an tuendum: si scripto, in qua specie iuris pugna sit, et in
- 14 ea de verbis an de voluntate quaeratur. Id ita consequemur si intuiti fuerimus quae sit lex quae litem faciat, hoc est, qua iudicium sit constitutum. Nam quaedam in scholasticis ponuntur ad coniungendam modo actae rei seriem, ut

⁵ *D.A.R.*: movendum A: amoliendum Gertz

⁸ Compare 5.12.14. ⁹ Roman *quaestiones perpetuae* were set up by specific legislation relating to particular classes of events (extortion, violence, murder, corruption, *maiestas*). By Q.'s time, however, the jurisdiction of the emperor, senate, and *praefecti* had made these established *quaestiones* less important. They remained dominant in rhetorical teaching, because this was based so much on the study of Cicero and other earlier orators.

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and pushed to a decision at the end.⁸ In defence, on the other hand, the weightiest charges generally have to be disposed of first, for fear that the judge, with his mind fixed on these, may be less favourable to the defence of the other points. Sometimes however even this order will be varied, if the lesser charges are obviously false, and the defence of the gravest one more difficult, so that we attack the last point only after discrediting the prosecution, when the judges have come to believe that all the allegations are unfounded. We shall need, however, to make a preliminary statement, giving the reason for the postponement of this charge and promising a defence of it; otherwise by not disposing of it at once we may give the impression that we are afraid of it. Charges against our client's past life should generally be cleared up first, so that the judge is in a sympathetic frame of mind when he begins to hear the facts on which he is to decide. Cicero, however, in *Pro Vareno* postponed this move also to the end, because he had his eyes not on what is generally expedient, but on what was expedient at that moment.

When the charge is simple, we have to consider whether to give a single answer or several. (1) If it is a single answer, shall we raise a Question of fact or of written text? If fact, is the charge to be denied or defended? If a written text, on what special legal situation does the conflict depend, and is it a question of the Letter or of the Spirit? We shall be able to settle these points if we have seen what the law is which gives rise to the dispute, that is, under what law the court has been set up.⁹ In school exercises, some laws are posited simply to construct the chain

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puta: 'Expositum qui agnoverit, solutis alimentis recipiat: minus dicto audientem filium liceat abdicare. Qui expositum recepit, imperat ei nuptias locupletis propinquae: ille
 15 deducere vult filiam pauperis educatoris.' Lex de expositis ad adfectum pertinet: iudicium pendet ex lege abdicatio- nis. Nec tamen semper ex una lege quaestio est, ut in anti- nomia. His spectatis apparebit circa quod pugna sit.

16 Coniuncta defensio est, qualis pro Rabirio: 'si occidis- set, recte fecisset, sed non occidit.' Ubi vero multa contra unam propositionem dicimus, cogitandum est primum quidquid dici potest, tum ex his quo quidque loco dici expediat aestimandum. In quo non idem sentio quod de propositionibus paulo ante quodque de argumentis pro- bationum loco concessi, posse aliquando nos incipere a
 17 firmioribus. Nam vis quaestionum semper crescere debet et ad potentissima ab infirmissimis pervenire, sive sunt
 18 eiusdem generis sive diversi. Iuris autem quaestiones so- lent esse nonnumquam ex aliis atque aliis confictionibus, facti semper idem spectant. In utroque genere similis ordo est.

Sed prius de dissimilibus: ex quibus infirmissimum quidque primum tractari oportet, ideo quod quasdam quaestiones executi donare solemus et concedere: neque

¹⁰ Compare Seneca, *Controversiae* 9.3; *Declamationes minores* 278; Bonner, *RD* 125–127.

¹¹ Compare § 18 of Cicero's defence (63 BC) of Gaius Rabirius on a charge of *perduellio* (i.e. action subversive of the state), based on his part in opposition to the tribune Saturninus in 99 BC.

¹² § 10.

¹³ 5.12.14.

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of events. For example: "A father who has now recognized a son whom he exposed in infancy shall pay for his keep before taking him back.¹⁰ A disobedient son may be disinherited. A father who took back a son who had been exposed orders him to marry a rich neighbour. The son wishes to marry the daughter of the poor man who brought him up." The law about exposed children is relevant to the emotional side of the case; the decision hangs on the law of disinheritance. But a Question may depend on more than one law, as in cases of Conflict of Laws. Once these points have been determined, the area of contention will become obvious.

(2) An example of a complex defence is *Pro Rabirio*:¹¹ "If he had killed him, he would have done right; but he did not kill him." But when we make a number of points against a single proposition, we have first to think of everything that can possibly be said, and secondly to judge where best to say each of these things. My view on this is different from what I conceded above about Propositions,¹² and about Arguments when I was discussing Proofs,¹³ namely that we might sometimes begin with the stronger points. For here the Questions must *always* be in ascending order of strength, and proceed from the weakest to the most powerful, whether they are of the same character or different. Questions of law sometimes consist of a series of different points of conflict, whereas Questions of fact always have the same point in view; the *order* is similar in both.

Let us begin with points of different character. The weakest of these must be stated first of all, because it is common practice to discuss some Questions and then concede or make a gift of them to the other side, and we can-

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- enim transire ad alias possumus nisi omissis prioribus.
- 19 Quod ipsum ita fieri oportet non ut damnasse eas videamur, sed omisisse quia possimus etiam sine eis vincere. Procurator alicuius pecuniam petit ex faenore hereditario: potest incidere quaestio, an huic esse procuratorem⁶ liceat.
- 20 Finge nos, postquam tractavimus eam, remittere vel etiam convinci: quaeretur an ei cuius nomine litigatur procuratorem habendi sit ius. Discedamus hinc quoque: recipit natura quaestionem an ille cuius nomine agitur heres
- 21 sit faeneratoris, an ex asse heres. Haec quoque concessa sint: quaeretur an debeat.

Contra nemo tam demens fuerit ut, cum id quod firmissimum duxerit se habere <tractaverit>,⁷ remittat illud et ad leviora transcendat. Huic in schola simile est: ‘non abdicabis adoptatum: ut hunc quoque, non virum fortem: ut et fortem, non quicumque voluntati tuae non paruerit: ut in alia omnia subiectus sit, non propter optionem: <ut propter optionem>,⁸ non propter talem optionem.’

- 22 Haec iuris quaestionum differentia est, in facti⁹ autem ad idem tendentia sunt plura, ex quibus aliqua citra summam quaestionem remitti solent, ut si is cum quo furti agitur dicat: ‘proba te habuisse, proba perdidisse, proba furto

⁶ procuratori *Halm* ⁷ *add. Meister*

⁸ *add. Spalding* ⁹ *Gertz: factis A*

¹⁴ Compare 4.4.6. ¹⁵ Another typical scenario, involving both *abdicatio* and the War Hero's Choice. Compare *Declamationes minores* 371. An amusing variation is found in Libanius, *Declamation* 33 (Russell (1996) 158–168), where a miserly father wishes to disown his hero son for choosing a commercially valueless wreath of olive as his reward.

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not pass on to other Questions without dropping those which come first. This should itself be done in such a way that we do not seem to have ruled them out as hopeless, but only to have omitted them because we can win even without them. An agent for a certain person claims the interest on a loan due to the estate his client has inherited.¹⁴ The Question may arise whether this man can legally act as agent. Imagine that, having dealt with this, we give it up, or even are refuted. The next Question will be whether the person in whose name the case has been brought is legally entitled to have an agent. Suppose we abandon this position also. The nature of the case allows the Question whether the person in whose name the proceedings are brought is heir to the creditor, and whether he is heir to the whole estate. Suppose these points also granted: the Question will then be whether the money is due at all.

On the other hand, no one will be so foolish, <having treated> what he believes to be his strongest point, as to let it alone and pass to less weighty matters. The following school case illustrates this: "You shall not disinherit an adopted son. Even if you can, you shall not disinherit a war-hero. Even if you can do this too, you shall not disinherit anyone just for not obeying your wishes. Even if he is subject to you for every other purpose, his Hero's Choice prevents you from disinheriting him; <even if in general it does not,> this particular Hero's Choice prevents you."¹⁵

So much for difference in Questions of Law. In Questions of Fact, there may be several points pointing the same way, some of which (but not the main Question) may be dropped. For example, suppose a man accused of theft says, "Prove that you had the property, prove that you lost it, prove that you lost it by theft, prove that the wrongdoing

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perdidisse, proba mea fraude.' Priora enim remitti possunt, ultimum non potest.

- 23 Solebam et hoc facere [praecipere],¹⁰ ut vel ab ultima specie (nam ea fere est quae continet causam) retrorsum quaererem usque ad primam generalem quaestionem, vel a genere ad extremam speciem descenderem: etiam in
- 24 suasoriis, ut deliberat Numa an regnum offerentibus Romanis recipiat. Primum, id est genus, an regnandum, <tum>¹¹ an in civitate aliena, an Romae, an laturo sint Romani talem regem. Similiter in controversiis. Optet enim vir fortis alienam uxorem. Ultima species est an optare possit alienam uxorem. Generale est an quidquid optarit accipere debeat; deinde, an ex privato, an nuptias, an maritum
- 25 habentis. Sed hoc non quem ad modum dicitur ita et quaeritur. Primum enim occurrit fere quod est ultimum dicendum, ut hoc: 'non debes alienam uxorem optare', ideoque divisionem perdit festinatio. Non oportet igitur offerentibus se contentum esse, sed quaerere¹² aliquid <quod>¹³ ultra sit: 'ne viduam quidem'; adhuc plus est¹⁴ 'nihil ex privato'; ultimum retrorsum, quod idem a capite primum est, 'nihil inicum'.
- 26 Itaque propositione visa, quod est facillimum, cogitemus, si fieri potest, quid naturale sit primum responderi. Id si tamquam <nostra>¹⁵ res agatur et nobis ipsis respon-

¹⁰ *del. Meister* ¹¹ *add. Christ*

¹² *sed quaerere Spalding; quaere A* ¹³ *add. t*

¹⁴ *Halm: si A* ¹⁵ *add. Shackleton Bailey*

¹⁶ Compare Livy 1.18; better, Plutarch, *Numa* 5, Dionysius of Halicarnassus, *Roman Antiquities* 2.60, who both stress Numa's reluctance.

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was mine." The first three can be dropped, but not the last.

Another practice of mine was either to proceed backwards from the final specialization (which is the one which normally forms the Core of the Cause) to the first General Question, or else to descend from the Genus to the final specialization; I would do this even in deliberative exercises. For example: Numa deliberates whether to accept the kingship offered by the Romans.¹⁶ First (the Genus), should one be king? Secondly, should one be king in a foreign city? Thirdly, should one be king in Rome? And will the Romans tolerate such a king? Similarly in forensic themes. Suppose a war hero chooses as his reward another man's wife. Final specialization is: is he able to ask for another man's wife as his choice? The generic point is whether he should receive whatever he asks for. Then comes (1) whether he can ask for private property, (2) whether he can ask for marriage, (3) whether he can ask for marriage to a woman who has a husband. But the order of asking these Questions is not the order of speaking. Normally, indeed, the first thing that comes to mind is the thing to be said last (here it is "You ought not to choose another man's wife"), and so haste spoils the Division. We must therefore not be satisfied with the ideas that present themselves, but look for something beyond them: "not even a widow." A further stage is "no private property." The last stage, working backwards, which is also the first starting from the logical beginning, is "nothing unfair."

Thus, having noted the other side's proposition (this is the easiest part), let us consider, if possible, what is naturally the first response. This will come to mind if we choose to look at it as if <our own> case was being pleaded and we

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- 27 dendi necessitas sit intueri voluerimus, occurret.¹⁶ Si id non contigerit, seponamus id quod primum se optulerit, et ipsi nobiscum sic loquamur: quid si hoc non esset? Id iterum et tertium et dum nihil sit reliqui; itaque inferiora quoque scrutabimur, quae tractata faciliorem nobis iudicem in summa quaestione facient. Non dissimile huic est et illud praeceptum, ut a communibus ad propria veniamus: fere enim communia generalia sunt. Commune: ‘tyrannum occidit’; proprium: ‘maritum¹⁷ tyrannum occidit’; ‘mulier occidit’; ‘uxor occidit’.
- 29 Solebam et excerpere quid mihi cum adversario conveniret, si modo id pro me erat, nec solum premere confessionem sed partiendo multiplicare, ut in illa controversia: ‘Dux qui competitorem patrem in suffragiis vicerat captus est: euntes ad redimendum eum legati obvium habuerunt
- 30 patrem revertentem ab hostibus. Is legatis dixit: sero itis. Excusserunt illi patrem et aurum in sinu eius invenerunt: ipsi perseverarunt ire quo intenderant, invenerunt ducem cruci fixum, cuius vox fuit: cavete proditorem. Reus est pater.’ Quid convenit? ‘Proditio nobis praedicta est et praedicta a duce’: quaerimus proditorem. ‘Te isse ad hostes fateris et isse clam et ab his incolumem redisse, aurum
- 31 retulisse et aurum occultum habuisse.’ Nam quod convenit,¹⁸ id nonnumquam potentius fit in propositione:

¹⁶ *Spalding*: occurrit A

¹⁷ *Watt* 1988: tamen A: talem *Gertz*

¹⁸ *Watt* 1988: fecit A (*‘did’*): laedit *Crusius* (*‘does damage’*)

¹⁷ With *Watt’s* *maritum*, the reference to the supposed murder of Alexander of Pherae by his wife (358 BC) is complete (compare Cicero, *De inventione* 2.144). (In fact, he was murdered by his

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personally were faced with the necessity of responding. If this is not possible, let us put on one side whatever first comes to mind and say to ourselves, "Suppose this were not so," and do this a second and a third time, and go on until there is nothing left. We shall therefore also be examining subordinate points, dealing with which will help to make the judge more responsive to us over the main Question. A similar point is made by the advice to "proceed from the common to the particular," because what is "common" is, as a rule, "general." Common: "killed a tyrant." Particular: "killed a tyrant husband."¹⁷ Again, "a woman killed him"; "his wife killed him."

I also used to note down what were my areas of agreement with my opponent, if they were favourable to me, and not only to insist on his admitting them, but to subdivide and so multiply them. Take for example the following *controversia*:¹⁸ "A general, who had defeated his father in an election in which he was a candidate, was taken prisoner; the envoys going to ransom him met the father returning from the enemy. He said to them, 'You are too late.' They searched the father and found gold on his person. They then continued on their way, and found the general on the cross. He said, 'Beware of a traitor.' The father is now put on trial." What is common ground? "We had warning of treachery, and warning from the general." We are looking for the traitor. "You admit that you went to the enemy, that you went secretly and returned safely, and that you brought back gold, and kept it hidden." For what is agreed is sometimes specially effective in the prosecu-

wife's brothers, but with her connivance: Xenophon, *Hellenica* 6.4.35.) ¹⁸ Compare Seneca, *Controversiae* 7.7.

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quae si animos occupavit, prope aures ipsae defensionis praecluduntur.

In totum autem congregatio criminum accusantem adiuvat, separatio defendentem.

32 Solebam id, quod fieri et in argumentis dixi, in tota facere materia, ut propositis extra quae nihil esset omnibus, deinde ceteris remotis, solum id superesset quod credi volebam, ut in praevaricationum criminibus: 'Ut absolvatur reus, aut innocentia ipsius fit aut interveniente aliqua potestate aut vi aut corrupto iudicio aut difficultate probationis aut praevaricatione. Nocentem fuisse confiteris: nulla potestas obstitit, nulla vis, corruptum iudicium non queris, nulla probandi difficultas fuit: quid superest nisi ut praevaricatio fuerit?'

33 Si omnia amoliri non poteram, plura amoliebar. 'Hominem occisum esse constat, non in solitudine, ut a latronibus suspicer, non praedae gratia, quia in spoliatus est, non hereditatis spe, quia pauper fuit: odium igitur in causa. Quis inimicus?'

34 Quae res autem faciliorem divisioni viam praestat, eadem inventioni quoque: excutere quidquid dici potest et velut reiectione facta ad optimum pervenire. Accusatur Milo quod Clodium occiderit. Aut fecit aut non: optimum erat negare, sed non potest; occidit ergo. Aut iure aut iniuria: utique iure; aut voluntate aut necessitate (nam ignorantia praetendi non potest): voluntas anceps est, sed, quia
35 ita homines putant, attingenda defensio ut id pro re publi-

¹⁹ 5.10.66.

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tion statement, and if this has once possessed the mind, the ears are pretty well closed to any defence.

In general, massing the charges together helps the prosecution, dividing them helps the defence.

I used also to apply to the whole material of a case the procedure I described with reference to Arguments,¹⁹ namely to set out all the possibilities, leaving nothing out, and then to exclude all except the one which I wanted to be believed. For example, in charges of collusion: "The acquittal of a defendant is secured either by his innocence, by the intervention of some powerful authority, by force, by bribery, by the difficulty of proving the charge, or by collusion. You admit his guilt. There has been no powerful intervention, and no violence. You are not complaining that the jury was bribed. There was no difficulty in proving the charge. What is left but collusion?"

If I could not exclude all the alternatives, I would exclude most of them. "It is agreed that the man was killed, but not in a lonely place, so as to arouse suspicion of robbers; not for gain, because the body was not robbed; not for an inheritance, because he was poor. Hatred must then be the motive. Who is his enemy?"

This procedure—examining all possible arguments and arriving at the best by a process of rejection—facilitates not only Division but also Invention. Milo is accused of killing Clodius. He either did or did not. The best plan would be to deny; but he cannot. Therefore he killed him. This was either justifiable or not justifiable. Of course it was justifiable. Then it was either intended or an act of necessity (ignorance is not a possible plea). Intention is a two-edged weapon, but, because people think in terms of intention, one must touch on the defence that the killing

ca fuerit. Necessitate: subita igitur pugna, non praeparata: alter igitur insidiatus est. Uter? Profecto Clodius. Videsne ut ipsa rerum necessitas diducat defensionem?

- 36 Adhuc: aut utique voluit occidere insidiatorem Clodium aut non. Tutius si noluit: fecerunt ergo servi Milonis neque iubente neque sciente Milone. At haec tam timida defensio detrahit auctoritatem illi qua recte dicebamus occisum;
- 37 adicietur: 'quod suos quisque servos in tali re facere voluisset.'

Hoc eo est utilius quod saepe nihil placet et aliquid dicendum est. Intueamur ergo omnia: ita apparebit aut id quod optimum est aut id quod minime malum.

Propositione aliquando adversarii utendum et esse nonnumquam communem eam suo loco dictum est.

- 38 Multis milibus versuum scio apud quosdam esse quaesitum quo modo inveniremus utra pars deberet prior dicere, quod in foro vel atrocitate formularum vel modo petitionum vel novissime sorte diiudicatur. In schola quaeri nihil attinet, cum in declamationibus isdem narrare et contradictiones solvere tam ab actore quam a possessore concessum sit. Sed in plurimis controversiis ne inveniri quidem potest, ut in illa: 'Qui tris liberos habebat, oratorem philosophum medicum, testamento quattuor partes fecit et singulas singulis dedit, unam eius esse voluit qui

²⁰ *Pro Milone* 29.

²¹ 4.4.8.

²² I.e. the statements of the issue to be tried, normally chosen by the plaintiff from specimens given in the praetor's edict (Crook (1967) 76-77).

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was in the public interest. Necessity then. If so, the fight arose in a moment, and was unpremeditated. One of the two must therefore have set an ambush. Which? Clodius of course. Do you see now how the compulsion of the facts itself provides the Division of the defence? Go a step further. Either he wanted to kill the ambusher, Clodius, or he did not. It is safer if he did not. In that case, Milo's slaves did it, without Milo's orders or knowledge. But this unduly cautious line detracts from the force of the argument that Clodius was justifiably killed. So we will add: "an action which any man would have wished his slaves to do in such circumstances."²⁰

This method is all the more useful because it is often the case that nothing seems satisfactory and yet we have to say something. Let us therefore examine all possibilities; the best course, or at any rate the least bad, will then become apparent.

I observed in the appropriate context²¹ that the other side's opening statement should sometimes be used, and may sometimes prove equally serviceable for both parties.

I am well aware that some writers have devoted many thousands of lines to the question of how to discover which party ought to speak first. In the courts, this is decided either by the inflexibility of the formulae²² or by the nature of the suit or by lot. In the schools, the question is irrelevant, because both the prosecutor and the defendant are allowed to compose Narratives and to answer Objections in the same declamations. In most *controversiae* indeed the question is unanswerable. For instance, "A man who had three sons, an orator, a philosopher, and a doctor, divided his estate into four parts, and left one part to each of them and the fourth to the one who was most use to

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39 esset utilissimus civitati. Contendunt.' Quis primus dicat incertum est, propositio tamen certa: ab eo enim cuius persona utemur incipiendum erit.

Et haec quidem de dividendo in universum praecipere possunt.

40 At quo modo inveniemus etiam illas occultiores quaestiones? Scilicet quo modo sententias verba figuras colores: ingenio cura exercitatione. Non tamen fere umquam nisi imprudentem fugerint, si, ut dixi, naturam sequi ducem velit. Sed plerique eloquentiae famam adfectantes contenti
41 sunt locis speciosis modo vel nihil ad probationem conferentibus: alii nihil ultra ea quae in oculos incurrunt exquirendum putant.

Quod quo facilius appareat, unam de schola controversiam, non ita sane difficilem aut novam, proponam in exemplum.

42 'Qui reo proditoris patri non adfuerit, exheres sit. Proditionis damnatus cum advocatione exulet. Reo proditoris patri disertus filius adfuit, rusticus non adfuit: damnatus abiit cum advocatione in exilium. Rusticus cum fortiter fecisset, praemii nomine impetravit restitutionem patris et fratris. Pater reversus intestatus decessit: petit rusticus

²³ Compare *Declamationes minores* 268.

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his city. They make contending claims for this.”²³ It is uncertain who speaks first, but the opening move is clear enough, for we have to start from the personality of the son whose role we assume.

So much for the general rules which may be stated about Division.

An example worked in detail

But how shall we also discover those less obvious Questions? In the same way as we discover *sententiae*, words, Figures, and “colours,” namely by native ability, study, and practice. They will not escape anyone, except through inattention, if, as I said, he is prepared to follow the guidance of nature. Yet many people, anxious to win a reputation for eloquence, are content with passages which are merely showy or contribute nothing to the Proof, while others think there is no need to look further than what meets the eye.

To make this more obvious, I will take one *controversia* from the school (neither particularly difficult nor original) as an example.

“A man who fails to appear in defence of his father, when the latter is accused of treason, shall be disinherited. A person convicted of treason shall be exiled, and so shall his advocate. An orator son defended his father in a trial for treason, while his uneducated brother did not. The father was convicted and went into exile along with his advocate. The uneducated son became a war hero, and was granted as his reward the recall of his father and his brother. The father returned and died intestate. The uneducated son

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partem bonorum, orator totum vindicat sibi.’

- 43 Hic illi eloquentes, quibusque nos circa lites raras sollicitiores ridiculi videmur, invadent personas favorabiles: actio pro rustico contra disertum, pro viro forti contra inbellem, pro restituto contra ingratum, pro eo qui parte contentus sit contra eum qui fratri nihil dare ex paternis
- 44 velit. Quae omnia sunt in materia et multum iuvant, victoriam tamen non trahunt. In hac quaerentur sententiae, si fieri poterit, praecipites vel obscurae (nam ea nunc virtus est), et pulchre fuerit cum materia tumultu et clamore transactum.

- 45 Illi vero quibus propositum quidem melius sed cura in proximo est haec velut innatantia videbunt: excusatum esse rusticum quod non interfuerit iudicio nihil conlaturus patri: sed ne disertum quidem habere quod inputet reo, cum is damnatus sit: dignum esse hereditate restitorem: avarum impium ingratum qui dividere nolit cum fratre eoque sic merito: quaestionem quoque illam primam scripti et voluntatis, qua non expugnata non sit sequentibus locus.

- 46 At qui naturam sequetur, illa cogitabit profecto, primo hoc dicturum rusticum: ‘pater intestatus duos nos filios reliquit, partem iure gentium peto.’ Quis tam imperitus, quis

²⁴ I.e. the supposedly natural law observed by all nations: Gaius, *Institutes* 1.1.2.

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claims a part of the estate, the orator claims it all for himself.”

In this, some eloquent persons—those who laugh at us for troubling ourselves unduly with out-of-the-way cases—will seize on the sympathetic personalities: the action is on behalf of an uneducated countryman against an orator, a war hero against a coward, the restorer of his family against an ungrateful brother, a modest man content with a part against one who is reluctant to give up any of his father’s estate to his brother. All these factors are present in the subject, and very helpful they are; but they do not ensure victory. Our friends will look for *sententiae* which are, if possible, bold or obscure (for this counts as a virtue nowadays) and the uproar and the clamour will then have brought the theme to a successful conclusion!

Those whose aims are higher, but whose attention is confined to the obvious, will see various points that, as it were, float on the surface of the subject. “The uneducated son is excused for not attending the trial because he could have done his father no good. The orator too has no claim on his father’s gratitude, because the father was convicted. The man who arranged the recall of his father deserves the inheritance. The man who is unwilling to share with a brother, and one moreover who has done such service, is greedy, devoid of family feeling, and ungrateful. Moreover, the first and most important Question is one of Letter and Spirit, and if this is not successfully met, there is no scope for further arguments.”

The man who follows the guidance of nature, on the other hand, will of course reflect that the uneducated son will begin by saying, “My father died intestate leaving us two sons; I claim my share by the law of nations.”²⁴ Who is

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- 47 tam procul a litteris quin sic incipiat, etiam si nescierit quid sit propositio? Hanc communem omnium legem leviter adornabit ut iustam. Nempe sequetur ut quaeramus quid huic tam aequae postulationi respondeatur. At id manifestum est: 'lex est quae iubet exheredem esse eum qui patri prodicionis reo non adfuerit, tu autem non adfuisti.' Hanc propositionem necessaria sequitur legis laudatio et eius qui non adfuerit vituperatio.
- 48 Adhuc versamur in confessis; redeat animus¹⁹ ad peti-
torem: numquid non hoc cogitet necesse est nisi qui sit plane hebes: 'si lex obstat, nulla lis est, inane iudicium est: atqui et legem esse et hoc quod ea puniat a rustico factum extra dubitationem est.' Quid ergo dicimus? 'Rusticus eram.' Si lex est,²⁰ omnis complectitur, nihil proderit:
- 49 quaeramus ergo num infirmari in aliquam partem lex possit. Quid aliud (saepius dicam) natura permittit quam ut cum verba contra sint de voluntate quaeratur? Generalis igitur quaestio, verbis an voluntate sit standum; sed hoc in commune de iure omni disputandum semper nec unquam satis iudicatum est. Quaerendum igitur in hac ipsa qua consistimus, an aliquid inveniri possit quod scripto
- 50 adversetur. 'Ergo quisquis non adfuerit, exheres erit? quisquis sine exceptione?' Iam se illa vel ultro offerent argumenta: 'et infans? [filius enim est et non adfuit]²¹ et qui

¹⁹ redeamus *Meister*

²⁰ *Winterbottom* (see *Shackleton Bailey* (1983) 223 n.3): eram
A: *del. Halm*

²¹ *del. D.A.R.*

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so unskilled and unlettered as not to start with this, even if he does not know what a "preliminary statement" is? He will then elaborate lightly on the justice of the law which is common to all men. The next thing of course will be for us to ask what answer can be given to such a reasonable demand. It is obvious. "There is a law which disinherits the man who did not defend his father on a charge of treason; you did not defend your father." This statement is necessarily followed by praise of the law, and denunciation of the man who failed to defend his father.

We are still dealing with admitted facts. Let our thoughts return to the claimant. Unless he is utterly stupid, he will surely think on the following lines: "If the law blocks the claim, there is no dispute, the case is futile. But it is beyond doubt both that there is a law and that the uneducated son committed the act which it punishes." So what do we say? "I was uneducated." If there is a law, it applies to all men; so this will be no good. Let us ask then whether the law can be invalidated in some respects. What else (let me repeat) does nature allow us to do, when the Letter of the Law is against us, except discuss its Spirit? So the General Question is, should we stand by the Letter or the Spirit? But, as a point about all law in general, this must be a perpetual subject of dispute, and has never been properly decided. We have therefore to ask, in regard to the particular law on which we are brought to court, whether something can be found to go against a literal interpretation. "And so, is everyone who fails to defend his father to be disinherited? Everyone, without exception?" Now the Arguments will start coming to mind. "Even a child?" [For he is a son, and did not come forward.] "Even a man who was away from home? Or on military service?"

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aberat? et qui militabat? et qui in legatione erat? Iam multum acti est: potest aliquis non adfuisse et heres esse.

- 51 Transeat nunc idem ille qui <hoc>²² cogitavit, ut ait Cicero, tibicinis Latini modo ad disertum: 'ut ista concedam, tu nec infans es nec afuisti nec militasti.' Num aliud occurrit quam illud: 'sed rusticus sum'? Contra quod palam est dici: 'ut agere non potueris, adsidere potuisti', et verum est. Quare redeundum rustico ad animum legum latoris: 'impietatem punire voluit, ego autem impius non sum.'
- 52
- 53 Contra quod disertus 'tum impie fecisti' inquit 'cum exheredationem meruisti, licet te postea vel paenitentia vel ambitus ad hoc genus optionis adduxerit.' Praeterea 'propter te damnatus est pater, videbaris enim de causa pronuntiasset.' Ad haec rusticus: 'tu vero in causa damnationis fuisti, multos offenderas, inimicitias domui contraxeras.' Haec coniecturalia: illud quoque, quod coloris loco rusticus dicit, patris fuisse tale consilium, ne universam domum periculo subiceret.

Haec prima quaestione scripti et voluntatis continentur.

- 54 Intendamus ultra animum, videamusque an aliquid inveniri praeterea possit. Quo id modo fiet? Sedulo imitator quaerentem, ut quaerere doceam, et omisso speciosiore stili genere ad utilitatem me submitto discentium.

²² *add. Christ*

²⁵ *Pro Murena* 26: the *iuris consultus*, like a "Latin piper," passes from one party in the case to the other, to pronounce the proper formulae, just as a piper on the Roman stage moves around to provide accompaniment for lyric or recitative passages delivered by various characters.

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Or absent on an embassy?" Now we have really got somewhere: a man may have failed to assist his father, and yet be his heir.

Now let the student who has worked this out pass over to the orator son—like a Latin piper, as Cicero says.²⁵ "Granted; but you are no infant, you were not abroad, and you were not on military service." Is there any answer to this except (once again) "But I am uneducated"? To this there is an obvious retort: "Even if you were unable to plead, you could have been at his side." And that is true. So the uneducated son then has to return to the intention of the lawgiver: "He wished to punish unfilial behaviour, and I am not unfilial." To this the orator son will reply "You did act in an unfilial way when you deserved to be disinherited, even if repentance or some ulterior motive has subsequently led you to make the choice you have." Again, "You were responsible for your father's being convicted, because you appeared to have made up your mind about his case." To this, the uneducated son will reply: "*You* were part of the cause of his conviction, because you had offended many people and brought enmities upon our house." These arguments are Conjectural, as is the statement made by the farmer son, by way of "colour," that his absence was his father's idea, so as not to endanger the whole family.

These are the elements of the first Question, that of Letter and Spirit.

Let us give it a little more attention, and see if anything more can be discovered. How can this be done? I am carefully reproducing the process of inquiry, in order to teach the skill of inquiry: I therefore abandon fine writing and sacrifice style in order to be useful to students.

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Omnes adhuc quaestiones ex persona petitoris ipsius
 duximus: cur non aliquid circa patrem quaerimus? Dictum
 55 enim est: 'quisquis non adfuerit, exheres erit.' Cur non
 conamur et sic quaerere: 'num cuicumque non adfuerit?'
 Facimus hoc saepe in iis controversiis in quibus petuntur
 in vincula qui parentis suos non alunt, ut eam quae testi-
 monium in filium peregrinitatis reum dixit, eum qui filium
 lenoni vendidit. In hoc de quo loquimur patre quid ad-
 56 prendi potest? Damnatus est. Numquid igitur lex ad abso-
 lutos tantum patres pertinet? Dura prima fronte quaestio.
 Non desperemus: credibile est hoc voluisse legum lato-
 rem, ne auxilia liberorum innocentibus deessent. Sed hoc
 dicere rustico <parum>²³ verecundum est, quia innocen-
 57 tem fuisse patrem fatetur. Dat aliud argumentum contro-
 versia: 'damnatus proditiōnis cum advocatione exulet.' Vix
 videtur posse fieri ut poena filio in eodem patre et si adfue-
 rit et si non adfuerit constituta sit. Praeterea lex ad exules
 nulla pertinet; non ergo credibile est de advocatione damnati
 58 scriptum: an possint enim bona esse ulla exulis? Rusticus²⁴
 in utramque partem dubium facit: disertus et verbis inhae-
 rebit, in quibus nulla exceptio est, et propter hoc ipsum
 poenam esse constitutam eis qui non adfuerint, ne pericu-
 lo exilii deterreantur advocatione, et rusticum innocenti

²³ *add. Winterbottom after Spalding*

²⁴ *Regius: scolastica A*

²⁶ See Bonner, *RD* 95; Seneca, *Controversiae* 1.1, 7.4; *Declamationes maiores* 5. ²⁷ Q. gives cases appropriate to each parent: if the father were absent or dead, the mother would be the person to give evidence on citizenship; and only the father would have power to sell a child.

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So far, we have taken all our Questions from the person of the claimant himself. Why should we not make some inquiries regarding the father? It has been said "Whoever has failed to defend his father shall be disinherited." Why do we not try to ask questions like this too: "Does it apply to *any* father whom his son has failed to defend?" We often make this move in *controversiae* in which children who fail to maintain their parents are threatened with prison;²⁶ take for example the mother who gave evidence against her son when he was accused of being an alien, or the father who sold his son to a pimp.²⁷ What can we lay hold of in the case of the father whom we are discussing? He was convicted. Now does the law apply only to fathers who have been acquitted? At first sight this presents a difficult problem. But let us not despair; it is easy to believe that the lawgiver intended that innocent men should not be without the help of their children. But the uneducated son cannot decently say this, because he admits that his father was innocent. The theme itself provides another Argument. "A man convicted of treason shall go into exile, together with his advocate." It seems barely possible that, given the same father, there should be a penalty for a son whether he appeared for the defence or not. Moreover, no law applies to exiles. So it is hard to believe that the Letter of the law should apply to the advocate of a convicted father; for can an exile have any property? The uneducated son raises doubts both about the Letter and about the Spirit; the orator son will stick to the Letter, which makes no exceptions, and will say that the reason for a penalty for failing to defend a father was the fear that sons would be deterred from acting as advocates by the risk of exile; he will also say that

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non adfuisse dicet. Illud protinus non indignum quod adnotetur, posse ex uno statu duas generales quaestiones fieri: an quisquis, an cuicumque.

- 59 Haec ex duabus personis quaesita sunt. Ex tertia autem, quae est adversarii, nulla oriri quaestio potest, quia nulla fit ei de sua parte controversia. Nondum tamen cura deficiat: ista enim omnia dici possent etiam non restituto patre. Nec statim eo tendamus quod occurrit ultro, a rustico restitutum. Qui subtiliter quaeret, aliquid spectabit ultra: nam, ut genus species sequitur, ita genus speciem
- 60 praecedit. Fingamus ergo ab alio restitutum: ratiocinativa seu collectiva quaestio orietur, an restitutio pro sublacione iudicii sit et proinde valeat ac si iudicium non fuisset. Ubi temptabit rusticus dicere ne impetrare²⁵ quidem aliter potuisse suorum restitutionem uno praemio nisi patre proinde ac si accusatus non esset revocato, quae res advocati quoque poenam, tamquam is non adfuisset, remiserit.
- 61 Tum venimus ad id quod primum occurrebat, a rustico esse restitutum patrem: ubi rursus ratiocinamur an restitutor accipi debeat pro advocato, quando id praestiterit quod advocatus petiit, nec improbum sit pro simili accipi quod plus est.

- 62 Reliqua iam aequitatis, utrius iustius sit desiderium. Id

²⁵ impetrari *Gertz*

²⁸ It is of course the uneducated son who has the juster case—even more so because his claim is less greedy than his brother's.

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the uneducated son failed to defend his innocent father. (It may be worthwhile pointing out at once that two General Questions—namely “everyone?” and “on behalf of *any* father?”—may arise out of a single Issue.)

These points have all come from considering *two* persons. From the third person, namely the opponent, no Question can arise, because there is no dispute about his having a share of the inheritance. But let us not relax yet. All the Arguments so far could have been used even if the father had not been recalled. Let us not go straight to the point that comes to mind immediately, namely that he was recalled as a result of what the uneducated son did. A little subtlety will see a little further. As Species comes after Genus, so Genus precedes Species. So let us imagine that the father was recalled by someone else. A “ratiocinative” or “syllogistic” Question will then arise: does recall from exile cancel the judgement, and effectively amount to the trial never having taken place? At this point the uneducated son will try to say that he could not have achieved the recall of both his relatives with a single reward, unless the recall of his father implied that he had not been accused, a fact which would itself cancel also the advocate’s penalty, for it would also imply that he had not defended his father. We come then to the thought which first struck us, namely that it was the uneducated son who restored his father. At this point we again reason syllogistically, whether the restorer should count as an advocate, because he produced the result which the advocate sought, and it is not unreasonable that an act which is more than the one demanded by the law should be treated as equivalent to it.

From now on, the remaining points turn on Equity: which of the two makes the juster request?²⁸ This can it-

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- ipsum adhuc dividitur: etiam si uterque totum sibi vindicaret, nunc utique, cum alter semissem, alter universa fratre excluso. Sed his tractatis etiam habet magnum momentum apud iudices patris memoria, cum praesertim de bonis eius quaeratur. Erit ergo coniectura qua mente pater intestatus decesserit; sed ea pertinet ad qualitatem: alterius
63 status instrumentum est. Plerumque autem in fine causarum de aequitate tractabitur, quia nihil libentius iudices audiunt. Aliquando tamen hunc ordinem mutabit utilitas, ut, si in iure minus fiduciae erit, aequitate iudicem praeparemus.
- 64 Nihil habui amplius quod in universum praecipere. Nunc eamus per singulas causarum iudicialium partes, quas ut persequi ad ultimam speciem, id est ad singulas lites controversiasque, non possum, ita in generalibus scribere licet ut quae in quemque statum frequentissime incidant tradam. Et quia natura prima quaestio est factumne sit, ab hoc ordiar.

2

- 1 Coniectura omnis aut de re aut de animo est. Utriusque tria tempora, praeteritum praesens futurum. De re et generales quaestiones sunt et definitae, id est, et quae non
2 continentur <personis et quae continentur>.¹ De animo quaeri non potest nisi ubi persona est et de facto constat.

¹ *suppl. Halm*

²⁹ The factual question is bound up with the question of what an equitable will would have been. For *instrumentum*, see 3.6.25.

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self still be subdivided: (1) on the supposition that both claimed the whole estate, and (2) *a fortiori*, in the present situation, when one claims a half, and the other the whole, to the exclusion of his brother. When this has all been dealt with, the father's memory weighs heavily with the judges, especially as the dispute concerns his estate. There will therefore be a Conjecture, as to what the father's intentions were when he died intestate. This however involves Quality; it is thus a basis of a second Issue.²⁹ Discussion of Equity will commonly come at the end of a Cause, for there is nothing that judges like hearing better. Expediency may however alter this order, so that, if we have no confidence in our case in law, we can soften the judge up by a point of Equity.

I have no more general advice to give. Let us now proceed to the individual kinds of judicial Causes; I cannot pursue these right down to the lowest species, that is to particular suits and Controversies, but I can explain in general terms which most commonly fall under which Issue. Since the first Question is naturally "whether something happened," I shall begin with this.

CHAPTER 2

The Division of Conjectural Causes

All Conjecture is concerned either with facts or with intention. Both may relate to any of the three divisions of time, past, present, and future. With a matter of fact, there are both General Questions and Definite ones, that is to say Questions which do not <and do> involve <persons>. With intention, no Questions can arise unless there is a person

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- Ergo cum de re agitur aut quid factum sit in dubium venit aut quid fiat aut quid sit futurum, ut in generalibus 'an atomorum concursu mundus sit effectus, an providentia regatur, an sit aliquando casurus': in definitis 'an parricidium commiserit Roscius', 'an regnum adfectet Manlius', 'an
- 3 recte Verrem sit accusaturus Q. Caecilius'. In iudiciis praeteritum tempus maxime valet, nemo enim accusat nisi quae facta sunt: nam quae fiant et quae futura sint ex praeteritis colliguntur.

Quaeritur et unde quid ortum, ut 'pestilentia ira deum an intemperie caeli an corruptis aquis an noxio terrae halitu', et quae causa facti, ut 'quare ad Troiam quinquaginta reges navigaverint, iure iurando adacti an exemplo moti an gratificantes Atridis.' Quae duo genera non multum inter se distant.

- 4 Ea vero quae sunt praesentis temporis, si non argumentis, quae necesse est praecessisse, sed oculis deprehendenda sunt, non egent coniectura, ut si apud Lacedaemonios quaeratur an Athenis muri fiant. Est et illud, quod potest videri extra haec positum, coniecturae genus, cum de aliquo homine quaeritur quis sit, ut est quaesitum con-

¹ In Cicero's *Pro Roscio Amerino*. ² See 5.9.13.

³ In Cicero's *Divinatio in Q. Caecilium*.

⁴ For such discussions, compare (e.g.) Lucretius 6.1138ff., Lucan 6.80ff., Silius Italicus 14.581ff.

⁵ The number of kings gathered at Aulis varies slightly in different accounts: 'Dictys' (1.17) has 45, Apollodorus (*Epitome* 3.11, 2.181 Frazer (LCL)) 43, Hyginus (*Fabulae* XCVII) apparently 50 or 51.

⁶ Tyndareus had made the suitors for his daughter Helen swear to accept the choice made of her husband (Menelaus), and to support him in case of attempts to take her away.

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involved and the fact is certain. Therefore, when we have to deal with a matter of fact, the doubtful point is either what happened, or what is happening, or what will happen. For example, to take General Questions, we may ask whether the universe *was* formed by atoms coming together, whether it *is* ruled by Providence, whether it *will* one day come to an end; or, to take Definite Questions, we may ask whether Roscius *was* his father's murderer,¹ whether Manlius *is* aiming to become king,² whether Quintus Caecilius *will* be right to accuse Verres.³ In the courts, the past is the most important, for no one brings an accusation except about a past event, because present and future events are inferred from the past.

We may also ask (1) about origins (is plague due to the wrath of the gods, an imbalance of the climate, polluted water-supply, or noxious vapours from the earth?),⁴ (2) about the motives for an action (why did the fifty kings⁵ set sail for Troy? Was it the obligation of their oath,⁶ their anxiety about the precedent, or to please the Atridae?). There is not much difference between these two types.

As regards facts relating to the present, if they are to be ascertained not by Arguments (which are inevitably antecedent to the facts) but by the eye, no Conjecture is needed; for example, if the question is raised at Sparta whether walls are in fact being built at Athens.⁷ There is also another type of Conjecture, which may seem to fall outside these categories, namely when the question is of the identity of an individual: for example, in the action

⁷ This declamation theme relates to Themistocles' deception of the Spartans when Athens was being fortified (Thucydides 1.90–92), and not to the events after Athens' surrender in 404 BC.

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- tra Urbiniae heredes is qui tamquam filius petebat bona
- 5 Figulus esset an Sosipater. Nam et substantia eius sub oculis venit, ut non possit quaeri an sit, quo modo an <sit terra>² ultra oceanum, nec quid sit nec quale sit sed quis sit. Verum hoc quoque genus litis ex praeterito pendet: 'an hic sit ex Urbinia natus Clusinius Figulus.' Fuerunt autem tales etiam nostris temporibus controversiae atque aliquae in meum quoque patrocinium inciderunt.
- 6 Animi coniectura non dubie in omnia tempora cadit: 'qua mente Ligarius in Africa fuerit', 'qua mente Pyrrhus foedus petat', 'quo modo laturus sit Caesar si Ptolomaeus Pompeium occiderit.'

- Quaeritur per coniecturam et qualitas³ circa modum speciem numerum: 'an sol maior quam terra, luna globosa
- 7 an plana an acuta, unus mundus an plures.' Itemque extra naturales quaestiones: 'maius bellum Troianum an Peloponnesium', 'qualis clipeus Achillis', 'an unus Hercules.'

In iis autem quae accusatione ac defensione constant, unum est genus in quo quaeritur et de facto et de auctore:

² *suppl. Radermacher*

³ *Regius: qualitatem A*

⁸ See 4.1.11, 7.2.26.

⁹ See 3.8.16, and compare also Seneca, *Suasoriae* 1.4.

¹⁰ Compare 2.16.7. ¹¹ Compare 3.8.56.

¹² Q. implies that these topics could be the subjects of rhetorical exercises (*theses*). They are all questions on which philosophers' opinions (*doxai*) were reported in handbooks: see H. Diels, *Doxographi Graeci* 351 (size of the sun), 357 (spherical form of the moon), 291 (number of worlds).

¹³ Thucydides 1.9–11 argues that the Trojan War was small compared with the Peloponnesian War.

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against Urbinia's heirs,⁸ the question was whether the man who claimed the property as a son was Figulus or Sosipater. In this case, the actual person can be seen, so that there is no question about his existence (as there is if one asks if there is <land> beyond the Ocean)⁹ or of Definition or Quality; it is only "who is he?" However, this type of dispute also depends on past events: is he the Clusinius Figulus who was Urbinia's child? Even in our own day there have been cases of this kind; some indeed have fallen to me as an advocate.

Conjecture relating to Intention undoubtedly occurs with reference to all times: what *did* Ligarius mean to do in Africa, what *is* Pyrrhus' intention in making the treaty,¹⁰ how *will* Caesar take it if Ptolemy kills Pompey?¹¹

We use Conjecture also in inquiring into Quality in relation to size, shape, or number; is the sun bigger than the earth, is the moon spherical, flat, or conical, is there one universe or many?¹² This occurs also outside the field of scientific speculation: for example, was the Trojan War or the Peloponnesian greater,¹³ what was the shield of Achilles like,¹⁴ was there only one Hercules?¹⁵

I turn now to cases involving both accusation and defence. There is (1) a type of Conjecture in which an action and its perpetrator are both in question. This sometimes

¹⁴ The shield made by Hephaestus for Achilles (*Iliad* 18.478–608) was a subject of much speculation, of which "Heraclitus," *Homeric Problems* 43–51 gives a good idea. See P. R. Hardie, "Imago Mundi," *Journal of Hellenic Studies* 105 (1985) 11–31.

¹⁵ Cicero, *De natura deorum* 3.42 enumerates six, and the idea that there were more than one is found in Herodotus (2.43–44). This too is evidently a possible exercise subject.

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quod interim coniunctam quaestionem habet et utrumque pariter negatur, interim separatam, cum et factum sit necne et, si de facto constet, a quo factum sit ambigitur.

- 8 Ipsum quoque factum aliquando simplicem quaestionem habet, an homo perierit, aliquando duplicem, veneno an cruditate perierit. Alterum est genus de facto tantum, cum, si id certum sit, non potest de auctore dubitari: tertium de auctore tantum, cum factum constat sed a quo sit factum in controversiam venit.
- 9 Et hoc quod tertio loco posui non est simplex. Aut enim reus fecisse tantum modo se negat aut alium fecisse dicit. Sed ne in alterum quidem transferendi criminis una forma est. Interdum enim substituitur mutua accusatio, quam Graeci ἀντικατηγορίαν vocant, nostrorum quidam 'concertativam': interdum in aliquam personam quae extra discrimen iudicii est transfertur, et alias certam, alias incertam: et cum certam, aut in extrariam aut in ipsius qui periiit voluntatem. In quibus similis atque in ἀντικατηγορίᾳ personarum causarum ceterorum comparatio est, ut Cicero pro Vareno in familiam Ancharianam, pro Scauro circa mortem Bostaris in matrem avertens crimen facit.
- 10
- 11 Est etiam illud huic contrarium comparationis genus, in quo uterque a se factum esse dicit, et illud in quo non personae inter se sed res ipsae colliduntur, id est non uter fecerit, sed utrum factum sit. Cum de facto et de auctore

¹⁶ *Fr. orat.* IIa Schoell, Crawford (1994) p. 12.

¹⁷ *Fr. (h)* Clark (= Severianus 360, 12 Halm). Scaurus was alleged to have contrived the death of this Bostar; Cicero in *Pro Scauro* (8–13) goes into the scandalous history of the family, and describes how Bostar's mother managed to get the wife of one Aris strangled in order to marry him herself.

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amounts to a combined Question, when both are equally denied, sometimes to separate Questions, when there is a doubt whether or not the act was committed, and then, if this were agreed, about who did it. The act itself again sometimes involves a single Question—for example, whether a man is dead—and sometimes a double one—did he die of poison or indigestion? (2) A second type of Conjecture, which is concerned with fact alone, occurs when there can be no doubt about the perpetrator, if the fact were once established. (3) A third type is concerned solely with the perpetrator, when the fact is agreed and the dispute turns on who did it.

This third type also has several varieties. The accused either merely denies he did it, or says someone else did it. There is more than one way too of shifting the guilt on to another. Sometimes this results in a mutual accusation, which the Greeks call *antikātēgoria*, and some Latin teachers “concertative.” Sometimes again, the charge is put upon some person not at risk in the case; sometimes this is a known person, sometimes an unknown one; when known, the responsibility may be transferred to the intention either of a person outside the case or of the victim himself. In these cases, as in the *antikātēgoria*, there is a comparison of persons, motives, and other matters. Thus Cicero in *Pro Vareno*¹⁶ shifts the charge on to Ancharius’ slaves, and in *Pro Scauro* puts the guilt of Bostar’s murder on to his mother.¹⁷ There is also the opposite form of comparison, in which both parties claim to have done the act, and yet another, in which it is not two persons but two acts which meet head on—that is to say, the Question is not which of two persons committed the act, but which of two acts was committed. When act and perpetrator are both

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constat, de animo quaeri potest.

- 12 Nunc de singulis. Cum pariter negatur, hoc modo: 'adulterium non commisi', 'tyrannidem non adfectavi.' In caedis ac veneficii causis frequens est illa divisio: 'non est factum, et si factum est ego non feci.' Sed cum dicimus 'proba hominem occisum', accusatoris tantum partes sunt, a reo nihil dici contra praeter aliquas fortasse suspiciones potest: quas spargere quam maxime varie oportebit, quia, si unum aliquid adfirmaris, probandum est aut causa periclitandum. Nam cum inter id quod ab adversario et id quod a nobis propositum est quaeritur, videtur utique alterum verum; ita everso quo defendimur relicum est quo
- 13 premimur: ut cum quaerimus de ambiguis signis cruditatis et veneni, nihil tertium est, ideoque utraque pars quod proposuit tuetur. Interim autem ex re quaeritur veneficium fuerit an cruditas, cum aliqua ex ipsa citra personam quoque argumenta ducuntur. Refert enim convivium praecesserit <laetitia>⁴ an tristitia, labor an otium, vigilia an quies. Aetas quoque eius qui periit discrimen facit. Interest subito defecerit an longiore valetudine consumptus sit: liberior adhuc in utramque partem disputatio si
- 14 tantum subita mors in quaestionem venit.
- 15 Interim ex persona probatio rei petitur, ut propterea credibile sit venenum fuisse quia credibile est ab hoc

. ⁴ *add. edd.*

¹⁸ For what follows regarding accusations of poisoning, see *Declamationes minores* 321 (with Winterbottom's note), Calpurnius Flaccus 13 (with Sussman's note).

agreed, the Question of intention may arise.

Now to the details. (1) Denial of both act and perpetrator: "I have not committed adultery," "I have not aimed at becoming tyrant." In cases of murder and poisoning,¹⁸ the following Division is common: "It was not done, and, if it was done, I did not do it." But when we say (as defendants), "Prove that the man was killed," this is something only the prosecution has to do, for the defendant can say nothing on the other side except perhaps throw out a few dark hints, which should be scattered around and made as varied as possible, because if you make a single definite assertion, you will have to prove it or risk losing your case. For when the Question lies between our statement and that of our opponent, one or other is bound to seem true; therefore, when the statement on which our defence relies is overthrown, the one which is damaging to us is left. For example, when we are asking about symptoms which point ambiguously either to a stomach illness or to poisoning, there is no third alternative, and therefore both parties stick to their original statements. Sometimes, however, some Arguments are drawn from the circumstances themselves, even without reference to any person, and the question "poison or illness?" is investigated on the basis of the circumstances. For it makes a difference whether the dinner was preceded by <happiness> or sadness, work or leisure, waking or sleeping. The age of the deceased also makes a difference; and it is relevant whether he collapsed suddenly or succumbed to a longer illness. Both sides will have even freer scope for debate if it is simply a sudden death which is in question.

The proof of a fact is sometimes sought in the character of the person, so that it becomes credible that it was poi-

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factum veneficium, vel contra.

Cum vero de reo et de facto quaeritur, naturalis ordo est ut prius factum esse accusator probet, deinde a reo factum. Si tamen plures in persona probationes habuerit, 16 convertet⁵ hunc ordinem. Defensor autem semper prius negabit esse factum, quia si in hac parte vicerit reliqua non necesse habet dicere: victo superest ut tueri se possit.

Illic quoque ubi de facto tantum controversia est, quod si probetur non possit de auctore dubitari, similiter argu- 17 menta et ex persona et ex re ducuntur, sed in unam facti quaestionem, sicut in illa controversia (utendum est enim et hic exemplis quae sunt discentibus magis familiaria): 'Abdicatus medicinae studuit. Cum pater eius aegrotaret, desperantibus de eo ceteris medicis adhibitus sanaturum se dixit si is potionem a se datam bibisset. Pater acceptae 18 potionis epota parte dixit venenum sibi datum, filius quod relicum erat exhausit: pater decessit, ille parricidii reus est.' Manifestum quis potionem dederit: quae si veneni fuit, nulla quaestio de auctore; tamen an venenum fuerit ex argumentis a persona ductis colligetur.

Superest tertium in quo factum esse constat aliquid, a quo sit factum quaeritur. Cuius rei supervacuum est ponere exemplum, cum plurima sint huius modi iudicia, ut hominem occisum esse manifestum sit vel sacrilegium commissum, is autem qui arguitur fecisse neget. Ex hoc nascitur *ἀντικατηγορία*: utique enim factum esse conve-

⁵ *edd.*: convertit A

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soning because it is credible that this man poisoned someone; or the opposite.

When the Question relates both to the accused and to the act, the natural order is that the prosecutor should first prove that the act took place, and secondly that the accused committed it. However, if he has more grounds for proof in the character of the accused, he will reverse this order. The defendant will always deny the fact first, because, if he wins here, he has no need to say anything further, while if he loses he can still defend himself.

(2) Where the dispute is about the act alone, and, if it is proved, there can be no doubt about the perpetrator, Arguments are similarly derived both from the person and from the fact, but they are directed solely to the question of fact, as in the following *controversia* (here too it seems best to use examples more familiar to students): "A disinherited son studied medicine. When his father was ill, and the other doctors despaired of him, he was called in and said he would cure him if he would drink a draught which he gave him. The father took the draught, drank part of it, and said that he had been poisoned. The son drank the rest of the dose. The father died and the son is charged with his murder." It is obvious who gave the potion, and, if it was poison, there is no question about the guilty person; but whether it really was poison is to be inferred from Arguments drawn from the person.

(3) There remains the third case, in which the act is certain, and the perpetrator is in question. It is unnecessary to give examples of this, since most cases are of the kind in which it is clear that (say) a man has been killed or a sacrilege committed, but the alleged criminal denies that he did it. *Antikatēgoria* is a development of this, since an act

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- 19 nit, quod duo invicem obiciunt. In quo quidem genere
causarum admonet Celsus fieri id in foro non posse, quod
neminem ignorare arbitror: de uno enim reo consilium
20 iudicium praeferri⁶ necesse est. Apollodorus quoque ἀντι-
κατηγορίαν duas esse controversias dixit, et sunt re vera
secundum forense ius duae lites. Potest tamen hoc genus
in cognitionem venire senatus aut principis. Sed in iudicio
quoque nihil interest actionum ut cum⁷ simul de utroque
21 pronuntietur [an]⁸ etiamsi de uno fertur <sententia>.⁹ Quo
in genere semper prior debet esse defensio, primum
quia natura potior est salus nostra quam adversarii per-
niciēs, deinde quod plus habebimus in accusatione aucto-
ritatis si prius de innocentia nostra constiterit, postremum
quod ita demum duplex causa erit. Nam qui dicit ‘ego
non occidi’, habet reliquam partem ut dicat ‘tu occidisti’:
<at qui dicit ‘tu occidisti’,>¹⁰ supervacuum habet postea
dicere ‘ego non occidi’.
- 22 Hae porro actiones constant comparatione: ipsa com-
paratio non una via ducitur. Aut enim totam causam nos-
tram cum tota adversarii causa componimus aut singula
argumenta cum singulis. Quorum utrum sit faciendum
non potest nisi ex ipsius litis utilitate cognosci. Cicero sin-

⁶ D.A.R.: praeferre A

⁷ ut cum *Winterbottom*: utrum A

⁸ del. *Spalding*

⁹ add. *Winterbottom* after *Regius*

¹⁰ *suppl. recc.*

¹⁹ *Fr. rhet.* 6 Marx.

²⁰ *Fr.* 5(b) *Granatelli*.

with which each party charges the other is, at least, agreed to have taken place. With regard to such cases, Celsus¹⁹ warns us that this cannot happen in the courts. I cannot conceive that anyone does not know this. After all, the court is convened to try a single accused, and even if there are parties who mutually accuse each other, one of the two cases must be presented before the other. Apollodorus²⁰ also said that *antikatēgoria* amounted to two disputes, and in fact, according to the law applied in the forum,²¹ there are two cases. However, this type of case can come up for decision before the Senate or the emperor. Indeed, even in the courts, it makes no difference to the pleadings, when for example a pronouncement is effectively made about both though the actual verdict is passed on one alone. In such cases the defence must always come first, because (1) our own safety is naturally more important than our adversary's ruin, (2) we shall have more authority for our accusation if our innocence has been established, and (3) only in this way can a double Cause be produced. The man who says "I did not kill him" can still say "You killed him," <but for the man who says "You killed him"> there is no point in saying "I did not kill him."

These cases, moreover, are based on Comparison, but there is more than one method of Comparison. We either set our Cause as a whole against our opponent's Cause as a whole, or individual Arguments against individual Arguments. Which of the two is to be done can only be known in the light of the needs of the actual case. Cicero in

²¹ I.e. under the formulary system, where the set form of the charge was determined by the praetor or other magistrate at the preliminary stage.

- gula pro Vareno comparat in primo crimine: est enim superior . . .¹¹ [enim]¹² persona alieni cum persona matris temere compararetur. Quare optimum est, si fieri poterit, ut singula vincantur a singulis: sed si quando in partibus laborabimus, universitate pugnandum est. Et [sive invicem accusant,]¹³ sive crimen reus citra accusationem in adversarium vertit, ut Roscius in accusatores suos, quamvis reos non fecisset, sive in ipsos quos sua manu perisse dicemus factum deflectitur, non aliter quam in iis quae mutuam accusationem habent utriusque partis argumenta inter se comparantur. Id autem genus de quo novissime dixi non solum in scholis saepe tractatur, sed etiam in foro. Nam id est in causa Naevi Arpiniani solum quaesitum, praecipitata esset ab eo uxor an se ipsa sua sponte iecisset. Cuius actionem et quidem solam in hoc tempus emiseram, quod ipsum me fecisse ductum iuvenali cupiditate gloriae fateor. Nam ceterae quae sub nomine meo feruntur negligentia excipientium in quaestum notariorum corruptae minimam partem mei habent.
- 25 Est et alia duplex coniectura, huic anticategoriae diver-

¹¹ *Lacuna marked by Winterbottom (cf. W. Stroh, Taxis und Taktik, 70 n. 64): etenim in posteriore Halm ('for in the second charge')* ¹² *om. rec.* ¹³ *del. Winterbottom*

²² *Fr. orat. II 7* Schoell, Crawford (1994) p. 11. We do not understand the case well enough to reconstruct Q.'s argument. I accept that there is a lacuna (Winterbottom), but leave open the question whether W. Stroh (see text note) is right to suppose that what follows the lacuna refers to *Pro Scauro* (where indeed a wicked mother was involved: see 7.2.10). ²³ Compare *Pro Roscio Amerino* 83–123. Julius Victor (377 Halm = 7 Giomini-Celentano) also makes this speech his example of this move.

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*Pro Vareno*²² compares individual arguments on the first charge, for the former . . . it would be rash to compare a stranger's position with that of a mother. It is best therefore, if possible, for individual Arguments to be refuted individually; but if the separate parts cause us problems, we must fight on the whole front at once. And [if they accuse each other, or] if the defendant passes the guilt on to the adversary without actually accusing him (as Roscius²³ does to his accusers, though he had not put them on trial) or again if the responsibility is laid on those whom we allege to have died by their own hand, the Arguments of the two sides are compared exactly as they are in cases of mutual accusation. This last mentioned type of case is not only often handled in the schools, but also in the courts. The sole question in the case of Naevius Arpinianus²⁴ was whether his wife was thrown to her death by him or threw herself down of her own accord. (My speech in this Cause is the only one I have so far published, and I admit that I was induced to do so by a youthful desire for fame. The other speeches circulating under my name, corrupted as they are by the negligence of the shorthand-writers who took them down to make money, have very little of me in them.)

There is another type of "double Conjecture,"²⁵ quite different from this *antikatēgoria*. It is concerned with Re-

²⁴ Nothing is known of this, but Arpinianus is probably part of the name (the adjective from *Arpinum* is *Arpinas*). A similar case concerning the wife of Plautius Silvanus is reported in Tacitus, *Annales* 4.22.

²⁵ For "counteraccusation" as "double Conjecture," see, e.g., Hermogenes 5.12ff. Rabe.

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sa, de praemiis, ut in illa controversia: 'Tyrannus suspicatus a medico suo datum sibi venenum torsit eum, et cum is dedisse se pernegaret accessit alterum medicum: ille datum ei venenum dixit sed se antidotum daturum, et dedit potionem ei, qua epota tyrannus decessit. De praemio duo medici contendunt.' Nam ut illic factum in adversarium transferentium, ita hic sibi vindicantium personae causae facultates tempora instrumenta testimonia comparantur.

- 26 Illud quoque, etiam si non est *ἀντικατηγορία*, simili tamen ratione tractatur in quo citra accusationem quaeritur utrum factum sit. Utraque enim pars suam expositionem habet atque eam tuetur, ut in lite Urbiniana petitor dicit Clusinium Figulum filium Urbiniae acie victa in qua steterat fugisse, iactatumque casibus variis, retentum etiam a rege, tandem in Italiam ac patriam suam †marginos†¹⁴ venisse atque ibi agnosci: Pollio contra servisse eum Pisauri dominis duobus, medicinam factitasse, manu missum alienae se familiae venali inmiscuisse, a se rogantem
- 27 ut ei serviret emptum. Nonne tota lis constat duarum causarum comparatione et coniectura duplici atque diversa? Quae autem accusantium ac defendentium, eadem petentium et infortiantium ratio est.

¹⁴ *Marrucinos Cuper*: per mangones *Kiderlin* ('was sold (venisse) by slave dealers')

²⁶ Compare Calpurnius Flaccus 13, and, for a Greek example, *Rhetores Graeci* 8. 403 Walz.

²⁷ See on 4.1.11, 7.2.4-5.

²⁸ Unknown: the conjecture *Marrucini* locates the family around Teate (Chieti); but the name Urbinia and the mention of

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wards. The following *controversia* is an example: "A tyrant, suspecting that his doctor had given him poison, tortured him, and, when he persisted in denying the charge, sent for a second doctor, who told him that he had been given poison, but that he himself would give him an antidote; he gave him a potion, after drinking which the tyrant died. The two doctors are in contention for the reward."²⁶ Here, as in the cases where the parties seek to transfer guilt to one another, there is a comparison of the two claimants, based on character, motives, opportunities, times, means, and evidence.

A similar procedure applies in another type of case, even if it is not an *antikategoria*, in which the question is raised which of two acts has been committed, but without accusing anyone. Both parties make and maintain their own account of the events. Thus in the case of Urbina,²⁷ the claimant alleges that Clusinius Figulus, Urbina's son, escaped after the defeat of the army in which he had fought, underwent various adventures, was even kept prisoner by the king, and finally returned to Italy and his home among the †Margini†²⁸ and was recognised there. Pollio, on the other hand, asserted that he had served two masters as a slave at Pisaurum, practised medicine, been manumitted, joined another slave household which was for sale, and was bought as a slave, at his own request, by Pollio. Does not this entire case consist of a Comparison between the two Causes, and of two very different Conjectures? (The principle governing claims and denials is the same as that governing prosecution and defence.)

Pisaurum (Pesaro) suggest an area further north. The circumstances of the case are unknown: what "king" is meant?

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- Ducitur coniectura primum a praeteritis: in his sunt personae causae consilia. Nam is ordo est, ut facere voluerit potuerit fecerit. Ideoque intuendum ante omnia qualis sit de quo agitur. Accusatoris autem est efficere ut si quid obiecerit non solum turpe sit, sed etiam crimini de quo iudicium est quam maxime conveniat. Nam si reum caedis inpubicum vel adulterum vocet, laedat quidem infamia, minus tamen hoc ad fidem valeat quam si audacem petulantem crudelem temerarium ostenderit. Patrono, si fieri poterit, id agendum est ut obiecta vel neget vel defendat vel minuat: proximum est ut a praesenti quaestione separet. Sunt enim pleraque non solum dissimilia sed etiam aliquando contraria, ut si reus furti prodigus dicatur aut neglegens: neque enim videtur in eundem et contemptus pecuniae et cupiditas cadere. Si deerunt haec remedia, ad illa declinandum est, non de hoc quaeri, nec eum qui aliqua peccaverit utique commisisse omnia, et hanc fiduciam fuisse accusatoribus falsa obiciendi, quod laesum et vulneratum reum speraverint hac invidia opprimi posse.
- 31 Tales a¹⁵ propositione accusatoris contraque eam loci oriuntur. Saepe a persona prior ducit argumenta defensor, et interim generaliter: incredibile esse a filio patrem occisum, ab imperatore proditam hostibus patriam. Facile re-

¹⁵ tales a *Winterbottom*: alia A: alii *recc.*

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Conjecture is derived, in the first place, from the past. This includes (1) Persons, (2) Motives, and (3) Designs. The natural order is: he wanted to do it, he was able to do it, he actually did it. (1) We must therefore consider first of all what sort of a person it is who is involved in the case. It is the accuser's business to ensure that any attacks on character he makes are not only shaming but, so far as possible, appropriate to the charge which is before the court. If he calls a man accused of murder a debauchee or an adulterer, the discredit would indeed be damaging, but it would not do as much for the accuser's credibility as if he showed him to be bold, insolent, cruel, and reckless. The defence advocate, if he can, must endeavour to deny, defend, or play down accusations which have been made; the next best thing is to dissociate these from the immediate Question. Some accusations are not only not in keeping with, but sometimes actually contrary to, the main charge: for example, if a man charged with theft is described as extravagant or careless, since contempt for money and desire for money do not seem to go together in the same person. Failing these remedies, we must have recourse to the plea that "this is not the question," or "the man who has committed some offences has not necessarily committed all," or "the prosecution felt confident in making false charges because they hoped that a damaged and wounded defendant could be crushed by the odium thus aroused."

Such are the topics which arise out of, and are directed against, the initial statement of the accuser. Arguments from character are often initiated by the defence, sometimes (a) in general terms—"it is incredible that a son should kill his father, or that a general should betray his country to the enemy"—(these however are easily an-

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spondetur, vel quod omnia scelera in malos cadant ideoque saepe deprensa sint, vel quod indignum sit crimina ipsa
32 atrocitate defendi. Interim proprie, quod est varium: nam dignitas et tuetur reum et nonnumquam ipsa in argumen-
tum facti convertitur, tamquam inde fuerit spes impunitatis: proinde paupertas humilitas opes, ut cuique ingenio vis
33 est, in diversum trahuntur. Probi vero mores et ante actae vitae integritas numquam non plurimum profuerint. Si nihil obicietur, patronus quidem in hoc vehementer incumbet, accusator autem ad praesentem quaestionem de qua sola iudicium sit cognitionem alligabit, dicens neminem non aliquando coepisse peccare, nec pro venia¹⁶ du-
34 cendum scelus primum. Haec in respondendo: sic autem praeparabit actione prima iudicum animos ut noluisse potius obicere quam non potuisse credatur. Eoque satius est omni se ante actae vitae abstinere convicio quam levibus aut frivolis aut manifesto falsis reum incessere, quia fides ceteris detrahitur: et qui nihil obicit omisisse credi potest maledicta tamquam supervacua, qui vana congerit confitetur unum in ante actis argumentum, in quibus vinci
35 quam tacere maluerit. Cetera quae a personis duci solent in argumentorum locis exposuimus.

Proxima est ex causis probatio, in quibus haec maxime

¹⁶ D.A.R.: encenia A: innocentia Gertz

²⁹ 5.10.20.

³⁰ Compare *Ad Herennium* 2.3, *De inventione* 2.17–28, but note that Q. confines *causa* to emotive reasons, putting rational considerations under *consilia* (§ 42).

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swered by saying *either* "all crimes involve bad men and this is why they are so often detected" or "it is wrong for crimes to be defended on the ground of their outrageousness"), and sometimes (b) on special grounds, which are various. Thus good standing both protects a defendant and is sometimes turned into an argument for his guilt, on the ground that it has given him hope of impunity. Likewise poverty, humble position, and wealth are open to very different interpretations, according to the individual's natural qualities. However, a good character and an honourable past life never fail to be a great help. If no character charge is made, the defending advocate will lean heavily on this aspect, while the prosecutor will try to tie down the hearing to the question in hand, the only one (he will say) which is before the court, and will remark that "everyone has to start going wrong at some time" and the fact that it is a first offence is not to be taken as an excuse. These points are the ones to make in a reply; but the prosecutor should also, in his original pleading, dispose the judge to believe that he has been unwilling rather than unable to bring charges against character. It is thus better to refrain from any attack on the defendant's past life than to weigh into him with slight, frivolous, or manifestly false charges, because these detract from the credibility of everything else. A speaker who makes no such allegations can be believed to have left them out as superfluous to his case, whereas one who assembles insubstantial ones is admitting that his only Argument rests on the defendant's past life, and he would rather be refuted in this than say nothing. The other points which are commonly derived from character have been explained in connection with Topics of Arguments.²⁹

(2) Next comes Proof from Motives,³⁰ of which the ones

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- spectantur: ira odium metus cupiditas spes: nam reliqua
 in horum species cadunt. Quorum si quid in reum con-
 veniet, accusatoris est efficere <ut>¹⁷ ad aliquid¹⁸ facien-
 dum causae valere videantur, easque quas in argumentum
 36 sumet augere: si minus, illuc conferenda est oratio, aut ali-
 quas fortasse latentes fuisse, aut nihil ad rem pertinere cur
 fecerit si fecit, aut etiam dignius esse odio scelus quod non
 habuerit causam. Patronus vero, quotiens poterit, instabit
 huic loco, ut nihil credibile sit factum esse sine causa.
 Quod Cicero vehementissime in multis orationibus tractat,
 praecipue tamen pro Vareno, qui omnibus¹⁹ aliis pre-
 37 mebatur (nam et damnatus est). At si proponitur cur
 factum sit, aut falsam causam aut levem aut ignotam reo
 dicet. Possunt autem esse aliquae interim ignotae: an he-
 redem habuerit, an accusaturus fuerit eum a quo dicitur
 occisus. Si alia defecerint, non utique spectandas esse cau-
 sas, nam quem posse reperiri qui non metuat oderit speret,
 38 plurimos tamen haec salva innocentia facere. Neque illud
 est omittendum, non omnis causas in omnibus personis
 valere: nam ut alicui sit furandi causa paupertas, non erit
 idem in Curio Fabricioque momentum.
 39 De causa prius an de persona dicendum sit quaeritur,
 varietate est ab oratoribus factum, a Cicerone etiam prae-
 latae frequenter causae. Mihi si neutro litis condicio prae-
 ponderet secundum naturam videtur incipere a persona.
 Nam hoc magis generale est rectorque divisio: an ullum

¹⁷ *add. Spalding* ¹⁸ *Halm: quid A*

¹⁹ *criminibus Puccioni ('charges')*

³¹ Stock examples of virtuous poverty (compare 12.2.30). See also, e.g., Cicero, *De senectute* 43, 53; Horace, *Carmina* 1.12.40.

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most considered are anger, hatred, fear, desire, and hope. Other motives fall under species of these. If any of these applies to the accused, it is the prosecutor's business to make the motives appear sufficient to produce a certain action, and to amplify the motives which he is going to use for his Argument. Otherwise, he must have recourse to suggesting either that there were perhaps some hidden motives, or that, if he did the deed, why he did it is irrelevant, or even that a crime is all the more abominable for being unmotivated. The defence advocate, on the other hand, will dwell whenever possible on the point that an unmotivated act is incredible. Cicero develops this with great vigour in many speeches, but especially in *Pro Vareno*, because Varenus had everything else against him. (After all, he was condemned!) But if a motive is alleged, the defending counsel will say that it is false or inept or unknown to the accused. (Some motives may in fact be unknown at the time—for example, whether the man whom he is accused of killing had an heir, or was going to prosecute the defendant.) If all else fails, he will say that motives do not necessarily need to be considered: for whom can one find who does not fear, hate, or hope, and yet most people have these feelings and preserve their innocence! We must not forget either that all motives are not effective for all persons: for some, poverty may be a motive for stealing, but it will not have that force for a Curius or a Fabricius.³¹

The question is often asked whether we should deal with motivation or with character first. Orators' practice varies; Cicero in fact frequently puts the motives first. I think the natural course is to begin with character, if the circumstances of the case do not weigh heavily in either direction. This is the more general point, and the more cor-

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- 40 crimen credibile, an hoc. Potest tamen id ipsum, sicut ple-
 raque, vertere utilitas. Nec tantum causae voluntatis sunt
 quaerendae, sed interim et erroris, ut ebrietas ignorantia.
 Nam ut haec in qualitate crimen elevant, ita in coniectura
 41 premunt. Et persona quidem nescio an umquam, utique in
 vero actu rei, possit incidere de qua neutra pars dicat: de
 causis frequenter quaeri nihil attinet, ut in adulteriis, ut in
 furtis, quia illas per se ipsa crimina secum habent.
- 42 Post haec intuenda videntur et consilia, quae late pa-
 tent: an credibile sit reum sperasse id a se scelus effici
 posse; an ignorari cum fecisset; an etiam si ignoratum non
 esset absolvi vel poena levi transigi vel tardiore vel ex qua
 minus incommodi consecuturus quam ex facto gaudii
 43 videretur; an etiam tanti putaverit poenam subire? Post
 haec, an alio tempore et aliter facere vel facilius vel secu-
 rius potuerit, ut dicit Cicero pro Milone enumerans pluri-
 mas occasiones quibus ab eo Clodius inpune occidi potue-
 rit. Praeterea cur potissimum illo loco, illo tempore, illo
 modo sit adgressus, qui et ipse diligentissime tractatur pro
 44 eodem locus, an etiam, si nulla ratione ductus est, impetu
 raptus sit et absque sententia (nam vulgo dicitur scelera
 non habere consilium), an etiam consuetudine peccandi
 sit ablati.

Excussa prima parte 'an voluerit', sequitur 'an potue-

32 38ff.

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rect Division is: (a) Is any crime credible of *this* defendant? (b) Is *this* crime credible? However, as so often, expediency may reverse the order. It is not only reasons for intention which we have to look for, but sometimes also reasons for mistakes, such as drunkenness or ignorance; while these are mitigating factors in an Issue of Quality, they are damaging in a Conjecture. I suspect indeed that there can never be a person, at any rate in a real case, about whose character neither side says anything, whereas it is often irrelevant to ask about motives, for example in cases of adultery or theft, where the charges themselves imply the motive.

(3) We have next also to consider Design, which is a wide area: is it credible that the defendant hoped either that he could carry out this crime, or that it could be unknown when he had done it, or again that, even if it became known, he could be acquitted or meet with a light or tardy punishment, or one the trouble of which might seem less than the joy secured by the deed itself? Did he even think it worthwhile to bear the punishment? Then again, could he have done it more easily or safely at another time or in another way? So Cicero in *Pro Milone*³² lists the many occasions on which Milo could have killed Clodius with impunity. Again, why should he have chosen this particular place, time, and method for his attack? (This topic too is very thoroughly treated in the same defence.) Again, if he was not guided by any reasonable consideration, was he carried away by impulse without making a conscious decision (it is commonly said that crimes are without Design) or was he even led astray by a habit of wrongdoing?

Having dealt thoroughly with "whether he wished to do it," which comes first, we come next to the question

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rit'. Hic tractatur locus tempus, ut furtum in loco cluso
 frequenti, tempore vel diurno, cum testes plures, vel
 45 nocturno, cum maior facultas.²⁰ Inspiciuntur itaque dif-
 ficultates occasiones, quae sunt plurimae ideoque exem-
 plis non egent. Hic sequens locus talis est ut si fieri non
 potuit sublata sit lis, si potuit sequatur quaestio an fecerit.
 Sed haec etiam ad animi coniecturam pertinent: nam et ex
 his colligitur an speraverit. Ideo spectari debent et instru-
 menta, ut Clodi ac Milonis comitatus.

46 Quaestio 'an fecerit' incipit a secundo tempore, id est
 praesenti <aut adhaerenti aut>²¹ coniuncto, quorum sunt
 sonus clamor gemitus: <deinde>²² insequentis latitatio me-
 tus, similia. His accedunt signa, de quibus tractatum est,
 47 verba etiam et facta, quaeque antecesserunt quaeque inse-
 cuta sunt. Haec aut nostra sunt aut aliena. Sed verba nobis
 magis nocent et minus prosunt nostra quam aliena, magis
 prosunt et minus nocent aliena quam nostra. Facta autem
 interim magis prosunt nostra, interim aliena, ut si quid
 quod pro nobis sit adversarius fecit: semper vero magis
 nocent nostra quam aliena.

48 Est et illa in verbis differentia, quod aut aperta sunt aut
 dubia. Seu nostra seu aliena sunt, infirmiora in utramque

²⁰ D.A.R.: difficultas A ²¹ add. D.A.R. after Gertz, Rader-
 macher, and Winterbottom (cf. 5.10.46)

²² Winterbottom, after Burman: A has it before coniuncto

³³ This topic—"will and means," "motive and opportunity,"
βούλησις καὶ δύναμις—was used in rhetoric from the beginning
 (e.g. in Gorgias' *Palamedes*) and is well discussed by Hermogenes
 (46–47 Rabe, Heath (1995) 37 ("motive and capacity")). See also
 GD 46–47.

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whether he *could* have done it.³³ Here we discuss Place and Time. For example, theft: was the place inaccessible or frequented? Was the time day (when there are more witnesses) or night (when there is more opportunity)? We therefore examine difficulties and chances, which are very numerous and so do not need illustration. This second topic means that, if the act could not have been committed, there is no case, but, if it could, the Question "Did he do it?" follows. These points involve also Conjecture as to Intention, for this is how one infers whether he had hopes. Means must also be considered: for example, the retinues of Clodius and of Milo.

The Question "Did he do it?" begins with the second division of time—that is, the present, <either Adherent > or Conjunct³⁴ (including sounds, shouts, groans)—and proceeding to the following stage (concealment, fear, and the like). To this must be added Signs (which I have already discussed),³⁵ and also words and acts, both antecedent and subsequent to the crime. These are either our own or those of others. With words, our own do us more harm and less good than those of others, while those of others do us more good and less harm than our own. With actions, it is sometimes ours that profit us more, and sometimes those of others—for example, if our opponent has done something which tells in our favour—while there is always more damage from what we do than from what others do.

With words, there is yet another distinction, namely that they are either plain or of doubtful meaning. Doubtful words, whether our own or others', are inevitably less tell-

³⁴ See 5.10.46.

³⁵ 5.9.

sint necesse dubia: tamen nostra saepe nobis nocent, ut in illa controversia: 'interrogatus filius ubi esset pater, dixit: ubicumque est, bibit;²³ at ille in puteo mortuus est inventus.' Aliena quae sunt dubia numquam possunt nocere nisi aut incerto auctore aut mortuo. 'Nocte audita vox est: cavete tyrannidem', et 'interrogatus cuius veneno moreretur respondit: non expedit tibi scire.' Nam si est qui possit interrogari, solvet ambiguitatem. Cum autem dicta factaque
 49
 50 nostra defendi solo animo possint, aliena varie refutantur.

De uno quidem maximo genere coniecturalium controversiarum locuti videmur, sed in omnis aliquid ex his cadit. Nam furti, depositi, creditae pecuniae et a facultatibus argumenta veniunt ('an fuerit quod deponeretur') et a personis ('an ullum deposuisse apud hunc vel huic credidisse credibile sit, an petiorem calumniari, an reum infitiatorem esse vel furem'). Sed etiam in furti reo sicut in caedis
 51 quaeritur de facto et de auctore. Crediti et depositi duae quaestiones, sed numquam iunctae, an datum sit, an redditum. Habent aliquid proprii adulterii causae, quod plerumque duorum discrimen est et de utriusque vita dicendum, quamquam et id quaeritur, an utrumque pariter defendi oporteat. Cuius rei consilium nascetur ex causa: nam si adiuvabit pars altera, coniungam, si nocebit,

²³ *Gertz*: vivit A

³⁶ The words *bibit* ("is drinking") and *vivit* ("is alive"), the reading of A, probably sounded much the same in Q.'s time (see Allen (1965) 41). The point of the story seems to depend on the boy's being understood to refer to his father's drinking habits. Presumably the boy is charged with parricide.

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ing for either party. Our own ambiguous words, however, often damage us, as in the following *controversia*: "A son was asked where his father was, and replied, 'Wherever he is, he is drinking':³⁶ and the father was found dead in a well." Ambiguous words of others can never do us harm, unless the speaker is either unknown or dead: "A voice was heard in the night, crying, 'Beware of tyranny';" or "When asked by whose poison he was dying, he replied 'It is better for you not to know.'" If there is anyone who can be asked, he will clear up the ambiguity! Although our own words and actions can be defended only by intention, those of others can be disposed of in various ways.

I seem to have been speaking about a single very important type of Conjectural dispute; but something of all this applies to all Conjectures. Thus in cases relating to theft, deposits, and loans, Arguments come both from opportunity (was there any money to deposit?) and from persons (can we believe that anyone deposited money with this man or lent to him, or that the claimant is making a false accusation, or that the defendant denies his obligation, or is a thief?). But even in the case of a defendant accused of theft (as of murder), there is a Question both about the act and about the perpetrator. With loans and deposits, there are two Questions, but they are never combined: "Was the money given?" and "Has it been returned?" It is a special feature of cases of adultery that two persons are generally at risk, and the past lives of both of them must be addressed; there is however another Question, namely whether the two should be defended jointly. The line to be taken about this will depend on the Cause: if one party can help the other, I shall put them together; if

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- 52 separabo. Ne quis autem mihi putet temere excidisse quod
 plerumque duorum crimen esse adulterium, non semper
 dixerim, potest accusari sola mulier incerti adulterii: 'mu-
 nera domi inventa sunt, pecunia cuius auctor non extat,
 53 codicilli dubium ad quem scripti.' In falso quoque ratio
 similis: aut enim plures in culpam vocantur aut unus. Et
 scriptor quidem semper tueri signatorem necesse habet,
 signator scriptorem non semper, nam et decipi potuit. Is
 autem qui hos adhibuisse et cui id factum dicitur et scrip-
 torem et signatores defendet. Idem argumentorum loci in
 causis proditionis et adfectatae tyrannidis.
- 54 Verum illa scholarum consuetudo ituris in forum po-
 test nocere, quod omnia quae in themate non sunt pro no-
 bis ducimus. Adulterium obicis: 'quis testis? quis index?'
 <Proditionem>²⁴: 'quod pretium? quis conscius?' Vene-
 num: 'ubi emi? a quo? quando? quanti? per quem dedi?'
 Pro reo tyrannidis adfectatae: 'ubi sunt arma? quos con-
 55 traxi satellites?' Neque haec nego ipsis esse dicendum et
 utendum²⁵ pro parte suscepta: nam et in foro aliqua, quan-
 do adversarius probare non poterit, desiderabo. Sed in
 foro tanta illa facilitate nolim desiderari,²⁶ ubi non fere
 56 causa agitur ut non aliquid ex his aut plura ponantur. Huic

²⁴ *add. Spalding* ²⁵ ipsis esse dicendum et utendum
Shackleton Bailey: esse dicenda et ipsis utendum A

²⁶ tanta . . . desiderari *Winterbottom*: tantam illam facilitatem
 olim desideravimus A

³⁷ "Attempted tyranny" is a very common declamation theme:
 e.g. *Declamationes minores* 267, Calpurnius Flaccus 6.11, *GD*
 32-33. For treachery cases, see 5.10.107, 7.1.42; Bonner, *RD* 109.
 Compare 5.9.13, 5.11.12, 7.2.2.

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not, I shall separate them. (However, in case anyone thinks I have been careless in letting slip the remark that adultery is “generally”—not “always”—a crime of two persons, let me point out that a woman alone may be accused of adultery with an unknown man: “presents were found in the house; money from an unknown source; letters to an unknown person.”) Similarly with forgery: there are either several accused or only one, and the writer of the document always finds it necessary to support the signatory, but the signatory does not always support the writer, because he may in fact have been deceived. On the other hand, the man who is said to have called them in, and for whom the thing is said to have been done, will defend both the writer and the signatories. The same Topics of Argument apply in cases of treachery and attempted tyranny.³⁷

The school custom of regarding everything not stated in the “theme” as favourable to one’s own case can be damaging to future practitioners in the courts. You bring a charge of adultery: “Who is the witness? Who is the informer?” <Of treachery>: “What was the reward? Who was my accomplice?” Of poisoning: “Where did I buy it? From whom? When? For how much? Whom did I get to give the dose?” For the defence in a charge of attempted tyranny: “Where are the arms? What bodyguards have I hired?” I do not say that students should not say these things themselves, or not use them on behalf of the side they have taken. And even in court I shall make some such demands when my opponent is unable to prove his point. In court, however, I should not wish demands to be made so readily, for there we hardly find a case in which one or more of those facts are not given us. Similar to this is the practice

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simile est quod in epilogis quidam quibus volunt liberos parentes nutrices accommodant: nisi quod magis concesseris ea quae non sint posita desiderare quam dicere.

De animo quo modo quaeratur satis dictum est, cum ita dividerimus: an voluerit, an potuerit, an fecerit. Nam qua via tractatur an voluerit, eadem quo animo fecerit: id enim est, an male facere voluerit.

- 57 Ordo quoque rerum aut adfert aut detrahit fidem: multo scilicet magis res prout <ponuntur>²⁷ congruunt aut repugnant. Sed haec nisi in ipso complexu causarum non deprehenduntur. Quaerendum tamen semper quid cuique conecatur et quid consentiat.

3

- 1 Sequitur coniecturam finitio; nam qui non potest dicere nihil fecisse, proximum habebit ut dicat non id fecisse quod obiciatur. Itaque pluribus in legibus isdem quibus coniectura versatur, defensionis tantum genere mutato, ut in furtis depositis adulteriis. Nam quem ad modum dicimus 'non feci furtum', 'non accepi depositum', 'non commisi adulterium', ita 'non est hoc furtum', 'non est hoc infitiatio', 'non est hoc adulterium'. Interim a qualitate ad
- 2

²⁷ *add. Spalding*

³⁸ Q. means that, in fictitious declamations, it is a less objectionable practice to challenge the opponent to produce evidence not implicit in the given problem than it is to add circumstances to one's own case by free invention. ³⁹ § 27.

¹ Compare 7.2.50, where an *infitiator* is the sort of person who would deny that he had received a deposit.

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of some declaimers, in their Epilogues, of providing any character they choose with children, parents, or nurses, though it seems rather more excusable to "demand" facts not given by the theme than to introduce them oneself!³⁸

Enough was said about inquiry into Intention when we made the Division into "Did he want to do it?" "Could he have done it?" and "Did he actually do it?"³⁹ The question "With what intention did he do it?" is dealt with by the same method as "Did he want to do it?" for it simply means "Did he want to do wrong?"

Again the order of the facts may either add to, or detract from, their credibility; the consistency or inconsistency of facts is much increased by the way in which <they are presented>. But these things can only be detected in the actual context of Causes. It is always right, however, to consider what coheres or is consistent with each item.

CHAPTER 3

Division in the Issue of Definition

Definition comes next after Conjecture. The accused who cannot say he has done nothing will, as his next recourse, take the position that he did not do what he is charged with. Consequently, Definition works in connection with most of the same laws as does Conjecture, except that the type of defence is different: for example in theft, deposits, and adultery. For just as we say "I have not committed theft," "I have not received a deposit," "I am not guilty of adultery," so we say "This is not theft," "This is not a denial of the claim,"¹ "This is not adultery." Sometimes it is from

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finitionem descenditur, ut in actionibus dementiae, malae tractationis, rei publicae laesae: in quibus si recte facta esse quae obiciuntur dici non potest, illud succurrit: 'non est <hoc dementem esse,>¹ male tractare, rem publicam laedere.'

- Finitio igitur est rei propositae propria et dilucida et
 3 breviter comprehensa verbis enuntiatio. Constat maxime, sicut est dictum, genere specie differentibus propriis: ut si finias equum (noto enim maxime utar exemplo), genus est animal, species mortale, differens irrationale (nam et homo mortale erat), proprium hinniens.
- 4 Haec adhibetur orationi pluribus causis. Nam tum est certum de nomine sed quaeritur quae res ei subicienda sit, tum res est manifesta sed quo <nomine appellanda sit non constat. Si de>² nomine constat, de re dubium est, interim
 5 coniectura est, ut si quaeratur quid sit deus. Nam qui neget deum esse spiritum omnibus partibus inmixtum, non hoc dicat, falsam esse divinae illius naturae appellationem, sicut Epicurus, qui humanam ei formam locumque inter

¹ *suppl. Regius*

² *suppl. D.A.R., after edd.*

² A Greek (*δίκη παρανοίας*) rather than a Roman type of action, though it was open to the relatives under Roman law to ask for a guardian (*curator*) for a person alleged to be insane. Bonner, *RD* 93. ³ See 7.4.11, where Q. compares this declamatory law (again Greek rather than Roman: see Bonner, *RD* 94) with real cases of matrimonial disputes (*rei uxoriae*).

⁴ Once again, primarily a Greek concept (*ἀδικεῖν τὸν δῆμον*): Bonner, *RD* 97–98. ⁵ 5.10.55.

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Quality that the shift is made to Definition, as in actions of mental incapacity,² maltreatment,³ or offences against the state.⁴ In these, if it is impossible to say that the alleged acts were justifiable, we have recourse to “<This is> not <lunacy, or> maltreatment, or an offence against the state.”

A Definition, then, is an accurate, lucid, and brief verbal expression of a fact. It normally comprises, as has been said,⁵ Genus, Species, Differentia, and Properties. For example, if you were to define a horse (I shall use a particularly familiar example), the Genus is “animal,” the Species “mortal,” the Differentia “nonrational” (man too is “mortal”!), the Property “neighing.”⁶

There are several reasons for introducing this into a speech. Sometimes there is no doubt about the name, but the question is what should fall under it. In other cases, the thing is plain enough but <there is no agreement about what name it should be called by. If> the name is agreed, and the doubt concerns the thing, sometimes (1) we have a Conjecture; for example, if the Question is “what is God?” Here, a man who denies that God is “a spirit diffused through all the parts of the world”⁷ would not be saying that it is mistaken to call the world divine, as Epicurus would, for he gave God human form and a place in the gaps

⁶ A stock example in philosophical schools: compare, e.g., Sextus Empiricus, *Hypotyposes* 2.211 (= 1.287 Bury (LCL)).

⁷ A Stoic definition (SVF 2. 1027: πνεῦμα . . . διήκον δι’ ὅλου τοῦ κόσμου). Q. means that to deny this all-pervading spirit does not entail denying the divinity of the universe, in which Platonists and others believed without subscribing to the Stoic materialist immanentism.

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- mundos dedit. Nomine uterque uno utitur, utrum sit in re
6 coniectat. Interim qualitas tractatur, ut 'quid sit rhetorice,
vis persuadendi an bene dicendi scientia'. Quod genus est
in iudiciis frequentissimum. Sic enim quaeritur an depre-
hensus in lupanari cum aliena uxore adulter sit: quia non
de appellatione sed de vi facti eius ambigitur, an omnino
peccaverit; nam si peccavit, non potest esse aliud quam
adulter.
- 7 Diversum est genus cum controversia consistit in no-
mine quod pendet ex scripto, nec versatur in iudiciis nisi
propter verba quae litem faciunt: an qui se interficit homi-
cida sit, an qui tyrannum in mortem compulit tyrannicida,
an carmina magorum veneficium. Res enim manifesta est
sciturque non idem esse occidere se quod alium, non idem
occidere tyrannum quod compellere ad mortem, non idem
carmina ac mortiferam potionem, quaeritur tamen an eo-
dem nomine appellanda sint.
- 8 Quamquam autem dissentire vix audeo a Cicerone, qui
multos secutus auctores dicit finitionem esse de eodem et
de altero (semper enim neganti aliquod esse nomen dicen-
dum quod sit potius), tamen equidem tris habeo velut spe-

⁸ Usener, *Epicurea* fr. 352. For Epicurus' religion (anthropomorphic gods who dwell in the *intermundia* and are not concerned with human affairs), see Cicero, *De natura deorum* 1 (doubtless known to Q.), and, in general, D. Obbink, *Philodemus on Piety* (Oxford, 1996) 1–23.

⁹ See 2.15.

¹⁰ See 5.10.39.

¹¹ Similarly, "Is a sleeping-draught a poison?" (*Declamationes minores* 246), "Is a love-potion a poison?" (*ibid.* 385, with Win-

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between the worlds.⁸ Both use the same word; both use Conjecture to determine which concept fits the facts. Sometimes (2) it is a question of Quality: "What is Rhetoric? Is it the power of persuasion or the science of speaking well?"⁹ This kind of thing is very common in the courts. This is the way in which one asks whether the man caught with another man's wife in a brothel is an adulterer. Here there is no doubt about the name, but only about the significance of the act: was it in any sense wrongdoing? If it was, he can only be an adulterer.¹⁰

There is a totally different type of Question in which the dispute rests on a word which depends on a written text. This appears in judicial proceedings only because of words which give rise to a legal conflict: is a suicide a homicide? Is the man who drives a tyrant to death a tyrannicide? Do magic spells amount to poisoning?¹¹ The facts here are clear, and it is understood that killing oneself is not the same as killing someone else, killing a tyrant is not the same as driving him to death, and spells are a different thing from a lethal potion; but the question is whether they should be called by the same name.

Although I hardly dare to differ from Cicero,¹² who follows many authorities in saying that Definition is a matter of Same and Other (since if you deny the applicability of a word, you always have to propose a better one), I myself hold that there are three species, as it were, of Definition.

terbottom's note). This second question is traditional: note [Aristotle], *Magna Moralia* 1188b31, on the woman acquitted by the Areopagus in such circumstances.

¹² *Topica* 83ff.

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- 9 cies. Nam interim convenit unum³ quaerere an hoc sit, ut an adulterium in lupanari. Cum hoc negamus, non necesse est dicere quid id vocetur, quia totum crimen infitiamur. Interim quaeritur hoc an hoc: furtum an sacrilegium (non quin sufficiat non esse sacrilegium, sed quia prosit⁴ dicere quid sit aliud); quo in loco utrumque finiendum est.
- 10 Interim quaeritur in rebus specie diversis, an et hoc et hoc eodem modo sit appellandum, cum res utraque habet suum nomen, ut amatorium, venenum. In omnibus autem huius generis litibus quaeritur an etiam hoc, quia nomen de quo ambigitur utique in alia re certum est. 'Sacrilegium est rem sacram de templo surripere: an et privatam?' 'Adulterium cum aliena uxore domi coire: an et in lupanari?' 'Tyrannicidium occidere tyrannum: an et in mortem
- 11 compellere?' Ideoque *συλλογισμός*, de quo postea dicam, velut infirmior est finitio, quia in hac quaeritur an idem sit huius rei nomen quod alterius, illo an proinde habenda sit haec atque illa.
- 12 Est et talis finitionum diversitas, ut quae idem⁵ sentiunt non isdem verbis comprehendantur,⁶ ut 'rhetorice est bene dicendi scientia', et eadem 'bene inveniendi' et 'bene enuntiandi' et 'dicendi secundum virtutem orationis' et 'dicendi quod sit officii': atque providendum ut si [officii]⁷ sensu non pugnant comprehensione dissentiant. Sed de

³ *D.A.R.*: suum A: solum *Zumpt*

⁴ *Shackleton Bailey*: sit A

⁵ quae idem *Winterbottom*: quidem A

⁶ *Winterbottom*: comprehendat A ⁷ *del. t*

¹³ Compare 3.6.33ff., 5.10.36ff.

¹⁴ 7.8.

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(1) Sometimes it is right to ask the single Question, whether the word is applicable: for example, is what is done in the brothel adultery? If we deny this, we do not have to explain what it should be called, because we are denying the whole charge. (2) Sometimes the Question is which of two terms is applicable: is it theft or sacrilege? (Not that it is not sufficient to show that it is not sacrilege, but it would be an advantage to show what else it is.) In this context, both terms must be defined. (3) Sometimes the Question is about things which differ in species, and we ask whether two things are both to be called by the same name, when both have names of their own, like "love-potion" and "poison." In all disputes under this head the Question is "Is *this* thing *also* properly so called?" because the disputed name certainly applies to some other thing. It is sacrilege to steal sacred property from a temple; is it sacrilege also if the property is private?¹³ It is adultery to sleep with another man's wife at home; is it also so in a brothel? It is tyrannicide to kill a tyrant: is it also tyrannicide to drive him to death? Thus the Syllogism, of which I shall speak later,¹⁴ is in a way a weaker form of Definition, since, while Definition asks whether one thing has the same name as another, Syllogism asks whether one thing is to be treated exactly as if it were another.

Another difference in Definitions arises because those which mean the same may not be expressed in the same words: thus Rhetoric is "the science of speaking well" and also the science of "inventing well" and "expressing well" and "speaking in accordance with the virtue of oratory" and "speaking as duty demands." One must take care here that if there is no conflict of sense there is a difference in

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his disputatur, non litigatur.

- 13 Opus est aliquando finitione obscurioribus et ignotioribus verbis: quid sit clarigatio, erectum citum, interim notis nominibus:⁸ quid sit penus, quid litus.

Quae varietas effecit ut eam quidam coniecturae, quidam qualitati, quidam legitimis quaestionibus subicerent.

- 14 Quibusdam ne placuit quidem omnino subtilis haec et ad morem dialecticorum formata conclusio, ut in disputationibus potius arguta⁹ verborum cavillatrix quam in oratoris officio multum allatura momenti. Licet enim valeat in sermone tantum ut constrictum vinculis suis eum qui responsurus est vel tacere vel etiam invitum id quod sit contra cogat fateri, non eadem est tamen eius in causis utilitas.
- 15 Persuadendum enim iudici est, qui etiam si verbis devictus¹⁰ est, tamen nisi ipsi rei accesserit tacitus dissentiet. Agenti vero quae tanta est huius praecisae comprehensionis necessitas? An, si non dixerō 'homo est animal mortale rationale', non potero, expositis tot corporis animique proprietatibus, latius oratione ducta vel a dis eum vel a mutis discernere? Quid quod et uno verbo¹¹ definitur res eadem (ut facit Cicero: 'Quid est enim vulgo? Universos'), et

⁸ *recc.*: nomine videbis A: nomine *Winterbottom*

⁹ *Zumpt*: argumenta A

¹⁰ devinctus *Regius* ('*tied down*')

¹¹ et uno verbo *Winterbottom*, after *Schuetz and Happel*: nec uno modo A

¹⁵ "Reparation" or "satisfaction."

¹⁶ See Cicero, *De oratore* 1.236; a legal technicality relating to the partition of an inheritance.

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formulation. But these are matters for discussion, not for litigation.

On occasion, Definitions are needed to explain obscure or unknown words (what is meant by *clarigatio*,¹⁵ *erctum citum*¹⁶) or sometimes even familiar words (what is meant by *penus*,¹⁷ *litus*¹⁸).

This variety has caused some writers to include Definition under Conjecture, others under Quality, others under Legal Questions. Some indeed entirely reject this subtle form of argument, modelled as it is on the methods of dialectic, and regard it as acute verbal sophistry for use in debate rather than as likely to be a significant contribution to the business of the orator. For, though in a dialogue Definition may be effective enough to tie the respondent down in chains of his own making and force him to be silent or even to give reluctant assent to something which goes against his case, it has not the same usefulness in Causes. For there we have to persuade the judge, who, even if he surrenders to the words, will continue to disagree tacitly unless he has assented to the actual facts. And what need has a pleader of such precision of definition? Even without saying "Man is a mortal and rational animal," can I not set out all the properties of mind and body at greater length, and so draw a distinction between man and the gods or the dumb animals? Again, the same thing can be defined both by a single word (as Cicero¹⁹ does: "What is meant by 'commonly'? 'Everybody'") and by a wider,

¹⁷ "Store": Aulus Gellius (4.1) reports a discussion between Favorinus and a grammarian on various legal senses of this word.

¹⁸ "Shore": see 5.14.34, Cicero, *Topica* 32.

¹⁹ *Pro Murena* 73.

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- latiore varioque tractatu, ut omnes oratores plerumque fecerunt: rarissime enim apud eos reperitur illa ex consuetudine philosophorum ducta servitus (est certe servitus) ad certa se verba adstringendi, idque faciendum in libris
- 17 Ciceronis de Oratore vetat M. Antonius. Nam est etiam periculosum, cum, si uno verbo sit erratum, tota causa cecidisse videamur, optimaque est media illa via, qua utitur Cicero pro Caecina, ut res proponatur, verba non periclitentur: 'etenim, recuperatores, non ea sola vis est quae ad corpus nostrum vitamque pervenit, sed etiam multo maior ea quae periculo mortis iniecto formidine animum perterritum loco saepe et certo statu demovet'; aut cum finitionem praecedit probatio, ut in Philippicis Cicero Servium Sulpicium occisum ab Antonio colligit et in clausula demum ita finit: 'is enim profecto mortem attulit qui causa mortis fuit.' Non negaverim tamen haec quoque ut expediet causae esse facienda, et si quando firme comprehendi poterit brevi complexu verborum finitio, esse id cum¹² elegans, tum etiam fortissimum, si modo erit illa inexpugnabilis.
- 19 Eius certus ordo est: quid sit, an hoc sit. Et in hoc fere labor maior est ut finitionem confirmes, quam ut rei¹³ finitionem adplices. In eo 'quid sit' duplex opus est: nam et nostra confirmanda est et adversae partis destruenda finitio.
- 20 Ideoque in schola, ubi nobis ipsi fingimus contradictio-

¹² *M.W.*: tum A

¹³ *Winterbottom*: in A

²⁰ 2.108. ²¹ 42. ²² *Recuperatores*, lit. "receivers," are judges appointed originally to try cases between *peregrini* and citizens, but later also used for cases between citizens.

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varied treatment, as all orators do most of the time. It is very rare to find in them the slavery (for slavery it certainly is) to certain particular words, which comes from the habits of the philosophers. Indeed Marcus Antonius in Cicero's *De oratore*²⁰ vetoes this practice. It is also dangerous, because, if there is an error in one word, we are seen to have failed in the whole case. The middle way is best, as taken by Cicero in *Pro Caecina*,²¹ namely to set out the facts and not run risks with the words: "Certainly, Assessors,²² the violence which threatens our persons and our lives is not the only kind; much more serious is that which uses the danger of death to strike the mind with panic and often dislodge it from its place and its assured stability." Alternatively, the Proof may precede the Definition: thus in the *Philippics*,²³ Cicero infers that Servius Sulpicius was killed by Antony and concludes with a Definition: "He who was the cause of death surely brought that death to pass." I would not deny that these moves too should be made, according to the needs of the Cause, and that if a Definition can be framed so as to be both secure and brief, this will then be elegant and indeed a great source of strength; but the Definition must be impregnable.

The order is fixed: first, *what* a thing is; then, whether it is *this*. There is usually more difficulty in establishing a Definition than in applying a Definition to a thing. In determining "what something is," there are two tasks to perform: we must both establish our own Definition and destroy our opponent's. Therefore in the school, where we ourselves make up "objections" to our position, we have to

²³ 9.7. Servius Sulpicius has died in the course of an embassy to Antony.

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nem, duos ponere debemus fines quales utrimque esse optimi poterunt. At in foro providendum num forte super-
 vacua et nihil ad causam pertinens an ambigua an contra-
 21 ria an communis sit finitio, quorum nihil accidere nisi
 agentis culpa potest. Ut recte autem finiamus ita fiet si
 prius in animo constituerimus quid velimus efficere: sic
 enim accommodari ad voluntatem verba poterunt. Atque
 ut a notissimo exemplo, quo sit res lucidior, non receda-
 mus: 'qui privatam pecuniam de templo surripuit, sacrile-
 22 gii reus est': culpa manifesta est, quaestio est an huic crimi-
 ni nomen quod est in lege conveniat. Ergo ambigitur an
 hoc sacrilegium sit. Accusator, quia de templo surrepta sit
 pecunia, utitur hoc nomine: reus, quia privatam surripu-
 erit, negat esse sacrilegium, sed furtum fatetur. Actor ergo
 ita finiet: 'sacrilegium est surripere aliquid <ex sacro>; reus:
 'sacrilegium est surripere aliquid>¹⁴ sacri.' Uterque finitio-
 23 nem alterius inpugnat. Ea duobus generibus evertitur, si
 aut falsa est aut parum plena. Nam illud tertium nisi stultis
 24 non accidit, ut nihil ad quaestionem pertineat. [Falsa est si
 dicas 'equus est animal rationale': nam est equus animal,
 sed irrationale. Quod autem commune cum alio est desi-
 net esse proprium.]¹⁵ Hic reus falsam dicit esse finitionem
 accusatoris, accusator autem non potest dicere falsam rei,
 nam est sacrilegium surripere aliquid sacri, sed dicit
 parum plenam, adiciendum enim 'aut ex sacro'.

¹⁴ *suppl. recc. (but ex M.W. for de)*

¹⁵ *del. Gesner*

²⁴ See above, on 7.3.10.

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set up two Definitions, and these must be the best possible on each side. In the courts, on the other hand, we have to guard against giving a Definition which is perhaps unnecessary, irrelevant, ambiguous, against our interests, or equally good for both sides; none of these things can happen except through the pleader's fault. A correct Definition will be assured if we first decide in our own mind what we want to effect; it will then be possible to suit the wording to our purpose. To make the matter clearer, let me stick with a very familiar example:²⁴ "A man who has stolen private money from a temple is accused of sacrilege." His guilt is plain: the question is whether the name given in the law fits his offence. It is therefore for debate whether this act is sacrilege. The accuser uses the word, on the ground that it was from a temple that the money was stolen. The defendant denies sacrilege but admits theft, on the ground that the money he stole was private. The prosecutor will therefore give the Definition "Sacrilege is stealing something <from a sacred place>"; the defendant will say "Sacrilege is stealing something > sacred." Each impugns the other's Definition. Now there are two ways of demolishing a Definition: it may be either false or not complete. (There is a third ground, irrelevance to the question; but this only happens to fools.) [It is a false Definition if you say, "A horse is a rational animal," because a horse is an animal but not rational. What is common to something else will cease to be a Property.] In our example, the defendant says that the accuser's Definition is false, but the accuser cannot say this of the defendant's (for sacrilege is "to steal something sacred") but he can say that it is incomplete, because it is necessary to add "or from a sacred place."

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- 25 Maximus autem usus in adprobando refellendoque fine priorum ac differentium, nonnumquam etiam *ἐτυμολογίας*. Quae tamen omnia, sicut in ceteris, confirmat aequitas, nonnumquam et coniectura mentis. *Ἐτυμολογία* maxime rara est: 'quid enim est aliud tumultus nisi perturbatio tanta ut maior timor oriatur? unde etiam nomen ductum est tumultus.' Circa propria ac differentia magna subtilitas, ut cum quaeritur an addictus, quem lex servire donec solverit iubet, servus sit. Altera pars finit ita: 'servus est qui est iure in servitute', altera: 'qui in servitute est eo iure quo servus', aut, ut antiqui dixerunt, 'qui servitatem servit'. Quae finitio, etiam si distat aliquo, nisi tamen propriis et differentibus adiuvatur, inanis est. [Dicet enim adversarius servire eum servitatem aut eo iure quo servum.]¹⁶ Videamus ergo propria et differentia, quae libro quinto leviter in transitu attigeram. Servus cum manu mittitur fit libertinus, addictus recepta libertate ingenuus: servus invito domino libertatem non consequetur, <addictus vel invito solvendo consequetur:>¹⁷ ad servum nulla lex pertinet, addictus legem habet: propria liberi, quod nemo habet nisi liber, praenomen nomen cognomen tribus;¹⁸ habet haec addictus.
- 28 Excusso quid sit, prope peracta est quaestio an hoc sit:

¹⁶ *del. M.W.*

¹⁷ *suppl. (e.g.) D.A.R. after Regius*

¹⁸ *Halm, after Spalding: tribum A*

²⁵ Cicero, *Philippics* 8.3. The etymology is false (but found also in Servius on *Aeneid* 2.486: *quasi timor multus*). In fact *tumultus* is connected with *tumere*, "to swell," not with *timere*, "to fear." ²⁶ See 3.6.57, 5.10.60.

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The most useful resource for establishing and refuting a Definition is to be found in Properties and Differentiae, sometimes also in Etymology. But all these things (as happens in other matters) are confirmed by Equity, and sometimes also by a process of conjecture. Etymology is very rare: "What is a 'tumult', other than a disturbance on such a scale that a greater fear arises from it? This is the origin of the word 'tumult'."²⁵ Much subtlety may be exercised over Properties and Differentiae; for example, when the question is whether a person in bond for debt, and ordered by the law to serve until he pays, is a slave. One side defines a slave as "one who is legally in servitude," the other as "one who is in servitude on the same legal terms as a slave" (or, to use the old expression, "who is serving his servitude").²⁶ This Definition, though it differs somewhat from the other, is valueless unless it is supported by Properties and Differentiae. [For the opponent will say that he is serving his servitude or is under the same legal conditions as a slave.] Let us therefore consider the Properties and the Differentiae on which I touched briefly in passing in Book Five.²⁷ When a slave is manumitted, he becomes a freedman; when a man who is in bond recovers his liberty he becomes a free man; a slave cannot obtain his liberty without the consent of his master; < a man who is in bond will obtain it by paying his debt, even without his master's consent >; no law applies to a slave, a person in bond has rights under the law. Properties of a free man—no one except a free man has these—are praenomen, nomen, cognomen, and tribe; a man held in bond possesses these.

Having dealt thoroughly with "what a thing is," we have

²⁷ 5.10.60; compare 3.6.57, *Declamationes minores* 311, 340.

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id enim agimus, ut sit causae nostrae conveniens finitio. Potentissima est autem in ea qualitas: an amor insania. Huc pertinebunt probationes quas Cicero dicit proprias esse finitionis, ex antecedentibus consequentibus adiunctis repugnantibus causis effectis, similibus, de quorum
29 argumentorum natura dictum est. Breviter autem pro Caecina Cicero initia causas effecta antecedentia consequentia complexus est: 'Quid igitur fugiebant? Propter metum. Quid metuebant? Vim videlicet. Potestis igitur principia negare cum extrema concedatis?' Sed similitudine quoque usus est: 'quae vis in bello appellatur, ea in
30 otio non appellabitur?' Sed etiam ex contrario argumenta ducuntur, ut si quaeratur amatorium venenum sit necne, quia venenum amatorium non sit.

Illud alterum genus quo sit manifestius adolescentibus meis (meos enim semper adolescentes putabo), hic quoque fictae controversiae utar exemplo. Iuvenes qui convivere solebant constituerunt ut in litore cenarent: unius,
31 qui cenae defuerat, nomen tumulo quem extruxerant inscripserunt. Pater eius, a transmarina peregrinatione cum ad litus idem adpulisset, lecto nomine suspendit se. Dicuntur ii causa mortis fuisse. Hic finitio est accusatoris:
32 'per quem factum est ut quis periret, causa mortis est'; rei:

²⁸ See, e.g., Plato, *Phaedrus* 244A, Plutarch, *Eroticus* 16 = *Moralia* 758D.

²⁹ *Topica* 88.

³⁰ 5.10.73.

³¹ 43-44.

³² For definitions of *causa mortis*, see *Declamationes minores* 270, 289, 292; Calpurnius Flaccus 16.

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practically settled the question whether "this" is it. Our object of course is to arrive at a Definition which suits our Cause. Now the most powerful element in a Definition is Quality: is love madness?²⁸ Relevant to this are the Proofs which Cicero²⁹ says are peculiar to Definition, namely those derived from Antecedents, Consequents, Adjuncts, Contraries, Causes, Effects, and the like. I have already dealt with the nature of these arguments.³⁰ Cicero, in *Pro Caecina*,³¹ embraces in a short passage Origins, Causes, Effects, Antecedents, and Consequences: "Why then did they fly? For fear. What were they afraid of? Violence, of course. Can you then deny the beginning, when you concede the end?" He also used Similarity: "Shall what is called violence in war not be called violence in peace?" Arguments are also taken from Contraries: for example, if one asks whether or not a love-potion is a poison, on the ground that a poison is not a love-potion.

The tomb on the beach

To make this second kind of Definition clearer to my boys—I shall always think of them as *my* boys—I will use here too an example from an imaginary Controversy. "Some young men, who were in the habit of dining together, decided to have a dinner on the beach. One of them had failed to turn up for the dinner; and they built a mound as a tomb and inscribed his name on it. This young man's father, landing on the same beach after a journey overseas, read the name, and hanged himself. They are said to have been the cause of his death."³² Here the prosecutor's Definition is "Anyone whose act leads to the death of another is the cause of death." The defendant's Defini-

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- ‘qui fecit quid sciens per quod perire homini necesse esset.’ Remota finitione accusatori sat est dicere: ‘causa mortis fuistis, per vos enim factum est ut homo periret: quia
 33 nisi vos illud fecissetis viveret.’ Contra: ‘Non statim per quem factum est ut quis periret is damnari debet, ut accusator, testis, iudex rei capitalis. Nec undecumque causa fluxit, ibi culpa est: ut si quis profectionem suaserit aut amicum arcessierit trans mare et is naufragio perierit, ad cenam invitarit et is cruditate illic contracta decesserit.
 34 Nec fuerit in causa mortis solum adulescentium factum, sed credulitas senis, in dolore ferendo infirmitas: denique si fortior fuisset aut prudentior viveret. Nec mala mente fecerunt, et ille potuit vel ex loco tumuli vel ex opere tumultuario suspicari non esse monumentum. Qui ergo puniri debent in quibus omnia desunt¹⁹ homicidae praeter manum²⁰’
- 35 Est interim certa finitio, de qua inter utramque partem convenit, ut Cicero dicit: ‘maiestas est in imperi atque in nominis populi Romani dignitate’: quaeritur tamen an
 36 maiestas minuta sit, ut in causa Corneli quaesitum est. Sed hic, etiam si videri potest finitiva, tamen quia de finitione non ambigitur iudicatio est qualitatis, atque ad eum potius

¹⁹ *D.A.R.* (absunt *Teuffel*): sunt *A*

²⁰ <voluntatem et> manum *Radermacher* (*‘the intention and the deed’*)

³³ See *Declamationes minores* 289.3 for the examples of the dangerous journey and the fatal dinner.

³⁴ Cicero, *Partitiones oratoriae* 105, *Fr. orat.* VII. 27 Schoell (Crawford (1994) p. 78).

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tion is: "Anyone who has knowingly done something as a result of which a man is certain to die." Setting aside the Definition, it is sufficient for the accuser to say "You people were the cause of death, because it was through your action that he died, and if you had not done that he would still be alive." The other side says: "It does not follow that a man through whose action someone has died should be condemned: what about prosecutors, witnesses, or judges in capital causes? Nor does the blame necessarily reside in the same quarter as the cause: suppose someone persuades a person to take a journey, or invites a friend from across the sea and the friend dies in a shipwreck; suppose someone invites a person to dinner and he dies of indigestion contracted there.³³ Nor should the action of the young men be regarded as the only factor in the cause of death; there is the old man's credulity, his weakness in bearing sorrow; in a word, if he had been braver or more sensible, he would still be alive. Nor did they act with any bad intention; and he could have guessed from the position of the mound or from its hasty construction that it was not a tomb. So why should they be condemned when they have none of the marks of the murderer—except the work of their hands?"

Sometimes we have an unquestioned Definition on which both parties agree, as in Cicero's "Majesty resides in the dignity of the power and name of the Roman people."³⁴ The Question is, however, whether this majesty has been diminished, as was the Question in the case of Cornelius. But although this case may seem to be one of Definition, nevertheless, since there is no doubt about the Definition, it is a judgement of Quality and should be referred rather to that Issue.

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statum reducenda: ad cuius forte quidem venimus mentionem, sed erat ordine proximus locus.

4

- 1 Est autem qualitas alia de summo genere atque ea quidem non simplex. Nam et qualis sit cuiusque rei natura et quae forma quaeritur: an immortalis anima, an humana specie deus, et de magnitudine ac numero: quantus sol, an unus mundus. Quae omnia coniectura quidem colliguntur,
- 2 quaestionem tamen habent in eo, qualia sint. Haec et in suasoriis aliquando tractari solent, ut, si Caesar deliberet an Britanniam inpugnet, quae sit Oceani natura, an Britannia insula (nam tum ignorabatur), quanta in ea terra, quo numero militum adgredienda in consilium ferendum sit. Eidem qualitati succedunt facienda ac non facienda, adpetenda vitanda: quae in suasorias quidem maxime cadunt, sed in controversiis quoque sunt frequentia, hac sola differentia, quod illic de futuris, hic de factis agitur.
- 3 Item demonstrativae partis omnia sunt in hoc statu: factum esse constat, quale sit factum quaeritur.

Lis est omnis aut <de aequo et iniquo aut>¹ de praemio

¹ *suppl. D.A.R.*

¹ I.e. other than the *qualitas* involved in special cases, just mentioned? But compare 6.4.4.

² Compare 7.2.6.

³ The proof that Britain was an island was established by a circumnavigation in AD 84 (Tacitus, *Agricola* 10.4), though it was confidently asserted before (e.g. Caesar, *De bello Gallico* 4.20.2).

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I have come to mention Quality thus incidentally; but it is in fact next in order.

CHAPTER 4

Division in Issues of Quality

There is another¹ sort of Quality, concerned with things in general, and a complex one at that, since we can ask about both the nature and the form of a thing—whether the soul is immortal, whether god has a human appearance—and also about its size and number—how big is the sun, whether there is only one universe.² All these problems are argued by Conjecture, but the Question they contain is one of a thing's Quality. They are sometimes treated in deliberative exercises too; for example, if Caesar is debating whether to attack Britain, we must bring into the debate the nature of the Ocean, whether Britain is an island (this was not known at the time),³ what its area is, and what size of force is needed for the invasion. To Quality in this sense also belongs what should or should not be done, or should be sought or avoided.⁴ These topics occur mainly of course in deliberative exercises, but they are common also in forensic, with the one difference that the former deals with the future and the latter with the past. Again, all the themes of Epideictic come under this Issue: the fact is admitted, the question turns on the Quality of the fact.

Every dispute involves <equity and its opposite,> re-

Q.'s remark implicitly flatters an achievement of Domitian's reign (so Calcante).

⁴ Cicero, *Topica* 89.

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aut de poena aut de quantitate eorum. Genus causae aut simplex aut comparativum: illic quid aequum, hic quid aequius aut quid aequissimum sit excutitur. Cum de poena iudicium est, a parte eius qui causam dicit aut defensio est criminis aut inminutio aut excusatio aut, ut quidam putant, deprecatio.

- 4 Defensio longe potentissima est qua ipsum factum quod obicitur dicimus honestum esse. Abdicatur aliquis quod invito patre militarit, honores petierit, uxorem duxerit: tuemur quod fecimus. Hanc partem vocant Hermagorei *κατ' ἀντίληψιν*, <alii vero *κατὰ διάνοιαν*>² ad intellectum id nomen referentes: Latine ad verbum tratam non inuenio, absoluta appellatur. Est enim de re sola
- 5 quaestio, iusta sit ea necne. Iustum omne continetur natura vel constitutione. Natura, quod fit secundum cuiusque
- 6 rei dignitatem. Hinc sunt pietas fides continentia et alia. Adiciunt et id quod sit par. Verum id non temere intuentum est: nam et vis contra vim et talio nihil habent adversum eum qui prior fecit iniusti, et non, quoniam res pares sunt, etiam id est iustum quod antecessit. Illa utrimque

² *suppl. Radermacher*

⁵ Compare Cicero, *De inventione* 2.69, where Quality is said to be concerned with equity and with rewards and punishments. I suggest (see text note) that Q. also made this division. There may be more missing than I have proposed; but the connection of thought in this paragraph can only be complete if *aequum* is given as one of the themes of *qualitas* in forensic cases.

⁶ Fr. 15a Mattbes. ⁷ Obscure. *Antilēpsis* (Lausberg, § 176) is literally "grip": the speaker takes hold of something to save himself being swept away (Syrianus 2.79 Rabe). Rader-

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ward, penalty, or the amount of these.⁵ Causes may be simple or comparative. In the former case, the question is what is fair; in the latter, what is fairer or fairest. When the judgement concerns a penalty, the pleader must either defend, extenuate, or excuse the alleged act, or, as some think, beg for mercy.

Absolute Quality

Much the strongest defence is to say that the act alleged is itself honourable. A son is disinherited because he has served as a soldier, sought office, or married, against his father's wishes. We defend what we did. The school of Hermagoras⁶ call this defence *kat' antilēpsin*; <others call it *kata dianoian*, > referring the word to understanding the action;⁷ I find no literal Latin translation of this: the defence is called "Absolute."⁸ The only question concerns the act: is it just or not? All justice rests either (1) on nature or (2) on convention. (1) "Nature" includes whatever is done because of the intrinsic value of the particular action. Under this head come piety, good faith, self-control, and the like. Some add "parity," but this is not a point to consider without careful thought, because the use of force against force and the "eye for an eye" principle⁹ involve no injustice towards the aggressor, while parity of actions does not imply that the first action was just. There is justice

macher's suggested supplement, though speculative, gives a more satisfactory explanation of *intellectum*.

⁸ Cicero, *De inventione* 2.69.

⁹ The *talio* principle existed in early Roman law: *Twelve Tables* 8.2-4 (= *ROL* 3. 476).

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iusta: eadem lex, eadem condicio; ac forsitan ne sint quidem paria quae ulla parte sunt dissimilia. Constitutio est in lege more iudicato pacto.

- 7 Alterum est defensionis genus in quo factum per se improbabile adsumptis extrinsecus auxiliis tuemur: id vocant *κατ' ἀντίθεσιν*. Latine hoc quoque non ad verbum transferunt, adsumptiva enim dicitur causa. In quo genere fortissimum est si crimen causa facti tuemur, qualis est defensio Orestis Horati Milonis. Ἀντέγκλημα dicitur, quia omnis nostra defensio constat eius accusatione qui vindicatur: 'occisus est sed latro', 'excaecatus sed raptor.'
- 8
- 9 Est et illa ex causis facti ducta defensio priori contraria, in qua neque factum ipsum per se, ut in absoluta quaestione, defenditur, neque ex contrario facto, sed ex³ aliqua utilitate aut rei publicae aut hominum multorum aut etiam ipsius adversarii, nonnumquam et nostra, si modo id erit quod facere nostra causa fas sit: quod sub extrario accusatore et legibus agente prodesse numquam potest, in
- 10 domesticis disceptationibus potest. Nam et filius patri in iudicio abdicationis et maritus uxori si malae tractationis accusabitur <et pater>⁴ filio si dementiae causa erit non inverecunde dicet multum sua interfuisse. In quo tamen

³ *Regius*: in A

⁴ *suppl. Winterbottom*

¹⁰ Compare Hermogenes 72ff. Rabe (Heath (1995) 46ff., calls it "counterplea"). ¹¹ Orestes killed Clytemnestra because she had murdered Agamemnon; Horatius killed his sister because of her love for one of the Curiatii (Cicero, *De inventione* 2.78); Milo killed Clodius in self-defence.

¹² Lausberg § 179.

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on both sides only when the law and the circumstances are the same. Perhaps indeed there is no "parity" either where there is dissimilarity in any respect. (2) Convention consists of law, custom, legal precedent, and contract.

Assumptive Quality

There is another form of defence in which we defend an action which is in itself unacceptable by taking up—"assuming"—external resources. This is called *kat' antithesin*, "by antithesis."¹⁰ Here again there is no literal Latin translation; it is called "Assumptive." The strongest line to take here is to defend the charge by the motive of the act: such are the defences of Orestes, Horatius, and Milo.¹¹ This is called *antenklēma* (countercharge),¹² because our whole defence rests on accusing the victim: "He was killed, but he was a robber," "He was blinded, but he was a rapist."

There is a further form of defence based on motives, the opposite of the last-mentioned, in which the act is not defended in itself, as in the Absolute form of Question, nor by an act of the other side, but by some result advantageous to the state or to a large number of people or even to our opponent, and sometimes indeed to ourselves, so long as the act is something we might rightfully do in our own interests. With an accuser outside the family and acting according to law, this can never help; in family disputes, it may. Thus a son pleading against his father in a case of disowning, or a husband against his wife if he is accused of wrongful treatment, or <a father> against a son in a case of mental incapacity, may quite properly allege that his action was very much in his own interest. But here the party seek-

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incommoda vitantis melior quam comoda petentis est causa.

11 Quibus similia etiam in vera rerum quaestione tractantur. Nam quae in scholis abdicatorum, haec in foro exheredatorum a parentibus et bona apud centumviros repetentium ratio est: quae illic malae tractationis, hic rei uxoriae, cum quaeritur utrius culpa divortium factum sit: quae illic dementiae, hic petendi curatoris.

12 Subiacet utilitati etiam illa defensio, si peius aliquid futurum fuit. Nam in comparatione malorum boni locum optinet levius, ut si Mancinus foedus Numantinum sic defendat, quod periturus nisi id factum esset fuerit exercitus. Hoc genus ἀντίστασις Graece nominatur, comparativum nostri vocant.

13 Haec circa defensionem facti: quae si neque per se ipsa nec adhibitis auxiliis dabitur, proximum est in alium transferre crimen, si possumus. Ideoque etiam in hos qui citra scriptum⁵ sunt status visa est cadere tralatio. Interdum ergo culpa in hominem relegatur, ut si Ti. Gracchus reus foederis Numantini (cuius metu leges populares tulisse in tribunatu videtur) missum se ab imperatore suo dicat;⁶

⁵ citra scriptum *Christ*: iam scripti A: etiam scriptum G: inscripti *Spalding*

⁶ *Spalding*: diceret A

¹³ Compare 3.8.3. The treaty of 137 was very controversial: Cicero, *De oratore* 1.181, Plutarch, *Tiberius Gracchus* 7, Velleius Paterculus 2.2.

¹⁴ Lausberg § 181.

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ing to avoid disadvantages has a better case than the one looking for positive advantage.

Problems like this are treated even in real investigations, since school themes about "disowned" sons involve the same principles as cases in the forum about sons who are deprived of an inheritance by their fathers and make claims in the centumviral courts. Similarly, wrongful treatment cases correspond to matrimonial disputes in which the question is which party is to blame for a divorce, and mental incapacity cases correspond to demands for the appointment of a guardian.

Expediency is also the principle underlying the defence in which it is argued that something worse would have happened, because in comparing bad with bad, the lesser evil counts as good: Mancinus for instance might defend the treaty of Numantia on the ground that if it had not been made the army would have been destroyed.¹³ This is called *antistasis* in Greek, "comparative" by Latin teachers.¹⁴

Transference

So much for the defence of an act. If this is unavailable on its own or even with the aid of outside resources, the next best thing, if possible, is to shift the charge on to someone else. This is why "Transference" has also been counted as one of the Issues which do not depend on written law. The blame is then sometimes put upon an individual (for example, if Tiberius Gracchus were accused of making the treaty of Numantia—fear of this accusation is supposed to have led him to bring forward his democratic laws as tribune—and were to say that he was under orders

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14 interim derivatur in rem, ut si is qui testamento quid iussus non fecerit dicat per leges id fieri non potuisse. Hoc *μετάστασιν* dicunt.

Hinc quoque exclusis excusatio superest. Ea est aut ignorantiae, ut si quis fugitivo stigmata scripserit eoque ingenuo iudicato neget se liberum esse eum scisse: aut necessitatis, ut cum miles ad commeatus diem non adfuit et
15 dicit se fluminibus interclusum aut valetudine. Fortuna quoque saepe substituitur culpa. Nonnumquam male fecisse nos sed bono animo dicimus. Utriusque rei multa et manifesta exempla sunt: idcirco non est eorum necessaria expositio.

Si omnia quae superscripta sunt deerunt, videndum an
16 inminui culpa possit. Hic est ille qui a quibusdam fieri solet status quantitatis. Sed ea cum sit aut poenae aut honoris, ex qualitate facti constituitur, eoque nobis sub hoc esse statu videtur sicut eius quoque quae ad numerum refertur a Graecis. Nam et *πηλικότητα* et *ποσότητα* dicunt, nos utrumque appellatione una complectimur.

17 Ultima est deprecatio, quod genus causae plerique ne-

¹⁵ Gracchus made the agreement because the Numantines refused to negotiate with anyone else (Plutarch, *Tiberius Gracchus* 5); but the trial which Q. suggests is fictitious.

¹⁶ In Latin also *remotio criminis*: *Ad Herennium* 1.24, Cicero, *De inventione* 2.86. Lausberg §§ 183–185.

¹⁷ See Lausberg §§ 187–191.

¹⁸ Compare 3.5.53. *Poson*? asks the question “how much?”; *pēlikon*? asks “how big?” Lausberg § 195.

¹⁹ Compare *Ad Herennium* 2.25, Cicero, *De inventione* 2.104. Lausberg §§ 192–194.

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from his commander)¹⁵ and sometimes diverted to circumstances (for example, if a man who has failed to comply with the instructions of a will were to plead that the laws made it impossible). This is called *metastasis*.¹⁶

Excuses of ignorance or compulsion

If these moves are ruled out, there remains the Excuse. This may be either (1) ignorance (as when a man brands as a slave a runaway who is afterwards adjudged to be a free man, and then denies that he knew he was free); or (2) necessity (as when a soldier overstays his leave and says he was delayed by floods or by illness). Fortune too is often made the scapegoat, and we sometimes say that we did wrong but meant well. There are many obvious examples of these last two moves, and so there is no need to explain them further.¹⁷

Extenuation

If all the above-mentioned possibilities fail, we have to see whether the offence can be made to seem less. Here comes what some make the Issue of Quantity. But when this means the amount of penalty or honour, it arises out of the Quality of the act, and so I classify it under this Issue, as I do also the type of Quantity which is related to number by the Greeks, who have two words *pēlikotēs* and *posotēs*, both of which we embrace under the one name.¹⁸

The plea for mercy

Finally, there is the plea for mercy,¹⁹ though most writers have said that this type of Cause never comes into

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- garunt in iudicium umquam venire. Quin Cicero quoque pro Q. Ligario idem testari videtur, cum dicit: 'causas, Caesar, egi multas et quidem tecum, dum te in foro tenuit ratio honorum tuorum, certe numquam hoc modo: ignoscite, iudices: erravit, lapsus est, non putavit, si umquam posthac', et cetera. In senatu vero et apud populum et apud principem et ubicumque sui iuris clementia est, habet locum deprecatio. In qua plurimum valent ex ipso qui reus est haec tria: vita praecedens si innocens, si bene meritus; spes in futurum innocenter victuri et in aliquo usu futuri; praeterea, si vel aliis incommodis vel praesenti periculo vel paenitentia videatur satis poenarum dedisse.
- 18
- 19 Extra nobilitas dignitas, propinqui amici. In eo tamen qui cognoscit plurimum ponendum est;⁷ laus enim misericordis potius quam repressio dissoluti consecutura est.

Verum et in iudiciis etiam si non toto genere causae, tamen ex parte magna hic locus saepe tractatur. Nam et divisio frequens est: <non fecisse et,>⁸ etiam si fecisset, ignoscendum fuisse, idque in causis dubiis saepe praevaluit, et epilogi omnes in eadem fere materia versari solent.

- 20 Sed nonnumquam etiam rei totius hic summa constituta. An vero si exheredatum a se filium pater testatus fuerit elogio propterea quod is meretricem amaverit, non omnis hic erit quaestio, an huic delicto pater debuerit ignoscere et centumviri tribuere debeant veniam? Sed etiam in formulis, cum poenariae sunt actiones, ita causam partimur: an

⁷ Gertz: ponendum si A ⁸ *suppl.* Gertz

²⁰ 30. ²¹ Here Q. seems to conceive a typical declamation theme as providing a case for the real court in which he and his pupils regularly pleaded.

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court. Indeed, Cicero in *Pro Ligario*²⁰ seems to support this view, when he says "I have pleaded many Causes, Caesar, and indeed with you, while your political career kept you active in the courts, but never have I said, 'Members of the jury, forgive this man, he erred, he lapsed, he did not think; if he ever does it again' . . ." and so on. However, in the senate, before the people or the emperor, or whenever clemency has free scope, there is room for this plea. In it, the three most effective points relating to the accused himself are (1) his previous life, if he is innocent and has done good service; (2) if he may be expected to live an innocent life in future and be of some use; (3) if he seems to have paid heavily enough already in other setbacks, in his present jeopardy, or by his repentance. External factors are birth, rank, connections, and friends. We must pin our main hopes, however, on the judge: praise for mercy, rather than blame for weakness, will be the result of his decision.

Even in the courts, however, this topic is often addressed, if not throughout the pleading, at least in the greater part of it. A common Division is: <"He did not do it, and> even if he had done it, he should have been pardoned"; this is often decisive in doubtful cases, and all Epilogues develop much the same theme. Sometimes indeed the nub of the whole case is here. For example, if a father has formally declared that he disinherited his son because he loved a prostitute, will not the whole question rest on whether the father ought to have pardoned this offence and whether the centumviral court should now show mercy?²¹ Even in penal actions governed by formulae, we divide the Cause into (1) whether the penalty has been in-

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commissa sit poena, an exigi debeat. Id autem, quod illi viderunt, verum est, reum a iudicibus hoc defensionis modo liberari non posse.

- 21 De praemiis autem quaeruntur duo: an ullo sit dignus qui petit, an tanto: ex duobus, uter dignior, ex pluribus, quis dignissimus. Quorum tractatus ex ipso meritorum genere ducuntur. Et intuebimur non rem tantum, sive adleganda sive comparanda erit, sed personam quoque (nam et multum interest, tyrannum iuvenis occiderit an senex, vir
- 22 an femina, alienus an coniunctus) et locum multipliciter (in civitate tyrannis adsueta an libera semper, in arce an domi) et quo modo factum sit (ferro an veneno) et quo tempore (bello an pace, cum depositurus esset eam potestatem an cum aliquid novi sceleris ausurus). Habent in
- 23 meritis gratiam periculum quoque et difficultas. Similiter liberalitas a quo profecta sit refert: nam in paupere gratior quam in divite, dante beneficium quam reddente, patre quam orbo. Item in quam rem dederit et quo tempore et quo animo, id est, num in aliquam spem suam: similiter alia.

- Et ideo qualitas maxime oratoris recipit operam, quia in utramque partem plurimum est ingenio loci, nec usquam tantum adfectus valent. Nam coniectura extrinsecus quoque adductas frequenter probationes habet et argumenta ex materia sumit; quale quidque videatur, elo-
- 24

²² I.e. the *plerique* of § 17.

²³ Heroism in battle (by the *vir fortis*, Greek *aristeus*) and Tyrannicide are the two common declamation situations involving rewards (often a choice of reward): *GD* 24–25, 32–33; Bonner, *RD* 88, 104; and see Index to LCL *Seneca: Controversiae and Suasoriae*.

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curred, (2) whether it should be exacted. But the perception of these scholars,²² that a defendant cannot be cleared by the judges by this form of defence, is quite correct.

As to Rewards, two questions arise: whether the claimant deserves a reward at all, and, if so, such a large one. If two claim, we ask which is worthier; if more, which is most worthy. The treatment of these matters is based on the actual nature of the services performed.²³ We shall consider not only (1) the act (whether it is to be judged on its own or compared with others) but also (2) the person (it makes a great difference whether the tyrant has been killed by a young man or an old, a man or a woman, a stranger or a connection), (3) the place (there are many aspects of this: is it a city accustomed to tyrants or always free; in the citadel or in his house?), (4) the method of killing (sword or poison), and (5) the time (war or peace, when he was about to lay down his power or when he was about to embark on fresh crimes). Danger and difficulty also enhance the value of services. Likewise with liberality: it makes a difference where it comes from. It is more pleasing in the poor than in the rich, in one who confers a benefit than in one who is returning one, in a father than in a childless man. It matters too for what purpose he gave it, on what occasion, and with what intention (had he perhaps an eye to some expectations of his own?). And similarly with other services.

Quality gives the most scope for the orator's craft, just because there is so much room for originality on both sides, and because nowhere else is an emotional appeal so effective. The reason for this is that Conjecture often introduces additional Proofs from outside and develops its Arguments out of the subject matter, whereas to demon-

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quentiae est opus: hic regnat, hic imperat, hic sola vincit.

Huic parti subiungit Verginius causas abdicationis, dementiae, malae tractationis, orbarum nuptias indicentium. Nam et fere sic accidit, inventique sunt qui has materias
 25 officiorum vocarent. Sed alios quoque nonnumquam leges
 hae recipiunt status: nam et coniectura est aliquando in
 plerisque horum (cum se vel non fecisse vel bona mente
 fecisse contendunt: cuius generis exempla sunt multa) et
 quid sit dementia ac mala tractatio finitur. Nam leges iuris⁹
 26 plerumque quaestiones praecurrere solent, et ex quibus
 causae non fiat status; quod tamen factum¹⁰ defendi non
 poterit, iure nitetur: et quos¹¹ et quibus causis abdicare
 non liceat, et in quae crimina malae tractationis actio non
 detur, et cui accusare dementiae non permittatur.

27 Abdicationum formae sunt duae: altera criminis perfecti, ut si abdicetur raptor adulter, altera velut pendentis et adhuc in condicione positi, quales sunt in quibus abdicatur filius quia non pareat patri. Illa semper asperam abdicantis actionem habet (inmutabile est enim quod factum est), haec ex parte blandam et suadenti similem (mavult

⁹ leges iuris *Spalding*: iuris leges *A*

¹⁰ *Schuetz*: facto *A* ¹¹ *Burman*: quod *A*: quot *recc.*

²⁴ See on 3.1.21. ²⁵ Text doubtful and sense obscure. *Q.* appears to be thinking specifically of declamation, in which the theme contains a statement of the law as its first item, though the Issue may not depend on the interpretation of it. It is only if the fact cannot be justified (by Quality) that the scope of the law becomes crucial. But see *Spalding ad loc.*, *Butler ad loc.*, *H. Stroux, Philologus* 91 (1936) 222–237.

²⁶ See *GD* 31–32; *Bonner, RD* 101–103; and on 3.6.77 above.

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strate the Quality of things is work for pure eloquence; this is where it reigns, this is where it rules, this is where it wins the day all on its own.

Verginius²⁴ includes under Quality cases of disowning children, mental incapacity, wrongful treatment of a wife, and the claims of female orphans to marry relatives. And indeed this is often correct, and there have been teachers who called these "themes of obligations." But these laws sometimes admit of other Issues also. (1) Conjecture occurs from time to time in many of them (when defendants contend either that they did not do it, or that they did it with good intentions; there are many examples of this). (2) Mental incapacity and wrongful treatment require Definition of these terms. Laws in fact generally come before Questions of legal right, even when the Issue of the Cause does not arise from them.²⁵ But if the fact cannot be defended, the case will rest on legal right: what persons is one *not* allowed to disown and for what reasons, for what offences is an action for wrongful treatment *not* allowed, who is *not* permitted to make an accusation of mental incapacity?

Disowning children

Cases of Disowning²⁶ are of two kinds. One applies to a crime already committed (for example, if a rapist or adulterer is disowned), the other to a crime which is, as it were, pending or hypothetical (like the cases in which a son is disowned for being disobedient to his father). The first type always demands a harshness on the father's part (the act cannot be undone), the other to some extent a tone of kindness and persuasiveness (the father would rather put

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enim pater corrigere quam abdicare); at pro filiis in utroque genere summissa <est>¹² et ad satis faciendum composita. A quo dissensuros scio qui libenter patres figura laedunt: quod non ausim dicere numquam esse faciendum—potest enim materia incidere quae hoc exigat: certe vitandum est quotiens aliter agi potest; sed de figuris alio libro tractabimus.

29 Non dissimiles autem abdicationum actionibus sunt malae tractationis: nam et ipsae habent eandem in accusationibus moderationem.

Dementiae quoque iudicia aut propter id quod factum est aut propter id quod adhuc fieri vel non fieri potest instituuntur. Et actor in eo quod factum est liberum habet impetum, sic tamen ut factum accuset, ipsius patris tamquam valetudine lapsi misereatur: in eo vero cuius libera mutatio est diu roget et suadeat et novissime dementiae rationi queratur obstare, non mores: quos quanto magis in praeteritum laudaverit, tanto facilius probabit morbo esse mutatos. Reus, quotiens causa patietur, debet esse in defensione moderatus, quia fere ira et concitatio furori sunt similia.

¹² *add. Winterbottom* (submissam . . . compositam *recc.*)

²⁷ I.e. insinuating offences which are not explicitly brought out: see, e.g., Hermogenes 208–209 Rabe, where a son defending himself against *apokeryxis* hints at his father's adultery with his daughter-in-law. ²⁸ See 9.2.65–80.

²⁹ See Bonner, *RD* 94.

³⁰ See Bonner, *RD* 93.

³¹ *Ira furor brevis est* (Horace, *Epistulae* 1.6.2) is a commonplace; note Seneca, *De ira* 1.1.2.

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the boy on the right track than disown him). In speaking for the sons, both types of case require a humble and suitably apologetic tone. I know this will not be approved by those who like attacking the father by a Figure,²⁷ and I would not venture to say that this may never be done—one may be faced with a theme which demands it—but it is certainly to be avoided when any other procedure is possible. But I shall discuss Figures in another book.²⁸

Wrongful treatment

Actions for wrongful treatment²⁹ resemble those for disowning. They too demand the same moderation in the accusations.

Lunacy cases

Again, trials about mental incompetence³⁰ are instituted either because of what has happened or of what may or may not happen in the future. In a case resting on past events, the pleader has a free run, so long as he confines himself to denouncing the act, and shows pity personally for a father whose illness has caused this lapse. In the other case, when a change of mind is possible, he must make a long, persuasive plea and only then complain, as a last resort, that it is madness and not a fault of character that stands in the way of reason; and the more he praises the father's past character, the easier it will be for him to prove that the deterioration is due to the illness. The defendant, whenever the case allows, should be moderate in his defence, because anger and passion are only too much like madness.³¹

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Omnibus his commune est quod rei non semper defensione facti, sed excusatione ac venia frequenter utuntur. Est enim domestica disceptatio, in qua et semel peccasse et per errorem et levius quam obiciatur absolutioni nonnumquam sufficit.

32 Sed alia quoque multa controversiarum genera in qualitatem cadunt.

Iniuriarum: quamquam enim reus aliquando fecisse negat, plerumque tamen haec actio facto atque animo continetur.

33 De accusatore constituendo, quae iudicia divinationes vocantur: in quo genere Cicero quidem, qui mandantibus sociis Verrem deferebat, hac usus est divisione: spectandum a quo maxime agi velint ii quorum de ultione quaeritur, a quo minime velit is qui accusatur. Frequentissimae
34 tamen hae sunt quaestiones, uter maiores causas habeat, uter plus industriae aut virium sit allaturus ad accusandum, uter id fide meliore facturus.

35 Tutelae praeterea: in quo iudicio solet quaeri an alia de re quam de calculis cognosci oporteat, an fidem praestare debeat tantum, non etiam consilium et eventum.

Cui simile est male gestae procurationis, quae in foro negotiorum gestorum: nam et mandati actio est.

³² *Divinatio in Q. Caecilium*, the classic model of this type of case.

³³ On agency and *mandatum* in general see Crook (1967) 236–241. *Actio mandati* differs from *actio negotiorum gestorum*: the former applies when definite instructions have been given to the agent, the latter to cases where business has been undertaken without such instructions. Once again, Q. is concerned to show that school themes have *some* relevance to real life.

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Common to all these cases is the feature that the accused do not always defend their action, but often resort to excuses and pleas for pardon. For these are domestic disputes, in which it is sometimes sufficient to secure an acquittal to say that the culprit has only sinned once, or that the act was done in error, or that it is not as bad as is alleged.

Other cases coming under Quality

There are also many other types of controversy which fall under Quality.

(1) Assault. Although the accused sometimes denies that he did it, this pleading is usually concerned with the fact and the intention.

(2) Appointment of prosecutor (so-called "divination" proceedings). For this, Cicero,³² who was accusing Verres on the instructions of allied communities, used the following Division: the point to have in mind is what prosecutor is (a) most acceptable to the victims for whom redress is sought, and (b) least acceptable to the accused. The commonest Questions however are: who has the better reason, who is going to bring more energy and vigour to the prosecution, and who will act with more sincerity?

(3) Next, Guardianship. In this type of case, the customary Question is whether the decision should turn on something more than the accounts, and whether the guardian is obliged to ensure not only probity but prudent planning and success.

(4) Maladministration of agency is similar; in the courts it is covered by "management of business"; there is also an action for "breach of instructions."³³

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- 36 Praeter haec finguntur in scholis et inscripti maleficii, in quibus aut hoc quaeritur, an inscriptum sit, aut hoc, an maleficcium sit, raro utrumque.

Male gestae legationis apud Graecos et veris causis frequens, ubi iuris loco quaeri solet an omnino aliter agere quam mandatum sit liceat, et quo usque sit legatus (quoniam aliae in <nuntiando legationes, aliae et in>¹³ renuntiando sunt), ut in Heio, qui testimonium in Verrem dixerat post perlatam legationem. Plurimum tamen est in eo, quale sit factum.

- 37 Rei publicae laesae: hic moventur quidem illae iuris cavillationes: 'quid sit rem publicam laedere' et 'laeserit an non profuerit' et 'ab ipso an propter ipsum laesa sit': in facto tamen plurimum est.

Ingrati quoque: in quo genere quaeritur an is cum quo agitur acceperit beneficium (quod raro negandum est: ingratus est enim qui negat), quantum acceperit, an reddiderit; an protinus qui non reddidit ingratus sit, an potuerit

- 38 reddere, an id quod exigebatur <praestare>¹⁴ debuerit, quo animo <non praestite>rit.¹⁵

¹³ *suppl. D.A.R. after Spalding and Winterbottom*

¹⁴ *suppl. Winterbottom*

¹⁵ *Winterbottom (on Decl. Min. 333.2): sit A*

³⁴ Compare Seneca, *Controversiae* 3 *praef.* 17, 5.1; Bonner, *RD* 86. ³⁵ The classical model is Demosthenes, *Oration* 19, "On the Mismanaged Embassy." See above, 4.4.5.

³⁶ *In Verrem* 4.18. ³⁷ Compare Seneca, *Controversiae* 10.4, Bonner, *RD* 97–98; again a school law rather than a real one.

³⁸ *Actio ingrati*, δίκη ἀχαριστίας: see Seneca, *Controversiae* 2.5; *Declamationes minores* 333, 368; Bonner, *RD* 87–88. Mainly a

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(5) In addition, we have in the schools fictitious cases of wrongdoing not specified by law,³⁴ in which the Question is *either* whether the act is not so specified *or* whether it is wrongdoing; rarely both.

(6) Misconduct of an embassy³⁵ is a common charge among the Greeks, even in real life; in it, the question is usually raised, as a point of law, whether it is permissible in general to act otherwise than according to instructions, and also how long the office of ambassador continues (some embassies are <to take a message, some also> to bring back the answer): compare the case of Heius who had given evidence against Verres after the completion of the embassy.³⁶ It is the Quality of the action that matters most in these cases.

(7) Action damaging to the state.³⁷ Here there arise well-known legal quibbles: what does it mean to “damage the state,” did he in fact damage it or simply fail to benefit it, was the damage done *by* him or simply *because of* him? The most important Question, however, is that of fact.

(8) Ingratitude.³⁸ Here we ask whether the accused has actually received a kindness (this is rarely deniable, for anyone who denies receiving something is ungrateful), how much he has received, and whether he has returned the favour; whether failure to reciprocate necessarily means that one is ungrateful; whether he could have done so; whether he was under an obligation <to repay> what was asked; with what intention he <failed to repay>.

school law (so Seneca, *De beneficiis* 3.6.1), but said to exist in Persia and at Athens and Massilia (Valerius Maximus 2.6.7, 5.3 ext. 3). At Rome, freedmen could be punished for not showing gratitude to former masters (Ulpian, *Digest* 3.3.35.1).

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Simpliciores illae iniusti repudii, sub qua lege controversiae illud proprium habent, quod a parte accusantis defensio est et defendentis accusatio.

- 39 Praeterea, cum quis rationem mortis in senatu reddit, ubi una quaestio est iuris, an is demum prohibendus sit qui mori vult ut se legum actionibus subtrahat, cetera qualitatis.

Finguntur et testamenta, in quibus de sola <qualitate>¹⁶ quaeratur, ut in controversia quam supra exposui, in qua de parte patrimonii quarta quam pater dignissimo ex filiis reliquerat contendunt philosophus medicus orator.

Quod idem accidit si orbae nuptias indicant pares gradu et si inter propinquos de idoneo quaeratur.

- 40 Sed mihi nec omnes persequi materias in animo est (fingienim adhuc possunt), nec omnis earum quaestiones, quia positionibus mutantur; hoc tantum admiror, Flavum, cuius apud me summa est auctoritas, cum artem scholae tantum componeret, tam anguste materiam qualitatis terminasse.

¹⁶ *add. Christ*

³⁹ *Repudium* is strictly a breach of engagement to marry, though also used of divorce: Treggiari (1991) 436–441.

⁴⁰ The *proselgia* theme (the speaker “denounces himself,” *ἑαυτὸν προσαγγέλλει*), beloved of Greek declaimers, with a tenuous hold on real life (Valerius Maximus 2.6.8: Massilia, Ceos): *GD* 35–37, 64. Not common in Latin sources, but see *Declamationes minores* 337. Such speeches are usually considered “figured,” on the ground that no one really wants to die, and so the speaker must be blackmailing society into granting him something that he really wants. Q. (9.2.86) has doubts about this.

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(9) Cases of Unjust Repudiation³⁹ are simpler; the peculiarity of cases under this law is that the defence is made by the accuser, and the accusation by the defendant.

(10) Explaining to the senate why one wishes to die.⁴⁰ Here there is one Question of law, namely whether one should prevent a man whose motive for wanting to die is to escape legal action; all the other Questions are of Quality.

(11) There are also fictitious wills, devised so that the only question is of <Quality,> as in the *controversia* I expounded above,⁴¹ in which a philosopher, a doctor, and an orator contend for the fourth part of the estate, which their father had left to "the most worthy" of his sons.

(12) The same situation arises in cases where female orphans claim marriages with relatives of equal propinquity, and there is a question among the relatives as to who is most suitable.⁴²

However, I have no intention of going through every possible theme (fresh themes can still be invented) nor to deal with all the Questions in them, since these vary with the terms in which the problem is set. But I am surprised that Flavus,⁴³ whose authority weighs greatly with me, defined the range of Quality so narrowly, though he was writing a textbook specially for schools.

⁴¹ 7.1.38.

⁴² A Greek rather than a Roman situation. In Attic law, if a man dies leaving only female issue, the woman "goes with the inheritance" (she is *ἐπίκληρος*), and it is the right of her father's nearest male relative to marry her: D. M. McDowell, *The Law in Classical Athens* (1978) 95–98.

⁴³ See above, 7.4.24.

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- 41 Quantitas quoque, ut dixi, etiam si non semper, plerumque tamen eidem subiacet, seu modi est seu numeri. Sed modus aliquando constat aestimatione facti, quanta sit culpa quantumve beneficium, aliquando iure, cum id in controversiam venit, qua quis lege puniendus vel honorandus sit: stuprator decem milia dare debeat, quae poena huic crimini constituta est, an, quia se stupratus suspendit, capite puniri tamquam causa mortis. Quo in genere falluntur qui ita dicunt tamquam inter duas leges quaeratur: nam de decem milibus nulla controversia est, quae non petuntur; iudicium redditur an reus causa sit mortis. In coniecturam quoque eadem species cadit, cum perpetuo an quinquennali sit exilio multandus in controversiam venerit: nam an prudens caedem commiserit quaeritur.
- 42
- 43
- 44 Illa quoque quae ex numero ducitur pendet ex iure: 'an Thrasybulo triginta praemia debeantur' et 'cum duo fures pecuniam abstulerint, separatim quadruplum quisque an duplum debeat'. Sed hic quoque factum aestimatur; et tamen ius ipsum pendet ex qualitate.

5

- 1 Qui neque fecisse se negabit neque aliud esse quod fecerit dicet neque factum defendet, necesse est in suo iure consistat, in quo plerumque actionis est quaestio. Ea non sem-
- 2

⁴⁴ 7.4.16. ⁴⁵ Compare *Declamationes minores* 252; also Sopatros 8. 362 Walz, where the rapist's victim is a blind man's daughter who is her father's guide, and the father now falls off a cliff. See *GD* 67-69. ⁴⁶ Compare *Declamationes minores* 248: Bonner, *RD* 98-100. ⁴⁷ Compare 3.6.26.

⁴⁸ See 7.6.2.

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Quantity also, as I have said,⁴⁴ whether it is of measure or of number, usually if not always falls under Quality. (1) Measure however sometimes consists of the evaluation of an action—how great is the offence or the service?—and sometimes of a point of law, when what is in dispute is under what law the person is to be punished or honoured: should a rapist pay 10,000 sesterces, which is the penalty fixed for this offence, or, because his victim hanged himself, incur capital punishment as being the cause of death?⁴⁵ In this type of case it is a mistake to talk as if there were a Question between two laws: there is no dispute about the 10,000 sesterces, which the prosecution does not claim; judgement is given on the Question whether the defendant is the cause of death. This type of case also falls under Conjecture, when the dispute is whether the accused is to be punished with permanent exile or exile for five years;⁴⁶ for the question here is whether he committed the homicide deliberately. (2) Quantity based on number also depends on law: is Thrasybulus owed thirty rewards?⁴⁷ When two thieves have stolen money, are they each required to pay quadruple or double the sum?⁴⁸ But here too the act is evaluated, yet the point of law itself turns on Quality.

CHAPTER 5

"Prescription" or "demurrer" cases

A man who neither denies an action nor alleges that what he did was something other than what he is charged with, nor again defends his act, must stand on his legal position; this generally raises the Question of the validity of the pro-

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per, ut quidam putaverunt, iudicium antecedit, qualia sunt praetorum curiosa consilia cum de iure accusatoris ambigitur, sed in ipsis frequentissime iudiciis versatur. Est enim¹ duplex eius disceptationis condicio, quod aut intentio aut praescriptio habet controversiam. Ac fuerunt qui praescriptionis statum facerent, tamquam ea non isdem omnibus quibus ceterae leges quaestionibus contineretur.

3 Cum ex praescriptione lis pendet, de ipsa re quaeri non est necesse. Ignominioso filius praescribit: de eo solo iudicatio est, an liceat. Quotiens tamen poterimus, efficiendum est ut de re quoque iudex bene sentiat; sic enim iuri nostro libentius indulgebit: ut in sponsionibus quae ex interdictis fiunt, etiam si non proprietatis est quaestio sed tantum possessionis, tamen non solum possedissee nos sed etiam nostrum possedissee docere oportebit.

4 Sed frequentius etiam quaeritur de intentione. 'Vir fortis optet quod volet': nego illi dandum quidquid optaverit: non habeo praescriptionem, sed tamen voluntate contra

¹ autem *Spalding*

¹ I.e. at the preliminary stage *in iure*, when it is open to the praetor to refuse a plaintiff an action; if he grants one, he must then get the parties to agree a *formula* on which it is to be tried.

² Compare 3.6.68.

³ I.e. is *ignominiosus* (compare 3.6.77) or *infamis* (Greek *ἀτιμος*), having lost his full citizen rights because of a criminal conviction or because he practises a disreputable trade (as a gladiator or procurer, for example): Crook (1967) 83–85.

⁴ The father has brought an action against the son; the point to be decided is whether the son is allowed a "demurrer," on account of the father's *ignominia*.

ceedings. This Question does not, as some have thought, invariably precede the trial, as in the detailed consultation of the praetors¹ when there is a doubt about the accuser's legal position, but very often has a place in the trial itself. There are two situations requiring such discussions, since either the prosecution's claim or the Prescription may be controversial. Some have made a separate Issue of Prescription—as though it did not involve all the same Questions as any other legal Issue!²

(1) When the dispute turns on a Prescription, there is no need to inquire into the facts of the case. A son puts in a Prescription against his father because the latter has forfeited his citizen rights.³ The adjudication bears only on whether he is allowed to do this.⁴ Whenever we can, however, we must try to get the judge to think favourably also of the facts, because that will make him more ready to be kind to our point of law. For example, in undertakings arising out of interdicts,⁵ even if the Question is not one of proprietorship but only of occupation, we shall need to prove not only that we were in occupation but that it was our own property that we occupied.

(2) Even more frequently, the Question relates to a prosecution claim. "The war hero shall choose what he will."⁶ I deny that he should be given whatever he chooses. I have no ground for a Prescription, but I use the Spirit

⁵ Compare 2.10.5. The praetor, by his *interdictum*, prohibits an action of which a plaintiff has complained; the defendant gives an undertaking (*sponsio*) to pay a sum if the interdict is not obeyed, and the plaintiff if his demand is shown to be unfounded. Cicero, *Pro Caecina* deals with such a case.

⁶ A standard declamatory law: see *GD* 24–25, Bonner, *RD* 88.

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verba praescriptionis modo utor. In utroque autem genere status idem sunt.

- 5 Porro lex omnis aut tribuit aut adimit, aut <honorat aut>² punit, aut iubet aut vetat aut permittit. Litem habet aut propter se ipsam aut propter alteram, quaestionem aut in scripto aut in voluntate. Scriptum aut apertum est
- 6 aut obscurum aut ambiguum. Quod de legibus dico, idem accipi volo de testamentis pactis stipulationibus, omni denique scripto: quod de scripto, idem de voce. Et quoniam quattuor eius generis quaestiones vel status fecimus, singulos percurram.

6

- 1 Scripti et voluntatis frequentissima inter consultos quaestio est, et pars magna controversi iuris hinc pendet. Quo minus id accidere in scholis mirum est: ibi etiam ex industria fingitur.

- Eius genus unum est in quo et de scripto et de voluntate quaeritur. Id tum accidit cum est in lege aliqua obscuritas. In ea aut uterque suam interpretationem confirmat, adversarii subvertit, ut hic: 'fur quadruplum solvat: duo surripuerunt pariter decem milia: petuntur ab utroque quadragena, illi postulant ut vicena conferant.' Nam et actor dicit hoc esse quadruplum quod petat, et rei hoc quod
- 3 offerant: voluntas quoque utrimque defenditur. Aut cum

² *add. Gertz*

¹ See 7.5.44.

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against the Letter of the law in the manner of a Prescription. The Issues are the same in both.

Moreover, every law either gives or takes away, <rewards> or penalizes, commands, forbids, or permits. It gives rise to a dispute either by itself or because of another law, and to a Question which turns either on the Letter or on the Spirit. The Letter is either clear, obscure, or ambiguous. What I say of laws, I mean to apply also to wills, agreements, contracts, in short all written texts; and what holds of written texts holds also of the spoken word. And since I classify such cases under four Questions or Issues, I will run through them in turn.

CHAPTER 6

Letter and Spirit

The Question of Letter and Spirit is very common among lawyers, and a great part of legal controversy depends upon it. We should not be surprised therefore that it occurs in the schools, where it is also deliberately invented.

There is one type in which the Question involves both Letter and Spirit. This happens when there is some obscurity in the law. There are two possibilities: (1) Both parties seek to establish their own interpretation and refute the other side's: for example, "A thief must pay four times the sum stolen. Two thieves have jointly stolen 10,000 sesterces. A demand is made on each of them for 40,000.¹ They ask to be allowed to pay 20,000 each." Here the prosecutor says that what he claims is "four times the sum": the defendants say that what they offer *is* "four times the sum." Both parties also plead the Spirit of the Law. (2) The Letter of

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de altero intellectu certum est, de altero dubium: 'ex meretrice natus ne contionetur: quae filium habebat prostare coepit: prohibetur adulescens contione.' Nam de eius filio quae ante partum meretrix fuit certum est: an eadem huius causa sit dubium est, quamquam¹ ex hac natus est, et haec
 4 meretrix est. Solet et illud quaeri, quo referatur quod scriptum est: 'bis de eadem re ne sit actio': id est, hoc 'bis' ad actorem an actionem. Haec ex iure obscuro.

Alterum genus est ex manifesto: quod qui solum videntur, hunc statum plani et voluntatis appellarunt. In hoc
 5 altera pars scripto nititur, altera voluntate. Sed contra scriptum tribus generibus occurritur. Unum est in quo ipso patet semper id servari non posse: 'liberi parentis alant aut vinciantur': non enim alligabitur infans. Hinc erit ad alia transitus et divisio: 'num quisquis non aluerit? num hic?
 6 <num> propter hoc?' <Ponunt>² quidam tale genus controversiarum in quo nullum argumentum sit³ quod ex lege ipsa peti possit, sed de eo tantum de quo lis est quaerendum sit. Peregrinus si murum escenderit capite puniatur. Cum hostes murum escendissent, peregrinus eos depulit:

¹ Kiderlin: quae G: qui A ² suppl. M.W. after Obrecht and Halm ³ D.A.R.: est A

² A declamatory law with Greek precedents (τὸν ἐξ ἐταίρας μὴ λέγειν, Hermogenes 40,18 Rabe). In Aeschines, *Contra Timarchum* 56, the law is said to forbid male prostitutes to speak in the assembly. Hermogenes and Apsines (5.17 = p. 158 Diltz-Kennedy) use the extension of this prohibition to children of prostitutes as an example of "Syllogism."

³ For this "double jeopardy" question, see *Declamationes minores* 266; Hermogenes 42,15 Rabe (Heath (1995) p. 79);

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the Law is certain in one respect, doubtful in another. "The son of a prostitute shall not speak in the assembly."² A woman who had a son began to work as a prostitute. The young man is barred from the assembly." There is no doubt about the son of a woman who was a prostitute before he was born. The doubt is whether the same applies in this man's case, although he *is* her son and she *is* a prostitute. Another Question frequently raised is what the text of a law refers to. "There shall not be an action twice on the same matter."³ Does "twice" apply to the prosecutor or to the prosecution? These points arise from obscurity in the law.

A second type arises when the law is clear. Those who have thought this to be the only type have named it "Issue of Express Meaning and Intention." In this, one party relies on the Letter, the other on the Spirit. There are three ways of attacking the Letter. (1) One is used when it is clear from the text itself that it cannot always be observed. "Children must support their parents or be imprisoned."⁴ No infant will be put in chains! At this point, there will be a transition to other exceptions. Division: "Does it apply to anyone who has failed to give support? Does it apply to this man? Does it apply when there are these reasons?" (2) Some set a type of *controversia* in which there is no Argument which can be derived from the law itself, but the only Question concerns the subject of the dispute. "If a foreigner goes up on the wall, he is to be punished with death. When the enemy scaled the wall, a foreigner drove them

Sopatros 8. 268,4 Walz. Compare also Terence, *Phormio* 403-406. But none of these texts raises Q.'s problem.

⁴ Compare 5.10.97: Bonner, *RD* 95.

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- 7 petitur ad supplicium.' Non erunt hic separatae quaestiones: 'an quisquis, an hic', quia nullum potest adferri argumentum contra scriptum vehementius eo quod in lite est, sed hoc tantum, an ne servandae quidem civitatis causa. Ergo aequitate et voluntate pugnandum. Fieri tamen potest ut ex aliis legibus exempla ducamus, per quae appareat semper stari scripto non posse, ut Cicero pro Caecina fecit.
- 8 Tertium cum in ipsis verbis legis reperimus aliquid per quod probemus aliud legum latorem voluisse, ut in hac controversia: 'qui nocte cum ferro deprensus fuerit, alligetur: cum anulo ferreo inventum magistratus alligavit'; hic, quia est verbum in lege 'deprensus', satis etiam significatum videtur non contineri lege nisi noxium ferrum.
- 9 Sed ut qui voluntate nitetur scriptum quotiens poterit infirmare debet, ita qui scriptum tuebitur adiuvere se etiam voluntate temptabit. In testamentis et illa accidunt, ut voluntas manifesta sit, scriptum nihil sit, ut in iudicio Curiano, in quo nota L. Crassi et Scaevolae fuit contentio.
- 10 Substitutus heres erat si postumus ante tutelae suae annos decessisset: non est natus: propinqui bona sibi vindicabant. Quis dubitaret quin ea voluntas fuisset testantis ut is non nato filio heres esset qui mortuo? Sed hoc non scripserat. Id quoque quod huic contrarium est accidit nuper, ut

⁵ Compare 4.4.4. ⁶ 51ff. ⁷ *Ferrum*, as well as meaning "iron," may mean "sword" or "knife" (*OLD* s.v. 4, 5, 8).

⁸ This case is referred to several times by Cicero: *De inventione* 2.122–123 (without names); *De oratore* 1.180; *Brutus* 194–198. It arose when the closest relative of the testator, M. Coponius, disputed the claim of the contingent heir, M'. Curius. Texts in *ORF* pp. 245–251.

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off. His punishment is demanded.”⁵ There are not here the separate Questions “Does it apply to everyone?” and “Does it apply to him?” because no stronger argument can be brought against the Letter of the Law than the fact in dispute; the only point is whether it is forbidden even for the sake of saving the city. The battle is therefore to be fought on Equity and the Spirit of the Law. It may be possible however to take examples from other laws to make it plain that we cannot always stand by the Letter, as Cicero did in *Pro Caecina*.⁶

(3) The third type is when we find something in the actual words of the law by which we can prove that the intention of the legislator was different, as in the following *controversia*: “A man caught carrying iron at night shall be imprisoned. A magistrate imprisoned a man who was carrying an iron ring.” Here, since the word “caught” is in the law, it seems to have been made clear also that the only “iron” covered by the law is an offensive weapon.⁷

But whereas the pleader who relies on the Spirit must, whenever possible, invalidate the Letter, the defender of the Letter will try to help himself with the Spirit as well. In wills it also happens that the intention is clear, but there is nothing in writing, for example in the case of Curius, which gave rise to the well-known dispute between Lucius Crassus and Scaevola.⁸ An alternative heir had been appointed, in the event of a posthumous child dying while still under guardianship. No such son was born. The relatives claimed the property for themselves. Who could doubt that the testator’s intention was that the person who was to be heir if the son died should also be heir if no son was born? But he had not put this in writing. An opposite case—namely, that the written will was obviously contrary to the testator’s in-

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esset scriptum quod apparet scriptorem noluisse. Qui sestertium nummum quinque milia legaverat, cum emendaret testamentum, sublatis sestertiis nummis 'argenti pondo' posuit, 'quinque milia' manserunt. Apparuit tamen 'quinque pondo' dari voluisse, quia ille in argento legati modus et inauditus erat et incredibilis.

- 12 Sub hoc statu generales sunt quaestiones, scripto an voluntate standum sit, quae fuerit scribentis voluntas: tractatus omnes qualitatis aut coniecturae, de quibus satis dictum arbitror.

7

- 1 Proximum est de legibus contrariis dicere, quia inter omnes artium scriptores constitit in antinomia duos esse scripti et voluntatis status: neque inmerito, quia, cum lex legi obstat, utrimque contra scriptum dicitur et quaestio est de voluntate; in utraque id ambigitur, an utique illa lege
2 sit utendum. Omnibus autem manifestum est numquam esse legem legi contrariam iure ipso, quia, si diversum ius esset, alterum altero abrogaretur, sed eas casu collidi et eventu.

Colliduntur autem pares aut¹ inter se, ut si optio tyrannicidae et viri fortis comparentur, utrique data quod velit petendi potestate; hic meritorum temporis praemii con-

¹ aut pares A, *transpos.* D.A.R.

¹ Lausberg §§ 218–220.

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tention—occurred recently. A man who had made a bequest of 5,000 sesterces, on revising his will, deleted “sesterces” and inserted “pounds of silver,” leaving the number 5,000. But it was clear that he meant five pounds of silver, because otherwise the quantity of the legacy in silver was unheard of and unbelievable.

Under this Issue come the General Questions, whether we should stand by the Letter or the Spirit, and what was the intention of the writer; the treatment of all these comes under Quality or Conjecture, about which I think I have said enough.

CHAPTER 7

Conflict of laws

We have next to discuss Contrary laws.¹ All the writers of textbooks have agreed that in *antinomia* (Conflict of Laws) there are two Issues of Letter and Spirit. This is a justifiable view, because, when one law stands in the way of another, both parties speak against the Letter, and the Question between them is about the Spirit: the doubt with regard to both laws is whether this is the law that must be applied. It is clear to everyone that one law can never be contrary to another in juristic principles, because if there were distinct principles one law would be cancelled out by the other; collisions between laws are thus due to chance and the way things turn out.

Equal laws conflict either (1) one with another, as when we set the choice of the tyrannicide against the choice of the war hero, both being given the power to ask for anything they wish; in this case the comparison is between

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- 3 latio est: aut secum ipsae, ut duorum fortium, duorum tyrannicidarum, duarum raptarum, in quibus non potest esse alia quaestio quam temporis, ultra prior sit, aut qualitatis, ultra iustior sit petitio.
- 4 Diversae quoque leges configunt aut similes aut <inpa- res. Similium > aliae² quibus etiam citra adversam legem contradici possit, ut in hac controversia: 'Magistratus ab arce ne discedat. Vir fortis <optet quod volet. Magistratus qui fortiter fecerat ab arce discessit. Impunitatem optat.' Nam et de lege viri fortis³ vel alia nulla obstante quaeri potest an quidquid optarit accipere debeat, et in magistratus multa dicentur quibus scriptum expugnetur,⁴ si incendium in arce fuerit, si in hostis decurrendum. <Aliae⁵ contra quas nihil opponi potest nisi lex altera: 'Tyrannicidae imago in gymnasio ponatur. <Mulieris imago in gymnasio ne ponatur.>⁶ Mulier tyrannum occidit.' Nam neque mulieris imago ullo alio casu poni potest nec tyrannicidae ullo alio casu summoveri.
- 6 Inpares sunt cum alteri multa [quae]⁷ opponi possunt, alteri nihil nisi quod in lite est, ut cum vir fortis inpunita-

² *Winterbottom after Christ*: aut similes aut duae A

³ *suppl. Winterbottom, e.g.* ⁴ *D.A.R.*: expugnatur A

⁵ *add. Winterbottom* ⁶ *suppl. rec.* ⁷ *om. rec.*

² Each victim has the choice between marriage to the rapist and his death: Bonner, *RD* 89–91. Many examples in the declamations: e.g. Seneca, *Controversiae* 1.5, 3.5, 7.8, 8.6; *Declamationes minores* 262, 270, 280; Calpurnius Flaccus 16; Hermogenes 41.10 Rabe.

³ I do not know a parallel for this "law." Cousin suggests that it is a special case of laws against "deserting one's post" (for which see 7.7.6 below). The long supplement needed to complete the sense is of course conjectural.

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their services, the occasion, and the reward; or (2) internally, as when we have two war heroes, two tyrannicides, or two victims of rape,² in which the only Question can be one of time (which request was first?) or Quality (which was more just?).

Diverse laws also conflict. These may be similar or <unequally matched. (1) First, similar laws. > (a) Some may be contradicted even without an opposing law, as in the following *controversia*: "A magistrate must not leave the citadel,³ a war hero <may choose what reward he wishes. A magistrate who had been a war hero left the citadel. He chooses as his reward exemption from the other law"; here, even as regards the war-hero law, and even if there is no opposing law, the Question whether he ought to be given whatever he asks may be raised; and as regards the law about the magistrate, many points can be made to impugn the Letter: suppose there is a fire on the citadel, or a sally has to be made against the enemy. (b) <Some again> cannot be opposed except by another law: "A statue of a tyrannicide shall be set up in the gymnasium. <No statue of a woman shall be set up in the gymnasium. > A woman has killed a tyrant."⁴ For there are no other circumstances in which a woman's statue can be put up and no other circumstances in which a tyrannicide's can be removed.

(2) Laws are unequally matched when there are many possible objections to one, but none to the other, except for the matter in dispute: for example when the war hero

⁴ This interesting theme also does not seem to be paralleled. The imagined case—a proposal for the removal of the woman's statue—is not spelt out.

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tem desertoris petit. Nam contra legem viri fortis, ut supra ostendi, multa dicuntur, adversus desertores scripta non potest nisi optione subverti.

- 7 Item aut confessum ex utraque parte ius est aut dubium. Si confessum est, haec fere quaeruntur: ultra lex potentior, ad deos pertineat an ad homines, rem publicam an privatos, de honore an de poena, de magnis rebus an de
- 8 parvis, permittat an vetet an imperet. Solet tractari et ultra sit antiquior: sed velut potentissimum ultra minus perdat, ut in desertore et viro forti, quod illo non occiso lex tota tollatur, occiso sit reliqua viro forti alia optio. Plurimum tamen est in hoc, utrum fieri sit melius atque aequius: de
- 9 quo nihil praecipitur nisi proposita materia potest. Si dubium, aut alteri aut invicem utrique de iure fit controversia, ut in re tali: 'patri in filium, patrono in libertum manus iniectio sit, liberti heredem sequantur: liberti filium quidam fecit heredem: invicem petitur manus iniectio'; et pater <negat ius patroni filio in patrem esse et filius>⁸ negat ius patris illi fuisse, quia ipse in manu patroni fuerit.
- 10 Duplices leges sicut duae colliduntur, ut 'nothus ante legitimum natus legitimus sit, post legitimum tantum civis.'

⁸ *suppl. Kiderlin*

⁵ Compare Calpurnius Flaccus 27.

⁶ For the procedure of *manus iniectio*—e.g. claiming a debtor or a thief in bondage—see Gaius, *Institutes* 4.21–25. Q.'s case may be imaginary; it is certainly involved.

⁷ Compare 3.6.96ff.

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asks pardon for a deserter as his reward.⁵ Here, as I have shown, many things can be said against the war-hero law, but the Letter of the law against deserters can only be subverted by the exercise of the choice.

Again, the legal point is either admitted by both parties or in doubt. (1) If it is admitted, the following questions generally arise: Which law is superior? Does it concern gods or men, public life or private citizens, honours or punishments, important matters or trivial? Does it permit, forbid, or command? Another commonly raised point is which law is the older: but the most potent Question, one might say, is which law will lose less: for example, in the case of the deserter and the war hero, if the deserter is not put to death that whole law is subverted, whereas if he is, the war hero still has other possible choices. However, it is of overriding importance in this to consider which is the better and fairer outcome; and no suggestion can be made about this without setting out an actual theme. (2) If the legal point is in doubt, one side (or each side in turn) has a legal controversy to raise. For example: "A father shall have power to lay hands on his son,⁶ and a former master on his freedman; freedmen shall go to the heir. A man made the son of a freedman his heir. The freedman and his son claim the right over each other." Here the father <denies that a son can have the right of a former master over his father, and the son> denies that his father had the right, because he was himself under the control of his former master.

Double laws conflict as though there were two laws: for example, "A bastard born before a legitimate child shall be legitimate; if born after, he shall simply have the rights of a citizen."⁷

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Quod de legibus, idem de senatus consultis dictum sit quae aut inter se pugnent aut obstent legibus: non tamen aliud sit eius status nomen.

8

- 1 Syllogismus habet aliquid simile scripto et voluntati, quia semper pars in eo altera scripto nititur; sed hoc interest, quod illic dicitur contra scriptum, hic supra scriptum: illic qui verba defendit hoc agit, ut fiat utique quod scriptum est, hic ne aliud quam scriptum est. Ei nonnulla etiam cum finitione coniunctio:¹ nam saepe, si finitio infirma est, in
- 2 syllogismum delabitur. Sit enim lex: 'Venefica capite puniatur. Saepe se verberanti marito uxor amatorium² dedit, eundem repudiavit: per propinquos rogata ut rediret non est reversa: suspendit se maritus. Mulier veneficii rea est.' Fortissima est actio dicentis amatorium venenum esse: id erit finitio. Quod si parum valebit, fiet syllogismus, ad quem velut remissa priore contentione veniemus: an proinde puniri debeat ac si virum veneno necasset.
- 3 Ergo hic status ducit ex eo quod scriptum est id quod incertum est: quod quoniam ratione colligitur, ratiocinativus dicitur. In has autem fere species venit: an quod semel

¹ *Regius*: coniectio A: conexio *Obrecht*

² se . . . amatorium *Halm*, from *Julius Victor* 378, 11–12 *Halm* = 9.2 *Giomini-Celentano*: severantia moritorium G: separanti amaritorium A

¹ *Lausberg* § 221. ² Compare 7.3.10. The same question arises in *Declamationes minores* 385. *Digest* 48.8.3 (*Marcianus*) raises it in connection with the *lex Cornelia de sicariis et veneficis*.

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What is said about laws may be taken also to apply to decrees of the senate which are in conflict with one another or with the laws; but there need be no other name for this Issue.

CHAPTER 8

Syllogism

“Syllogism”¹ has some similarity to Letter and Spirit, because in it one side always relies on the Letter: but the difference is that in Letter and Spirit we argue against the Letter, in this Issue we go beyond it. In the former, again, the pleader who is defending the Letter aims at ensuring that in any case this is put into effect, whereas in Syllogism his object is to prevent anything other than the Letter being put into effect. There is also some link between this and Definition, because if a Definition is weak it often slips into Syllogism. “Assume the law: a woman poisoner shall be liable to capital punishment. A wife gave a love potion to a husband who regularly beat her. She also divorced him. She was asked by relatives (as intermediaries) to go back; she did not. Her husband hanged himself. She is charged with poisoning.”² The strongest prosecution line is that a love potion is a poison. This will be a Definition. If it proves too weak, we shall virtually drop the previous contention and come to a Syllogism: should she be punished exactly as if she had poisoned her husband?

This Issue, then, deduces something which is uncertain from the Letter of the law. As it is a matter of rational inference, it is called the “Ratiocinative Issue.” The species into which it is divided are roughly speaking as follows: (1) If a

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- ius est, idem et saepius: 'incesti damnata et praecipitata de saxo vixit: repetitur.' An quod in uno, et in pluribus: 'qui duos uno tempore tyrannos occidit, duo praemia petit.' An quod ante, et postea: 'raptor profugit, rapta nupsit, reverso illo petit optionem.' An quod in toto, idem in parte: 'aratrum accipere pignori non licet; vomerem accepit.' An quod in parte, idem in toto: 'lanas evehere Tarento non licet; oves evexit.'
- 5 In his syllogismus et scripto nititur: nam satis cautum esse dicit. 'Postulo ut praecipitetur incesta: lex est', et 'rapta optionem petit', et 'in ove lanae sunt', similiter alia. Sed quia responderi potest: 'non est scriptum ut bis praecipitetur damnata, ut quandoque rapta optet, ut tyrannicida duo praemia accipiat: nihil de vomere cautum, nihil de ovibus', ex eo quod manifestum est colligitur quod dubium est. Maioris pugnae est ex scripto ducere quod scriptum non est: an quia hoc, et hoc: 'qui patrem occiderit, culleo insuatur: matrem occidit'; 'ex domo in ius educere ne liceat: ex tabernaculo eduxit.' In hoc genere haec quaeruntur: an,

³ See Seneca, *Controversiae* 1.3; Bonner, *RD* 92–93.

⁴ Compare 7.4.44. ⁵ Security for a loan had to be given in such a way as not to advantage the creditor (who must not appropriate the articles deposited with him) or ruin the debtor (as the removal of an essential tool of his trade—plough or ploughshare for example—would do).

⁶ Tarentum was famous for its wool: Varro, *De re rustica* 2.18, Horace, *Carmina* 2.16.10, Columella 7.2.3, Calpurnius Siculus 2.69. ⁷ See Cicero, *Pro Roscio Amerino* 70–72; Suetonius, *Augustus* 33, *Claudius* 34. Compare 5.10.88.

⁸ See *Digest* 2.4.18 (Gaius on the *Twelve Tables*): no one is to be brought forcibly *in ius* from his own house, because this is his safe refuge; but a person may be summoned from the baths or from the theatre, or from the door of a house.

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right is given once, does it apply on more occasions? "A priestess convicted of incest and thrown off the Rock survived; she is charged again."³ (2) If a provision applies to one event, does it apply to several? "A man who has killed two tyrants at one time claims two rewards."⁴ (3) Does what applied before an event also apply afterwards? "A rapist fled the country, his victim married; he has returned, and she now demands her choice." (4) Does what applies to the whole apply to a part? "It is forbidden to accept a plough as a pledge; he has accepted the ploughshare."⁵ (5) Does what applies to the part apply to the whole? "It is forbidden to export wool from Tarentum; he has exported sheep."⁶

In these cases, the Syllogism relies also on the Letter of the law; for the prosecutor says that the provisions are adequate—"I demand that the unchaste priestess shall be thrown off the Rock; this is the law"; "the victim claims her choice"; "wool is on a sheep," and so on; but, as the other side can reply "It is not stated that the condemned woman should be thrown over twice" or "that a victim of rape should exercise her choice at any time" or "that a tyrannicide should receive two rewards," or again that "nothing is said about a ploughshare" or "about sheep," it follows that an inference is being made from a certain fact to an uncertain one. (6) It is a more difficult business to infer from the Letter what is not stated: that is, "since A, therefore B." "A man who has killed his father shall be sewn up in a sack.⁷ He has killed his *mother*." "It is illegal to drag a man to court from his house. He has dragged him out of his tent."⁸ In this type of case the following Questions arise:

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quotiens propria lex non est, simili sit utendum, an id de quo agitur ei de quo scriptum est simile sit. Simile autem et maius est et par et minus. In illo priore, an satis lege cautum sit, an, etsi parum cautum est, et hac³ sit utendum. In utroque de voluntate legum latoris. Sed de aequo tractatus potentissimi.

9

- 1 Amphiboliae species sunt innumerabiles, adeo ut philosophorum quibusdam nullum videatur esse verbum quod non plura significet; genera admodum pauca: aut enim vocibus accidit singulis aut coniunctis.
- 2 Singula adferunt errorem cum pluribus rebus aut hominibus eadem appellatio est (ὁμωνυμία dicitur), ut 'gallus' avem an gentem an nomen an fortunam corporis significet incertum est, et 'Aiax' Telamonius an Oilei filius. Verba quoque quaedam diversos intellectus habent, ut
- 3 'cerno'. Quae ambiguitas plurimis modis accidit. Unde fere lites, praecipue ex testamentis, cum de libertate aut etiam hereditate contendunt ii quibus idem nomen est, aut quid sit legatum quaeritur.

³ *Regius*: hoc A

⁹ More detail in Hermogenes 89,16ff. Rabe; Fortunatianus 100 Halm.

¹⁰ I.e. the law now to be adduced, since there is none that properly applies.

¹ Chrysippus, *SVF* 2. 152; on this see especially C. Atherton, *The Stoics on Ambiguity* (1993) 29; on this chapter of Q., *ibid.* 270ff., 477–482, 495–501.

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(a) Should we use a similar law whenever there is none that properly applies? (b) Is the case before us similar to that which is stated in the law? (Note that "similar" includes greater, equal, and less.)⁹ In (a), we ask whether the law¹⁰ makes adequate provision and, if it does not, whether we should still use this law. In both Questions the intention of the lawgiver is involved; but the most effective treatments are based on Equity.

CHAPTER 9

Ambiguity

There are innumerable Species of Ambiguity (indeed some philosophers think that there is no word which does not have several meanings)¹ but very few Genera, because it must occur either in individual words or in groups.

(1) Single words give rise to error, when the same name applies to a number of things or persons (this is called Homonymy): thus it is unclear whether *gallus* signifies a bird or a nation or a proper name or a certain physical misfortune,² and Ajax may mean the son of Telamon or the son of Oileus. Some verbs likewise have different meanings, like *cerno*.³ This ambiguity occurs in various ways, and commonly gives rise to disputes, especially as a result of wills, when people of the same name contend for their freedom or even for an inheritance, or when there is a question about what has been bequeathed.

² I.e. a cock, a Gaul, a person called Gallus, or a castrated priest of Cybele.

³ "See," "sift," "decide," "accept an inheritance."

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4 Alterum est in quo alia integro verbo significatio est, alia diviso, ut ingenua et armamentum et Corvinum, ineptae sane cavillationis, ex qua tamen Graeci controversias ducunt: inde enim ἀλληγρίς illa vulgata, cum quaeritur utrum aula quae ter ceciderit an tibicina si ceciderit debeat publicari.

5 Tertia est ex compositis, ut si quis corpus suum in culto loco poni iubeat, circaque monumentum multum agri ab heredibus in tutelam cinerum, ut solent, leget, sit litis occasio cultum <locum dixerit an incultum>.¹ Sic apud Graecos contendunt Leon et Pantaleon, cum scriptura dubia est, bona omnia Leonti an bona Pantaleonti relicta sint.

In coniunctis plus ambiguitatis est. Fit autem per casus ut

aio te, Aeacida, Romanos vincere posse:

7 per conlocationem, ubi dubium est quid quo referri oporteat, ac frequentissime cum quod medium est utrimque possit trahi, ut de Troilo Vergilius 'lora tenens tamen': hic

¹ *suppl. Zumpt*

⁴ *In genua*, "to the knees"; *arma mentum*, "arms, chin"; *corvinum*, "heart, wine." ⁵ A stock example: Theon, *Progymnasmata* 81.30ff. Spengel. See Atherton, *op. cit.* 221–223.

⁶ Compare Hermogenes 41.20 Rabe (Heath (1995) 35).

⁷ Ennius, *Annales* 179 Vahlen = 174 Warmington (*ROL* 1. 66) = 167 Skutsch. The Delphic oracle's Greek response to Pyrrhus is here given in Latin; it leaves it unclear whether *te* or *Romanos* is the subject of *vincere posse*. The response is modelled on one given to Croesus (Herodotus 1.53).

⁸ *Aeneid* 1.476–477: *fertur equis curruque haeret resupinus inani, lora tenens tamen*, "is carried along by the horses, and

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(2) Another type of ambiguity is where the word has one meaning as a whole and another when broken up: *ingenua, armamentum, Corvinum*.⁴ This is all foolish quibbling, but the Greeks make *controversiae* out of it, as in the hackneyed case of the *aulētris*,⁵ when the question is whether what is to be confiscated is a hall (*aulē*) which has fallen down three times (*tris*), or a flute girl (*aulētris*) who has fallen down.

(3) A third type comes from compound words: for example, if a man orders his body to be buried in a cultivated place (*incultoloco*), and leaves, as is common, a considerable area around his tomb to his heirs to secure his ashes, there would be reason to dispute whether he meant in a cultivated (*in culto*) <or uncultivated (*inculto*) place>. Similarly in the Greek rhetors, Leon and Pantaleon go to law because the writing leaves it in doubt whether he left all (*panta*) his property to Leon, or his property to Pantaleon.⁶

(4) Groups of words give more scope for ambiguity. It occurs (a) because of cases:

I say that you, O child of Aeacus, the Romans can
defeat;⁷

(b) because of the arrangement, when it is doubtful what refers to what, especially when there is a word in the middle of a sentence which may be taken either with what precedes or with what follows. Thus in Vergil's line about Troilus:⁸ *lora tenens tamen*, it may be disputed whether he

clings, leaning back, to the empty chariot, yet still holding the reins." Servius explains *tamen* as implying "although he was dead." It is not easy to visualize the scene: see R. G. Austin ad loc.

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- 8 utrum teneat tamen lora, an quamvis teneat tamen trahatur quaeri potest. Unde controversia illa: 'testamento quidam iussit poni statuam auream hastam tenentem; quaeritur statua hastam tenens aurea esse debeat, an hasta esse aurea in statua alterius materiae.' Fit per flexum idem magis:

quingenta ubi erant centum inde occidit Achilles.

- 9 Saepe utri duorum antecedentium sermo subiunctus sit in dubio est, unde et controversia: 'heres meus uxori meae dare damnas esto argenti quod elegerit pondo centum; uter eligat quaeritur.'
- Verum id quod ex his primum est mutatione casuum, sequens divisione verborum aut translatione emendatur, tertium adiectione. Accusativi geminatione facta amphibolia solvitur ablativo, ut illud 'Lachetem audivi percussisse Demean' fiat 'a Lachete percussum Demean'. Sed ablativo ipsi, ut in primo diximus, inest naturalis amphibolia: 'caelo decurrit aperto': utrum per apertum caelum an cum apertum esset. Divisio respiratione et mora constat: 'statuam',
- 10
- 11 deinde 'auream hastam', vel 'statuam auream', deinde

⁹ Similar examples in *Ad Herennium* 1.20, Cic. *De inventione* 2.116.

¹⁰ A variant of an example found in Aristotle, *Sophistici Elenchi* 166a37: πεντήκοντ' ἀνδρῶν ἑκατὸν λίπε δίος Ἀχιλλεύς, "godlike Achilles left 50 of 100 (or 100 of 50) men"—i.e. either he spared half of the 100, or he chopped each of the 50 in two. Atherton, op. cit. 505–506 discusses Aristotle's examples. Q's version depends on where we pause in speaking the line: after *quingenta* makes sense, after *erant* makes nonsense.

¹¹ *Fr.com. incert.* 10 Ribbeck: "I heard that L. struck D. (or D. struck L.)." Compare 8.2.16.

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is “nevertheless holding the reins” or, although he is holding them, is “nevertheless” dragged along. Hence the *controversia*: “A man in his will ordered the erection of *statuam auream hastam tenentem*, and the question is whether it is the statue holding the spear which is to be of gold, or the spear of gold and the statue of some other material.”⁹ The same thing happens more easily as a result of the inflexion of the voice:

fifty where there were a hundred did Achilles kill.¹⁰

(c) Often too it is doubtful to which of two preceding words an expression refers. Hence the *controversia*: “My heir shall be bound to give my wife a hundred pounds of silver as chosen.” The question is, who is to choose, the wife or the heir.

Of these examples, the first may be remedied by a change of case, the second by dividing or moving the words, the third by an addition: (1) The ambiguity resulting from two accusatives is remedied by using the ablative: *Lachetem audivi percussisse Demeam*¹¹ becomes *a Lachete percussum Demeam*. (But there is a natural ambiguity in the ablative itself, as I pointed out in Book One:¹² does *caelo decurrit aperto*,¹³ mean “through the clear sky” or “when the sky was clear”?) (2) Division depends on breath and pause; *statuam*, stop, then *auream hastam*; or *statuam auream*, stop, then *hastam*. (3) Addition consists,

¹² 1.7.3.

¹³ *Aeneid* 5.212 *pelago decurrit aperto*, 1.155 *caeloque in-
vectus aperto*. Either Q. quotes Vergil from memory, or the line is from some other poet.

'hastam'. Adiectio talis est: 'argentum quod elegerit ipse', ut heres intellegatur, vel 'ipsa', ut uxor. Adiectione facta amphibolia, qualis fit 'hunc² flentes illos deprendimus', detractio solvetur.

- 12 Pluribus verbis emendandum ubi et³ id quod quo referatur dubium est, et ipsum⁴ est ambiguum: 'heres meus dare illi damnas esto omnia sua.' In quod genus incidit Cicero loquens de C. Fannio: 'is soceri instituto, quem, quia cooptatus in augurum collegium non erat, non admodum diligebat, praesertim cum ille Q. Scaevolam sibi minorem natu generum praetulisset.' Nam 'sibi' et ad socerum referri et ad Fannium potest.⁵
- 13 Productio quoque in scripto et correctio in dubio relicta causa est ambiguitatis, ut in hoc 'cato.' Aliud⁶ enim ostendit brevis secunda syllaba casu nominativo <aliud eadem producta casu ablativo>.⁷ Plurimae praeterea sunt aliae species, quas persequi nihil necesse est.
- 14 Nec refert quo modo sit facta amphibolia aut quo resolvatur. Duas enim res significari manifestum est et quod ad scriptum vocemve pertinet in utramque partem par est. Ideoque frustra praecipitur ut in hoc statu vocem ipsam ad

² Spalding: nunc A: nos edd. ³ a in rasura: est G

⁴ et ipsum A: et ipse G: eo ipso Gertz

⁵ In quod genus . . . potest del. Radermacher

⁶ rec.: alium A ⁷ suppl. Halm

¹⁴ With Spalding's *hunc*, the offending word is *illos*; with Badius' *nos* it is *nos*.

¹⁵ *Brutus* 101 (see A. E. Douglas (1966) ad loc.). Cicero goes on to say: "Laelius however excused himself by saying he had given the privilege not to his younger son-in-law but to his elder daughter—anyway, Fannius had been a pupil of Panaetius, on

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for example, in adding "by him" if he means the heir, or "by her" if he means his wife, to the word "chosen." (An ambiguity due to an addition can be remedied by removing the offending word:¹⁴ *hunc flentes illos deprendimus*, "as we wept for him, we found them" or "we found them weeping for him.")

When there is both a doubt about what a word refers to, and it is itself ambiguous, it takes several words to put things right: "My heir shall be bound to give him all his property." Cicero falls into this error in speaking of Gaius Fannius:¹⁵ "He, at the instigation of his father-in-law, whom, because he had not been elected to the college of augurs, he did not much like, especially as he had preferred his younger son-in-law, Quintus Scaevola, to himself . . ." Here "to himself" may refer either to his father-in-law or to Fannius.

The length or shortness of a syllable, which is left doubtful in a written text, is also a cause of Ambiguity, as in *cato*, where a short second syllable in the nominative gives one meaning, <and a long second syllable in the ablative another>.¹⁶ There are many other kinds of Ambiguity which it is unnecessary to enumerate.

Nor does it really matter how an Ambiguity is produced or resolved. It is obvious that two things are signified, and, so far as the written or spoken word is concerned, the two sides are equally balanced. It is therefore futile to recommend that, in this Issue, we should try to turn the ex-

Laelius' recommendation." Not a good example of ambiguity; Radermacher may be right to delete the passage.

¹⁶ In *Cato*, the proper name, the second syllable may be shortened; in *cato*, "shrewd" (dat. or abl. sing. masc.), it cannot.

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- 15 nostram partem conemur vertere: nam si id fieri potest amphibolia non est. Amphiboliae autem omnis erit in his quaestio: aliquando uter sit secundum naturam magis sermo, semper utrum sit aequius, utrum is qui scripsit ac dixit voluerit. Quarum in utramque partem satis ex iis quae de coniectura et qualitate diximus praeceptum est.

10

- 1 Est autem quaedam inter hos status cognatio. Nam et in finitione quae sit voluntas nominis quaeritur (ut in syllogismo, qui secundus a finitione status est, [quae]¹ spectatur quid voluerit scriptor) et contrarias leges duos esse scripti et voluntatis status apparet. Rursus et finitio quodam modo est amphibolia, cum in duas partes diducatur intellectus nominis, et scriptum et voluntas habet in verbis iuris² quaestionem, quod idem antinomia petitur. Ideoque omnia haec quidam scriptum et voluntatem esse dixerunt, alii in scripto et voluntate amphiboliam esse quae faciat³ quaestionem. Sed distincta sunt: aliud est enim obscurum
- 3 ius, aliud ambiguum. Igitur finitio in natura ipsa nominis quaestionem habet generalem et quae esse etiam citra complexum causae possit: scriptum et voluntas de eo disputatiure quod est in lege, syllogismus de eo quod non est. Amphiboliae lis in diversum trahit, legum contrariarum ex
- 4 diverso pugna est. Neque inmerito et recepta est a doctis-

¹ *del. Regius*

² *Spalding (or legis): iocis G: vocis A*

³ *Spalding: fecit G: facit A*

BOOK 7.10

pression itself to our advantage, because if that can be done, there is no Ambiguity. The whole question in any Ambiguity rests *sometimes* on which is the more natural interpretation, but *always* on which is the more equitable and which the writer or speaker intended. There is enough advice on this for both parties in what we said about Conjecture and Quality.

CHAPTER 10

The relation between these issues

There is a certain affinity between these Issues. In Definition we investigate the intention of a word, just as in Syllogism, the Issue which is closest to Definition, we consider what the writer intended; Conflict of Laws clearly comprises two Issues of Letter and Spirit. Again, Definition is in a sense Ambiguity, because the understanding of a word is taken in two different ways, and Letter and Spirit involves a Question of law based on words, a Question also raised by Conflict of Laws. For this reason, some people call all these Letter and Spirit, while others say that in Letter and Spirit it is Ambiguity which gives rise to the Question. But they are distinct; obscure law is one thing, ambiguous law is another. Definition, then, involves a General Question (and one which can exist apart from the context given by the case) regarding the actual nature of a term. Letter and Spirit discusses a question of right contained in the law, Syllogism that which is not contained in the law. In Ambiguity, the dispute leads to different interpretations; in Conflict of Laws, it arises from a difference. This distinction has been rightly accepted by the best

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simis haec differentia et apud plurimos ac prudentissimos durat.

- Et de hoc quidem genere dispositionis, etiam si non
5 omnia, tradi tamen aliqua potuerunt. Sunt alia quae nisi
proposita de qua dicendum est materia viam docendi non
praebeant. Non enim causa <tantum>⁴ universa in quaes-
tiones ac locos diducenda est, sed hae ipsae partes habent
rursus ordinem suum. Nam et in prohoemio primum est
aliquid et secundum ac deinceps, et quaestio omnis ac lo-
cus habet suam dispositionem, ut thesis etiam simplices.
6 Nisi forte satis erit dividendi peritus qui controversiam in
haec diduxerit, an omne praemium viro forti dandum sit,
an ex privato, an nuptiae, an eius quae nupta sit, an hae:
deinde, cum fuerit de prima quaestione dicendum, passim
et ut quidque in mentem veniet miscuerit, non primum in
ea scierit esse tractandum verbis legis standum sit an vo-
7 luntate, huius ipsius particulae aliquod initium fecerit,
deinde proxima subnectens struxerit orationem, ut pars
hominis est manus, eius digiti, illorum quoque articuli.
Hoc est quod scriptor demonstrare non possit nisi certa
8 definitaque materia. Sed quid una faciet aut altera, quin

⁴ *add. Halm*

¹ I.e. the type of progymnasmata consisting of discussion of individual general themes.

² In which the "hero" has opted to marry another man's wife: see 7.1.24.

scholars and survives in the majority of authorities, and the wisest.

Not everything can be taught

On this general topic of Disposition, though it has not been possible to teach everything, some instruction has proved possible. There are other matters which allow no scope for teaching unless one has a statement of the theme to be treated. Not only must the whole Cause be analysed into its Questions and Topics, but these parts in turn have an order of their own. In the Prooemium, something comes first and something second, and so on; moreover, every Question and Topic has its own Disposition, just like Theses¹ on their own. Suppose a student has broken his *controversia*² up into (let us say) (1) is it right to give the war hero any conceivable reward? (2) can his reward come from private sources? (3) can it be a marriage? (4) if so, can it be to a woman already married? (5) or this particular marriage?—but then, finding himself having to speak to the first Question, gets into a thorough muddle and says whatever comes into his mind, without realising that the first point to handle here is whether we should stand on the Letter or the Spirit of the Law, and without producing a proper beginning even to this little section, or incorporating the subsequent points in such a way as to give his speech a structure in the sense that the hand is part of the human body, the fingers part of the hand, and the joints part of the fingers. Will such a person be competent in Division? These are precisely the things a writer cannot demonstrate without a particular definite subject. But what will one or two instances provide, or indeed a hun-

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immo centum ac mille in re infinita? Praeceptoris est in alio atque alio genere cotidie ostendere quis ordo sit rerum et quae copulatio, ut paulatim fiat usus et ad similia transitus: tradi enim omnia quae ars efficit non possunt.

- 9 Nam quis pictor omnia quae in rerum natura sunt adumbrare didicit? Sed percepta semel imitandi ratione adsimulabit quidquid acceperit: quis non faber vasculum aliquod quale numquam viderat fecit?
- 10 Quaedam vero non docentium sunt sed discentium. Nam medicus quid in quoque valetudinis genere faciendum sit, quid quibusque signis providendum docebit: vim sentiendi pulsus venarum, caloris modos, spiritus meatum, coloris distantiam, quae sui cuiusque sunt ingenii, non dabit. Quare plurima petamus a nobis et cum causis deliberemus, cogitemusque homines ante invenisse artem
- 11 quam docuisse. Illa enim est potentissima quaeque vere dicitur oeconomia totius causae dispositio, quae nullo modo constitui nisi velut in re praesente potest: ubi adsumendum prohoemium, ubi omittendum: ubi utendum expositione continua, ubi partita: ubi ab initiis incipiendum,
- 12 ubi more Homérico a mediis vel ultimis: ubi omnino non exponendum: quando a nostris, quando ab adversariorum

³ οἰκονομία, see 3.3.9. The term (lit. "household management") is common in rhetoric from Aristotle onwards: note especially Dionysius of Halicarnassus, *Thucydides* 9, who discusses it under the heads of διαίρεσις (division), τάξις (order), and ἐξέργασια (execution). Lausberg § 443.

⁴ With reference to the way in which both *Iliad* and *Odyssey* begin, in a sense, in the middle of the story (Horace's *in medias res . . . auditorem rapit*, *Ars Poetica* 148–149). This is a familiar point: Cicero, *Ad Atticum* 1.16.1, Pliny, *Epistulae* 3.9.28, *VPH* 162.

BOOK 7.10

dred or a thousand, when the possibilities are infinite? It is the teacher's business to demonstrate every day in one kind of case after another what is the order of topics and their connection, so that experience and the skill to transfer it to similar cases are gradually developed. To *teach* everything that art can effect is an impossibility. What painter has learned to sketch everything in the natural world? Yet, having once acquired the principles of imitation, he will reproduce whatever he is presented with. What potter has not made a vessel such as he never saw before?

Some things however depend on the students, not the teachers. A doctor will teach what has to be done in each kind of illness, what is to be looked for and by what signs; but he will not communicate the power of feeling a pulse, or noting temperature, pattern of breathing, or difference of colour: these are a matter of the individual pupil's natural ability. Let us therefore look for most of what we need from our own resources, take counsel with the Cause we are to plead, and realise that men discovered our art before they taught it. The most potent Disposition of the whole Cause—what is properly called its "economy"³—is something which cannot be determined unless we imagine ourselves confronted by an actual situation. It consists in deciding when a Prooemium is needed and when not; when the Narrative should be continuous and when divided; when to begin at the beginning and when, like Homer,⁴ to start in the middle or at the end; when no statement of facts at all is required; when we should begin with our own, when with our opponents' positions; when with

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- propositionibus incipiamus, quando a firmissimis probationibus, quando a levioribus: qua in causa proponendae prohoemiis quaestiones, qua praeparatione praemuniendae: quid iudicis animus accipere possit statim dictum, quo paulatim deducendus: singulis an universis opponenda refutatio: reservandi perorationi an per totam actionem diffundendi adfectus: de iure prius an de aequitate dicendum: ante acta crimina an de quibus iudicium
- 13 est prius obicere vel diluere conveniat: si multiplices causae erunt, quis ordo faciendus: quae testimonia tabulae cuiusque generis in actione recitandae, quae reservandae. Haec est velut imperatoria virtus copias suas partim ad casus proeliorum retinentis, partim per castella tuenda custodiendasve urbes, petendos commeatus, obsidenda itinera, mari denique ac terra dividendis.
- 14 Sed haec in oratione praestabit cui omnia adfuerint, natura doctrina studium. Quare nemo expectet ut alieno tantum labore sit disertus: vigilandum (dicam iterum)⁵ enitendum pallendum est, facienda sua cuique vis, suus usus, sua ratio, non respiciendum ad haec, sed in promptu
- 15 habenda, nec tamquam tradita sed tamquam innata. Nam via demonstrari potest, velocitas sua cuique est; verum ars satis praestat si copias eloquentiae ponit in medio:
- 16 nostrum est uti eis scire. Neque enim partium est demum

⁵ dicam iterum *Kiderlin*: dicendum A: dicat iterum G

⁵ *Kiderlin* compares 7 *proem.* 4: the word implies wakefulness and burning the midnight oil.

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our strongest Proofs and when with the weaker; in which Causes the Questions should be set out in the Prooemium, and how the path to them should be made smooth; what the judge's mind can take in as soon as it is said, and what he has to be guided to by easy stages; whether to refute the other side's arguments as a whole or one at a time; whether emotional appeals should be reserved for the Peroration or scattered through the whole pleading; whether legal points or points of equity should be taken first; whether it is right to bring up (or dismiss) previous offences first, or those which are the subject of the trial; what order should be followed, if the Cause is a multiple one; which pieces of evidence or documents of various kinds should be read out during the pleading, and which held in reserve. This is, as it were, the virtue of the general who keeps back part of his forces to meet the contingencies of battle, and detaches other parts to defend forts and guard cities, ensure supplies, block roads, and indeed serve either at sea or on land.

In oratory, this will be achieved by the man who possesses all the advantages: nature, learning, and commitment. Let no one expect to become eloquent merely through the work of others. One must keep awake (let me say this again!),⁵ strive hard, grow pale with study, develop one's own powers, one's own experience, one's own method; there must be no looking round for these things, they must be ready at hand, not as things learned, but as things present from birth. The road can be pointed out; but the speed is everyone's own affair. The textbook does well enough if it makes the resources of eloquence publicly available; it is our business to know how to use them. Nor is Disposition just a matter of the parts of the speech; within

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17 dispositio, sed in his ipsis primus aliquis sensus et secundus et tertius: qui non modo ut sint ordine conlocati laborandum est, sed ut inter se vincti atque ita cohaerentes ne commissura perluceat: corpus sit, non membra. Quod ita continget si et quid quoque <loco>⁶ conveniat viderimus et, ut verba verbis adplicamus non pugnancia sed quae invicem complectantur, ita res non diversae distantibus ex locis quasi invicem ignotae collidentur, sed aliqua societate cum prioribus ac sequentibus copulatae tenebunt, ac videbitur non solum composita oratio sed etiam continua.

Verum longius fortasse progredior fallente transitu et a dispositione ad elocutionis praecepta labor, quae proximus liber inchoabit.

⁶ *suppl. Winterbottom*

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these parts too there is one thought which should come first, one second, one third. Our efforts are needed not only to put these thoughts in order but to give them mutual connection and cohesion, so that no gap lets in the light. It must be a body, not just a collection of limbs. And this will come about if we see what best fits each place, and if—just as we combine word with word so that they embrace one another and are not in conflict—so also our facts, instead of emerging from different directions and, as it were, bumping into one another like strangers, are held together in some sort of association with what precedes and what follows. That is how the speech will come to seem not only properly composed, but to be all of a piece.

But perhaps I am straying too far, and slipping, without noticing the transition, from Disposition to the rules of Elocution, which the next book will begin to discuss.

BOOK EIGHT

INTRODUCTION

The Prooemium first (1–6) selects the most important points in Books Two to Seven, and then (13–33) stresses the importance of Elocution (*elocutio*), in other words the verbal expression of the thoughts which the speaker has “discovered” and “arranged.”

For the general background of ancient stylistic theory, see (e.g.) G. A. Kennedy in *CHLC* 1. 188–199; G. A. Rowe in *CRHP* 121–157; Russell, *CA* chap. 9.

Quintilian’s account (compare 1.5.1) is based on the four virtues (*aretai*), an Aristotelian concept (*Rhetoric* 3. 1407a19) developed by Theophrastus (frs. 681–704 Fortenbaugh) and standard in most later writers, including Cicero. They are:

- (1) Correctness (8.1; Lausberg §§ 463–527).
- (2) Lucidity or Clarity (8.2; Lausberg §§ 528–537).
- (3) Ornament (8.3–10.7; Lausberg §§ 538–1054). This includes Tropes, Figures, Composition, and the use of reading and imitation to develop stylistic facility.
- (4) Propriety or Decorum (11.1; Lausberg §§ 1055–1062).

8.1 naturally refers back to the grammar teaching advocated in Book One, adding only the need to adhere to good Latin usage. Quintilian adduces the stories of Theophrastus’ hyper-Atticism and Livy’s “Patavinity.”

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8.2 deals with Lucidity in so far as it depends on words. This, says Quintilian, is principally a matter of Propriety—i.e. using the correct and apt words for things—but also involves straightforward order and economy. (Brevity is not a separate virtue for Quintilian.) The chapter is rather negative in tone, and has more to say about avoiding obscurity than about any clearly perceived positive virtue. This seems to have been the regular approach: compare Theon, *Progymnasmata* 2. 81–83 Spengel, Anonymus Seguerianus 79–88 (both specifically about Narrative), and Cicero, *De oratore* 3.48–50.

8.3 deals in general with verbal *ornatus* (κατασκευή, Ornament: “polish” and “finish” are also possible translations). 3.1–11 explains the importance of the topic, and especially the need for Ornament to be “manly” and relevant. Quintilian’s polemic against decadence is much in evidence here. In 3.11–14 he addresses the different needs of the various genres. The main division of the topic (3.15) is into individual words and groups of words. Choice of synonyms (3.15–21) is usually determined by the needs of the Cause, but sometimes by aesthetic considerations. The following section (3.24–39) classifies words as “proper,” “made up,” and “metaphorical”; this is a traditional grouping, first in Aristotle, *Poetics* 1457b, and common later. Under the first head (3.24–30), Quintilian interestingly discusses archaisms (compare *Ad Herennium* 4.15, *De oratore* 3.153; W. D. Lebek, *Verba prisca* (1970), Lausberg § 546), showing himself less than enthusiastic about the revival of old Latin words, which was to be the dominant fashion with his successors in the age of Fronto and Apuleius. In what follows (3.30–37) on “made up,” i.e. coined, words, he shows himself alert to changes of us-

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age—"what is old now was new once"—and willing to accept expressions which would have been thought questionable in his own youth. A brief word on metaphor (3.38–39) concludes this section; metaphor will be discussed in detail under Tropes.

The discussion of "words in combination" (3.40–90) begins with a list of faults to be avoided (3.41–60; Lausberg §§ 1074–1077), of which the most interesting is the kind of affectation called *cacozelia* (3.56): this word has an important role as a critical term. Coming at last to positive features (3.61), Quintilian takes first a particular heightening of the quality of lucidity which he calls by the Greek name *enargeia*; this is the vividness which makes the hearer believe he can actually see what is being described (3.61–71). This topic has already been raised in 6.2.29–36, where its relation to imagination (and hence to emotion) was in question: see Introduction to Book Six. Quintilian's example of the sack of a city (3.67–69; probably suggested by Livy's Sack of Alba, 1.29) gives a further valuable glimpse into his teaching methods. Closely connected with this is the following discussion of similes (3.72–82)—a topic already raised in 5.11, and to be developed further under Figures, 9.3—which are here viewed as a means of making the subject more vivid. Another means is *emphasis* (3.83–86; Lausberg § 578), which also (8.2.11) had a part in Lucidity. The chapter concludes (3.83–90) with some remarks on certain qualities of style—simplicity, abundance, forcefulness, bitterness—of which we should like to have heard more, since they bring to mind the multiplicity of stylistic types (*ideai*) found in later theorists, especially Hermogenes. (For the development of this line of thinking, see especially I. Rutherford, 1998.) But all this is hur-

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ried over, because Quintilian wants to come on to the “power to amplify and diminish,” which is especially important to the orator.

The capacity “to make small things great and great things small” was indeed a defining characteristic of rhetoric from early times. We may follow ancient usage in calling this Amplification; but it means, of course, exaggeration, not just spending more words on the subject, or expressing it more fully. Background texts include Aristotle, *Rhetoric* I. 1374b–1375a; “Longinus” 11–12.2; Anonymus Seguerianus 160–165; *Ad Herennium* 2.47–49. See Lausberg §§ 400–409. We must note that Quintilian here treats this whole topic under Elocution; but he points out that he has already had occasion to touch on it in the context of Invention (8.3.99). He accordingly begins with choice of words (8.4.1–3), but proceeds to climax-type devices (4.4–9), comparisons, inferences, and “accumulations”—all surely matters of thought, and closely related to the Figures which he will discuss in Book Nine. His aim in 8.4 seems to be to pull together various elements in a topic which he sees as central to the orator’s enterprise as a whole. He is certainly less precise in defining Amplification than, for example, “Longinus” 12.1.

If our interpretation of 8.4.29 (see notes) is sound, the next topic, *sententiae* (8.5), is supposed to be a type of verbal Ornament which does not come under any of the heads already discussed, but is demanded by current practice and fashion. It is difficult to translate *sententia*: “epigram” does not always satisfy; “sentence” covers only one of its meanings; “thought” (as in Pope, *Essay on Criticism* 355, “some unmeaning thing they call a Thought”) would not now be understood; “sound bite” is contemporary and (let

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us hope) ephemeral. French is luckier than English: *trait* serves quite well. The word corresponds roughly to Greek *gnōmē* (so 8.5.3), which means a concisely expressed general sentiment, but also to *epiphōnēma* (see 8.5.11), a sort of “punch line.” The *thing* is of course a staple of all rhetorical and declamatory literature: see M. Winterbottom’s Introduction to Seneca’s *Controversiae* (LCL), xv–xvii; J. de Decker, *Juvenalis declamans* (1913), 154–172; Lausberg §§ 872–879, and his Index. Quintilian’s historical account and classification (esp. 5.15–25) seem original, and his plea for moderation (5.25–34) is in tune with his customary views.

“Tropes,” the subject of 8.6, form an important part both of the rhetor’s instruction and of that of the *grammaticus*. Background material is extensive: note especially Demetrius 78–90 (with Schenkeveld (1964) 88ff.), *Ad Herennium* 4.42–46, Trypho in Spengel, *Rhetores Graeci* 3. 191–206 (better edited by M. L. West, *Classical Quarterly* 1965, 230–248) and other similar treatises in the same volume of Spengel; and above all [Plutarch] *Life and Poetry of Homer* (hereafter *VPH*; ed. J. F. Kindstrand (1990), commentary by M. Hillgruber (1994–1998)), though this text has only eight kinds of trope, as against Quintilian’s and Trypho’s fourteen. Summary of evidence in Lausberg §§ 552–598; Volkmann 415–442 (lucid and sensible). Recent discussions by G. O. Rowe, *CRHP* 124–129, G. Calboli, *Rhetorica* 16 (1998) 56–80. W. G. Rutherford’s *A Chapter in the History of Annotation* (1905) 183–369 remains worth consulting, despite his (perhaps justifiably) low opinion of Quintilian’s “muddy” discussion.

Quintilian begins (6.1–3) with a definition, a claim to be

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limiting his treatment to what is oratorically useful, and a refutation of the view that Tropes are simply word changes, and do not involve sentences or word order. He then plunges into Metaphor (6.4–18; Lausberg §§ 558–564), the most important Trope of all. He explains the criteria by which it is justified (necessity, vividness, decency) and treats it as a “shorter simile.” His primary classification (6.9–10) is based on distinguishing “animate” and “inanimate” terms in the analogy which Metaphor sets up. He couples this (6.13) with a further subdivision into Metaphor “from rational to nonrational and vice versa” and “from whole to part and vice versa.” These classifications (which are distinct from, but owe something to, Aristotle’s seminal discussions in *Poetics* 21 and *Rhetoric* 3) are found in *VPH* (2–26), Trypho (192 Spengel) and later rhetors such as Bede (*RLM* 611).

The remaining Tropes are discussed in an order partly based on a classification associated with the Stoics (Barwick (1957) 88–97), though Quintilian does not consistently use Stoic concepts, but conflates them with Aristotelian ones. The essential classification is into variations from the norm suggested by (1) similarity (as in Metaphor), (2) *vicinitas*, “neighbourhood,” “proximity” (as in Synecdoche), and (3) “contrariety” (as in some Allegory). Metaphor having already been discussed, we have first three *vicinitas* tropes: (a) Synecdoche (6.19–22; *VPH* 22, *Ad Herennium* 4.44–46; Lausberg §§ 572–577); (b) Metonymy (6.23–28; *VPH* 23, *Ad Herennium* 4.43; Lausberg §§ 565–571); (c) Antonomasia (6.29–30; *VPH* 24; *Ad Herennium* 4.42; Lausberg §§ 580–581). Next comes Onomatopoeia (6.31–33; *VPH* 16; *Ad Herennium* 4.42; Demetrius 94–95), which here means word-coining, not neces-

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sarily the imitation of the sounds of the real world (for this latter sense, see Anon. *On Tropes* in Spengel 3. 210, 27). It does not fit into any of the categories, and is in any case closely related to the type of verbal Ornament discussed in 8.3.30. Catachresis (6.34–36; *VPH* 18; *Ad Herennium* 4.45; Cicero, *Orator* 94, *De oratore* 3.169; Lausberg §§ 562, 577) is a sort of compulsory Metaphor or Synecdoche, used when no proper term is available; it is a *vicinitas* trope, as is the next item, Metalepsis (6.37–39; *VPH* 21; Lausberg § 571), a complex and rather frivolous device, not much use in practical oratory. Epithet (6.40–43; Aristotle, *Rhetoric* 3.1406a12ff.; *VPH* 17; Hermogenes 338, 20 Rabe; Lausberg §§ 676–685) is regarded by some not as a Trope at all, and is one only when the epithet acquires a sense of its own, when it is a kind of Antonomasia.

Allegory (6.44–53) and Irony (6.54–58) are famous critical tools. They belong to the group of “contrariety tropes,” because they convey their message by remote and obscure means and may seem to say the opposite of what the speaker intends. For Allegory, see *Ad Herennium* 4.46, Demetrius 99–102, *VPH* 68–69, and especially “Heraclitus” *Homeric Questions* 1–5; Lausberg §§ 895–901). For Irony, compare *VPH* 68–69, Trypho 205 Spengel, Cocondrius 3.235 Spengel; Lausberg §§ 902–905. It is also treated as a Figure in Book Nine.

The chapter ends with three other devices, which also have corresponding Figures (on the Trope–Figure distinction, see 9.1): (a) Periphrasis (6.59–61; “Longinus” 28–29; *Ad Herennium* 4.44; *VPH* 29; Lausberg §§ 716–718); (b) Hyperbaton (6.62–67; *Ad Herennium* 4.44; *VPH* 30.2; Lausberg §§ 716–718; the concept is first seen in Plato, *Protagoras* 343E); (c) Hyperbole (6.67–76; “Longinus” 38;

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Ad Herennium 4.44; Demetrius 124–127; *VPH* 71; Lausberg § 579). This last is really a *vicinitas* trope, and (like Metaphor and Catachresis) can be seen to be grounded in the habits of common speech. It is a valuable but risky tool for the orator.

LIBER OCTAVUS

<PROHOEMIUM>

- 1 His fere, quae in proximos quinque libros conlata sunt, ratio inveniendi atque inventa disponendi continetur, quam ut per omnis numeros penitus cognoscere ad summam scientiae necessarium est, ita incipientibus brevius ac simplicius tradi magis convenit.
- 2 Aut enim difficultate institutionis tam numerosae atque perplexae deterreri solent, aut eo tempore quo praecipue alenda ingenia atque indulgentia quadam enutrienda sunt asperiorum tractatu rerum atteruntur, aut si haec sola didicerunt satis se ad eloquentiam instructos arbitrantur, aut quasi ad certas quasdam
- 3 dicendi leges alligati conatum omnem reformidant. Unde existimant accidisse ut qui diligentissimi artium scriptores extiterint ab eloquentia longissime fuerint. Via tamen opus est incipientibus, sed ea plana et cum ad ingrediendum tum ad demonstrandum expedita. Eligat itaque peritus ille praeceptor ex omnibus optima et tradat ea demum in praesentia quae placet, remota refutandi cetera mora: sequen-

BOOK EIGHT

PROOEMIUM

The material assembled in the preceding five books effectively covers the principles of Invention and Disposition. It is necessary to know these thoroughly and in every detail in order really to master the subject, but a briefer and simpler course of instruction is more suitable for beginners. These tend either to be put off by the difficulty of such a detailed and complicated course, or worn down by having to handle such rebarbative material, at the very time when their minds particularly need nurturing and building up with a certain degree of indulgence; alternatively, they may come to think that, if they have learnt these things and nothing besides, they are now fully trained for eloquence; or they may fight shy of any independent effort because they have become slaves to a certain set of rules of speaking. This, it is thought, is why the most scholarly writers of textbooks have been most remote from real eloquence. Beginners do of course need a path to follow; but it must be a level one, easy to walk and easy to point out. The skilful instructor must therefore select the best things out of all the authorities, and content himself for the moment with teaching what he believes to be correct, without spending time on refuting other views. Pupils will follow

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- 4 tur enim discipuli quo duxeris. Mox cum robore dicendi crescet etiam eruditio. Idem primo solum iter credant esse in quod inducentur, mox illud cognituri etiam optimum. Sunt autem neque obscura neque ad percipiendum difficilia, quae scriptores diversis opinionibus pertinaciter tu-
- 5 endis involverunt. Itaque in toto artis huiusce tractatu difficilius est iudicare quid doceas quam cum iudicaris docere, praecipueque in duabus his partibus perquam sunt pauca, circa quae si is qui instituitur non repugnaverit primum ad cetera habiturus est cursum.
- 6 Nempe enim plurimum in hoc laboris exhausimus, ut ostenderemus rhetoricen bene dicendi scientiam et utilem et artem et virtutem esse: materiam eius res omnis de quibus dicendum esset: eas in tribus fere generibus, demonstrativo deliberativo iudicialique, reperiri: orationem porro omnem constare rebus et verbis: in rebus intuendam inventionem, in verbis elocutionem, in utraque conlocationem, quae memoria complecteretur, actio commendaret. Oratoris officium docendi movendi delectandi partibus contineri, ex quibus ad docendum expositio et argumentatio, ad movendum adfectus pertinerent, quos

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where you lead. Later, as their speaking powers develop, their learning will increase too. To begin with, let them think that there is no way other than that on which they are being led; later they will realize that it is also the best. The things which writers have made so complicated by obstinate defences of their own diverse opinions are really neither obscure nor hard to grasp. Thus, throughout the whole field of rhetoric, it is more difficult to decide what to teach than to teach it once you have decided; and in Invention and Disposition in particular there is a very small group of principles which ensure that, so long as the student does not find them repugnant, he will have an easy passage to the rest.

Essential points in Books II-VII

My main effort to be sure has been expended in showing:

(1) That Rhetoric is the science of speaking well, is useful, and is an art and a virtue. [2.15-18]

(2) That its subject matter is everything on which one may be asked to speak. [2.21]

(3) That, broadly speaking, it is found in three forms, Epideictic, Deliberative, and Forensic. [3.3.14]

(4) That all speech consists of things and words; the study of things is Invention, of words Elocution; Disposition is involved in both; the whole is retained by Memory and made acceptable by Delivery. [3.3.1-10]

(5) That the duty of an orator can be divided into Informing, Moving, and Giving Pleasure. Narrative and Argumentation are the means of Informing, Emotional Appeals are the means of Moving, and should be dominant

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- per omnem quidem causam sed maxime tamen in ingressu ac fine dominari. Nam delectationem, quamvis in utroque sit eorum, magis tamen proprias in elocutione partes habere. Quaestiones alias infinitas, alias finitas, quae personis temporibus locis continerentur. In omni porro materia tria esse quaerenda, an sit, quid sit, quale sit. His adiciebamus demonstrativam laude ac vituperatione constare. In ea quae ab ipso de quo diceremus, quae <ante, quae>¹ post eum acta essent, intuendum. Hoc opus tractatu honestorum utiliumque constare. Suasoriis accedere tertiam partem ex coniectura, possetne fieri et an esset futurum de quo deliberaretur. Hic praecipue diximus spectandum quis, apud quem, quid diceret. Iudicialium causarum alias in singulis, alias in pluribus controversiis consistere, et in quibusdam intentionem modo <facere statum, in quibusdam et depulsionem>:² depulsionem porro omnem in fitatione duplici, factumne et an hoc factum esset, praeterea defensione ac translatione constare. Quaestionem aut ex scripto esse aut ex facto: facto de rerum fide proprietate qualitate, scripto de verborum vi aut voluntate, in quibus vis tum causarum, tum actionum inspicere soleat, quae aut

¹ *suppl. Gertz*

² *suppl. D.A.R. after Happel*

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throughout the speech, but particularly at the beginning and the end. Pleasure, though it is found both in things and in words, has its main sphere in Elocution. [3.5.1-4]

(6) That some Questions are "indefinite," others "definite," that is to say defined by persons, times, and places. [3.5.5-11]

(7) That in every type of subject there are three Questions to be asked: does it exist? what is it? what sort of thing is it? [3.6.44, 80]

(8) That the Epideictic genre consists of praise and blame; in this we have to consider what was done by our subject himself, what <before him, and what > after him. The basis of this kind of work is the treatment of the Good and the Expedient. [3.7]

(9) That, in Deliberative oratory, there is also a third element, dependent on Conjecture, namely whether the proposed action can or will be executed. Here we said that the special points to be considered were the speaker, the audience, and the proposal. [3.8]

(10) That, of forensic cases, some consist of one point of controversy, others of several; in some, the prosecution alone <determines the Issue, in others the rebuttal also>; further, the basis of every rebuttal is a double denial—both that the act happened and that it was the act alleged in the indictment—and also a Justification and a Plea of Transference. [3.6.13-17, 83-85]

(11) That a Question depends either on a written text or an action; if it is an action, it involves the truth, special character, and Quality of the facts; if a written text, it is a matter of the meaning of the words or the intention; here the nature both of the Causes and of the procedures must normally be taken into account; these things are com-

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- scripti et voluntatis aut ratiocinativa aut ambiguitatis aut le-
- 11 gum contrariarum specie continentur. In omni porro causa iudiciali quinque esse partes, quarum exordio conciliari audientem, narratione <doceri, probatione>³ proposita confirmari, refutatione <contra dicta dissolvi, peroratione>⁴
- 12 tione>⁴ aut memoriam refici aut animos moveri. His argumentandi et adficiendi locos et quibus generibus concitari placari resolvi iudices oporteret adiecimus. Accessit ratio divisionis. Credere modo qui discet velit, certa quaedam via est,⁵ et in qua multa etiam sine doctrina praestare debeat per se ipsa natura, ut haec de quibus dixi non tam inventa a praeceptoribus quam cum fierent observata esse videantur.
- 13 Plus exigunt laboris et curae quae secuntur. Hinc enim iam elocutionis rationem tractabimus, partem operis, ut inter omnis oratores convenit, difficillimam. Nam et M. Antonius, cuius supra mentionem habuimus, cum a se disertos visos esse multos ait, eloquentem neminem, diserto satis putat dicere quae oporteat, ornate autem dicere proprium esse eloquentis. Quae virtus si usque ad eum in nullo reperta est ac ne in ipso quidem aut L. Crasso, certum est et in his et in prioribus eam desideratam quia difficil-
- 14

³ *suppl. Meister*

⁴ *suppl. Halm*

⁵ certa . . . est A: materia quidem varia est *Halm* ('the material is various'): *del. Gesner*

¹ Cicero, *De oratore* 1.94. M. Antonius was last mentioned 7.3.16.

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prised under Letter and Spirit, Syllogism, Ambiguity, and Conflict of Laws. [3.6.86–90]

(12) That in every forensic Cause there are five parts: of these, the Exordium wins the hearer's attention, the Narrative <informs him, the Proof> confirms our position, the Refutation <demolishes our opponents', and the Peroration> either refreshes the memory or arouses emotions. [4.1–6.1]

(13) I added to all this the Topics of Argumentation and Emotion, and showed by what means judges should be stimulated, calmed, or made to relax. [5.10, 6.1–3]

(14) After all this came the theory of Division. [7]. If the learner will only have faith, there is indeed a path to follow, but one in which nature must do a great deal on its own, even without the help of learning—so that all the things I have discussed may be thought to have been not so much the inventions of the teachers as the result of their observation at the time of what was being done. [7.10.10–15]

Importance and difficulty of Elocution

What follows needs more effort and care. I have next to treat the theory of Elocution, which all orators agree is the most difficult part of the whole work. On the one hand, Marcus Antonius,¹ whom I mentioned above, says that he has seen many competent speakers, but no eloquent one; he thus holds the view that saying the right things suffices for the merely competent, but the eloquent speaker's special part is to say them in style. If this virtue was to be found in no orator up to his day, and not even in him or in Lucius Crassus, it is obvious that the lack of it in them and in their predecessors was due to its great difficulty. On the other

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- lima fuit. Et M. Tullius inventionem quidem ac dispositionem prudentis hominis putat, eloquentiam oratoris, ideoque praecipue circa praecepta partis huius laboravit.
- 15 Quod eum merito fecisse etiam ipso rei de qua loquimur nomine palam declaratur. Eloqui enim est omnia quae mente conceperis promere atque ad audientis perferre, sine quo supervacua sunt priora et similia gladio condito
- 16 atque intra vaginam suam haerenti. Hoc itaque maxime docetur, hoc nullus nisi arte adsequi potest, hic studium plurimum adhibendum: hoc exercitatio petit, hoc imitatio, hic omnis aetas consumitur: hoc maxime orator oratore praestantior, hoc genera ipsa dicendi aliis alia potiora.
- 17 Neque enim Asiani aut quocumque alio genere corrupti res non viderunt aut eas non conlocaverunt, neque quos aridos vocamus stulti aut in causis caeci fuerunt, sed his iudicium in eloquendo ac modus, illis vires defuerunt, ut appareat in hoc et vitium et virtutem esse dicendi.
- 18 Non ideo tamen sola est agenda cura verborum. Occurram enim necesse est et velut in vestibulo protinus adprehensuris hanc confessionem meam resistam iis qui omnia rerum, qui nervi sunt in causis, diligentia quodam inani circa voces studio senescunt, idque faciunt gratia decoris, qui est in dicendo mea quidem opinione pulcherrimus,
- 19 sed cum sequitur, non cum adfectatur. Corpora sana et integri sanguinis et exercitatione firmata ex isdem his spe-

² *Orator* 44, 61.

³ See 9.4.103, 12.10.16–19; General Introduction, vol. I, Introduction to Book Twelve, vol. V.

⁴ I.e. the Atticists: compare Cicero, *Brutus* 68, Tacitus, *Dialogus* 18.

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hand, Marcus Tullius holds that Invention and Disposition are the business of a sensible man, but eloquence belongs to the orator; he therefore put his main effort into instruction for this.² That he was right in doing this is perfectly obvious just from the name of the thing we are talking about. The word *eloqui* means to bring out and communicate to an audience the thoughts you have formed in your mind. Without this, everything that has gone before is useless, like a sword that is put up and will not come out of its scabbard. This therefore is the main subject of teaching, this is the accomplishment that no one can achieve without art, this is the area on which study should be concentrated, this is the goal of practice and imitation, this is the occupation of a lifetime, this is what makes one orator better than another, and one style of speaking preferable to another. It was not that the "Asians"³ and other decadent stylists failed to discover their points or arrange them; nor that the "dries,"⁴ as we call them, were fools or blind to the needs of their Causes. No, the former lacked judgement and moderation in Elocution, the latter lacked strength. It is obvious therefore that the faults and the virtues of public speaking are both to be found in Elocution.

This does not mean, however, that we should care only about words. I must go on the offensive, and block the way right at the outset to those who would like to use this confession of mine for their own ends: I mean the people who take no trouble with their subject matter (which is the backbone of all Causes) and grow old in a futile pursuit of words. They do this in the name of beauty, which in my view is indeed the finest thing in oratory, but only when it comes naturally, not when it is deliberately sought. Healthy bodies, with sound blood and strengthened by ex-

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20 ciem accipiunt ex quibus vires, namque et colorata et ad-
 stricta et lacertis expressa sunt: sed eadem si quis vulsa
 atque fucata muliebriter comat, foedissima sint ipso for-
 mae labore. Et cultus concessus atque magnificus addit
 21 hominibus, ut Graeco versu testatum est, auctoritatem: at
 muliebris et luxuriosus non corpus exornat, sed detegit
 mentem. Similiter illa translucida et versicolor quorun-
 dam elocutio res ipsas effeminat quae illo verborum habitu
 22 vestiuntur. Curam ergo verborum, rerum volo esse sollici-
 tudinem. Nam plerumque optima rebus cohaerent et cer-
 nuntur suo lumine: at nos quaerimus illa tamquam lateant
 semper seque subducant: ita numquam putamus circa id
 esse de quo dicendum est, sed ex aliis locis petimus et
 23 inventis vim adferimus. Maiore animo adgredienda elo-
 quentia est, quae si toto corpore valet, unguis polire et ca-
 pillum reponere non existimabit ad curam suam pertinere.

23 Sed evenit plerumque ut in hac diligentia deterior
 etiam fiat oratio: primum, quia sunt optima minime arces-
 sita et simplicibus atque ab ipsa veritate profectis similia.
 Nam illa quae curam fatentur et ficta atque composita
 videri etiam volunt nec gratiam consecuntur et fidem
 24 amittunt, praeter id quod sensus obumbrant et velut laeto
 gramine sata strangulant. Nam et quod recte dici potest
 circumimus amore verborum, et quod satis dictum est

⁵ Not identified.

⁶ The clothing image (compare Cicero, *Brutus* 274: *sententias mollis et perlucens vestiebat oratio*) continues. Clothes that can be seen through are a sign of effeminacy: compare e.g. Seneca, *Epistulae* 114.21, Juvenal 2.7, *Panegyrici Latini* 2.33.4 (*perlucere* is the verb in all these passages).

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ercise, acquire good looks by the same means as they acquire strength; they are tanned, slim, and muscular. On the other hand, if one feminizes them by plucking the hair and using cosmetics, the very striving for beauty makes them disgusting. Again, decent and impressive apparel lends men authority, as the Greek verse⁵ bears witness, but a womanish and luxurious dress, instead of adorning the body, exposes the mind within. In the same way, the translucent and many-coloured style of some speakers emasculates subjects which are clothed in this kind of verbal dress.⁶ What I want is *care* for words, but *deep concern* for the subject. Most commonly, the best words are bound up with the subject, and are discovered by their own light; and yet we go on searching for them as though they were always hiding and taking themselves out of the way! We never think they are to be found where the subject of our speech is to be found, but prefer to seek them elsewhere and do violence to the results of our Invention. Eloquence should be approached in a higher spirit; if her whole body is healthy, she will not think that polishing her nails or styling her hair has anything to do with her well-being.

The usual consequence is that this obsession actually makes the speech worse. One reason for this is that the best words are the least farfetched, and resemble those simple words that spring from reality. Expressions which reveal the trouble they have cost, and strive to seem artificial and contrived, fail to achieve elegance and at the same time lose credibility – to say nothing of the fact that they cast a shadow over the sense and, as it were, choke the crop by their luxuriant growth. Our love of words makes us go round in circles to express what could be said directly, repeat what has been said already, load a thought with

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repetimus, et quod uno verbo patet pluribus oneramus,
 et pleraque significare melius putamus quam dicere.
 25 Quid quod nihil iam proprium placet dum parum creditur
 disertum quod et alius dixisset? A corruptissimo quoque
 poetarum figuras seu tralationes mutuamur, tum demum
 ingeniosi scilicet si ad intellegendos nos opus sit ingenio.
 Atqui satis aperte Cicero praeceperat in dicendo vitium
 vel maximum esse a vulgari genere orationis atque a
 26 consuetudine communis sensus abhorrere. Sed ille [et]⁶
 durus atque ineruditus: nos melius, quibus sordet omne
 quod natura dictavit, qui non ornamenta quaerimus sed le-
 nocinia, quasi vero sit ulla verborum nisi rei cohaerentium
 virtus: quae ut propria sint et dilucida et ornata et apte
 conlocentur si tota vita laborandum est, omnis studiorum
 27 fructus amissus est. Atqui plerosque videas haerentis circa
 singula et dum inveniunt et dum inventa ponderant ac
 dimetiuntur. Quod si idcirco fieret ut semper optimis
 uterentur, abominanda tamen haec infelicitas erat, quae et
 cursum dicendi refrenat et calorem cogitationis extinguit
 28 mora et diffidentia. Miser enim et, ut sic dicam, pauper
 orator est qui nullum verbum aequo animo perdere potest.
 Sed ne perdet quidem qui rationem eloquendi⁷ primum
 cognoverit, tum lectione multa et idonea copiosam sibi
 verborum supellectilem compararit, huic adhibuerit ar-
 tem conlocandi, deinde haec omnia exercitatione plurima
 roborarit, ut semper in promptu sint et ante oculos:

⁶ *del. Regius: est Spalding*

⁷ *recc.: loquendi A*

⁷ *De oratore* 1.12:

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many words where one would make it clear, and often think it better to drop a hint than to speak out straight. Of course, no one is content with the proper word nowadays, when there is held to be no merit in anything that someone else might have said! We borrow figures or metaphors from the most decadent of the poets, and take it that the unique sign of genius is needing a genius to understand us. And yet Cicero⁷ had laid down quite clearly that the greatest fault in public speaking was to distance oneself from ordinary language and our normal instinctive usage. But Cicero was a rude ignoramus; *we* have better ideas, we who look with distaste on anything that Nature dictates, we who seek not ornament but meretricious finery, and behave as though words could possess virtue without cohering with their subject! If we have to labour all our lives just to ensure that our words are correct, lucid, elegant, and properly arranged, the whole fruit of our studies has been lost! And yet you can find many people puzzling over individual words, first to discover them and then to weigh and measure their discoveries. Even if the purpose of this was to ensure that they always used the best words, this unhappy preoccupation would be something to reject with disgust, because it both checks the natural movement of speech and puts out the fire of the imagination by producing delay and loss of confidence. An orator who cannot bear to lose a single word is a poor creature—a pauper, one might say. But he will not even need to lose one, if he has first grasped the principles of Elocution, next furnished himself with copious verbal resources by extensive and appropriate reading, brought skill in Composition to bear on this, and finally strengthened all his accomplishments by persistent practice, so that they are always ready at hand

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- 29 namque ei qui id fecerit sic res cum suis nominibus occur-
rent. Sed opus est studio praecedente et adquisita facul-
tate et quasi reposita. Namque ista quaerendi iudicandi
comparandi anxietas dum discimus adhibenda est, non
dum dicimus. Alioqui sicut qui patrimonium non pararunt,
sub diem quaerunt, ita in oratione qui non satis <eruditus
30 erit, verborum paupertate>⁸ laborabit⁹: sin praeparata di-
cendi vis fuerit, erunt in officio, non ut requisita respon-
dere sed ut semper sensibus inhaerere videantur atque eos
31 ut umbra corpus sequi. Sed in hac ipsa cura est aliquid
satis: nam cum Latina significantia ornata, cum apte sunt
conlocata, quid amplius laboremus? Quibusdam tamen
nullus est finis calumniandi se et in¹⁰ singulis paene syl-
labis commorandi, qui etiam cum optima sunt reperta
quaerunt aliquid quod sit magis antiquum remotum inopi-
natum, nec intellegunt iacere sensus in oratione in qua
32 verba laudantur. Sit igitur cura elocutionis quam maxima,
dum sciamus tamen nihil verborum causa esse faciendum,
cum verba ipsa rerum gratia sint reperta: quorum ea sunt
maxime probabilia quae sensum animi nostri optime pro-
munt, atque in animis iudicum quod nos volumus effi-
33 ciunt. Ea debent praestare sine dubio et admirabilem et
iucundam orationem, verum admirabilem non sic quo

⁸ *suppl. Radermacher after Meister*

⁹ *Meister: laboravit A*

¹⁰ *Castiglioni: cum A*

⁸ Compare Plutarch, *On Curiosity* 520C, on people who “haunt the Monster Market, marking those without legs or with deformed arms or three eyes or sparrow heads” (trans. Russell (1993) 201).

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and in full view. Having done this, he will find that the ideas will present themselves to his mind accompanied by the right words. But one needs previous study, and to have acquired the facility and, as it were, stored it up for use. All that anxiety of looking for words and judging and comparing them should be exercised at the learning stage, not when we are active as speakers. Otherwise, just as people who have not got any capital live from one day to the next, so, in speaking, the man who has not been sufficiently <trained will> suffer <from shortage of words>. If however his capacity has been developed beforehand, the words will be on duty; they will seem not to appear in response to a search, but to be perpetually present in his thinking and following it around as the shadow follows the body. But there is a point where sufficiency is reached even in this concern. For when the words are good Latin, meaningful, and elegant, and when they are placed appropriately, why should we toil further? And yet there are people who never stop finding fault with themselves and hesitating over almost every syllable, and who, having found the best words, look for something more archaic, remote, or unexpected; they do not realize that when the wording of a speech is praised, its content is a failure. So let us give as much attention to Elocution as possible, so long as we understand that nevertheless nothing should be done *for the sake of* words, because words were invented for the sake of things, and those words are most acceptable which best express our thoughts and lead to the effect we want in the minds of the judges. They must of course produce speech which arouses admiration and delight, but an admiration very different from that which we bestow on monsters,⁸ and a

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modo prodigia miramur, et iucundam non deformi voluptate sed cum laude ac dignitate coniuncta.

1

- 1 Igitur quam Graeci *φράσις* vocant, Latine dicimus elocutionem. Ea spectatur verbis aut singulis aut coniunctis. In singulis intuendum est ut sint Latina, perspicua, ornata, ad id quod efficere volumus accommodata: in coniunctis ut
- 2 emendata, ut <apte>¹ conlocata, ut figurata. Sed ea quae de ratione Latine atque emendate loquendi fuerunt dicenda in libro primo, cum de grammaticae loqueremur, executi sumus. Verum illic tantum ne vitiosa essent praecepimus: hic non alienum est admonere ut sint quam minime peregrina et externa. Multos enim, quibus loquendi ratio non desit, invenias quos curiose potius loqui dixeris quam Latine, quo modo et illa Attica anus Theophrastum, hominem alioqui disertissimum, adnotata unius adfectatione verbi hospitem dixit, nec alio se id deprendisse interrogata
- 3 respondit quam quod nimium Attice loqueretur: et in Tito Livio, mirae facundiae viro, putat inesse Pollio Asinius quandam Patavinitatem. Quare, si fieri potest, et verba omnia et vox huius alumnum urbis oleant, ut oratio Romana plane videatur, non civitate donata.

¹ *add. Christ*

¹ A not uncommon synonym of *lexis* in this sense; see e.g. "Longinus" 3.1, 8.1, 30.1, 42.1.

² 1.5 (the "virtues" which are the subject of 8.1–3 are listed at 1.5.1).

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delight derived not from unseemly pleasure but from pleasure combined with honour and dignity.

CHAPTER 1

The primary virtue of good Latin

What the Greeks call *phrasis*¹ we call *elocutio* in Latin. It is studied both in individual words and in words taken together. In individual words, we need to ensure that they are good Latin, clear, elegant, and well adapted to our purpose. Grouped words must be correct, <appropriately> arranged, and figured. I have already, in discussing *grammaticē* in Book One, said what was necessary about the principles of speaking pure and correct Latin.² But there, my advice bore only on avoiding faults; here it is relevant to warn that there should be as few non-Roman or foreign words as possible. One can find many speakers, not lacking in linguistic understanding, whose style may be said to be pedantic rather than Latin. Think of the old Athenian woman who addressed the very eloquent Theophrastus as “Stranger,” because she noticed a peculiarity in one word; and when she was asked how she caught him out, she said it was because he spoke too good Attic.³ Again Asinius Pollio thinks there is a certain “Patavinity” in Livy, who was a man of marvellous eloquence.⁴ If possible, then, let all our words and our pronunciation have a whiff of city breeding, so that our speech seems to be native Roman, not simply naturalized.

³ Compare Cicero, *Brutus* 172, but the point that Theophrastus’ Attic was too good to be true seems to be peculiar to Q.

⁴ See on 1.5.56.

- 1 Perspicuitas in verbis praecipuam habet proprietatem, sed
 proprietas ipsa non simpliciter accipitur. Primus enim in-
 tellectus est sua cuiusque rei appellatio, qua non semper
 2 utemur. Nam et obscena vitabimus et sordida et humilia.
 Sunt autem humilia infra dignitatem rerum aut ordinis. In
 quo vitio cavendo non mediocriter errare quidam solent,
 qui omnia quae sunt in usu, etiam si causae necessitas
 postulet, reformidant: ut ille qui in actione Hibericas her-
 bas se solo nequiquam intellegente dicebat, nisi inridens
 hanc vanitatem Cassius Severus spartum dicere eum velle
 3 indicasset. Nec video quare clarus orator duratos muria
 pisces nitidius esse crediderit quam ipsum id quod vitabat.
 In hac autem proprietatis specie, quae nominibus ipsis
 cuiusque rei utitur, nulla virtus est, at quod ei contrarium
 est vitium. Id apud nos inproprium, *ἄκυρον* apud Graecos
 4 vocatur, quale est ‘tantum sperare dolorem’, aut, quod in
 oratione Dolabellae emendatum a Cicerone adnotavi,
 ‘mortem ferre’, aut qualia nunc laudantur a quibusdam,

¹ Greek *σαφήνεια*. Lausberg §§ 528–537.

² On such unacceptable words, see also 10.1.9; “Longinus” 43 (with Russell ad loc.). ³ Or “the court’s standing.”

⁴ FOR p. 350; see on 6.1.43.

⁵ I.e. “Spanish broom” (*spartium iunceum*) or some other plant producing fibre used in rope-making.

⁶ Presumably *salsamenta*: compare “Longinus” 43.2, who objects to *κρέα τεταριχενμένα*, “salted meat,” in the historian Theopompus. Perhaps Q. does not name this orator because he is still alive; however, the possibility that it is Asinius Pollio is well argued by J. Uria Varela in *Classical Quarterly* 50 (2000) 314–316.

⁷ Vergil, *Aeneid* 4.419: the usage is not rare (*OLD* s.v. *spero* 5),

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CHAPTER 2

Lucidity

The most important characteristic of Lucidity¹ in words is Propriety. But Propriety itself can be understood in more than one way. (1) Its first sense is that of calling everything by its right name. We should not always do this, for we should avoid words that are obscene, disgusting, or low. By “low”² I mean beneath the dignity of the subject or the speaker’s standing.³ In trying to avoid this fault, some tend to make the serious mistake of shunning all words that are in ordinary use, even if the requirements of the Cause demand them—like the man who mentioned “Hiberic grass” in his speech, to no purpose (because he was the only person who knew what he meant), had not Cassius Severus,⁴ making fun of his foolishness, explained that he meant esparto.⁵ Nor do I see why a distinguished orator thought that “fish preserved in brine” was more elegant than the word he was avoiding.⁶ There is no positive virtue in this kind of Propriety, which consists in using the actual names for things, but its opposite is a fault. This is what we call Impropropriety, and the Greeks *akyrōn*: for example “to hope for such great woe,”⁷ or the phrase which I see Cicero corrected in a speech by Dolabella, “to bear death,”⁸ or the sort of expressions which are praised by some people now-

though Servius (ad loc.) agrees with Q.: *sperare . . . pro timere: et est akyrologia*.

⁸ ORF p. 516. For Cicero’s instruction of his son-in-law Dolabella see also 12.11.6; *mortem ferre* is used in the sense “inflict death” by Cicero himself (*In Verrem* 5.147), but it could also mean “to endure death.”

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- quorum est 'de cruce verba ceciderunt'. Non tamen quidquid non erit proprium protinus et inproprii vitio laborabit, quia primum omnium multa sunt et Graece et Latine non denominata. Nam et qui iaculum emittit iaculari dicitur, qui pilam aut sudem appellatione privatim sibi assignata caret: et ut lapidare quid sit manifestum est, ita glebarum testarumque iactus non habet nomen. Unde
- 5
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- abusio, quae κατάχρησις dicitur, necessaria. Tralatio quoque, in qua vel maximus est orationis ornatus, verba non suis rebus accommodat. Quare proprietates non ad nomen sed ad vim significandi refertur, nec auditu sed intellectu perpendenda est.
- Secundo modo dicitur proprium inter plura quae sunt eiusdem nominis id unde cetera ducta sunt, ut vertex est contorta in se aqua vel quidquid aliud similiter vertitur, inde propter flexum capillorum pars summa capitis, ex hoc id quod in montibus eminentissimum. Recte dixeris haec omnia vertices, proprie tamen unde initium est. Sic soleae et turdi pisces et cetera.
- Tertius est huic diversus modus cum res communis pluribus in uno aliquo habet nomen eximium, ut carmen

⁹ I.e. the words of a criminal suffering crucifixion. So Ovid, *Epistulae ex Ponto* 1.6.38, "prisoners are said to hope for salvation, and a man hanging on a cross makes vows" (adduced by Calcante).

¹⁰ See 8.6.34 (Latin *abusio*). Lausberg § 577.

¹¹ *OLD* s.v. follows Q.'s classification of these meanings.

¹² (1) "Sole" or "sandal," (2) also the fish "sole."

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adays, like "the words fell from the cross."⁹ However, it does not follow that whatever fails to exhibit Propriety automatically suffers from the fault of Impropropriety, because, in the first place, there are many things which have no name either in Greek or in Latin. For example, the verb *iaculari* is used of someone throwing a javelin (*iaculum*), but there is no special word for the person who throws a ball or a stick. Again it is plain that *lapidare* means "to stone," but there is no word for throwing clods of earth or pieces of pot. Thus "abuse" (*katachrēsis*)¹⁰ becomes necessary. Metaphor too, which is the greatest ornament of oratory, fits words to things which do not belong to them. Propriety, therefore, is relative not to the word, but to its semantic value, and is to be judged not by the ear but by the understanding.

(2) In the second sense of Propriety, when there are a number of things which share the same term, the "proper" use is that from which the others are derived. For example, *vertex* means a whirlpool or anything which spins round in the same way; next, because of the coils of the hair, it comes to mean the top of the head, and from this it is extended to the highest points of mountains.¹¹ All these are rightly called *vertex*, but only the original meaning is the "proper" one. So too *solea*¹² and *turdus*¹³ are used as names of fish, and so on.

(3) The third kind of Propriety is the reverse of this. It occurs when a thing which is common to various circumstances has a special name in one of them, as a funeral song

¹³ (1) "Thrush" or (2) a fish, perhaps a wrasse (Greek *κίχλη* also has these two meanings): French *grive de mer*, Italian *tordo* apparently mean a fish of the same kind.

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funebre proprie 'nenia' et tabernaculum ducis 'augurale'.

Item quod commune est et aliis nomen intellectu alicui rei peculiariter tribuitur, ut 'urbem' Romam accipimus et 'venales' novicios et 'Corinthia' aera, cum sint urbes aliae quoque et venalia multa et tam aurum et argentum quam aes Corinthium. Sed ne in his quidem virtus oratoris inspicitur.

- 9 At illud iam non mediocriter probandum, quod hoc etiam laudari modo¹ solet ut proprie dictum, id est, quo nihil inveniri possit significantius, ut Cato dixit C. Caesarem ad evertendam rem publicam sobrium accessisse, ut Vergilius 'deductum carmen', et Horatius 'acrem tibiam'
- 10 'Hannibalemque dirum'. In quo modo illud quoque est a quibusdam traditum proprii genus ex adpositis (epitheta dicuntur), ut 'dulcis musti' et 'cum dentibus albis'. De quo genere alio loco dicendum est.
- 11 Etiam quae bene tralata sunt, propria dici solent. Interim autem quae sunt in quoque praecipua proprii locum accipiunt, ut Fabius inter plures imperatorias virtutes Cunctator est appellatus.

¹ <omni> modo Watt 1993

¹⁴ If this category is the reverse of the previous one, Q. must mean that a particular kind of song (viz. a funeral song) and a particular kind of tent (viz. a general's) have the technical names *naenia* and *augurale*: he thus neglects the fact that *naenia* can also signify, e.g., a children's song or lullaby, and *augurale* can be applied to anything which belongs to an augur (especially his staff, *OLD* s.v. 2).

¹⁵ "Corinthian" bronze, thought of as an alloy of bronze and a precious metal, was supposed to have been produced accidentally in the burning of Corinth in 146 BC (Pliny, *Natural History* 34.6).

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is properly a *naenia* and a general's tent an *augurale*.¹⁴

(4) Again, a name which is common to other things may be understood in a special sense as applying to one particular thing, as we use *urbs* for Rome, or *venales* for newly-purchased slaves, or *Corinthia*¹⁵ for bronze, though there are other cities besides Rome, and many things for sale besides slaves, and gold and silver, as well as bronze, can be Corinthian.

There is no scope for oratorical excellence here either.

(5) We do however now come to something which *does* deserve serious approbation, and is in fact commonly praised in this way as "the proper expression"—which means that no more significant expression can be thought of: for example, when Cato said "Gaius Caesar went sober to the work of overthrowing the Republic,"¹⁶ or when Vergil speaks of a "fine-spun song"¹⁷ or Horace of the "sharp pipe"¹⁸ or "dire Hannibal."¹⁹ Under this head, some include also Propriety of Adjectives (or Epithets, as they are called): for example "sweet must"²⁰ or "with white teeth."²¹ These must be discussed elsewhere.²²

Good metaphors also are often regarded as instances of Propriety. And sometimes the leading feature of a particular person becomes his "proper" name: Fabius was called Cunctator, Delayer, because of just one of his many qualities as a general.

In any case, bronze objects from Corinth flooded the market at that time, and "Corinthian bronze" was a prestige possession.

¹⁶ Suetonius, *Divus Iulius* 53. ¹⁷ *Eclogues* 6.5.

¹⁸ *Carmina* 1.12.1. ¹⁹ *Carmina* 3.6.36.

²⁰ *Georgics* 1.295. ²¹ *Aeneid* 11.681.

²² 8.6.40.

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Possunt videri verba quae plus significant quam elo-
cuntur in parte ponenda perspicuitatis: intellectum enim
adiuvant; ego tamen libentius emphasis retulerim ad or-
natum orationis, quia non ut intellegatur efficit sed ut plus
intellegatur.

- 12 At obscuritas fit verbis iam ab usu remotis, ut si
commentarios quis pontificum et vetustissima foedera et
exoletos scrutatus auctores id ipsum petat ex iis quae inde
contraxerit, quod non intelleguntur. Hinc enim aliqui
famam eruditionis adfectant, ut quaedam soli scire videan-
tur.
- 13 Fallunt etiam verba vel regionibus quibusdam magis
familiaria vel artium propria, ut 'atabulus' ventus et navis
'stlataria'² et \dagger inmalocosanum \dagger .³ Quae vel vitanda apud iu-
dicem ignarum significationum earum vel interpretanda
sunt, sicut in iis quae homonyma vocantur, ut 'taurus' ani-

² *Haupt*: saccaria A ³ inula Cosana *Schenkl*: cinnamum
comacum or cinnamum Cosmianum D.A.R.

²³ See on 9.2.64.

²⁴ The sirocco from Africa: Horace, *Sermones* 1.5.78; Seneca,
Nat. Quaest. 5.17.5.

²⁵ The manuscript reading *saccaria*—a ship carrying a cargo
in bags—is quite possible; Halm's *stlataria* (from *stlata*, a type of
boat perhaps associated with pirates) makes Q. possibly allude to
Ennius, *Annales* 469 Vahlen (= 177 Warmington (*ROL* 1, 68) =
462 Skutsch): *et melior navis quam quae stlataria portat*, "a better
ship than that which carries (? pirated goods)"; see Courtney on
Juvenal 7.134.

²⁶ Guesswork is all that is possible here. *Schenkl's inula*
"Cosana," "elecampane 'Cosan'" assumes that this bitter root (one

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Words which signify more than they say may be thought to come under Lucidity, because they help one to understand. But I prefer to treat Emphasis²³ under the ornaments of speech, because its effect is not just to make something understood, but to make an extra something understood as well.

Obscurity

Obscurity results from words no longer in common use: suppose, for example, a man were to hunt through the records of the *pontifices*, ancient treaties, and obsolete authors, deliberately looking for unintelligibility in the extracts he makes from them. Some seek a reputation for erudition from this; they want to be thought to be the only people who know certain things.

Words more familiar in certain districts or peculiar to certain professions are also misleading. Such are *atabulus*²⁴ (a wind), *stlataria*²⁵ (a type of ship) and †*inmalocosanum*†.²⁶ These expressions are either to be avoided with a judge who does not know these meanings, or else explained, like what are called “homonyms”: for instance

kind of which was known as Campanian) came especially from Cosa. I hazard also *cinnamum* “*comacum*” (an inferior cinnamon from Syria, Pliny, *Nat. Hist.* 12.135) or *cinnamum* “*Cosmianum*” (*Cosmianum* is a proprietary brand of perfume, from the perfumer Cosmus (Martial 3.82, 11.15, 12.55), the constituents of which we do not know; but *cinnamum* could be one: S. Lilja, *The Treatment of Odours in the Poetry of Antiquity* (Helsinki, 1972) 79–82, gives some information). However, Q.’s other examples refer to earlier classical literature, and this consideration is rather against his mentioning a contemporary usage.

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mal sit an mons an signum in caelo an nomen hominis an radix arboris nisi distinctum non intellegetur.

- 14 Plus tamen est obscuritatis in contextu et continuatione sermonis, et plures modi. Quare nec sit tam longus ut eum prosequi non possit intentio, nec traiectione ultra⁴ modum [hyperbato]⁵ finis eius differatur. Quibus adhuc peior est mixtura verborum, qualis in illo versu:

saxa vocant Itali mediis quae in fluctibus aras.

- 15 Etiam interiectione, qua et oratores et historici frequenter utuntur ut medio sermone aliquem inserant sensum, impediri solet intellectus, nisi quod interponitur breve est. Nam Vergilius illo loco quo pullum equinum describit, cum dixisset

nec vanos horret strepitus,

compluribus insertis alia figura quinto demum versu redit:

tum, si qua sonum procul arma dederunt,
stare loco nescit.

- 16 Vitanda in primis ambiguitas, non haec solum, de cuius genere supra dictum est, quae incertum intellectum facit, ut 'Chremetem audiui percussisse Demean', sed illa quo-

⁴ traiectione (*recc.*) ultra (*Zumpt*): transiectio intra *A*

⁵ *del. Halm*

²⁷ This is our only evidence that *taurus* might mean a tree-root. There is evidence (Diomedes, *GL* 1.449, 8 K.) that it has an obscene meaning, and Greek *ταῦρος* can mean *perineum*. On these grounds, Cousin conjectured *corporis* ("body") for *arboris*: and it is true that *radix* is one of the many words that can mean "penis" (Adams 1982, 24).

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whether *taurus* is an animal ("bull") or a mountain or a constellation or a man's name or the root of a tree will not be understood unless it is made clear.²⁷

But there is more obscurity, and more different kinds of it, in the structure and development of the sentence. The sentence therefore should not be too long to be followed with attention, and the end of it should not be postponed too far by hyperbaton. Even worse is a tangle of words, as in the line:

Rocks the Italians call in the midst of the waves
altars.²⁸

Understanding is also often impeded by a parenthesis (a device which both orators and historians frequently use in order to insert a thought in the middle of a sentence), unless the insertion is short. When Vergil, in the passage in which he describes a colt, has said

Nor dreads he empty noises,²⁹

he goes on to insert several details, in a different Figure, and does not come back till four lines later, with

Then, if the sound of arms is heard afar,
stand still he cannot.

Above all, ambiguity is to be avoided, not only ambiguity of the kind discussed above which makes understanding uncertain—"I heard that Chremes Demea struck"³⁰—

²⁸ *Aeneid* 1.109.

²⁹ *Georgics* 3.79–84. Editors have not followed Q. in making *illi* . . . *et gilvo* a parenthesis.

³⁰ Compare 7.9.10 (where Laches replaces Chremes).

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que, quae etiam si turbare non potest sensum in idem tamen verborum vitium incidit, ut si quis dicat visum a se hominem librum scribentem. Nam etiam si librum ab homine scribi patet, male tamen composuerit, feceritque ambiguum quantum in ipso fuit.

- 17 Est etiam in quibusdam turba inanium verborum, qui, dum communem loquendi morem reformidant, ducti specie nitoris circumeunt omnia copiosa loquacitate, [et]⁶ quod dicere nolunt ipsa: deinde illam seriem cum alia simili iungentes miscentesque ultra quam ullus spiritus durare possit extendunt. In hoc malum a quibusdam etiam laboratur: neque id novum vitium est, cum iam apud Titum Livium inveniam fuisse praeceptorem aliquem qui discipulos obscurare quae dicerent iuberet, Graeco verbo utens *σκότισον*. Unde illa scilicet egregia laudatio: ‘tanto melior: ne ego quidem intellexi.’
- 18
- 19 Alii brevitatem aemulati necessaria quoque orationi subtrahunt verba, et, velut satis sit scire ipsos quid dicere velint, quantum ad alios pertineat⁷ nihili putant: at ego vitiosum sermonem dixerim quem auditor suo ingenio intellegit. Quidam, emutatis in perversum dicendi figuris,
- 20 idem vitium consecuntur. Pessima vero sunt adianoeta, hoc est quae verbis aperta occultos sensus habent, ut cum

⁶ *del. t: eo Halm*

⁷ *perveniat Shackleton Bailey ('reaches')*

³¹ Fr. 87 Weissenborn–Mueller, presumably from Livy's letter to his son (compare 2.5.20, 10.1.39).

³² Lit. “unintelligibles.” [Dionysius of Halicarnassus], *Art of Rhetoric* 9.16 uses *ἀδιανοήτως* to describe a mysterious move in Odysseus' speech to Achilles (*Iliad* 19.27ff.), the point of which

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but also that which, although it cannot confuse the sense, falls into the same verbal fault. So if you were to say, for example, "I saw a man a book writing," although it is obvious that the man is writing the book, it will be a bad piece of Composition, and you will have made it as ambiguous as you could.

Some writers too produce a medley of pointless words. In their horror of normal forms of expression, they are seduced by the appearance of elegance into wrapping up everything in long-winded circumlocutions, just because they do not want to make the simple statement; they then proceed to join this string of words up to another of the same kind, stir them together, and spin it all out beyond the limits of anyone's breath. Some even make an effort to acquire this vice; nor is it a new failing, for I find already in Livy that there was once a teacher who told his pupils to obscure what they were saying: he used the Greek word *skotison*, "Darken it!"³¹ Hence the famous compliment, "Excellent! I couldn't understand it myself."

Others, in their zeal for brevity, cut out even essential words from their discourse: as though it was enough that they should themselves know what they mean, they regard other people's concern in the matter as of no importance. My view, however, is that any expression is faulty which the hearer has to make a mental effort of his own to understand. Some achieve the same fault by perverse variations of Figures of Speech. Worst of all, however, are *adiaphorata*,³² that is to say expressions which have a clear verbal sense but a hidden meaning, as when the blind man is said

only becomes clear later on. It is no wonder that we do not understand the examples that follow.

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- dictus est caecus 'secundum viam⁸ stare', et qui suos artus
 morsu lacerasse fingitur in scholis 'supra se cubasse'.
- 21 Ingeniosa haec et fortia et ex ancipiti diserta creduntur,
 pervasitque iam multos ista persuasio, ut id demum ele-
 ganter atque exquisite dictum putent quod interpretan-
 dum sit. Sed auditoribus etiam nonnullis grata sunt haec,
 quae cum intellexerunt acumine suo delectantur, et gau-
 dent non quasi audierint sed quasi invenerint.
- 22 Nobis prima sit virtus perspicuitas, propria verba, rec-
 tus ordo, non in longum dilata conclusio, nihil neque desit
 neque superfluat: ita sermo et doctis probabilis et planus
 imperitis erit. Haec eloquendi observatio: nam rerum
 perspicuitas quo modo praestanda sit diximus in praecep-
 23 tis narrationis. Similis autem ratio est in omnibus. Nam si
 neque pauciora quam oportet neque plura neque inordi-
 nata aut indistincta dixerimus, erunt dilucida et neglegen-
 ter quoque audientibus aperta: quod et ipsum in consilio
 est habendum, non semper tam esse acrem iudicis inten-
 tionem ut obscuritatem apud se ipse discutiat et tenebris
 orationis inferat quoddam intellegentiae suae lumen, sed
 multis eum frequenter cogitationibus avocari, nisi tam cla-
 ra fuerint quae dicemus ut in animum eius oratio, ut sol in

⁸ vitam G: vitem Watt 1988 ('staff, stick')

³³ If *viam* is preferable (as it seems to be), there may be a *double entendre*, the blind man in what is perhaps a declamation scene "standing" like a prostitute plying for hire (*OLD* s.v. *sto*, 1 d). With Watt's *vitem*, the blind man "stands next to his stick"; but the point of this is unclear.

³⁴ Compare 8.5.23: the father apparently poisons the son who tries to eat himself. *Supra se cubasse* is obscure, but we expect a

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to "stand at the side of the road,"³³ or when the man who had rent his own limbs with his teeth is said, in a school exercise, to have "sat at table above himself."³⁴ These things are thought ingenious, powerful, and audaciously eloquent, and the conviction has now become widespread that nothing is elegant or refined unless it needs interpreting. Some audiences also enjoy these things, because they delight in their own cleverness when they understand them, and rejoice as if they had not so much heard them as thought of them for themselves.

Let us then take, as the primary virtue, Lucidity, "proper" words, straightforward order, no long-delayed conclusion, nothing missing and nothing too much. This will lead to language acceptable to the learned and plain to the unlearned. I am talking of course about Elocution; how clarity of *thought* is to be assured, I have explained in my advice on Narrative.³⁵ But the principles are the same everywhere. If we say no less and no more than we ought, and avoid disorder and indistinctness, things will be clear and obvious even to an inattentive audience. Inattentiveness indeed is something we have to take into account: the judge's concentration is not always so keen that he can dispel obscurities by himself and bring some light from his own understanding to bear on the dark places of the speech; on the contrary, he is often distracted by a variety of thoughts, unless what we say is so clear that our words make their way into his mind, like sunlight into the eyes,

double entendre: "sits at dinner in the place above himself" (i.e. on the left of himself, *OLD* s.v. *supra* 3 b), or "lies on top of himself," or more simply "dines on himself" (i.e. he is also the dish he has in front of him)? ³⁵ 4.2.

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- 24 oculos, etiam si in eam non intendatur, incurrat. Quare non ut intellegere possit sed ne omnino possit non intellegere curandum. Propter quod etiam repetimus saepe quae non satis percepisse eos qui cognoscunt putamus: 'quae causa utique nostra, iudices,⁹ culpa dicta <est>¹⁰ obscurius: ad planiora et communia magis verba descendimus', cum id ipsum optime fiat, quod nos aliquid non optime fecisse simulamus.

3

- 1 Venio nunc ad ornatum, in quo sine dubio plus quam in ceteris dicendi partibus sibi indulget orator. Nam emendate quidem ac lucide dicentium tenue praemium est, magisque ut vitiis carere quam ut aliquam magnam virtutem
2 adeptus esse videaris. Inventio cum imperitis saepe communis, dispositio modicae doctrinae credi potest: si quae sunt artes altiores, plerumque occultantur ut artes sint; denique omnia haec ad utilitatem causarum solam referenda sunt. Cultu vero atque ornatu se quoque commendat ipse qui dicit, et in ceteris iudicium doctorum, in hoc vero etiam popularem laudem petit, nec fortibus modo sed
3 etiam fulgentibus armis proeliatur. An in causa C. Corneli Cicero consecutus esset docendo iudicem tantum et utiliter demum ac Latine perspicueque dicendo ut populus

⁹ *Stroux*: id A

¹⁰ *add. D.A.R. (after obscurius, edd.)*

¹ *Fr. orat. VII Schoell: Crawford (1994) 73.*

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without his attention being directed to them. The thing to aim at is not that he should be able to understand but that he should anyway not be able not to understand. For this reason we often repeat what we think the judges have not taken in properly: "Members of the jury, this case has been presented to you in an unclear fashion, through my own fault; I come down now to plainer and more usual language." It is a very good thing in itself to pretend that we have done something that falls short of the highest standards.

CHAPTER 3

Ornament

I come now to Ornament, in which of course the orator indulges himself more than in any other department of his art. The rewards of speaking correctly and lucidly are slight; one seems rather to be avoiding faults than to have achieved any important virtue. Invention too is often shared with the untrained, and Disposition can be thought a matter of quite modest learning; if there are any deeper skills, they generally have to be hidden in order to function as skills; and finally, all these things relate only to the practical needs of Causes. But with elegance and Ornament, the orator is out to recommend himself as well as his Cause, and seeks not only (as in all his other activities) the judgement of experts, but also the praise of the general public; he is fighting with weapons that are not only effective but polished and gleaming. If, in his defence of Gaius Cornelius,¹ Cicero had simply given the judge the facts and spoken with practical sense in clear, good Latin, would

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- Romanus admirationem suam non adclamatione tantum sed etiam plausu confiteretur? Sublimitas profecto et magnificentia et nitor et auctoritas expressit illum fragorem.
- 4 Nec tam insolita laus esset prosecuta dicentem si usitata et ceteris similis fuisset oratio. Atque ego illos credo qui aderant nec sensisse quid facerent nec sponte iudicioque plausisse, sed velut mente captos et quo essent in loco ignaros erupisse in hunc voluptatis adfectum.
- 5 Sed ne causae quidem parum conferet idem hic orationis ornatus. Nam qui libenter audiunt et magis attendunt et facilius credunt, plerumque ipsa delectatione capiuntur, nonnumquam admiratione auferuntur. Nam et ferrum adfert oculis terroris aliquid, et fulmina ipsa non tam nos confunderent si vis eorum tantum, non etiam ipse fulgor
- 6 timeretur. Recteque Cicero his ipsis ad Brutum verbis quadam in epistula scribit: 'nam eloquentiam quae admirationem non habet nullam iudico.' Eandem Aristoteles quoque petendam maxime putat.

- Sed hic ornatus (repetam enim) virilis et fortis et sanctus sit nec effeminatam levitatem et fuco ementitum colorem amet: sanguine et viribus niteat. Hoc autem adeo
- 7 verum est ut, cum in hac maxime parte sint vicina virtutibus vitia, etiam qui vitiis utuntur virtutum tamen iis nomen imponant. Quare nemo ex corruptis dicat me ini-

² Compare Plato, *Menexenus* 235C.

³ *Fr. epist.* VII. 8 Watt.

⁴ Compare perhaps Aristotle, *Rhetoric* 3, 1404b11: "People admire what is absent, and what is admired is pleasing."

⁵ Compare 3.7.25. On this misnaming of virtues and vices,

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he have made the Roman people show their admiration not only by acclamation but by clapping their hands? No, it was the sublimity and the splendour, the elegance and the authoritative manner that evoked that storm of applause. Nor would such unusual praise have greeted the speaker if his speech had been commonplace and like any other. Those present, I suspect, did not know what they were doing; their applause did not come from choice or judgement, they were possessed by a sort of frenzy, lost all sense of where they were,² and burst out in that ecstasy of delight.

But this Ornament of style will make no small contribution to the Cause as well. Those who find it a pleasure to listen are both more attentive and readier to believe; they are often won over by their pleasure, and sometimes carried away by admiration. The sword strikes terror also to the eye; even lightning would not dismay us so much if it was only the force that we feared, and not the flash as well. Cicero in a letter to Brutus³ gets it right (I quote his exact words): "Eloquence which wins no admiration I judge no eloquence at all." Aristotle⁴ also thinks this is the main thing to aim at.

However (let me say this again) this Ornament must be manly, strong, and chaste. It must not favour effeminate smoothness or the false colouring of cosmetics; it must shine with health and vigour. And this is so true that, since vices and virtues in this area are particularly close neighbours, those who adopt the vices actually give them the names of the virtues.⁵ Therefore I do not want any of our

the classic passages are Thucydides 3.82.4–5, Plato, *Republic* 8.560D, and Aristotle, *Rhetoric* 1.9, 1367a33.

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micum esse culte dicentibus: non hanc esse virtutem nego,
 8 sed illis eam non tribuo. An ego fundum cultiorem putem
 in quo mihi quis ostenderit lilia et violas et anemonas spon-
 te¹ surgentes quam ubi plena messis aut graves fructu vites
 erunt? sterilem platanum tonsasque myrtos quam mari-
 tam ulmum et uberes oleas praeoptaverim? Habeant illa
 9 divites licet: quid essent si aliud nihil haberent? Nullusne
 ergo etiam frugiferis adhibendus est decor? Quis negat?
 Nam et in ordinem certaue intervalla redigam meas arbo-
 res. Quid illo quincunce speciosius, qui in quamcumque
 partem spectaveris rectus est? Sed protinus in id quoque
 10 prodest, ut terrae sucum aequaliter trahat. Fugientia in al-
 tum cacumina oleae ferro coercebo: in orbem se formosius
 fundet et protinus fructum ramis pluribus feret. Decentior
 equus cuius adstricta ilia, sed idem velocior. Pulcher as-
 pectu sit athleta cuius lacertos exercitatio expressit, idem
 11 certamini paratior. Numquam vera species ab utilitate
 dividitur.

Sed hoc quidem discernere modici iudicii est: illud
 observatione dignius, quod hic ipse honestus ornatus
 materiae genere variatus decebit.²

Atque ut à prima divisione ordiar, non idem demon-
 strativis et deliberativis et iudicialibus causis conveniet.

¹ *Winterbottom (considered but rejected by Spalding): fonte A*

² *M.W. after Gertz: decidit variatus A: dictante variandus Watt 1993 ('to be varied as dictated by the nature of the material')*

⁶ Q. seems to recall Horace, *Carmina* 2.15.1–8, Vergil, *Georgics* 2.70. Lilies and violets, commercially useless, are none the less turned to account by a miserly character in Libanius (*Declamations* 31.14).

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decadents to say that I am against elegant speakers. I do not deny that elegance is a virtue; but I do not find it in them. Am I to regard a farm where I am shown lilies and violets and anemones freely springing up as better cultivated than one where there is a full harvest and vines laden with fruit? Am I to prefer the barren plane and clipped myrtle to the vine-supporting elm and the fruitful olive?⁶ Rich men may be allowed these luxuries; but what would they be if they had nothing else? "Are we not then to lend beauty to the fruit trees also?" Of course. I shall plant my trees in order and at fixed distances apart. What can be more handsome than the quincunx, which presents straight lines whichever way you look?⁷ But it also has the immediate advantage that it draws the moisture from the ground evenly. If the top shoots of my olive bolt, I shall lop them with the knife, and it will fill out all round more handsomely and forthwith bear fruit on more branches. A horse whose flanks are compact looks better, but is also faster. An athlete whose muscles have been developed by exercise may be good to look at; he is also more ready for the fray. True beauty is never separated from usefulness.⁸

But it only takes a modest power of judgement to see this. What is more worth noting is that this honourable Ornament will itself acquire appropriateness by being varied in accordance with the type of subject.

To begin with the primary division, the same Ornament will not suit Epideictic, Deliberative, and Forensic

⁷ Compare, for example, *Georgics* 2.277–286 (with Mynors ad loc.); also Cicero, *De senectute* 59 (paraphrasing Xenophon, *Oeconomicus* 4.21).

⁸ Compare Cicero, *De oratore* 3.178–181.

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- Namque illud genus ostentationi compositum solam petit audientium voluptatem, ideoque omnes dicendi artes aperit ornatumque orationis exponit, ut quod non insidietur nec ad victoriam sed ad solum finem laudis et gloriae tendat. Quare quidquid erit sententiis populare, verbis nitidum, figuris iucundum, tralationibus magnificum, compositione elaboratum, velut institor quidam eloquentiae intuendum et paene pertractandum dabit: nam eventus ad ipsum, non ad causam refertur.
- 12
- 13 At ubi res agitur et vera dimicatio est, ultimus sit famae locus. Praeterea ne decet³ quidem, ubi maxima rerum momenta versantur, de verbis esse sollicitum. Neque hoc eo pertinet, ut in his nullus sit ornatus, sed uti pressior et severior et minus confessus, praecipue materiae accommodatus.
- 14 Nam et in suadendo sublimius aliquid senatus, concitatus populus, et in iudiciis publicae capitalesque causae poscunt accuratius dicendi genus. At privatum consilium causasque paucorum, ut frequenter accidit, calculatorum purus sermo et dissimilis curae magis decuerit. An non pudeat certam creditam perihodis postulare aut circa stillicidia adfici aut in mancipii redhibitione sudare?⁹ Sed ad propositum.
- 15 Et quoniam orationis tam ornatus quam perspicuitas aut in singulis verbis est aut in pluribus positus, quid separata, quid iuncta exigant consideremus.

³ *Spalding*: debet A (*with* sollicitus)

⁹ I.e. cases involving the right to let roof-water fall on a neighbour's property, or claims that the vendor of a defective slave should take him back. Compare Cicero, *Orator* 72, Horace, *Epistulae* 2.2.3-19.

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Causes. Epideictic, devised for display, seeks nothing but the pleasure of the hearer; it therefore openly displays all the arts of speech and puts its Ornament on view, because it does not lay traps or plan to win a case but addresses itself solely to the end of praise and glory. And so the speaker, as a sort of salesman of eloquence, will allow the customer to see and almost to handle all his most attractive maxims, all his brilliant words, all his pretty figures, grand metaphors, and studied Composition. For the success is seen as due to him, not to the Cause.

But when serious business is afoot, and there is a real battle, his own reputation should come last in his priorities. Moreover, when important matters are at stake, it is actually improper to be fussy about words. This does not mean that there should be no Ornament in these cases, but that it should be more restrained and austere, less obvious, and above all appropriate to the subject. In deliberative oratory the senate demands a loftier tone, the popular assembly a more vehement one. In court cases, public and capital Causes require a more careful style, whereas private advice and litigation involving (as often) small sums of money are better suited by pure and apparently unstudied language. Would you not blush to claim repayment of a loan in formal periods, to show deep feeling on the subject of a water gutter, or to work yourself up into a sweat over the return of a defective slave?⁹ But to return to the point.

And since rhetorical Ornament, like Lucidity, occurs either in single words or in groups, let us consider what is required both of individual words and of combinations.

QUINTILIAN

Quamquam enim rectissime traditum est perspicuitatem propriis, ornatum tralatis verbis magis egere, sciamus
 16 nihil ornatum esse quod sit inproprium. Sed cum idem frequentissime plura significant, quod *συνωνυμία* vocatur, iam sunt aliis alia honestiora sublimiora nitidiora iucundiora vocaliora. Nam ut syllabae e litteris melius sonantibus clariores, ita verba e syllabis magis vocalia, et quo plus quodque spiritus habet, auditu pulchrius. Et quod facit
 17 syllabarum, idem verborum quoque inter se copulatio, ut aliud alii iunctum melius sonet. Diversus tamen usus: nam rebus atrocibus verba etiam ipso auditu aspera magis convenient. In universum quidem optima simplicium creduntur quae aut maxime exclamant⁴ aut sono sunt iucundissima.

Et honesta quidem turpibus potiora semper nec sordidis umquam in oratione erudita locus.

18 Clara illa atque sublimia plerumque materiae modo discernenda sunt: quod alibi magnificum tumidum alibi, et quae humiliacirca res magnas apta circuminores videntur. Ut autem in oratione nitida notabile humilium verbum et velut macula, ita a sermone tenui sublime nitidumque discordat fitque corruptum quia in plano tumet.

19 Quaedam non tam ratione quam sensu iudicantur, ut illud

⁴ <rem> maxime explanant *Stroux* (cf. *Cic. Orator* 80)

¹⁰ Compare 12.10.27–34.

¹¹ Q. means that the choice depends on the nature of the subject, and this consideration may override the general rule. *Stroux*' conjecture would give "those which best make the subject plain" (compare Cicero, *Orator* 80).

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Individual words

It is of course a perfectly correct rule that Lucidity has more need of "proper" words, and Ornament of metaphors; but let us be clear that nothing "improper" is "ornamental." However, as it often happens that several words share the same meaning (this is called "synonymy"), it follows that some are more dignified, lofty, smart, pleasing, or euphonious than others. For just as syllables composed of the better-sounding letters have a clearer ring, so words composed of such syllables are more euphonious, and the fuller the sound of a given word, the more attractive it is to the ear.¹⁰ Combinations of words act just like combinations of syllables; some combinations sound better than others. The practical use of them, however, is different, because when the content is outrageous, words which are also harsh to the ear will be more appropriate than others. As a general rule, though, the best individual words are held to be those which have the fullest or the most pleasing sound.¹¹

Respectable words are always preferable to coarse; for really low words there is no place in educated speech.

Striking and sublime words normally need to be judged against the level of the subject. What seems grand in one context seems inflated in another, what is too low-key for an important theme seems apt for a lesser one. And just as a low word is conspicuous in a highly polished context, and shows up on it like a dirty mark, so a lofty or brilliant word is out of keeping with a simple style, and becomes a decadent feature, a swelling on a level surface.

Some phrases are judged by the ear rather than by reason: the line

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caesa iungebant foedera porca

fecit elegans fictio nominis, quod si fuisset 'porco' vile erat. In quibusdam ratio manifesta est. Risimus, et merito, nuper poetam qui dixerat:

praetextam in cista mures rosere camilli.

20 At Vergili miramur illud

saepe exiguus mus;

nam epitheton [exiguus]⁵ aptum et proprium effecit ne plus expectaremus, et casus singularis magis decuit, et clausula ipsa unius syllabae non usitata addidit gratiam. Imitatus est itaque utrumque Horatius:

nascetur ridiculus mus.

21 Nec augenda semper oratio, sed summittenda nonnumquam est. Vim rebus aliquando verborum ipsa humilitas adfert. An cum dicit in Pisonem Cicero 'cum tibi tota cognatio serraco advehatur', incidisse videtur in sordidum nomen, non eo contemptum hominis quem destructum

⁵ *del. Winterbottom*

¹² *Aeneid* 8.641. It is odd that Q. thinks *porca* a word coined by Vergil; it is in fact quite ordinary, used by Cato and Cicero. Q. clearly thought it striking in poetry; *porcus* would have had no resonance (indeed, it might have been thought low: see Adams (1982) 82 for an obscene sense of the word). Servius (ad loc.) tells us that the fact is wrong, because it was a male pig that was sacrificed on these occasions; he conjectures that Vergil either "used one gender for another" or showed that the female animal was always the more valuable sacrifice.

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They killed a sow (*porca*) to seal the pact¹²

is made elegant by the coinage of the word *porca*; *porco* would have lacked dignity. In some cases the reason for the choice is clear. We laughed lately—and quite rightly—at the poet who said

Inside the chest mouse lordlings gnawed the gown,¹³
while we admire Vergil's

often the tiny mouse . . . ¹⁴

where the epithet, which is proper and apt, prevented us from expecting too much, the singular number was more appropriate, and the unusual monosyllabic line-ending itself added charm. Horace therefore imitated both features:

there will be born—a funny little mouse.¹⁵

The tone does not always have to be raised; it sometimes has to be lowered. Meanness of vocabulary may itself on occasion lend vigour. When Cicero says, in *In Pisonem*, “when all your kith and kin are carried on a cart,”¹⁶ do we think that he has lighted accidentally on the low word, and not deliberately enhanced the contempt felt for the man

¹³ A *camillus* is a young boy of noble parents who performs some religious duty. The poet may have meant “the gown of the *camillus*” (or “of Camillus,” if it is a proper name), but this is less likely; Q. is talking about inappropriate and appropriate epithets applied to mice. See Courtney (1993) 461, comparing Juvenal 3.206–207. ¹⁴ *Georgics* 1.181.

¹⁵ *Ars Poetica* 139.

¹⁶ Fr. 16 Nisbet.

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- 22 volebat auxisse? Et alibi: 'caput opponis cum eo coruscans.'⁶ Unde interim gratus idiotismi decor,⁷ qualis est ille apud M. Tullium: 'pusio qui cum maiore sorore cubitabat' et 'Flavius qui cornicum oculos confixit', et pro Milone illud 'heus tu Rufio', et 'Erucius Antoniaster'. Id tamen in declamatoribus est notabilius, laudarique me puero solebat 'da patri panem', et in eodem 'etiam canem pascis'. Res quidem praecipue in scholis anceps et frequenter causarisus, nunc utique cum haec exercitatio procul a veritate seiuncta laboret incredibili verborum fastidio ac sibi magnam partem sermonis absciderit.
- 23
- 24 Cum sint autem verba propria ficta tralata, propriis dignitatem dat antiquitas. Namque et sanctiorem et magis admirabilem faciunt orationem, quibus non quilibet fuerit usus, eoque ornamento acerrimi iudicii P. Vergilius
- 25 unice est usus. 'Olli' enim et 'quianam' et 'moerus'⁸ et 'pone' et 'pelligerent'⁹ adspargunt illam, quae etiam in

⁶ *Freund*: conificans A: cornificans *Bonnell*

⁷ gratus (*Zumpt*) idiotismi (*Doerry*) decor (*Spalding*): grati idiotis de quo A ⁸ *Ribbeck*: mus A ⁹ *See Mynors on Verg. Aen.* 6.34: pollicerent A: porricere *Haupt*

¹⁷ *Fr. orat.* B 20, p. 469 Schoell: Crawford (1994) p. 295.

¹⁸ *Pro Caelio* 36.

¹⁹ *Pro Murena* 25.

²⁰ *Pro Milone* 60.

²¹ *Fr. orat.* II 10 Schoell (*Pro Vareno*):

compare Priscian, *GL* 2. 112.20 K.; Crawford (1994) 15–17. The point seems to be that the prosecutor Erucius is ridiculed as a poor imitator of the great orator M. Antonius (compare *Favoniaster*, Cicero, *Ad Atticum* 12.44 Shackleton Bailey: the termination used to coin the word is what Q. sees as *idiotismus*).

²² Compare Seneca, *Controversiae* 1.7.18: the declaimer Albucius used this on behalf of a father whose son has failed to

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he was trying to ruin? Likewise in another passage: "You put your head down and butt him."¹⁷ Hence a colloquial phrase sometimes gives welcome elegance, as in Cicero's "The little lad who went to bed with his big sister,"¹⁸ and "Flavius, who scratched out the crows' eyes,"¹⁹ or (in *Pro Milone*) "Hi there, Redhead!"²⁰ and "Erucius the Antonianist."²¹ This device is obtrusive in the declaimers: when I was a boy, there was praise for "Give your father bread" and (in the same case) "You feed even your dog."²² It is a risky business, especially in the schools, and often a cause of ridicule, particularly nowadays, when declamation has departed so far from reality, labours under such incredible fastidiousness about words, and has cut itself off from a large part of ordinary language.

Proper, Coined, and Metaphorical Words

Words are either Proper, Coined, or Metaphorical. (1) In Proper words, age confers dignity, because words which not everyone would have used give style a more venerable and distinguished air. Vergil, with his perfect judgement, used this Ornament with unique skill. *Olli, quianam, moerus, pone, and pelligerent*²³ produce a sprinkling of

support him in need (Bonner, *RD* 95). "Give your father bread" might also mean "stop his mouth," i.e. "stop him talking": Otto (1890) 263, Petronius 69.

²³ For *olli* (= *illi*) see e.g. *Aeneid* 7.506; for *quianam*, *Aeneid* 5.13, 10.6; for *moerus* (= *murus*, "wall"), Servius on *Aeneid* 10.24; *pone* "behind" is, e.g., in *Georgics* 4.487. For *pelligerent* ("read through") see Mynors or Geymonat on *Aeneid* 6.34.

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picturis est gravissima, vetustatis inimitabilem arti auctoritatem. Sed utendum modo nec ex ultimis tenebris repetenda. Satis est vetus 'quaeso': quid necesse est 'quaiso' dicere? 'Oppido', quamquam usi sunt paulum tempore nostro superiores, vereor ut iam nos ferat quisquam: certe 'anteferio', cuius eadem significatio est, nemo nisi ambiciosus utetur. 'Aerumna' quid opus est, tamquam parum sit si dicatur <'dolor'>? 'Queo' horridum,¹⁰ 'reor' tolerabile, 'autumo' tragicum; 'prolem' dicere versus est,¹¹ 'prosapiam' insulsum. Quid multa? totus prope mutatus est sermo. Quaedam tamen adhuc vetera vetustate ipsa gratius nitent, quaedam et necessario interim sumuntur, ut 'nuncupare' et 'fari': multa alia etiam audentius inseri possunt, sed ita demum si non appareat adfectatio, in quam mirifice Vergilius:

28 Corinthiorum amator iste verborum,
 Thucydides Britannus, Atticae febres,
 tau Gallicum, min et sphin—et male illi sit—

¹⁰ 'Aerumna' . . . dicatur <dolor>? 'Queo' horridum *Kennedy*, after *Madvig*: aerumnas . . . si dicatur quod horridum A

¹¹ dicere versus est *D.A.R.* after *Doerry*: dicendi versum ei A

²⁴ In fact, *quaeso* is not an archaic synonym of *quaero*, but a separate word (Lindsay (1894) 487; Sihler (1995) 536) originally with a desiderative sense: but it was felt to be old-fashioned (note first person plural *quaesumus*), and the spelling *quaiso* is certainly archaic (Lindsay 242, Sihler 55). ²⁵ "Quite," "utterly": found in Plautus, Terence, Catullus, and occasionally later; revived by second-century archaizers like Apuleius.

²⁶ "Very": see 1.6.40.

²⁷ "Grief," "sorrow": a word of early poetry, but also in Cicero,

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that authoritative air of antiquity, which is impressive also in pictures, and which no art can reproduce. But moderation is needed: we must not look for words in the darkest recesses of the past. *Quaeso* is archaic enough: why must we say *quaiso*?²⁴ No one would tolerate our using *oppido*,²⁵ though our predecessors used it not so long ago; certainly *antegerio*,²⁶ which has the same meaning, could only be used by someone who wanted to show off. Why do we need *aerumna*,²⁷ as though it was not enough to say *dolor*? *Queo* is uncouth, *reor* tolerable; *autumo* belongs to tragic style; *proles* has its place in verse; *prosapia* is tasteless.²⁸ Need I say more? Almost the whole language has changed. But there are still some old words which shine brighter with age, while there are others which are sometimes necessary for our purposes, like *nuncupare* and *fari*.²⁹ Others again may be adopted, if you are bold enough, but only if there is no sign of that affectation which Vergil attacks so marvellously:

That lover of Corinthian words,
British Thucydides—the Attic fevers,
min, *sphin*, the Gallic *tau*—and ill betide him!—

Sallust, Livy, Seneca. Q.'s rejection is strange, and the text of this passage uncertain.

²⁸ *Queo*, "I can"; *reor*, "I think" (perfectly common); *autumo*, "I say" (not in prose till revived by Apuleius); *proles*, "offspring"; *prosapia*, "lineage" (said by Cicero, *Timaeus* 39, to be an "old" word). Some of Q.'s examples come from Cicero, *De oratore* 3.153: see Doreen Innes in *Rhetorica* 6 (1988) 309–311.

²⁹ "Name," "speak." *Nuncupare* has various specialist legal senses: *fando audire*, "to hear of by hearsay," is a specialized use of *fari*.

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ita omnia ista verba miscuit fratri.

- 29 Cimber hic fuit a quo fratrem necatum hoc Ciceronis dicto notatum est: 'Germanum Cimber occidit.' Nec minus noto Sallustius epigrammate incessitur:

et verba antiqui multum furate Catonis,
Crispe, Iugurthinae conditor historiae.

- 30 Odiosa cura: nam et cuilibet facilis et hoc pessima, quod eius¹² studiosus non verba rebus aptabit, sed res extrinsecus arcesset quibus haec verba convenient.

Fingere, ut primo libro dixi, Graecis magis concessum est, qui sonis etiam quibusdam et adfectibus non dubitarunt nomina aptare, non alia libertate quam qua illi primi

- 31 homines rebus appellationes dederunt. Nostri aut in iungendo aut in derivando paulum aliquid ausi vix in hoc satis recipiuntur. Nam memini iuvenis admodum inter Pomponium ac Senecam etiam praefationibus esse tractatum an

¹² *Gesner*: rei A

³⁰ *Catalepton* 2. The MSS of this obscure poem ascribed to Vergil (Q. is our earliest testimony to this ascription) have *tyranus* for *Britannus*, *febris* for *febres*, *spin* or *psin* for *sphin*, and (like A) *et male illi sit*. "Corinthian" words are presumably antiques, on the analogy of Corinthian bronzes. *Min* and *sphin* are dialectal (and poetic) pronouns in Greek: *tau Gallicum* is obscure.

³¹ T. Annius Cimber, *grammaticus*, archaist in taste (Suetonius, *Augustus* 86.3); the reference to Cicero is to *Philippics* 11.14, where there are puns on the name of his father (Lysidicus, "dissolver of laws"), and on *Cimber*, which can also mean "a Cimbrian" from the German tribe *Cimbri*, and *germanus* ("brother," but also "German").

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he so mixed all the words to dose his brother.³⁰

This was Cimber,³¹ whose murder of his brother is remarked on by Cicero in the words "Cimber has killed his brother german." Sallust is the target of an equally well-known epigram:

You, Crispus, plunderer of old Cato's words,
and author of Jugurtha's history.³²

This is sheer pedantry. Anyone can practise it, and it is particularly bad because the enthusiast for it will not choose words to fit his facts but bring in irrelevant facts for which these words will be suitable equivalents.

(2) Coining words (as I said in Book One)³³ is more a privilege of the Greeks, who have not hesitated to fit words even to certain sounds and emotions with the same freedom with which primitive man gave things their names. The few ventures that our countrymen have made in compounds or derived words have scarcely met with acceptance. I remember, when I was a very young man, a dispute between Pomponius³⁴ and Seneca, carried on even in their

³² *Fr. incert.* 16 Morel: Courtney (1993) p. 145.

³³ 1.5.70ff. On Cicero's somewhat more receptive view of neologisms, see Innes (loc. cit., n. 28), 311–314.

³⁴ Pomponius Secundus, consul AD 44, was a distinguished public servant and man of letters. He was legate of Upper Germany 50–51, and is not heard of after this. Q. presumably knew him in his early years in Rome. The *praefationes* in which he and Seneca argued need not be written prefaces to published works; they could be statements made to introduce *recitationes*. The title of one tragedy, *Aeneas*, is known.

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'gradus eliminat' in tragoedia dici oportuisset. At veteres ne 'expectorat' quidem timuerunt, et sane eiusdem notae est 'exanimat'.

32 At in tractu et declinatione talia sunt qualia apud Ciceronem 'beatitas' et 'beatitudo': quae dura quidem sentit esse, verum tamen usu putat posse molliri. Nec a verbis modo sed ab nominibus quoque derivata sunt quaedam, ut a Cicerone 'sullaturit', Asinio 'fimbriatum' et 'figulatum'.

33 Multa ex Graeco formata nova, ac plurima a Sergio Plauto,¹³ quorum dura quaedam admodum videntur, ut 'queentia'¹⁴ et 'essentia': quae cur tanto opere aspernemur nihil video, nisi quod iniqui iudices adversus nos sumus, ideoque paupertate sermonis laboramus.

34 Quaedam tamen perdurant. Nam et quae vetera nunc sunt fuerunt olim nova, et quaedam sunt in usu perquam recentia: [ut Messala primus 'reatum', 'munerarium' Augustus primus dixerunt]¹⁵ 'reatum' nemo ante Messalam, 'munerarium' nemo ante Augustum dixerat. 'Piraticam' quoque ut 'musicam' et 'fabricam' dici adhuc dubitabant¹⁶

¹³ *Detlefsen*: flavio A ¹⁴ *Winterbottom*: quae ens A

¹⁵ *del. Gesner* (reatum . . . dixerat *del. Regius*)

¹⁶ vetabant *Halm* ('forbade')

³⁵ Presumably "takes his steps out of the door," i.e. "steps outside." The verb is a creation of early Roman tragedy: e.g. Ennius, *Scaenica* 256 (238 Jocelyn). ³⁶ Ennius, *Scaenica* 23 (17 Jocelyn): *tum pavor sapientiam omnem exanimato expectorat*

("then fear expelled all wisdom from the terrified man"), quoted by Cicero, *De oratore* 3.154, 3.218, which is Q.'s source.

³⁷ *De natura deorum* 1.95. ³⁸ *Ad Atticum* 9.10.6.

³⁹ See *ORF* pp. 523, 526. The words are based on the proper

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Prefaces, as to whether *gradus eliminat*³⁵ was a phrase that ought to have been used in tragedy. The ancients, however, had no qualms even about *expectorat*, and *exanimat* of course bears the same stamp.³⁶

Derivative formation and inflection are exemplified by Cicero's *beatitas* and *beatitudo*,³⁷ which he feels to be harsh but thinks may be softened by usage. There are some derivatives not only from verbs but from nouns, like Cicero's *Sullaturit*³⁸ ("wants to do a Sulla") and Asinius' *Fimbriatus* and *Figulatus*.³⁹

Many new words are formed on Greek models, especially by Sergius Plautus,⁴⁰ some of which seem very harsh, such as *queentia* ("potentiality") and *essentia* ("being"); I see no reason why we should so spurn these, except that we are unreasonable critics of ourselves, and consequently suffer from poverty of language.⁴¹

However, some words do stick. Those which are old now were new once, and some very modern words have become accepted: no one had said *reatus*⁴² before Messala, or *munerarius*⁴³ before Augustus. As to *piratica* ("piracy"),⁴⁴ my teachers still doubted that it was an acceptable usage, analogous to *musica* ("music") and *fabrica*.

names Fimbria and Figulus, but also suggest "tasselled" and "potted." ⁴⁰ See on 2.14.2.

⁴¹ For the perceived "poverty" of Latin, see Lucretius 1.136–139, 832; Cicero, *De finibus* 3.3. ⁴² I.e. the position of *reus*, "accused person": a rare word, but note Justin 4.4.4 *revocato ad reatum Alcibiode* ("A. being recalled to answer charges").

⁴³ "One who gives a gladiatorial show (*munus*)."⁴⁴ So Seneca, *Controversiae* 4 *praef.* 1. ⁴⁴ Once in Cicero (*De senectute* 11), and not uncommon later, in this sense (so in Q. himself, 3.8.44). *Fabrica* denotes any building or constructional craft.

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mei praeceptores, 'favorem' et 'urbanum' Cicero nova credit. Nam et in epistula ad Brutum 'eum' inquit 'amorem et
 35 eum, ut hoc verbo utar, favorem in consilium advocabo': et ad Appium Pulchrum: 'te, hominem non solum sapientem verum etiam, ut nunc loquimur, urbanum.' Idem putat a Terentio primum dictum esse 'obsequium', Cincius¹⁷ a Sisenna 'albente'¹⁸ caelo. 'Cervicem' videtur Hortensius primus dixisse: nam veteres pluraliter appellabant. Audendum itaque: neque enim accedo Celso, qui ab oratore verba fingi vetat. Nam cum sint eorum alia, ut dicit Cicero, 'nativa', id est, 'quae significata sunt primo sensu', alia 're-
 36 perta, quae ex his facta sunt': ut iam nobis ponere aliqua, quod illi rudes homines primique fecerunt, fas non sit, at derivare flectere coniungere, quod natis postea concessum
 37 est, quando desit licere? Sed si quid periculosius finxisse videbimur, quibusdam remediis praemuniendum est: 'ut ita dicam', 'si licet dicere', 'quodam modo', 'permittite mihi sic uti.' Quod idem etiam in iis quae licentius tralata erunt proderit, nihilque non tuto dici potest in quo non falli iudicium nostrum sollicitudine ipsa manifestum erit. Qua de

¹⁷ *Claussen*: cincilius A: cecilius *recc.*

¹⁸ *Spalding*: albenti A

⁴⁵ *Fr. epist.* VII. 9 Watt. ⁴⁶ *Ad familiares* 3.8.3.

⁴⁷ "Obedience." *De amicitia* 89: Terence, *Andria* 68. Cicero however does not imply that the *Terentianum verbum* is a new coinage. ⁴⁸ If this correction is right, Cincius will be the antiquarian Lucius Cincius Alimentus, known to have written *De verbis priscis*, "On old words."

⁴⁹ Sisenna: fr. 103 Peter. Sisenna's predilection for uncommon words is noted by Cicero, *Brutus* 259.

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Cicero thinks *favor* and *urbanus* new; for he writes in a letter to Brutus: "I will call in to advise me that love, and, if I may use the word, that *favor*,"⁴⁵ and to Appius Pulcher: "You, who are not only a wise man, but, as we say nowadays, *urbanus*."⁴⁶ He also thinks that Terence was the first to use *obsequium*,⁴⁷ and Cincius⁴⁸ says that Sisenna originated *albente caelo*, "as the sky whitened."⁴⁹ Horace seems to have been the first to use *cervix* ("neck") in the singular, whereas the ancients used the plural.⁵⁰ So we must be brave; I do not agree with Celsus,⁵¹ who forbids the orator to coin words. For since (as Cicero says)⁵² some words are "native," that is to say "meant in their primary sense," and others "found," that is to say "constructed out of these," then, assuming that it is not permitted to us now to assign names of the first type as our rude ancestors did, yet at what moment was that permission to derive, inflect, and compound, which some later generations were granted, finally withdrawn? However, if we seem to have taken a risk in inventing a word, we should protect ourselves by some palliative expression: "so to say," "if I may so put it," "in a sense," "allow me to use this word." The same precaution is useful with overbold metaphors;⁵³ indeed anything can be said safely if the qualms we feel about it make it clear that our judgement is not at fault. The Greeks have

⁵⁰ See Horace, *Carmina* 2.5.1. On such plurals, see J. Wackernagel, *Vorlesungen über Syntax* 1. 87.

⁵¹ *Fr. rhet.* 12 Marx.

⁵² *Partitiones oratoriae* 16.

⁵³ See "Longinus" 23.3, who refers to Aristotle and Theophrastus (F 690 Fortenbaugh) for this advice, which is also in Cicero, *De oratore* 3.165.

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re Graecum illud elegantissimum est, quo praecipitur
προεπιπλήσσειν τῇ ὑπερβολῇ.

- 38 Tralata probari nisi in contextu sermonis non possunt. Itaque de singulis verbis satis dictum, quae, ut alio loco ostendi, per se nullam virtutem habent. Sed ne inornata sunt quidem, nisi cum sunt infra rei de qua loquendum est dignitatem, excepto si obscena nudis nominibus enuntientur.
- 39 Quod viderint qui non putant esse vitanda quia nec sit vox ulla natura turpis, et, si qua est rei deformitas, alia quoque appellatione quacumque ad intellectum eundem nihilo minus perveniat. Ego Romani pudoris more contentus etiam respondendi talibus verecundiam silentio vindicabo.
- 40 Iam hinc igitur ad rationem sermonis coniuncti trans-eamus. Cuius ornatus in haec duo prima dividitur, quam concipiamus elocutionem, quo modo efferamus. Nam primum est ut liqueat augere quid velimus an minuere, concitate dicere an moderate, laete an severe, abundanter an presse, aspere an leniter, magnifice an subtiliter, graviter
- 41 an urbane: tum quo tralationum genere, quibus figuris, qualibus sententiis, quo modo,¹⁹ qua postremo conlocatione id quod intendimus efficere possimus.

¹⁹ quo <actionis> modo or quo motu (*'emotion,' cf. 8.5.35*)
 D.A.R.

⁵⁴ Aristotle, *Rhetoric* 3, 1408b3.

⁵⁵ 1.5.3.

⁵⁶ Compare Aristotle, *Rhetoric* 3, 1405b9; Cicero, *De officiis* 1.128.

⁵⁷ Or "rhythm" (M. W. compares Cicero, *Orator* 236); but

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an extremely neat piece of advice on this subject: "Be the first to criticize your own exaggeration."⁵⁴

(3) Metaphor can only be justified by reference to the context. So enough has now been said about individual words, which, as I have shown elsewhere,⁵⁵ have no virtue of their own. They are not however without ornamental quality, unless they are beneath the dignity of the subject on which we have to speak—obscenities set out in crude terms are of course an exception. I say this to warn those who do not think it necessary to avoid obscenity, on the ground that no word is shocking in itself and that, if the thing meant is disgusting, it comes to be understood by whatever name it is called.⁵⁶ For my part, I shall content myself with our modest Roman ways, and follow the tactful procedure of answering such speakers by silence.

Words in combination

Let us now pass to the principles of connected discourse. The primary division of Ornament here is into our mental conception of the expression needed and our actual production of it. The first thing is that it should be clear whether we wish to enhance or attenuate, to speak vigorously or calmly, in rich or austere terms, at length or concisely, harshly or gently, grandly or plainly, with gravity or with wit. Secondly, we have to discover what type of metaphor, what Figures, what sort of *sententiae*, what means,⁵⁷ and, finally, what word arrangement is needed to effect our purpose.

modo is obscure, and the text suspect: my tentative suggestions mean "what kind of delivery" and "what emotional effect."

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- Ceterum dicturus quibus ornetur oratio, prius ea quae sunt huic laudi contraria attingam: nam prima virtus est vitio carere. Igitur ante omnia ne speremus ornatam orationem fore quae probabilis non erit. Probabile autem Cicero id genus dicit quod non nimis est comptum:²⁰ non quia comi expolirique non debeat (nam et haec ornatus pars est), sed quia vitium est ubique quod nimium est.
- 43 Itaque vult esse auctoritatem in verbis, sententias vel graves vel aptas opinionibus hominum ac moribus. His enim salvis licet adsumere ea quibus inlustrem fieri orationem putat, delecta tralata supralata, ad nomen adiuncta, duplicia²¹ et idem significantia atque <ab ipsa actione atque>²² imitatione rerum non abhorrentia.
- 44 Sed quoniam vitia prius demonstrare adgressi sumus, ab hoc initium sit quod cacemphaton vocatur: sive mala consuetudine in obscenum intellectum sermo detortus est, ut 'ductare exercitus' et 'patrare bellum'²³ apud Sallustium dicta sancte et antique ridentibus, si dis placet (quam culpam non scribentium quidem iudico sed legentium, tamen vitandam, quatenus verba honesta moribus perdidimus et vincentibus etiam vitiis cedendum est), sive iunctura deformiter sonat, ut, si cum hominibus notis loqui

²⁰ *Halm*: dictum *A*: fictum *Gertz* ²¹ duplicata *D. C. Innes*
(*cf. Cic. Part. orat.* 20) ²² *suppl. Halm, from Cic. loc. cit.*

²³ *edd. (cf. Sallust Jugurtha* 21.2): bella *A*

⁵⁸ Horace, *Epistulae* 1.1.41.

⁵⁹ *Partitiones oratoriae* 19–20.

⁶⁰ "To lead armies." *Ductare* is used also of "leading" a prostitute home to bed (e.g. Terence, *Phormio* 500).

⁶¹ "To finish off the war." *Patrare* is used also of "completing" a

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But before I discuss Ornament of speech, I must say something about the characteristics which are contrary to this excellence: after all, the primary virtue is to be without vice.⁵⁸ First of all, then, let us not expect any style to possess Ornament which is not itself acceptable. An acceptable style, according to Cicero,⁵⁹ is one which is not too well dressed. It is not that style should not be spruced up and polished (that too is a part of Ornament), but excess is everywhere a vice. He therefore calls for authority in the words, and gravity or suitability to human opinions and character in the thoughts. These assured, we can add the means by which he thinks style acquires distinction: choice words, Metaphor, Hyperbole, Epithets, Repetition, Synonyms, and whatever does not conflict with <the case and> the reality to be expressed.

But since I have undertaken first to indicate faults, let us begin with what is called *cacemphaton*. This consists either (1) in a phrase perverted by bad usage so as to give an obscene meaning, as by those who (if you can believe it) get a laugh out of *ductare exercitus*⁶⁰ and *patrare bellum*,⁶¹ which are respectable but old-fashioned expressions in Sallust (this is not, in my judgement, the writers' fault but the readers', but it is none the less to be avoided, inasmuch as our moral decline has led to the loss of respectable words, and we have to yield even to vices if they are winning); or (2) in a collocation of words which has an unfortunate sound: if we say *cum hominibus notis loqui*

sexual act (e.g. Persius 1.18). Burman's *bellum* ("war" or "pretty boy") is needed to produce the *double entendre* (compare Adams (1982) 143 n. 2), as well as to make the quotation of *Jugurtha* 21.2 exact.

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- nos dicimus, nisi hoc ipsum 'hominibus' medium sit, in praefanda videmur incidere, quia ultima prioris syllabae littera, quae exprimi nisi labris coeuntibus non potest, aut intersistere nos indecentissime cogit aut continuata cum
- 46 insequente in naturam eius corrumpitur. Aliae quoque coniunctiones aliquid simile faciunt, quas persequi libenter est in eo vitio quod vitandum dicimus commorantis. Sed divisio quoque adfert eandem iniuriam pudori, ut si
- 47 'intercapedinis' nominativo casu quis utatur. Nec scripto modo id accidit, sed etiam sensum²⁴ plerique obscene intellegere, nisi caveris, cupiunt (ut apud Ovidium 'quaeque latent meliora putant')²⁵ et ex verbis quae longissime ab obscenitate absunt occasionem turpitudinis rapere. Siquidem Celsus cacemphaton apud Vergilium putat:

incipiunt agitata tumescere:

quod si recipias, nihil loqui tutum est.

- 48 Deformitati proximum est humilitatis vitium (ταπεινωσις vocant), quarei magnitudo vel dignitas minuitur, ut

²⁴ *Winterbottom*: sensu A

²⁵ ut . . . putant *del. Spalding*

⁶² Thus forming *cunno*, from *cunus*, the common word for female genitalia. Cicero, *Orator* 154 makes this point to explain why we say *nobiscum*, "with us," and not *cum nobis*.

⁶³ Q. has in mind Cicero, *Ad familiares* 9.22.4 (a letter to Paetus, devoted to this subject): *non honestum verbum est "divisio"?* at *inest obscenum, cui respondet "intercapedo."* The hidden obscenity in *intercapedo* ("interruption") is *pedo*, "fart." Cicero also apparently sees one in *divisio*: this is the verb *visio*, *visire* (*vissire*), evidently also meaning "fart" (for this word, see

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("to speak with well-known men"), without the inserted *hominibus*, we find ourselves falling into something objectionable, because the last letter of the first syllable (*m*), which cannot be pronounced without closing the lips, either forces us to pause in a very unbecoming way, or, if joined to the next letter (*n*), is assimilated to it.⁶² Other collocations have similar consequences; to pursue them would amount to dwelling willingly on a fault which we say is to be avoided. Division also, however, can cause offence to modesty, for instance, the use of the nominative *intercapedo*.⁶³ And it is not only in writing that this occurs: many people are keen to understand a sentence in an obscene sense, unless you take precautions (as Ovid says "Whatever's hidden, they think best"),⁶⁴ and to seize on indecency in words which are far from having any obscene meaning. Celsus, for instance, sees *cacemphaton* in Vergil's

they are stirred and start to swell;⁶⁵

but if you take this view, nothing is safe to say.

Next to the disgusting comes the fault of lowness or meanness (*tapeinōsis* in Greek), by which the importance or dignity of something is diminished:

Adams (1982) 249). Q.'s editors take it that he is not following Cicero here, but simply saying that the "division" of words, like their running together, can produce *cacemphaton*. I accept this, which is the natural interpretation. But Cicero's remark is at least an odd coincidence.

⁶⁴ *Metamorphoses* 1.502.

⁶⁵ Celsus, *Fr. rhet.* 13 Marx; *Georgics* 1.357.

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saxea est verruca in summo montis vertice:

- cui natura contrarium sed errore par est parvis dare excellentia modum nomina, nisi cum ex industria risus inde captatur. Itaque nec parricidam 'nequam' dixeris hominem nec deditum forte meretrici 'nefarium', quia alterum
- 49 parum, alterum nimium est. Proinde quaedam hebes sordida ieiuna tristis ingrata vilis oratio est. Quae vitia facillime fient manifesta contrariis virtutibus. Nam primum acuto, secundum nitido, tertium copioso, deinceps hilari iucundo accurato diversum est.
- 50 Vitari <debet>²⁶ et ἔλλειψις, cum sermoni deest aliquid, quo minus plenus sit, quamquam id obscurae potius quam inornatae orationis est vitium. Sed hoc quoque, cum a prudentibus fit, schema dici solet, sicut tautologia, id est
- 51 eiusdem verbi aut sermonis iteratio. Haec enim, quamquam non magnopere a summis auctoribus vitata, interim vitium videri potest, in quod saepe incidit etiam Cicero securus tam parvae observationis, sicut hoc loco: 'non solum igitur illud iudicium iudicii simile, iudices, non fuit.' Interim mutato nomine ἐπανάληψις dicitur, atque est et ipsum inter schemata, quorum exempla illo loco quaerenda quo virtutes erunt.
- 52 Peior hac ὁμοείδεια; quae nulla varietatis gratia levat taedium atque est tota coloris unius, qua maxime depre-

²⁶ *add. Halm*

⁶⁶ See also 8.6.14. This is *Trag. incert. fr. 75* Klotz (*ROL* 2. 614 Warmington). Compare Gellius 3.7. Cato (*fr. 83* Peter) makes a tribune in the first Punic War refer to a hill as a wart (*verruca*); our line may therefore be from a historical play covering this episode.

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There is a rocky wart upon the mountain's head.⁶⁶

Opposite to this, but no less wrong, unless one is deliberately seeking a laugh, is giving small things extravagant names. We must neither call a parricide "naughty," nor for example a man who is in the clutches of a prostitute "evil," because the former epithet is too weak and the latter too strong. Similarly, there is language which is dull, coarse, jejune, grim, unpleasing, or common; these faults will be clear enough if one thinks of the opposite virtues, which are respectively point, polish, richness, gaiety, charm, and refinement.

We <must> also avoid Ellipse, in which there is something lacking for the completeness of the expression. This however is a fault of obscurity rather than of lack of Ornament. When done deliberately, it also is commonly called a Figure, as is Tautology, that is to say the repetition of the same word or phrase. This, though not very strictly avoided by the best authors, may sometimes appear to be a fault, one into which even Cicero often falls, because he is indifferent to such obsession with trivialities, as in this passage: "Not only, judges, was this judgement unlike a judgement."⁶⁷ It sometimes has a different name, *epanalēpsis*, and this too is one of the Figures, examples of which may be found below, where we discuss them as virtues.⁶⁸

Monotony (*homoeideia*)⁶⁹ is worse; it has no charm of variety to relieve the tedium, and is all in the same tone. It

⁶⁷ *Pro Cluentio* 96. Q. fails to appreciate Cicero's deliberate choice. ⁶⁸ 9.3; but Q. does not use *epanalēpsis* for *geminatio* when he comes to it at 9.3.28.

⁶⁹ Lausberg § 1072.

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henditur carens arte oratio, eaque et in sententiis et in figuris et in compositione longe non animis solum sed etiam auribus est ingratisissima.

- 53 Vitanda <etiam>²⁷ macrologia, id est longior quam oportet sermo, ut apud T. Livium: 'legati non impetrata pace retro domum, unde venerant, abierunt.'

Sed huic vicina periphrasis virtus habetur.

Est et pleonasmus vitium, cum supervacuis verbis oratio oneratur: 'ego oculis meis vidi' (sat est enim 'vidi').

- 54 Emendavit hoc etiam urbane in Hirtio Cicero: cum is apud ipsum declamans filium a matre decem mensibus in utero latum esse dixisset, 'quid? aliae' inquit 'in perula solent ferre?' Nonnumquam tamen illud genus, cuius exemplum priore loco posui, adfirmationis gratia adhibetur:

vocemque his auribus hausi.

- 55 At vitium erit quotiens otiosum fuerit quod²⁸ supererit, non cum <profuerit quod>²⁹ adicietur.

Est etiam quae periergia vocatur, supervacua, ut sic dixerim, operositas, ut a diligenti curiosus et religione superstitio distat. Atque, ut semel finiam, verbum omne quod neque intellectum adiuvat neque ornatum vitiosum dici potest.

²⁷ *add. Christ* ²⁸ *M. W.: et A*

²⁹ *suppl. M. W. after Kiderlin and Radermacher*

⁷⁰ Lausberg §§ 502–504. ⁷¹ Fr. 75 Weissenborn-Mueller; there are similar redundancies elsewhere in Livy, e.g. 24.20.3, 24.40.9. ⁷² Compare 9.1.3; 9.3.97.

⁷³ For the situation (Hirtius and Dolabella practising declamation with Cicero in 46 BC) see *Ad familiares* 9.16, 9.18.

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is the surest sign of a style which is without art. In *sententiae*, in Figures, and in Composition, this is much the most disagreeable feature both to the mind and to the ear.

Prolixity (*macrologia*),⁷⁰ that is to say a longer form of expression than is necessary, is <also> something to avoid. Livy provides an instance: "The ambassadors, not having obtained peace, went off home, whence they had come."⁷¹

Periphrasis,⁷² which is close to this, is however regarded as a virtue.

Pleonasm, burdening the style with unnecessary words, is also a fault: "I personally saw with my own eyes," when "I saw" would do. Cicero wittily corrected this fault in Hirtius, when the latter, declaiming in Cicero's house, said "the son had been carried ten months by his mother in her womb": "Oh," said Cicero, "do other women carry them in a bag?"⁷³ Sometimes, however, a Pleonasm of the type I illustrated above is used to make a statement stronger:

With these ears I drank in his voice.⁷⁴

But this is a fault when the superfluous element is pointless, but not when the addition <has served a purpose>.

There is also what is called *periergia*:⁷⁵ a supererogatory carefulness, if I may so express it, distinguished in the same way as the pedant is distinguished from the scholar and superstition from religion. To sum up, any word which furthers neither sense nor Ornament can be said to be faulty.

⁷⁴ *Aeneid* 4.359.

⁷⁵ See 1.6.19; "Longinus" 3.4.

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- 56 Cacozelon, id est mala adfectatio, per omne dicendi genus peccat; nam et tumida et pusilla et praedulcia et abundantia et arcessita et exultantia sub idem nomen cadunt. Denique cacozelon vocatur quidquid est ultra virtutem, quotiens ingenium iudicio caret et specie boni fallitur, omnium in eloquentia vitiorum pessimum: nam cetera parum
- 57 vitantur, hoc petitur. Est autem totum in elocutione. Nam rerum vitia sunt stultum commune contrarium supervacuum: corrupta oratio in verbis maxime in propriis, redundantibus, compressione³⁰ obscura, compositione fracta, vocum similium aut ambiguarum puerili captatione consistit. Est autem omne cacozelon utique falsum, etiam si non omne falsum cacozelon: est <enim quod>³¹ dicitur aliter quam se natura habet et quam oportet et quam sat est. Totidem autem generibus corrumpitur oratio quot ornatur. Sed de hac parte et in alio nobis opere plenius dictum est et in hoc saepe tractatum³² et adhuc spargetur omnibus locis. Loquentes enim de ornatu subinde quae sint vitanda similia virtutibus vitia dicemus.
- 59 Sunt inornata et haec: quod male dispositum est, id ἀνοικονόμητον, quod male figuratum, id ἀσχημάτιστον,

³⁰ *recc.*: compressione A ³¹ est enim quod *Butler*: et A

³² *Winterbottom*: tractatur A

⁷⁶ For the fullest account of this vague term of abuse (literally “taste for the bad”), which always takes colour from its context, see H. D. Jocelyn, *Papers of the Liverpool Latin Seminar* 2 (1979) 77–109 (this passage is discussed, 105–106). Q. is not clear about the relation of *cacozelia* to the wider concept of *corrupta oratio*. See also “Longinus” 3.4, Demetrius 186–188, where the application of the term is narrower than in Q.

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Cacozelia

Cacozēlia,⁷⁶ that is to say perverse affectation, is a fault found in every type of style. The same name covers the turgid, the trivial, the luscious, the redundant, the far-fetched, and the extravagant. In short, it is the name given to whatever goes beyond the demands of good style, whenever the mind shows a lack of judgement and is deceived by a false appearance of good. It is the worst of all faults of eloquence, because the rest are due to failure to avoid them, whereas this is deliberately sought. And it is entirely a matter of Elocution. Faults of content are foolishness, ambivalence, self-inflicted damage, and superfluity. Decadent style is shown particularly in improper or redundant words, obscurity of sentence structure, effeminate Composition, and a childish hunt for similar⁷⁷ or ambiguous words. *Cacozēlon* is always false, though not every false expression is *cacozēlon*; for the word denotes what is said otherwise than is natural, right, or adequate. Style is corrupted in as many ways as it can be ornamented. I have discussed this more fully in another work;⁷⁸ it has often been touched on in this one, and further mentions of it will be found sporadically throughout. In speaking of Ornament, we shall repeatedly have to expound vices which resemble virtues and have to be avoided.

Failures in Ornament include also the following: faulty Disposition or *anoikonomēton*, faulty Figures or *aschē-*

⁷⁷ It is not clear whether Q. is thinking of paronomasia or of some sound-effect like homoeoteleuton.

⁷⁸ See General Introduction, vol. I.

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quod male conlocatum, id *κακοσύνητον* vocant. Sed de dispositione diximus, de figuris et compositione dicemus.

- 60 *Σαρδισμός* quoque appellatur quaedam mixta ex varia ratione linguarum oratio, ut si Atticis Dorica et Aeolica Iadicis³³ confundas. Cui simile vitium est apud nos si quis sublimia humilibus, vetera novis, poetica vulgaribus misceat—id enim tale monstrum quale Horatius in prima parte libri de arte poetica fingit:

humano capiti cervicem pictor equinam
iungere si velit

et cetera ex diversis naturis subiciat.

- 61 Ornatum est quod perspicuo ac probabili plus est. Eius primi sunt gradus in eo quod velis <concupiendo et>³⁴ exprimendo, tertius qui haec nitidiora faciat, quod proprie dixeris cultum. Itaque *ἐνάργειαν*, cuius in praeceptis narrationis feci mentionem, quia plus est evidentia vel, ut alii dicunt, repraesentatio quam perspicuitas, et illud patet, hoc se quodam modo ostendit, inter ornamenta ponamus.
- 62 Magna virtus res de quibus loquimur clare atque ut cerni videantur enuntiare. Non enim satis efficit neque, ut debet, plene dominatur oratio si usque ad aures valet, atque

³³ *Schindel*: et Iadica A ³⁴ *add. Butler*

⁷⁹ Lausberg § 1072. ⁸⁰ 9.1–4.

⁸¹ Q. is our first authority for this expression; it is generally supposed to refer to the mixture of dialects found at Sardis, the ancient capital of Lydia.

⁸² *Ars Poetica* 1–2.

⁸³ See on 4.2.62, 6.2.29–36: compare also Demetrius 209–211.

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matiston, faulty Composition or *kakosyntheton*.⁷⁹ Disposition we have discussed: Figures and Composition we shall discuss later.⁸⁰

There is also what is called *Sardismos*,⁸¹ a style made up of a mixture of several kinds of language, for example a confusion of Attic with Doric, Aeolic with Ionic. We Romans commit a similar fault, if we combine the sublime with the mean, the ancient with the modern, the poetic with the vulgar, for this produces a monster like the one Horace invents at the beginning of the *Ars Poetica*:

Suppose a painter chose to put together
a man's head and a horse's neck,⁸²

and then added other limbs from different creatures.

Vividness (enargeia)

"Ornament" is what goes beyond Lucidity and Acceptability. Its first two stages consist in <conceiving and> carrying out your intention; the third is the stage that puts the polish on, and may properly be called "finish." We must thus count as an Ornament the quality of *enargeia*,⁸³ which I mentioned in giving instructions for Narrative, because vividness, or, as some say, "representation," is more than mere perspicuity, since instead of being merely transparent it somehow shows itself off. It is a great virtue to express our subject clearly and in such a way that it seems to be actually seen. A speech does not adequately fulfil its purpose or attain the total domination it should have if it goes no further than the ears, and the judge feels that he is

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ea sibi iudex de quibus cognoscit narrari credit, non exprimi et oculis mentis ostendi.

- 63 Sed quoniam pluribus modis accipi solet, non equidem in omnis eam particulas secabo, quarum ambitiose a quibusdam numerus augetur, sed maxime necessarias attin-gam.

Est igitur unum genus, quo tota rerum imago quodam modo verbis depingitur:

constitit in digitos extemplo arrectus uterque

- et cetera, quae nobis illam pugilum congregantium fa-
ciem ita ostendunt ut non clarior futura fuerit spectanti-
64 bus. Plurimum in hoc genere sicut ceteris eminet Cicero:
an quisquam tam procul a concipiendis imaginibus rerum
abest ut non, cum illa in Verrem legit: 'stetit soleatus
praetor populi Romani cum pallio purpureo tunicaque
talari muliercula nixus in litore', non solum ipsos intueri vi-
deatur et locum et habitum, sed quaedam etiam ex iis quae
65 dicta non sunt sibi ipse adstruat? Ego certe mihi cernere
videor et vultum et oculos et deformes utriusque blandi-
tias et eorum qui aderant tacitam aversationem ac timidam
verecundiam.

- 66 Interim ex pluribus efficitur illa quam conamur expri-
mere facies, ut est apud eundem (namque ad omnium
ornandi virtutum exemplum vel unus sufficit) in descrip-
tione convivii luxuriosi: 'Videbar videre alios intrantis,

⁸⁴ *Aeneid* 5.426. ⁸⁵ *In Verrem* 5.86.

⁸⁶ *Pro Q. Gallio* fr. VI. 1 Schoell: Crawford (1994) p. 150. Quoted again, 11.3.165. A defence against a charge of bribery in a praetorship election: outcome unknown. Despite a quotation in *Aquila Romanus* (23.12 Halm) it is unlikely that this scene is one

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merely being told the story of the matters he has to decide, without their being brought out and displayed to his mind's eye.

But since *enargeia* is understood in more ways than one, I shall not attempt to subdivide it into all its minute varieties, the number of which is pretentiously exaggerated by some writers, but shall merely touch on the most essential.

(1) One kind, then, is that in which a whole scene is somehow painted in words:

At once, both took their stand, up on their toes . . . ⁸⁴

and the ensuing passage, which gives us the picture of the two boxers confronting each other so vividly that it could not have been any clearer to the spectators. Cicero is outstanding in this area, as in all others. Read the passage in the *Verrines* which runs "There stood the Roman praetor, in his slippers, with a purple cloak and a tunic down to his heels, leaning on one of his women on the beach . . ." ⁸⁵ Could anyone be so unimaginative as not to feel that he is seeing the persons and the place and the dress, and to add some unspoken details for himself into the bargain? I certainly imagine that I can see the face, the eyes, the disgusting endearments of the pair, and the silent loathing and abashed fear of the bystanders.

(2) Sometimes, the picture we wish to present is made up of a number of details, as again by Cicero (who suffices on his own to exemplify all the virtues of Ornament) in his description of a luxurious banquet: ⁸⁶ "I seemed to see

in which Cicero's client takes part; more likely (see 11.3.165) it is a misdemeanour of the opponents.

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67 alios autem exeuntis, quosdam ex vino vacillantibus, quosdam hesternis ex potatione oscitantibus. Humus erat immunda, lutulenta vino, coronis languidulis et spinis cooperta piscium.' Quid plus videret qui intrasset³⁵? Sic <et>³⁶ urbium captarum crescit miseratio. Sine dubio enim qui dicit expugnatam esse civitatem complectitur omnia quaecumque talis fortuna recipit, sed in adfectus minus penetrat brevis hic velut nuntius. At si aperias haec, quae verbo uno inclusa erant, apparebunt effusae per domus ac templa flammae et ruentium tectorum fragor et ex diversis clamoribus unus quidam sonus, aliorum fuga incerta, alii extremo complexu suorum cohaerentes et infantium feminarumque ploratus et male usque in illum diem servati
 68 fato senes: tum illa profanorum sacrorumque direptio, efferentium praedas repetentiumque discursus, et acti ante suum quisque praedonem catenati, et conata retinere infantem suum mater, et sicubi maius lucrum est pugna inter victores. Licet enim haec omnia, ut dixi, complectatur
 69 'eversio', minus est tamen totum dicere quam omnia. Consequemur autem ut manifesta sint si fuerint veri similia, et licebit etiam falso adfingere quidquid fieri solet. Contingit eadem claritas etiam ex accidentibus:
 70

mihi frigidus horror
 membra quatit gelidusque coit formidine sanguis
 et

³⁵ interesset *recc.* ('was present')

³⁶ *add. Bonnell*

⁸⁷ Livy's "sack of Alba" (1.29) illustrates all this well, and was probably in Q.'s mind. ⁸⁸ *Aeneid* 3.29–30. Compare Longinus 10.1–3 (on a passage of Sappho).

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some going in, some going out, some reeling with drink, some dozing after yesterday's potations. The floor was filthy, swimming with wine, littered with wilting garlands and fishbones." What more could anyone have seen who had entered the room? This too is how the pathos of a captured city can be enhanced. No doubt, simply to say "the city was stormed" is to embrace everything implicit in such a disaster, but this brief communiqué, as it were, does not touch the emotions. If you expand everything which was implicit in the one word, there will come into view flames racing through houses and temples, the crash of falling roofs, the single sound made up of many cries, the blind flight of some, others clinging to their dear ones in a last embrace, shrieks of children and women, the old men whom an unkind fate has allowed to live to see this day; then will come the pillage of property, secular and sacred, the frenzied activity of plunderers carrying off their booty and going back for more, the prisoners driven in chains before their captors, the mother who tries to keep her child with her, and the victors fighting one another wherever the spoils are richer.⁸⁷ "Sack of a city" does, as I said, comprise all these things; but to state the whole is less than to state all the parts. We shall succeed in making the facts evident, if they are plausible; it will even be legitimate to invent things of the kind that usually occur.

(3) This same vividness can be obtained by describing the incidental features of a situation:

Chill shuddering shakes my limbs,
my blood is curdled cold with fear,⁸⁸

or

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trepidae matres pressere ad pectora natos.

71 Atque huius summae iudicio quidem meo virtutis facilissima est via: naturam intueamur, hanc sequamur. Omnis eloquentia circa opera vitae est, ad se refert quisque quae audit, et id facillime accipiunt animi quod agnoscunt.

72 Praeclare vero ad inferendam rebus lucem repertae sunt similitudines: quarum aliae sunt quae probationis gratia inter argumenta ponuntur, aliae ad exprimendam rerum imaginem compositae, quod est huius loci proprium:

inde lupi ceu
raptores atra in nebula

et

avi similis quae circum litora, circum
piscoscos scopulos humilis volat aequora iuxta.

73 Quo in genere id est praecipue custodiendum, ne id quod similitudinis gratia adscivimus aut obscurum sit aut ignotum: debet enim quod inlustrandae alterius rei gratia adsumitur ipsum esse clarius eo quod inluminat. Quare poetis quidem permittamus sane eius modi exempla:

qualis ubi hibernam Lyciam Xanthique fluenta
deserit ac³⁷ Delum maternam invisit Apollo:

³⁷ *So Vergil:* aut *AB*

⁸⁹ *Aeneid* 7.518.

⁹⁰ *Ibid.* 2.355–356.

⁹¹ *Ibid.* 4.254–255.

⁹² *Ibid.* 4.143–144.

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And trembling mothers clasped their children to their breast.⁸⁹

And yet the path to this excellence, which in my judgment is a very great one, is extremely easy. We have only to watch Nature and follow her. All eloquence is about the activities of life, every man applies whatever he hears to his own experience, and the mind finds it easiest to accept what it can recognize.

Similes as Ornament

Similes are an excellent invention for shedding light on facts. Some Similes are inserted among Arguments for the sake of a Proof, others are devised to make pictures of things. It is this second type which is relevant here:

And then, like robber wolves in murky dark . . .⁹⁰

and

Like to the bird that flies around the shore,
round rocks where fish lie, low upon the water.⁹¹

In this sort of thing, the main thing to guard against is any obscure or unknown feature in the subject chosen for the Simile. What is selected to illustrate something else needs to be clearer than the thing it illustrates. Thus we can let poets have Similes like

As when Apollo leaves his wintry Lycia
and river Xanthus, and his mother's Delos
revisits . . .⁹²

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- 74 non idem oratorem decebit, ut occultis aperta demonstret.
Sed illud quoque de quo in argumentis diximus similitudinis genus ornat orationem, facitque sublimem floridam iucundam mirabilem. Nam quo quaeque longius petita est, hoc plus adfert novitatis atque inexpectata magis est.
- 75 Illa vulgaria videri possunt et utilia tantum ad conciliandum fidem: 'ut terram cultu, sic animum disciplinis meliorem uberiolemque fieri', et 'ut medici abalienata morbis membra praecidant, ita turpes ac perniciosos, etiam si nobis sanguine cohaereant, amputandos'. Iam sublimius illud pro Archia: 'saxa atque solitudines voci respondent, bestiae saepe inmanes cantu flectuntur atque consistunt'
- 76 et cetera. Quod quidem genus a quibusdam declamatoria maxime licentia corruptum est: nam et falsis utuntur, nec illa iis quibus similia videri volunt adplicant. Quorum utrumque in his est, quae me iuvene ubique cantari solebant: 'magnorum fluminum navigabiles fontes sunt', et 'generosioris arboris statim planta cum fructu est.'
- 77 In omni autem parabole aut praecedit similitudo, res sequitur, aut praecedit res et similitudo sequitur. Sed interim libera et separata est, interim, quod longe optimum est, cum re cuius est imago conectitur, conlatione invicem respondente, quod facit redditio contraria, quae antapodosis dicitur. Praecedit similitudo illa cuius modo feci mentionem:
- 78

⁹³ In 5.11.

⁹⁴ 19.

⁹⁵ Compare Aristotle, *Rhetoric* 3, 1407a15: Lausberg § 846.

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But it will be quite inappropriate for an orator to do the same and illustrate the obvious by the mysterious.

Nevertheless, even the type of Simile which we discussed in connection with Arguments⁹³ can provide Ornament for a speech, and make it sublime, colourful, attractive, or striking. The more remote the source of the Simile, the more novelty it produces and the more unexpected it is. The following examples may seem too ordinary, and useful only for winning credibility: "The mind becomes better and richer by learning, as the soil does by cultivation"; "As doctors amputate limbs which disease has alienated from the body, so wicked and dangerous men, even if they are related to us by blood, must be cut off." A higher level is reached by the passage in the *Pro Archia*:⁹⁴ "Rocks and deserts respond to the voice, savage beasts are often moved and brought to a stand by the power of song," and so on. This type of Simile has been corrupted by some writers, mainly as a result of declamatory licence; the comparisons they use are false, and even so they fail to apply them to the subjects which they wish them to parallel. Both these faults are to be seen in examples which were on everybody's lips when I was young: "The sources of great rivers are themselves navigable" and "A cutting from a choice tree bears fruit from the start."

In any Comparison (*parabolē*), either the Simile comes first and the subject after, or the subject first and the Simile after. Sometimes the Simile is free and detached, sometimes (and this is much the best arrangement) it is connected with the object of which it is an image, with a correspondence between the two halves of the comparison; this effect is produced by what is called *antapodosis* or "repayment."⁹⁵ The Simile I mentioned just now comes first:

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inde lupi ceu
raptores atra in nebula.

Sequitur in primo Georgicon post longam de bellis civilibus atque externis conquestionem:

ut, cum carceribus sese effudere quadrigae,
addunt in spatia, et frustra retinacula tendens
fertur equis auriga, neque audit currus habenas.

- 79 Sed hae sunt sine antapodosi. Redditio autem illa rem utramque quam comparat velut subicit oculis et pariter ostendit. Cuius praeclara apud Vergilium multa reperio exempla, sed oratoriis potius utendum est. Dicit Cicero pro Murena: 'ut aiunt in Graecis artificibus eos auloedos esse qui citharoedi fieri non potuerint: sic nos videmus, qui oratores evadere non potuerint, eos ad iuris studium devenire.' Illud pro eodem iam paene poetico spiritu, sed
- 80 tamen cum sua redditione, quod est ad ornatum³⁸ accommodatius: 'nam ut tempestates saepe certo aliquo caeli signo commoventur, saepe improviso nulla ex certa ratione obscura aliqua ex causa concitantur: sic in hac comitiorum tempestate populari, saepe intellegas quo signo commota sit, saepe ita obscura est ut sine causa excitata videatur.'
- 81 Sunt et illae breves: 'vagi per silvas ritu ferarum', et illud Ciceronis in Clodium: 'quo ex iudicio velut ex incendio

³⁸ *Perhaps orationem (oratory contrasted with poetry) D.A.R.*

⁹⁶ 1.512-514.

⁹⁷ 29.

⁹⁸ *Ibid.* 36.

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And then, like robber wolves in murky dark . . .

The Simile comes second in the first book of the *Georgics*,⁹⁶ after the long lament over the civil and foreign wars:

As when the chariots hurl themselves out of the
gates,
faster and faster, lap by lap; in vain
the driver tightens the curb, but the horses
sweep him away, and the chariot heeds no rein.

These have no *antapodosis*. This "repayment," however, sets both terms of the comparison before our eyes, as it were, and exhibits both equally. I find many fine instances of this in Vergil, but we had better use examples from oratory. Cicero says in *Pro Murena*:⁹⁷ "As among Greek artists (or so they say) the only ones who become pipers are those who cannot be lyre players, so we see those who have not managed to become orators turn to the study of the law." Or again, in the same speech, we have a Simile of almost poetical inspiration, but accompanied by its "repayment," a procedure which is better adapted for Ornament: "For, as storms are often stirred up by some sign in the heavens, but often also break out with no clear reason from some unknown cause, so with these electoral storms in the assemblies you can often see what sign has stirred them up, but often again they are so obscure that they seem to have blown up without a cause."⁹⁸

We find also brief Similes: "wandering through the woods like wild beasts," or Cicero's words against Clodius, "He fled from court like a man escaping from a fire without

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nudus effugit.' Quibus similia possunt cuicumque etiam ex cotidiano sermone succurrere.

82 Huic subiacet virtus non solum aperte ponendi rem ante oculos, sed circumcise atque velociter. Ac merito laudatur brevitās integra. Sed ea minus praestat quotiens nihil dicit nisi quod necesse est (*βραχυλογία* vocant, quae reddetur inter schemata), est vero pulcherrima cum plura paucis complectimur, quale Sallusti est: 'Mithridates corpore ingenti, perinde³⁹ armatus.' Hoc male imitantes sequitur obscuritas.

83 Vicina praedictae, sed amplior virtus est emphasis, altiorē praebens intellectum quam quem verba per se ipsa declarant. Eius duae sunt species: altera quae plus significat quam dicit, altera quae etiam id quod non dicit.

84 Prior est et apud Homerum, cum Menelaus Graios in equum 'descendisse' ait—nam verbo uno magnitudinem eius ostendit, et apud Vergilium: 'demissum lapsi per funem': nam sic quoque est demonstrata altitudo. Idem Cyclopa cum iacuisse dixit 'per antrum', prodigiosum illud

85 corpus spatio loci mensus est. Sequens positum in voce aut omnino suppressa aut etiam abscisa. Supprimitur vox, ut

³⁹ *edd.*: proinde AB

⁹⁹ *Fr. orat.* XIV. 6 Schoell: Crawford (1994) p. 240. Clodius is ruined after bribing the jury to secure his acquittal for his intrusion into the women's ritual of the *Bona Dea*. Cicero's speech, delivered in the senate in 61, was published in part, without his permission, in 58. (The source of the preceding quotation is not known; it sounds like a description of primitive man, and recalls, e.g., Cicero, *De inventione* 1.2, Lucretius 5.932, or Vitruvius 2.1.1.) ¹⁰⁰ 9.3.50.

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his clothes.”⁹⁹ Similar examples even in everyday speech may occur to everyone.

Underpinning all this is the virtue of bringing the object before our eyes not only plainly but also concisely and rapidly. Perfect brevity is rightly praised; and though it is less valuable when it says nothing but the bare essentials (it is then called “brachylogy,” and we shall deal with it among the Figures),¹⁰⁰ it is very fine indeed when we contrive to embrace a great deal in a few words, as in Sallust’s description of Mithridates “of mighty body, armed accordingly.”¹⁰¹ Unsuccessful attempts to imitate this end in obscurity.

Emphasis

A virtue close to this, but of wider scope, is Emphasis,¹⁰² which offers a meaning deeper than that which the words declare in themselves. There are two species, one which hints more than it says, and one which hints also what it does not say. (1) The first type is found both in Homer, when Menelaus says that the Greeks “descended into” the Horse (this one word shows how big the Horse was!), and in Vergil’s “sliding down the rope they had let down,” which also shows the height of the Horse.¹⁰³ Vergil again, when he says that the Cyclops lay “throughout the cave,”¹⁰⁴ gives us the measure of the monster by indicating the area he covered. (2) The second kind depends on completely suppressing, or even breaking off short, some element of the sentence. Suppression can be seen in Cicero’s

¹⁰¹ *Histories* 2, fr. 77 Maurenbrecher.

¹⁰² See 9.2.64.

¹⁰³ *Odyssey* 11.523, *Aeneid* 2.262.

¹⁰⁴ *Aeneid* 3.361.

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fecit pro Ligario Cicero: 'quod si in tanta fortuna bonitas tanta non esset quam tu per te, per te, inquam, optines: intellego quid loquar.' Tacuit enim illud, quod nihilo minus accipimus, non deesse homines qui ad crudelitatem eum impellant. Absciditur per ἀποσιώπησιν, quae quoniam est figura reddetur suo loco.

- 86 Est in vulgaribus quoque verbis emphasis: 'virum esse oportet', et 'homo est ille', et 'vivendum est': adeo similis est arti plerumque natura.

Non tamen satis eloquenti est ea de quibus dicat clare atque evidenter ostendere, sed sunt multi ac varii excolendae orationis modi. Nam ipsa illa ἀφέλεια simplex et inadfectata habet quendam purum, qualis etiam in feminis amatur, ornatum, et sunt quaedam vel ex⁴⁰ tenui diligentia circa proprietatem significationemque munditiae.

Alia copia locuples, alia floribus laeta.

- 88 Virium non unum genus: nam quidquid in suo genere satis effectum est, valet. Praecipua tamen eius opera δεινωσις in exaggeranda indignitate et in ceteris altitudo quaedam, φαντασία in concipiendis visionibus, ἐξεργασία in efficiendo velut opere proposito, cui adicitur ἐπ-

⁴⁰ *Winterbottom*: velut e *B*: veluti *A*

105 15. 106 9.2.54, 9.3.60.

107 *A* "man" must be brave, a "human being" is frail and to be treated humanely, life is to be enjoyed.

108 "Simplicity": defined and exemplified at length by Hermogenes, 322–329 Rabe (Wooten (1987) 71–75). In *Q.*, this and the two following categories of "copiousness" and "force" roughly correspond to the "three styles"—simple, "middle," and grand—which *Q.* deals with in 12.10.58–66.

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Pro Ligario.¹⁰⁵ "But if, in this exalted position, there were no corresponding goodness of heart—that goodness which is truly your own—your own, I repeat, and I understand what I am saying—." Here Cicero suppresses the fact, which we none the less understand, that there is no lack of people ready to urge Caesar to be cruel. "Breaking off" is produced by *aposiopesis*, which, as it is a Figure, will be dealt with in its due place.¹⁰⁶

Emphasis is also found in everyday expressions: "Be a man!" "He is a human being," "We must live."¹⁰⁷ So closely does Nature often resemble Art!

Varieties of style

It is not however enough for the speaker to set out his theme brilliantly and vividly; there are many different ways of enhancing our style. Even simple, unaffected *apheleia*¹⁰⁸ possesses a certain chaste Ornament, such as one likes also in women, and there is a certain neatness of propriety and precise meaning which indeed derives from the delicate craftsmanship.

Copiousness too is of two kinds: one rich, one ornate and flowery.

Force also is of more than one sort, for whatever is properly executed in its own kind possesses its own strength. Its most important products however are: (1) *deinōsis*,¹⁰⁹ which is a kind of elevation displayed in enhancing indignation and other feelings; (2) *phantasia* in conceiving imaginative visions;¹¹⁰ (3) *exergasia* in bringing a plan (as it were) to completion; with the addition of (4)

¹⁰⁹ Compare 6.2.24.

¹¹⁰ Compare 6.2.29–31.

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89 *εξεργασία*, repetitio probationis eiusdem et cumulus ex abundanti, *ἐνέργεια* confinis his (est enim ab agendo ducta) et cuius propria sit virtus non esse quae dicuntur otiosa.

Est et amarum quiddam, quod fere in contumelia est positum, quale Cassi: 'quid facies cum in bona tua invasero, hoc est, cum te docuero nescire maledicere?' et acre, ut illud Crassi: 'ego te consulem putem, cum tu me non putes senatorem?'

90 Sed vis oratoris omnis in augendo minuendoque consistit. Utrique parti totidem modi, ex quibus praecipuos attingemus (reliqui similes erunt). Sunt autem positi in rebus et verbis: sed quae sit rerum inventio ac ratio, tractavimus; nunc quid elocutio attollat aut deprimat dicendum.

4

1 Prima est igitur amplificandi vel minuendi species in ipso rei nomine, ut cum eum qui sit caesus 'occisum', eum qui sit improbus 'latronem', contraque eum qui pulsavit 'atti-

¹¹¹ *Exergasia*, "working up," "treating in detail," is a fairly common rhetorical term, but with no very precise technical sense (Dionysius of Halicarnassus, *On Isocrates* 4, *On Thucydides* 16; Philodemus, *Rhetoric* 1.121 Sudhaus). *Epexergasia*, "further working up," "elaboration," is less common; for Q.'s sense, see Sextus Empiricus, *Against the mathematicians* 9.144 (3.76 in R. G. Bury's LCL edition): *ἐπεξεργαστικώτερον τιθέναι τὸν λόγον*, "to put the argument on a more elaborate basis." *Energieia*, "activity," is associated with metaphors that represent inanimate things as animate (Aristotle, *Rhetoric* 3, 1411b28; Demetrius 81) and often connected (sometimes confused) with *enargeia*, "vividness": Q.'s use of it here to denote economical terseness seems unexampled.

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epexergasia, a repetition of the same Proof and an abundant accumulation of arguments; (5) the closely related *energeia* (the name implies "action"), whose peculiar virtue is that nothing that we say is otiose.¹¹¹

There is also a quality of "bitterness," which is found mainly in abuse, as in Cassius'¹¹² "What will you do when I take over your property, that is to say, when I show that you have no idea how to abuse anybody?" And there is "pungency," as in Crassus' "Am I to regard you as consul when you do not regard me as a senator?"¹¹³

But the whole power of the orator lies in Amplification and Attenuation. Both these tasks involve the same number of methods, of which I shall touch on the more important (the others will be on similar lines). These methods are concerned either with words or with things. As to things, we have already dealt with the relevant Invention and theory; we have now to explain how Elocution may enhance or diminish the effect.

CHAPTER 4

Amplification and Attenuation

The first type of Amplification and Attenuation depends on the actual word used for something. For example we may say that a man who was beaten was "murdered," or that a dishonest man is a "brigand"; or, conversely, that a

¹¹² Presumably Cassius Severus; compare 6.1.43.

¹¹³ Compare 11.1.37; *De oratore* 3.4; Valerius Maximus 6.2.2 (*ORF* p. 252).

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- gisse', qui vulneravit 'laesisse' dicimus. Utriusque pariter exemplum est pro M. Caelio: 'si vidua libere, proterva petulanter, dives effuse, libidinosa meretricio more viveret, adulterum ego putarem si qui hanc paulo liberius salutas-
- 2 set?' Nam et inpudicam meretricem vocavit et eum cui longus cum illa fuerat usus liberius salutasse. Hoc genus increscit ac fit manifestius si ampliora verba cum ipsis nominibus pro quibus ea posituri sumus conferantur, ut Cicero in Verrem: 'non enim furem sed ereptorem, non adulterum sed expugnatorem pudicitiae, non sacrilegum sed hostem sacrorum religionumque, non sicarium sed crudelissimum carnificem civium sociorumque in vestrum
- 3 iudicium adduximus.' Illo enim modo ut sit multum, hoc etiam plus ut sit efficitur.

Quattuor tamen maxime generibus video constare amplificationem, incremento comparatione ratiocinatione congerie.

- Incrementum est potentissimum cum magna videntur etiam quae inferiora sunt. Id aut uno gradu fit aut pluribus, et pervenit non modo ad summum sed interim quodam
- 4 modo supra summum. Omnibus his sufficit vel unum Ciceronis exemplum: 'facinus est vincire civem Romanum, scelus verberare, prope parricidium necare: quid dicam in crucem tollere?' Nam et si tantum verberatus esset uno gradu increverat, ponendo etiam id esse facinus quod erat

¹ 38.

² 1.9.

³ *In Verrem* 5.170.

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man who struck someone “touched” him or one who wounded a man “hurt” him. There is an example of both in *Pro Caelio*:¹ “Suppose there was a widow woman living as she liked, a forward woman behaving with effrontery, a wealthy woman living extravagantly, a wanton woman living like a whore—should I take a man to be an adulterer if he addressed this lady rather freely?” Here he called an immodest woman a whore, and said that a man who had long been her lover “addressed her rather freely.” This type is reinforced and becomes clearer if the stronger words are contrasted with the terms for which we are to substitute them. Thus Cicero in the *Verrines*:² “We have brought before your court not a thief, but a plunderer; not an adulterer, but a stormer of women’s virtue; not a committer of sacrilege, but the avowed enemy of all sacred things and religious observances; not an assassin, but a bloodthirsty butcher of our fellow-citizens and our allies.” The first method makes the matter seem great, the second makes it seem more than great.

There are, in my view, four main kinds of Amplification, based on Increment, Comparison, Inference, and Accumulation.

(1) Increment is most powerful when even comparatively insignificant things are made to seem important. This is done either by one step or by several; the process not only goes to the top, it sometimes in a sense goes beyond it. A single example from Cicero³ suffices to show all these features: “It is wrong to bind a Roman citizen, a crime to flog him, little short of parricide to put him to death: what shall I say about putting him on the cross?” If he had merely been flogged, there would have been one stage of Increment (taking the previous stage to be itself

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- 5 inferius, et si tantum occisus esset per plures gradus ascenderat: cum vero dixerit 'prope parricidium necare', supra quod nihil est, adiecit 'quid dicam in crucem tollere?' Ita cum id quod maximum est occupasset necesse erat in eo quod ultra est verba deficere.
- 6 Fit et aliter supra summum adiectio, ut apud Vergilium de Lauso:

quo pulchrior alter
non fuit, excepto Laurentis corpore Turni.

Summum est enim 'quo pulchrior alter non fuit', huic deinde aliquid superpositum.

- 7 Tertius quoque est modus, ad quem non per gradus itur, sed <quo ponitur> non quod est¹ plus quam maximum, sed quo nihil maius est. 'Matrem tuam cecidisti: quid dicam amplius? Matrem tuam cecidisti.' Nam et hoc augendi genus est, tantum aliquid efficere ut non possit augeri.
- 8 Crescit oratio minus aperte, sed nescio an hoc ipso efficacius, cum citra distinctionem in contextu et cursu semper aliquid priore maius insequitur, ut de vomitu in Antonium Cicero: 'in coetu vero populi Romani, negotium publicum gerens, magister equitum.' Singula incrementum habent. Per se deforme vel non in coetu vomere, in coetu etiam, non populi, populi etiam, non Romani, vel si nullum negotium ageret vel si non publicum vel si non ma-

¹ sed <quo ponitur> non quod est *D.A.R. after Winterbottom*: et quod non est *AB*

⁴ *Aeneid* 7.649–650. ⁵ *Philippics* 2.63. Antony has the title of Master of the Horse as deputy to the dictator Caesar.

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criminal); if he had merely been killed, there would have been more stages; but having said "to put him to death is little short of parricide"—and there is nothing to cap this—he added "what shall I say about putting him on the cross?" Thus, when he had already used the strongest word, words were bound to fail him for the stage beyond.

There is another way of going beyond the highest degree, exemplified in Vergil's description of Lausus:

than whom was none more beautiful,
except Laurentian Turnus.⁴

Here "than whom was none more beautiful" gives us the highest point, and then something is made to cap this.

There is also a third type, not reached by going step by step, but one <in which what is stated> is not the stage above the greatest, but something which has no superior at all: "You beat your mother. What more can I say? You beat your mother." For to make something so great that it cannot be increased is itself another form of Increment.

A less obvious, but perhaps therefore more effective, form is found when a succession of details, each stronger than the last, occurs in a continuous passage without any break in the sentence. An example is Cicero's description of Antony's vomiting:⁵ "in an assembly of the people of Rome, while doing public business, while Master of the Horse." Each phrase marks an Increment. Vomiting is revolting even when not in an assembly, revolting in an assembly, even if not an assembly of the people, revolting in an assembly of the people, even if it were not the people of Rome; revolting if he was doing no business, revolting if he was doing business but not public business, revolting

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9 gister equitum. Sed alius divideret haec et circa singulos gradus moraretur: hic in sublime etiam currit et ad summum non pervenit nisu, sed impetu.

Verum ut haec amplificatio in superiora tendit, ita quae fit per comparisonem incrementum ex minoribus petit. Augendo enim quod est infra necesse est extollat id quod
 10 superpositum est, ut idem atque in eodem loco: 'si hoc tibi inter cenam et in illis inmanibus poculis tuis accidisset, quis non turpe duceret? In coetu vero populi Romani . . .' Et in Catilinam: 'servi mehercule mei si me isto pacto metuerent ut te metuunt omnes cives tui, domum meam
 11 relinquendam putarem.' Interim proposito velut simili exemplo efficiendum est ut sit maius id quod a nobis exaggerandum est, ut idem pro Cluentio, cum exposuisset Milesiam quandam a secundis heredibus pro abortu pecuniam accepisse: 'quanto est' inquit 'Oppianicus in eadem iniuria maiore supplicio dignus! si quidem illa, cum suo corpori vim attulisset, se ipsa cruciavit, hic autem idem
 12 illud effecit per alieni corporis vim atque cruciatum.' Nec putet quisquam hoc, quamquam est simile illi ex argumentis loco quo maiora ex minoribus colliguntur, idem esse. Illic enim probatio petitur, hic amplificatio, sicut in Oppianico non id agitur hac comparatione, ut ille male fecerit, sed ut peius.

Est tamen quamquam diversarum rerum quaedam vicinia: repetam itaque hic quoque idem quo sum illic usus

⁶ 1.17.

⁷ 32. Oppianicus is alleged to have poisoned his pregnant sister-in-law, so as to kill the child she was carrying.

⁸ See 5.10.86.

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even if he were not Master of the Horse. Another writer might have split this up and lingered over each step; Cicero has gone full speed for his climax, and reached the top, not by effort, but by sheer *élan*.

(2) While this form of Amplification rises ever higher and higher, the form based on Comparison aims at Increment by starting lower down the scale: by exaggerating the lower stage it cannot help raising the level of the higher. So Cicero in the passage already quoted: "If this had happened to you at dinner or in the middle of your monstrous potations, who would not think it disgraceful? But it happened in an assembly of the people of Rome . . ." Or again, from *In Catilinam*:⁶ "If my slaves feared me as all your fellow-citizens fear you, I should think I ought to leave my house." Sometimes to suggest a parallel example enables us to make something which we want to exaggerate even greater, as Cicero again does in *Pro Cluentio*⁷ where, after telling how a woman from Miletus took a bribe from the reversionary heirs to have an abortion, he goes on: "How much greater is the punishment Oppianicus deserves for the same offence? That woman, by doing violence to her own body, tortured herself; he has brought about the same outcome by the violence and torture suffered by another person." Let no one think that this is the same as the topic of Argument⁸ in which the greater is inferred from the less, though there is indeed a similarity. For in that case we are aiming at Proof, here at Amplification. Thus, in the passage about Oppianicus, the object is not to show that he did a bad thing, but that he did something worse than the other person.

But, different as these procedures are, there is an affinity between them. I will therefore repeat here also the

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- 13 exemplum, sed non in eundem usum. Nam hic² mihi ostendendum est, augendi gratia non tota modo totis sed etiam partes partibus comparari, sicut hoc loco: 'an vero vir amplissimus P. Scipio pontifex maximus Ti. Gracchum mediocriter labefactantem statum rei publicae privatus interfecit: Catilinam orbem terrae caede atque incendio
- 14 vastare cupientem nos consules perferemus?' Hic et Catilina Graccho et status rei publicae orbi terrarum et mediocris labefactatio caedi et incendiis et vastationi et privatus consulibus comparatur: quae si quis dilatare velit, plenos singula locos habent.
- 15 Quas dixi per ratiocinationem fieri amplificationes viderimus an satis proprio verbo significaverim: nec sum in hoc sollicitus, dum res ipsa volentibus discere appareat; hoc sum tamen secutus, quod haec amplificatio alibi posita est, alibi valet: ut aliud crescat, aliud augetur, inde ad id
- 16 quod extolli volumus ratione transitur.³ Obiecturus Antonio Cicero merum et vomitum 'tu' inquit 'istis faucibus, istis lateribus, ista gladiatoria totius corporis firmitate'. Quid fauces et latera ad ebrietatem? Minime sunt otiosa: nam respicientes ad haec possumus aestimare quantum ille vini in Hippiae nuptiis exhausserit, quod ferre et coquere⁴ non posset illa corporis gladiatoria firmitate. Ergo, si ex alio colligitur aliud, nec inproprium nec inusitatum nomen est

² hic *M.W.*: hoc *AB*

³ *D.A.R.*: ducitur *AB*: ratio deducitur *recc.*

⁴ *t*: concoquere *Spalding*: conquire *B*: quod conquire *A*

⁹ 5.13.24: Cicero, *In Catilinam* 1.7.

¹⁰ *Philippics* 2.63. Plutarch, *Antony* 9, draws on this passage, but adds the detail that Hippias was an actor.

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example I used there,⁹ but for a different purpose. What I have to show here is that not only can wholes be compared with wholes for the sake of exaggeration, but parts with parts. So in this passage: "That great man, Publius Scipio, the pontifex maximus, acting as a private citizen, killed Tiberius Gracchus, whose subversion of the existing political order was not so very radical: shall we, as consuls, tolerate Catiline, whose ambition is to devastate the world with fire and sword?" Here Catiline is contrasted with Gracchus, the constitution of the state with the world, a not very radical subversion with fire and sword and devastation, and a private citizen with the consuls. If anyone chose to expand these points, each one of them is capable of ample development.

(3) As for Amplifications by Inference, which I mentioned, I wonder if this was quite the right word for it—that I am unduly worried about this, so long as the thing itself is clear to the student. My point was, anyway, that this Amplification is made in a certain place, but has its effect in another. One thing is magnified to augment another, and a transition is made by an inference to the thing which we wish to emphasize. Cicero is going to reproach Antony with his drunkenness and vomiting: "You," he says, "with your throat, your lungs, your gladiator's physique."¹⁰ What have throat and lungs to do with drunkenness? They are by no means pointless; by thinking about them we can estimate how much wine he downed at Hippias' wedding, so that he was unable to carry or digest it, despite his "gladiator's physique." So, if one fact is inferred from another, Inference is not an improper or an unusual word to use;

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- ratiocinationis, ut quod ex eadem causa inter status quoque habeamus.
- 17 Sic et ex insequentibus amplificatio ducitur, si quidem tanta vis fuit vini erumpentis ut non casum adferret aut voluntatem sed necessitatem ubi minime deceret vomendi, et cibus non recens, ut accidere interim solet, redderetur, sed usque in posterum diem redundaret.
- 18 Idem hoc praestant quae antecesserunt: nam cum Aeolus a Iunone rogatus

cavum conversa cuspide montem
impulit in latus, et⁵ venti velut agmine facto
<qua data porta>⁶ ruunt,

- 19 apparet quanta sit futura tempestas. Quid? cum res atrocissimas quasque in summam ipsi extulimus invidiam elevamus consulto, quo graviora videantur quae secutura sunt, ut a Cicerone factum est cum illa diceret: 'Levia sunt haec in hoc reo. Metum virgarum nauarchus nobilis nobilissimae civitatis pretio redemit: humanum est; alius ne securi feriretur pecuniam dedit: usitatum est.' Nonne usus est ratione, qua colligerent audientes quantum illud esset quod inferebatur, cui comparata haec viderentur humana atque usitata?
- 20

Sic quoque solet ex alio aliud augeri cum Hannibalis bellicis laudibus ampliatur virtus Scipionis, et fortitudi-

⁵ ac t (*and so Vergil*)

⁶ add. t (*from Vergil*)

¹¹ See 3.6.43.

¹² *Aeneid* 1.81–83.

¹³ *In Verrem* 5.177.

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indeed, we use it also for a similar reason as a name for one of the Issues.¹¹

Again, Amplification may be derived from Consequences; in this case the violence with which the wine burst out was such as to make it a matter not of chance or choice but of necessity that he vomited in the least appropriate place, and to ensure that it was not just his recently consumed food (as sometimes happens) that was brought up, but that there was an overflow to come up the next day.

Antecedents may have the same effect. When Aeolus, responding to Juno's request,

with spear reversed
struck at the mountain's hollow flank; the winds
formed up and rushed out <where the door was
made>,¹²

it is obvious how great the storm is going to be. Or consider cases when we deliberately minimize some very outrageous event which we have ourselves exposed to the greatest odium, in order to make what is to follow seem even worse: Cicero, for instance, did this when he said, "These are trivial matters for this defendant. A ship's captain from a famous city bought off the threat of a flogging at a price: that's being humane! Another man gave money to save his head from the axe: that's normal practice!"¹³ Did he not here use Inference to enable the audience to infer how great must be the implied crime, compared with which these actions could seem "humane" and "normal practice"?

Similarly, one thing is often magnified by reference to another: as when Scipio's valour is amplified by praise of Hannibal's military qualities, or when we admire the cour-

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nem Gallorum Germanorumque miramur quo sit maior
C. Caesaris gloria.

- 21 Illud quoque est ex relatione ad aliquid quod non eius
rei gratia dictum videtur amplificationis genus. Non pu-
tant indignum Troiani principes Graios Troianosque prop-
ter Helenae speciem tot mala tanto temporis spatio susti-
nere: quaenam igitur illa forma credenda est? Non enim
hoc dicit Paris, qui rapuit, non aliquis iuvenis aut unus e
vulgo, sed senes et prudentissimi et Priamo adsidentes.
- 22 Verum et ipse rex decennibello exhaustus, amissis tot libe-
ris, imminente summo discrimine, cui faciem illam, ex qua
tot lacrimarum origo fluxisset, invisam atque abominan-
dam esse oportebat, et audit haec et eam filiam appellans
iuxta se locat et excusat etiam sibi atque esse malorum
- 23 causam negat. Nec mihi videtur in symposio Plato, cum
Alcibiaden confitentem de se quid a Socrate pati voluerit
narrat, ut illum culparet haec tradidisse, sed ut Socratis
invictam continentiam ostenderet, quae corrumpi specio-
sissimi hominis tam obvia voluntate non posset.
- 24 Quin ex instrumento quoque heroum illorum magnitu-
do aestimanda nobis datur: huc pertinet clipeus Aiacis et
pelias Achillis.⁷ Qua virtute egregie est usus in Cyclope
Vergilius. Nam quod illud corpus mente concipiam cuius
- 25 'trunca manum pinus regit'? Quid? cum vix loricam duo
'multiplicem conixi umeris' ferunt, quantus Demoleos qui
indutus ea 'cursu palantis Troas agebat'? Quid? M. Tullius

⁷ huc . . . Achilles *del. Meister*

¹⁴ *Iliad* 3.156ff. ¹⁵ 218Bff.

¹⁶ *Iliad* 7.219, 16.140ff. ¹⁷ *Aeneid* 3.659.

¹⁸ *Aeneid* 5.264–265.

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age of the Gauls and Germans in order to enhance Caesar's glory.

Another type is based on reference to something which appears to have been said for a different purpose. The chief men of Troy think it no discredit for Greeks and Trojans to endure so many troubles so long for the sake of Helen's beauty.¹⁴ What then must her beauty be believed to be? For it is not Paris, who ravished her, who says this, nor some young man or one of the common people, but the wise old men who are Priam's counsellors. Even the king himself, exhausted by the ten years' war, after losing so many children and with the ultimate peril hanging over him, the very man who ought to have loathed and hated the face which had caused so many tears, hears these words, calls her his daughter, makes her sit next to him, and even excuses her to himself and denies that she is the cause of the troubles. Again, when Plato in his *Symposium*¹⁵ reports Alcibiades' self-confession of what he hoped Socrates would do to him, he does not record this, I think, in order to blame Alcibiades, but in order to demonstrate Socrates' invincible self-control, which could not even be broken by the obvious wishes of a very great beauty.

Again, we are enabled to estimate the stature of the heroes of old from their equipment. Ajax' shield and Achilles' spear-shaft from Pelion are relevant here.¹⁶ Vergil used this device admirably for his Cyclops: what size of body am I to imagine in a creature whose "hand is guided by a pine tree's trunk?"¹⁷ And what a giant must Demoleos¹⁸ have been, whose "many-layered breastplate" two men "could scarcely carry on their shoulders," but who wore it when he "chased the scattering Trojans at a run"? And could

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de M. Antoni luxuria tantum fingere saltem potuisset quantum ostendit dicendo: 'conchyliatis Cn. Pompei peristromatis servorum in cellis stratos lectos videres'? Conchyliata peristromata et Cn. Pompei terunt servi et in cellis: nihil dici potest ultra, et necesse est tamen infinito plus in domino cogitare. Est hoc simile illi quod emphasis dicitur: sed illa ex verbo, hoc ex re coniecturam facit, tantoque plus valet quanto res ipsa verbis est firmior.

Potest adscribi amplificationi congeries quoque verborum ac sententiarum idem significantium. Nam etiam si non per gradus ascendant, tamen velut acervo quodam adlevantur: 'Quid enim tuus ille, Tubero, destrictus in acie Pharsalica gladius agebat? Cuius latus ille mucro petebat? Qui sensus erat armorum tuorum? Quae tua mens, oculi, manus, ardor animi? Quid cupiebas? Quid optabas?' Simile est hoc figurae quam *συναθροισμὸν* vocant, sed illic plurium rerum est congeries, hic unius multiplicatio. Haec etiam crescere solet verbis omnibus altius atque altius insurgentibus: 'aderat ianitor carceris, carnifex praetoris, mors terrorque sociorum et civium Romanorum, lictor Sextius.'

Eadem fere est ratio minuendi: nam totidem sunt ascendentibus quot descendentibus gradus. Ideoque uno ero exemplo contentus, eius loci quo Cicero de oratione Rulli haec dicit: 'pauci tamen qui proximi adstiterant ne-

¹⁹ *Philippics* 2.67.

²⁰ Cicero, *Pro Ligario* 9.

²¹ Literally "piling together." See Rutilius Lupus 1.2; Alexander 3.17 Spengel: Lausberg § 667.

²² Cicero, *In Verrem* 5.118.

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Cicero, talking of Antony's luxury, have invented the level of extravagance which he manages to indicate by saying "You might see beds in his slaves' quarters covered with Pompey's purple bedspreads"?¹⁹ Purple bedspreads—Pompey's purple bedspreads—slept on by slaves, and in their own quarters! Nothing can be said to cap this, and yet one is bound to infer that there was infinitely more luxury in the master! This is rather like what is called Emphasis; but Emphasis is a matter of suggestive words, and this of suggestive things; it is therefore the more potent, inasmuch as things carry more weight than words.

(4) Accumulation of words and sentences having the same meaning may also be reckoned as Amplification. For even though there is no step-by-step ascent, the facts are raised by being piled up, as it were: "What was that sword of yours doing, Tubero, the sword you drew on the field of Pharsalus? At whose body was that blade pointed? What was the meaning of your appearing under arms? What did you intend? What were your eyes, your hand, your brave heart doing? What did you want? What did you pray for?"²⁰ This resembles the Figure called *synathroismos*,²¹ though that consists of an accumulation of different facts, and what we have here is the multiplication of a single one. This accumulation also often shows a rising pattern, when every word marks a step in an ascending series: "There stood the doorkeeper of the prison, the praetor's executioner, the death and terror of the allies and citizens of Rome, lictor Sextius."²²

The principle of Attenuation is much the same, as there are just as many steps going down as going up. I shall therefore content myself with a single example, the passage where Cicero speaks of Rullus' speech: "A few, who stood

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scio quid illum de lege agraria voluisse dicere suspicabantur.' Quod si ad intellectum referas, minutio est, si ad obscuritatem, incrementum.

- 29 Scio posse videri quibusdam speciem amplificationis hyperbolen quoque: nam et haec in utramque partem valet; sed quia excedit hoc nomen, in tropos differenda est. Quos continuo subiungerem, nisi esset a ceteris separata ratio dicendi quae constat non propriis nec⁸ tralatis. Demus ergo breviter hoc desiderio iam paene publico, ne omittamus eum quem plerique praecipuum ac paene solum putant orationis ornatum.

5

- 1 Sententiam veteres quod animo sensissent vocaverant. Id cum est apud oratores¹ frequentissimum, tum etiam in usu cotidiano quasdam reliquias habet: nam et iuraturi 'ex animi nostri sententia' et gratulantes 'ex sententia' dicimus. Non raro tamen et sic locuti sunt, ut 'sensa' sua dicerent.
- 2 Nam 'sensus' corporis videbantur. Sed consuetudo iam tenuit ut mente concepta sensus vocaremus, lumina autem praecipueque in clausulis posita sententias; quae minus

⁸ *Stroux*: sed AB: quae . . . tralatis *del. Halm*

¹ auctores *M.W.*, *cf.* 1.4.4

²³ *De lege agraria* 1.13 (not quoted exactly: in Cicero it is not those who stood nearest him but those who were sharper-witted (*acutiores*) who sensed the speaker's intention).

²⁴ 8.6.67-76.

¹ See Cicero, *De oratore* 1.32. Q.'s distinction between *sensa*

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nearest to him, suspected that he meant to say something about the agrarian law."²³ If we think of the sense, this is an Attenuation; if of Rullus' obscurity, it is an Amplification.

I know that some may think Hyperbole also to be a species of Amplification, for it too works both ways. But as it goes beyond our present subject, I postpone it till we come to Tropes.²⁴ I would indeed put these next, were there not another quite distinct fashion of speech, which does not fall under either proper or metaphorical usage. Let us therefore briefly satisfy what is almost a universal desire, and say something about the type of Ornament which so many people think the principal, indeed almost the only, type there is.

CHAPTER 5

Sententiae

The ancients used the word *sententia* to mean what they felt in their minds. This meaning is very common in the orators, and there are some vestiges of it in everyday usage: when we are about to take an oath, we say *ex animi nostri sententia*, "from the feelings of our heart"; when we congratulate someone we say we do it *ex sententia*, "in accordance with our feelings." They often spoke also of "speaking their *sensa*,"¹ for *sensus* was thought to refer only to the bodily senses. However, the usage that has come to prevail is to call mental concepts *sensus*, and bright thoughts, especially at the ends of passages, *sententiae*; these were not

and *sensus*, and his limitation of *sensus* to physical senses, are not justified.

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celebratae² apud antiquos nostris temporibus modo ca-
rent. Ideoque mihi et de generibus earum et de usu arbi-
tror pauca dicenda.

- 3 Antiquissimae sunt quae proprie, quamvis omnibus
idem nomen sit, sententiae vocantur, quas Graeci gnomas
appellant: utrumque autem nomen ex eo acceperunt quod
similes sunt consiliis aut decretis. Est autem haec vox uni-
versalis, quae etiam citra complexum causae possit esse
laudabilis, interim ad rem tantum relata, ut 'nihil est tam
populare quam bonitas': interim ad personam, quale est
4 Afri Domiti: 'princeps qui vult omnia scire necesse habet
multa ignoscere.' Hanc quidam partem enthymematis,
quidam initium aut clausulam epichirematis esse dixerunt,
et est aliquando, non tamen semper. Illud verius, esse eam
aliquando simplicem, ut ea quae supra dixi, aliquando rati-
one subiecta: 'nam in omni certamine qui opulentior est,
etiam si accipit iniuriam, tamen quia plus potest facere vi-
5 detur': nonnumquam duplicem: 'obsequium amicos, veri-
tas odium parit.' Sunt etiam qui decem genera fecerint,
sed eo modo quo fieri vel plura possunt: per interrogatio-

² *Bonnell (from Julius Victor 437.20 Halm = 91, 17 Giomini-Celentano): crebra AB: crebrae Meister*

² See Aristotle, *Rhetoric* 2, 1394a21ff.: "A statement, not about individuals (e.g. about the character of Iphicrates) but general; not about everything (e.g. not the statement that 'straight is the opposite of crooked'), but about whatever is the subject of actions, and where there are courses to be chosen or avoided with a view to action." Compare *Rhetorica ad Alexandrum* 1430b1, *Ad Herennium* 4.24, Aphthonius, *Progymnasmata* 7 Rabe. Lausberg §§ 872-879, 1121.

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so popular with the ancients, but in our time they know no bounds. I feel therefore that I must say a little about the types and use of these *sententiae*.

Oldest of all—and properly called *sententiae*, though the same name serves for all types—are what are called in Greek *gnōmai*.² (Both names come from the fact that these sayings are like proposals or decrees.)³ It is a universal pronouncement (such as might be praiseworthy even outside the context of a Cause), relating sometimes simply to things (“Nothing is so popular as goodness of heart”),⁴ sometimes to persons (“An emperor,” said Domitius Afer, “who wants to know everything has to forgive much”).⁵ Some have thought of a *sententia* as part of an Enthymeme, some as the major premiss or conclusion of an Epichireme.⁶ And so it is sometimes, but not always. A better classification is into (1) simple *sententiae* (like those just quoted); (2) *sententiae* with an added reason (“In any contest, the better resourced, even if he is the victim, is thought to be the aggressor, because of his greater power”);⁷ (3) double *sententiae* (“Obsequiousness wins friends, truth enmity”).⁸ There are even people who have made ten classes, but on principles on which even more could be produced; they give us *sententiae* based on Inter-

³ Both the Greek word and the Latin are used in this sense: LSJ s.v. *γνώμη* III a, b; OLD s.v. *sententia* 3, 4, 5.

⁴ Cicero, *Pro Ligario* 37.

⁵ FOR p. 570.

⁶ Compare Aristotle, *Rhetoric* 2, 1394a26–b6.

⁷ Sallust, *Jugurtha* 10.7.

⁸ Terence, *Andria* 68.

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nem, per comparationem, infitiationem, similitudinem, admirationem et cetera huius modi. Per omnes enim figuras tractari potest. Illud notabile ex diversis:

mors misera non est, aditus ad mortem est miser.

6 Ac rectae quidem sunt tales:

tam deest avaro quod habet quam quod non habet.

Sed maiorem vim accipiunt et mutatione figurae, ut 'usque adeone mori miserum est?' (acrius hoc enim quam per se 'mors misera non est'), et translatione a communi ad proprium. Nam cum sit rectum 'nocere facile est, prodesse difficile', vehementius apud Ovidium Medea dicit:

servare potui: perdere an possim rogas?

7 Vertit ad personam Cicero: 'nihil habet, Caesar, nec fortuna tua maius quam ut possis, nec natura melius quam ut velis servare quam plurimos.' Ita quae erant rerum, propria fecit hominis.

In hoc genere custodiendum est et id, quod ubique, ne crebrae sint, ne palam falsae (quales frequenter ab iis dicuntur qui haec catholica vocant et quidquid pro causa videtur quasi indubitatum pronuntiant) et ne passim et a

8 quocumque dicantur. Magis enim decet eos in quibus est auctoritas, ut rei pondus etiam persona confirmet. Quis

⁹ *Fr. trag. incert.* 109 Klotz; Warmington, *ROL* 2, p. 618.

¹⁰ Publilius Syrus 628 Meyer = 694 Duff (in *LCL Minor Latin Poets*, p. 106). Compare 9.3.64; Seneca, *Controversiae* 7.18.

¹¹ *Aeneid* 12.646. ¹² Fr. 1 Lenz, from Ovid's only tragedy (see Tacitus, *Dialogus* 12.6, Seneca, *Suasoriae* 3.7).

¹³ *Pro Ligario* 38. ¹⁴ So [Hermogenes] 418.2 Rabe.

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rogation, Comparison, Denial, Similitude, Admiration, and so on. In fact, a *sententia* can be handled in the form of any Figure. Here is a noteworthy one "from opposites":

Death is not sad: the approach to death is sad.⁹

Direct *sententiae* are of the form

The miser misses what he's got no less than what he hasn't,¹⁰

but they acquire greater force (1) by a change of Figure: "Is it so sad to die?"¹¹ is more pointed than just "Death is not sad"; (2) by a move from the general to the particular: thus the direct form is "It is easy to hurt, but hard to do good," but Medea in Ovid puts it more vigorously when she says

I had power to save: do you ask, have I power to destroy?"¹²

Cicero¹³ gives the thought a personal application: "Caesar, your fortune confers on you nothing greater than the power, and your nature nothing better than the desire, to save as many people as possible." Here he has attributed to the person features that belonged to his circumstances.

With this type of thing, we must also take care, as always, that the *sententiae* are (1) not frequent, (2) not obviously false (as are many that are spoken by people who call them *catholica*¹⁴ ("universal thoughts") and pronounce as undoubted truths anything that seems to further their case), and (3) not spoken at random or put in the mouth of any person indifferently. The most appropriate speaker is a man of authority, so that his character can add weight to

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enim ferat puerum aut adolescentulum aut etiam ignobilem si iudicet in dicendo et quodam modo praecipiat?

- 9 Enthymema quoque est omne quod mente concepimus, proprie tamen dicitur quae est sententia ex contrariis, propterea quod eminere inter ceteras videtur, ut Homerus 'poeta', 'urbs' Roma. De hoc in argumentis satis
 10 dictum est. Non semper autem ad probationem adhibetur, sed aliquando ad ornatum: 'quorum igitur impunitas, Caesar, tuae clementiae laus est, eorum te ipsorum ad crudelitatem acuet oratio?'—non quia sit ratio dissimilis, sed quia
 11 iam per alia ut id iniustum appareret effectum erat; et addita in clausula est epiphonematis modo non tam probatio quam extrema quasi insultatio. Est enim epiphonema rei narratae vel probatae summa adclamatio:

tantae molis erat Romanam condere gentem!

'facere enim probus adulescens periculose quam perpeti turpiter maluit.'

- 12 Est et quod appellatur a novis noema, qua voce omnis intellectus accipi potest, sed hoc nomine donarunt ea quae non dicunt verum intellegi volunt, ut in eum quem saepius a ludo redemerat soror, agentem cum ea talionis quod ei pollicem dormienti recidisset: 'eras dignus ut haberes in-

¹⁵ Compare 6.3.103. Q. alludes to the usage called in Greek *κατ' ἐξοχήν* (Strabo 1.2.10), and in Latin sometimes *per eminentiam*, i.e. *par excellence*.

¹⁶ 5.14.24–26.

¹⁷ *Pro Ligario* 10.

¹⁸ See Demetrius 106; Hermogenes 196–199 Rabe; Lausberg § 879.

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the idea. Who would tolerate a child or a young man or even a low-class person, if he pronounced judgement in his speech or in some fashion offered advice?

“Enthymeme” also means any thought formed in the mind; but more particularly it means a *sententia* based on contraries, because this is regarded as a *sententia par excellence*, as Homer is *the* poet, and Rome *the* city.¹⁵ I have said enough about this in connection with Arguments,¹⁶ but it is not always used for Proof, but occasionally for Ornament: “Caesar, are the words of those persons whose safety is the glory of your mercifulness now to spur you on to cruelty?”¹⁷ Cicero gives this not as a different reason, but because the injustice had already been demonstrated by other Arguments, and what is added at the end as an *epiphōnēma*¹⁸ is not so much a Proof as a final flourish. (An *epiphōnēma* is a final utterance clinching a Narrative or a Proof:

So great a task it was to found the Roman race!¹⁹

or “The honourable young man preferred the risks of action to the disgrace of passivity.”)²⁰

There is also something which the moderns call a *noēma* (“thought”), a word which can mean any idea, but which they have given specially to things which they want to be understood without their being said. For example, the sister who had frequently bought out her brother from a gladiators’ school says to him, when he has brought an action for compensation against her (she had cut off his thumb when he was asleep), “You deserved to keep your

¹⁹ *Aeneid* 1.33, the phrase in which the Prologue reaches its culmination. ²⁰ Cicero, *Pro Milone* 9.

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tegram manum': sic enim auditur 'ut depugnares'.

- 13 Vocatur aliquid et clausula: quae si est quod conclusionem dicimus, et recta et quibusdam in partibus necessaria est: 'quare prius de vestro facto fateamini necesse est quam Ligari culpam ullam reprehendatis.' Sed nunc aliud volunt, ut omnis locus, omnis sensus in fine sermonis feriat
- 14 aurem. Turpe autem ac prope nefas ducunt respirare ullo loco qui adclamationem non petierit. Inde minuti corruptique sensiculi et extra rem petiti: neque enim possunt tam multae bonae sententiae esse quam necesse est multae sint clausulae.
- 15 Iam haec magis nova sententiarum genera: ex inopinato, ut dixit Vibius Crispus in eum qui, cum loricatus in foro ambularet, praetendebat id se metu facere: 'quis tibi sic timere permisit?' et insigniter Africanus apud Neronem de morte matris: 'rogant te, Caesar, Galliae tuae ut felicitatem
- 16 tuam fortiter feras.' Sunt et alio relata (ut Afer Domitius, cum Cloatillam defenderet, cui obiectum crimen quod virum qui inter rebellantis fuerat sepelisset remiserat

²¹ This declamation theme (without exact parallel?) combines familiar features: *lex talionis* ("an eye for an eye," Bonner, *RD* 96: in this case, "a thumb for a thumb"), debt, and the disgrace of becoming a gladiator.

²² By *clausula*, Q. does not mean the rhythmical ending of a sentence, but just a natural point of closure. By *conclusio* he seems here to mean the completion of an argument (so Zundel, *Clavis Quintiliana*, s.v.); but the word is also one of the synonyms for "period."

²³ *Pro Ligario* 2.

²⁴ See 5.13.48: *FOR* p. 588.

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hand entire!"—implying "so that you could fight to the death."²¹

There is also something called a "closure."²² If this is what we call a "conclusion," it is a correct and sometimes necessary device: "You must therefore first confess your own offences before you accuse Ligarius of anything."²³ Nowadays, however, something more is wanted, namely that every passage, every sentence, should strike the ear with its final phrase. Speakers think it a disgrace, almost a crime, to pause for breath at any point which does not call for applause. Hence a lot of little sentences, fragmented, affected, and irrelevant; for there cannot be as many good *sententiae* as there must be closures!

Here now are some more modern types of *sententia*:

(1) Based on surprise: Vibius Crispus²⁴ said to a man who was walking in the forum in body armour and claimed he was doing it because he was afraid, "Afraid? Who gave you permission?" Another distinguished example is Africanus²⁵ remark to Nero about his mother's death, "Caesar, your provinces of Gaul beg that you will bear your happiness like a man."

(2) Alluding to other events: Domitius Afer, defending Cloatilla,²⁶ whom Claudius had pardoned when she had been charged with having buried her husband (who had taken part in a rebellion), addressed her sons in his Epi-

²⁵ Julius Africanus (see 10.1.118, 12.10.11) was a Gaul, rival of Domitius Afer. His *mot* concerns the death of Agrippina (murdered at Nero's instigation) in 59. FOR p. 571.

²⁶ Domitius Afer defends Cloatilla against her own sons by alluding to another event, viz. Claudius' pardoning her for burying her rebel husband. See 9.2.20, 9.3.66, 9.4.31. FOR p. 567.

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17 Claudius, in epilogo filios eius adloquens ‘matrem tamen’
 inquit ‘pueri sepelitote’) et aliunde petita, id est in alium
 locum ex alio tralata: pro Spatale Crispus, quam qui here-
 dem amator instituerat decessit cum haberet annos duo-
 18 deviginti: ‘hominem divinum, qui sibi indulsit.’ Facit quas-
 dam sententias sola geminatio, qualis est Senecae in eo
 scripto quod Nero ad senatum misit occisa matre, cum se
 periclitatum videri vellet: ‘salvum me esse adhuc nec cre-
 do nec gaudeo.’ Melior cum ex contrariis valet: ‘habeo
 quem fugiam, quem sequar non habeo’; ‘quid quod miser,
 19 cum loqui non posset, tacere non poterat?’ Ea vero fit pul-
 cherrima cum aliqua comparatione clarescit. Trachalus
 contra Spatalen: ‘placet hoc ergo, leges, diligentissimae
 pudoris custodes, decimas uxoribus dari, quartas meretri-
 cibus?’

20 Sed horum quidem generum et bonae dici possunt et
 malae: illae semper vitiosae quae sunt a³ verbo: ‘patres
 conscripti: sic enim incipiendum est mihi, ut memineritis
 patrum.’ Peius adhuc, quo magis falsum est et longius

³ quae sunt a *Watt* 1988: aut a *B*: uti *A*

²⁷ Compare § 19. This case is not otherwise known. Apparently the young man, as if foreseeing his early death, had spent all his fortune and left nothing to his mistress, who is now (perhaps) accused of murdering him and can be defended on grounds of lack of motive. *FOR* p. 588.

²⁸ Fr. 106 Haase; see Tacitus, *Annales* 14.10–11. Nero has contrived the murder of his mother Agrippina, and Seneca helps him to discredit her.

²⁹ Cicero, *Ad Atticum* 8.7.2 (compare 6.3.109).

³⁰ Cicero, *In Pisonem* fr. iii Nisbet; see A. Gellius 1.15.16.

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logue with the words "Nevertheless, boys, you will have to bury your mother."

(3) Taken from another set of circumstances, that is to say transferred from one context to another. Crispus, defending Spatale,²⁷ whose lover had made her his heir and then died at the age of eighteen: "What prophetic powers the man had, to have so indulged himself!"

(4) Mere repetition of a phrase produces another type of *sententia*, as in the statement written by Seneca²⁸ which was sent to the senate by Nero, about the death of his mother, when he wanted to appear to have been in danger: "I neither believe nor rejoice that I am still alive."

(5) A better *sententia* comes from an effective contrast of opposites: "I know whom to flee; I have no one to follow"²⁹ or "What of the fact that the poor man, though unable to speak, could not keep quiet?"³⁰

(6) A *sententia* has its finest effect when it is illuminated by a comparison. Trachalus³¹ against Spatale: "Is it your pleasure then, you laws that are the most faithful guardians of chastity, that wives should get a tenth, and mistresses a quarter?"³²

But in all these types there can be both good and bad *sententiae*. Those which depend on a word are always bad: "Conscript fathers—I must begin like that, to make sure you think of fathers . . ." ³³ Even worse, because more unreal and far-fetched, is the remark of the gladiator men-

³¹ See 6.3.78, 10.1.119, 12.5.5.

³² The Augustan *Lex Papia Poppaea* gave a childless widow a right to a tenth of the estate, plus the usufruct of a third (Treggiari (1991) 69–80).

³³ Perhaps from a declamation defending a father, the case being supposed to be heard in the senate.

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petitum, contra eandem sororem gladiatoris cuius modo feci mentionem: 'ad digitum pugnavi.'

- 21 Est etiam generis eiusdem, nescio an vitiosissimum, quotiens verborum ambiguitas cum rerum falsa quadam similitudine iungitur. Clarum actorem iuvenis audivi cum lecta in capite cuiusdam ossa sententiae gratia tenenda matri dedisset: 'infelicissima femina, nondum extulisti filium et iam ossa legisti.'
- 22 Ad hoc plerique mimicis⁴ etiam inventiunculis gaudent, quae excussae risum habent, inventae facie ingenii blandiuntur. De eo qui naufragus et ante agrorum sterilitate vexatus in scholis fingitur se suspendisse: 'quem
- 23 neque terra recipit nec mare, pendeat.' Huic simile in illo de quo supra dixi, cui pater sua membra laceranti venenum dedit: 'qui haec edit, debet hoc bibere.' Et in luxuriosum qui apocarteresin simulasse dicitur: 'necte laqueum, habes quod faucibus tuis irascaris: sume venenum, decet
- 24 luxuriosum bibendo mori.' Alia vana, ut suadentis purpuratis ut Alexandrum Babylonis incendio sepeliant: 'Alexandrum sepelio: hoc quisquam spectabit a tecto?'—quasi vero id sit in re tota indignissimum. Alia nimia, ut de Ger-

⁴ *Hey*: minimis AB

³⁴ § 12. The point is not clear. "To raise the finger" was to admit defeat, and plead for mercy: Martial, *De spectaculis* 29.5.

³⁵ *Ossa legere* would normally denote the collection of bones from the pyre, as a part of the funeral ritual; here, however, the mother has to hold splinters of bone taken from a head wound. See 6.1.30. ³⁶ 8.2.20.

³⁷ For ἀποκαρτερεῖν in this sense, see especially Cicero, *Tusculanae Disputationes* 1.84, referring to a book on such sui-

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tioned above,³⁴ speaking against his sister: "I fought to the finger."

Of the same type, and perhaps worst of all, are instances where a verbal ambiguity is combined with some unreal likeness. As a young man I heard a famous pleader, simply for the benefit of his *sententia*, hand a mother some splinters of bone³⁵ taken from her son's head, and say "Unhappy woman, you have not yet given your son a funeral, and yet you have gathered up his bones."

Again, many delight in farcical conceits, which when seriously considered are ridiculous, though inventing them gives a flattering sense of genius. Remember what is said of the character in the school exercise, who hanged himself after being first ruined by the barrenness of his land and then shipwrecked: "Neither land nor sea accepts him, let him hang in air." Rather like this is the remark about the man I mentioned above,³⁶ whose father gave him poison when he tore his limbs with his teeth: "If he eats that, he should drink this." Or again, take the case of the glutton who is said to have pretended to starve himself to death:³⁷ "Tie a noose; you have good reason to be angry with your throat. Take poison, it is fitting that a glutton should die by drinking." Other examples are merely pointless, like the words of the speaker who advises Alexander's courtiers to bury the king by burning Babylon:³⁸ "This is Alexander I am burying: shall anyone watch this from a rooftop?"—as though that was the worst aspect of the

cides by Hegesias. Abstention from food was a well-known method: see the case of Marcellinus in Seneca, *Epistulae* 77.5–16.

³⁸ A fictitious *suasoria* (Kohl (1915) p. 87); Alexander's body was in fact taken to Alexandria.

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manis dicentem quendam audivi: 'caput nescio ubi impositum',⁵ et de viro forti: 'bella umbone propellit.' Sed finis non erit si singulas corruptorum persequar formas: illud potius quod est magis necessarium.

Duae sunt diversae opiniones, aliorum sententias solas paene sectantium, aliorum omnino damnantium, quorum mihi neutrum admodum placet. Densitas earum obstat invicem, ut in satis omnibus fructibusque arborum nihil ad iustam magnitudinem adolescere potest quod loco in quem crescat caret. Nec pictura in qua nihil circumlitum est eminet, ideoque artifices, etiam cum plura in unam tabulam opera contulerunt, spatiis distingunt, ne umbrae in corpora cadant. Facit res eadem concisam quoque orationem: subsistit enim omnis sententia, ideoque post eam utique aliud est initium. Unde soluta fere oratio et e singulis non membris sed frustis conlata structura caret, cum illa rutunda et undique circumcisa insistere invicem nequeant. Praeter hoc etiam color ipse dicendi quamlibet clarus multis tamen ac variis velut maculis conspergitur. Porro, ut adferunt lumen clavus et purpurae loco insertae, ita certe neminem deceat intertexta pluribus notis vestis. Quare licet haec et nitere et aliquatenus extare videantur, tamen et lumina illa non flammae sed scintillis inter fu-

⁵ in <nube> positum *Obrecht*

³⁹ Obrecht's suggestion means "up in the clouds." Anyway, the reference seems to be to the tallness of the Germans: Tacitus, *Germania* 4. ⁴⁰ For *bella*, "wars," in the sense of "armies" compare Pliny, *Panegyricus* 12.3, where the frozen Danube *bella transportat*, "carries over whole armies."

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whole affair!—while others go too far: I once heard someone say about the Germans “And the head somewhere up there,”³⁹ and of a war hero “He beats back wars with his shield boss.”⁴⁰ But we shall never be finished, if I list all the various forms of decadence. I turn to a more vital matter.

There are two opposing schools of thought, those for whom *sententiae* are almost the sole object, and those who ban them altogether. I do not much like either view. Crowded together, *sententiae* get in one another's way, just as with all crops and fruit on trees nothing can develop to its proper size if it lacks room to grow. In a painting, too, nothing stands out except against a surrounding background; this is why artists who include a number of subjects in the same picture separate them by some distance, so that no shadows fall upon the bodies. Such density also produces a fragmented effect, because each *sententia* stands on its own, and there must therefore be a fresh beginning after it. This leads as a rule to a broken style, made up not of *cola* but of tiny scraps, and devoid of structure, because these rounded and whittled-down phrases cannot support one another. Besides, the whole tone of the speech, brilliant as it may be, is bespattered, as it were, with dirty marks of various kinds. Again, a stripe or some purple in the right place adds a touch of splendour,⁴¹ but a dress with a number of different marks in the weave would suit no one. Hence, though these things seem to glitter and to some extent to stand out, their brilliance may be said to resemble not so much a flame as a few sparks emerging

⁴¹ For the analogy, compare Petronius 118.5, and Brink on Horace, *Ars Poetica* 15–16 (*purpureus pannus*, “the purple patch”).

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num emicantibus similia dixeris (quae ne apparent quidem ubi tota lucet oratio, ut in sole sidera ipsa desinunt cerni) et quae crebris parvisque conatibus se attollunt inaequalia tantum et velut confragosa nec admirationem consecuntur eminentium et planorum gratiam perdunt.

- 30 Hoc quoque accedit, quod solas captanti sententias multas dicere necesse est leves frigidas ineptas: non enim potest esse delectus ubi numero laboratur. Itaque videas et divisionem pro sententia poni et argumentum, si⁶ tantum
- 31 in clausula clamose⁷ pronuntietur. 'Occidisti uxorem ipse adulter; non ferrem te etiam si repudiasses' divisio est. 'Vis scire venenum esse amatorium? Viveret homo nisi illud bibisset' argumentum est. Nec multas plerique sententias dicunt, sed omnia tamquam sententias.
- 32 Huic quibusdam contrarium studium, qui fugiunt ac reformidant omnem hanc in dicendo voluptatem, nihil probantes nisi planum et humile et sine conatu. Ita, dum timent ne aliquando cadant, semper iacent. Quod enim tantum in sententia bona crimen est? Non causae prodest?
- 33 non iudicem movet? non dicentem commendat? 'Sed est quoddam genus quo veteres non utebantur.' Ad quam usque nos vocatis vetustatem? Nam si illam extremam, multa Demosthenes quae ante eum nemo. Quo modo potest probare Ciceronem qui nihil putet ex Catone Gracchisque mutandum? Sed ante hos simplicior adhuc ratio loquendi fuit.
- 34 Ego vero haec lumina orationis velut oculos quosdam

⁶ sit B

⁷ *Winterbottom*: clausula et male B: clausulae calce A

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from the smoke (indeed they are invisible when the whole speech is bright, just as stars cannot be seen in sunlight). Moreover, writing that tries to achieve elevation by repeated small-scale efforts is all unevenness and rough places, as it were, and loses the charms of a level surface without earning any admiration for its high points.

We may add that those who aim at *sententiae* and nothing else must produce many that are trivial, frigid, or foolish. There can be no selection when the object is mere quantity. You therefore find a Division or an Argument used as a *sententia*, so long as it is pronounced with bravura at a point of closure. "You killed your wife, though you are an adulterer yourself; I should find you intolerable if you had merely divorced her." This is a Division. "Do you wish to be told that a love potion is a poison? The man would still be alive if he had not drunk this." This is an Argument. Many speakers do not give us many *sententiae*; but they deliver everything as if it was a *sententia*.

Some, on the other hand, pursue the opposite policy: they avoid and shun all these luxuries of speech, approving nothing that is not level, low-key, and undemanding. They are so afraid of taking a tumble that they never get up off the floor. For what is the crime in a good *sententia*? Does it not help one's Cause? Does it not affect the judge? Is it not a good advertisement for the speaker? "But it is a sort of thing the ancients never used." What past is it to which you are appealing? If it is a distant one, well, Demosthenes did many things which no one had done before him. How can one approve of Cicero, if one thinks that nothing should be changed since Cato or the Gracchi? Yet before them, style was even simpler.

Personally, I think these highlights are in a sense the

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esse eloquentiae credo. Sed neque oculos esse toto corpore velim, ne cetera membra officium suum perdant, et, si necesse sit, veterem illum horrorem dicendi malim quam istam novam licentiam. Sed patet media quaedam via, sicut in cultu victuque accessit aliquis citra reprehensionem nitor. Quare, sicubi⁸ possumus, adiciamus virtutibus: prius tamen sit vitiis carere, ne, dum volumus esse meliores veteribus, simus tantum dissimiles.

- 35 Reddam nunc quam proximam esse dixeram partem de tropis, quos motus⁹ clarissimi nostrorum auctores vocant. Horum tradere praecepta et grammatici solent; sed a me, cum de illorum officio loquerer, dilata pars haec est, quia de ornatu orationis gravior videbatur locus et maiori operi reservandus.

6

- 1 Tropos est verbi vel sermonis a propria significatione in aliam cum virtute mutatio. Circa quem inexplicabilis et grammaticis inter ipsos et philosophis pugna est quae sint genera, quae species, qui numerus, quis cuique subiciatur.

⁸ *Obrecht*: sicut AB

⁹ *modos* A

⁴² The eyes are the most precious and beautiful part of the body: see *OLD* s.v. *oculus* 1.d-f, s.v. *ocellus* 1.b.

⁴³ 8.4.29.

⁴⁴ Compare 9.1.2. The reading *modos*, "modes," is however supported by Bede (*RLM* 611.21 Halm). The first known use of *τρόπος* in this sense appears to be Philodemus, *Rhetorica* 1.164.18 Sudhaus.

⁴⁵ In 1.8.16.

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eyes⁴² of eloquence. But I do not want there to be eyes all over the body, lest the other organs lose their function, and if I were forced to choose, I would rather have the old uncouthness of speech than your modern licence. However, there is a middle course open to us, just as in dress and diet there has developed an elegance which escapes reproof. So let us add this to the virtues wherever we can; but let us give a higher priority to getting rid of faults, for fear that, in trying to outdo our predecessors, we succeed merely in being unlike them.

I will now deal with the subject I said⁴³ came next, namely Tropes, or Moves⁴⁴ as the most famous Latin authorities call them. The *grammatici* also usually give instruction on these; but I postponed this subject when I was speaking of their duties,⁴⁵ because I thought Ornament of speech seemed a more important topic, worth keeping back for the major part of the work.

CHAPTER 6

Tropes

A Trope is a shift of a word or phrase from its proper meaning to another, in a way that has positive value. An endless battle has raged around this, both by the *grammatici* among themselves and by the philosophers,¹ as to the genera, species, number, and classification of Tropes. I shall

¹ For the Stoic contribution to the theory of tropes, see Barwick (1957) 88–97. Q. probably means that philosophers, like grammarians, disputed among themselves (so Calcante), rather than that there was a dispute between grammarians and philosophers.

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- 2 Nos, omissis quae nihil ad instruendum oratorem pertinent cavillationibus, necessarios maxime atque in usum receptos exequemur, haec modo in his adnotasse contenti, quosdam gratia significationis, quosdam decoris adsumi, et esse alios in verbis propriis, alios in tralatis, vertique formas non verborum modo sed et sensuum et compositionis.
- 3 Quare mihi videntur errasse qui non alios crediderunt tropos quam in quibus verbum pro verbo poneretur. Neque illud ignoro, in isdem fere qui significandi gratia adhibentur esse et ornatum, sed non idem accidet contra, eruntque quidam tantum ad speciem accommodati.
- 4 Incipiamus igitur ab eo qui cum frequentissimus est tum longe pulcherrimus, tralatione dico, quae *μεταφορά* Graece vocatur. Quae quidem cum ita est ab ipsa nobis concessa natura ut indocti quoque ac non sentientes ea frequenter utantur, tum ita iucunda atque nitida ut in oratione quamlibet clara proprio tamen lumine eluceat.
- 5 Neque enim vulgaris esse neque humilis nec insuavis haec recte modo adscita potest. Copiam quoque sermonis auget permutando aut mutuando quae non habet, quodque est difficillimum, praestat ne ulli rei nomen deesse videatur. Transfertur ergo nomen aut verbum ex eo loco in quo proprium est in eum in quo aut proprium deest aut tralatum
- 6 proprio melius est. Id facimus aut quia necesse est aut quia

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disregard subtleties which have no bearing on the training of the orator, and discuss only those Tropes which are most necessary and most widely used, contenting myself with noting here (1) that some are used to assist the meaning and some for embellishment, (2) that some arise from words used "properly" and others from metaphorical uses, and (3) that it is not only the forms of words that undergo change, but also the forms of sentences and of Composition. I think therefore that writers who have held that the only Tropes are those in which one word is substituted for another are mistaken. I am aware that the Tropes employed to assist meaning generally also provide Ornament; but the converse will not be true, and there will be some which are only suitable for embellishment.

Metaphor

Let us begin then with the commonest and far the most beautiful of Tropes, namely *translatio*, which is called *metaphora* in Greek. This is both a gift which Nature herself confers on us, and which is therefore used even by uneducated persons and unconsciously, and at the same time so attractive and elegant that it shines by its own light however splendid its context. So long as it is correctly employed, it cannot be vulgar or mean or displeasing. It also adds to the resources of language by exchanges or borrowings to supply its deficiencies, and (hardest task of all) it ensures that nothing goes without a name. A noun or a verb, then, is "transferred" from a place in which it is "proper" to a place in which either there is no "proper" word or the "transferred" term is better than the "proper" one. We do this either because it is necessary or because it

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- significantius est aut, ut dixi, quia decentius. Ubi nihil horum praestabit quod transferetur, inproprium erit. Necessitate rustici 'gemma' in vitibus (quid enim dicerent aliud?) et 'sitire segetes'¹ et 'fructus laborare', necessitate nos 'durum hominem' aut 'asperum': non enim proprium
- 7 erat quod daremus his adfectibus nomen. Iam 'incensum ira' et 'inflammatum cupiditate' et 'lapsum errore' significandi gratia: nihil enim horum suis verbis quam his arcessitis magis proprium erit. Illa ad ornatum, 'lumen orationis' et 'generis claritatem' et 'contionum procillas' et 'eloquentiae fulmina', ut Cicero pro Milone Clodium 'fontem gloriae eius' vocat et alio loco 'segetem ac materiem'.
- 8 Quaedam etiam parum speciosa dictu per hanc explicantur:

hoc faciunt nimio ne luxu obtunsior usus
sit genitali arvo et sulcos oblimet inertes.

- In totum autem metaphora brevior est similitudo, eoque distat quod illa comparatur rei quam volumus exprime, haec pro ipsa re dicitur. Comparatio est cum dico
- 9 fecisse quid hominem 'ut leonem', tralatio cum dico de homine 'leo est'.

¹ *Cic. Orator* 81 *has sitire agros, laetas esse segetes* ('fields are thirsty, crops are happy')

² Cicero, *De oratore* 3.155: *gemmae vitis . . . etiam rustici dicunt*. The true development is probably the reverse: the sense of "jewel" is derived from the similarity of a precious stone to a bud.

³ Cicero, *Orator* 81; Vergil, *Georgics* 4.402.

⁴ 34-35.

⁵ Vergil, *Georgics* 3.135-136.

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expresses the meaning better or (as I said) because it is more decorative. When the proposed transference effects none of these ends, it will be "improper." (1) Necessity makes countrymen call a vinebud *gemma*² (what else could they say?), or speak of the crops as "thirsty"³ or the harvest as "in trouble"; necessity makes us speak of a man as "hard" or "rough," because there is no pre-existing proper term which we could apply to these characteristics. (2) A second stage is shown in "inflamed with anger," "on fire with greed," and "fallen into error"; these are meant to convey a meaning, because none of these things can be described more appropriately by its own natural words than by these imported ones. (3) Metaphors intended as Ornament include "highlight of style," "brilliance of birth," "storms of the assemblies," "thunderbolts of eloquence"; Cicero in *Pro Milone*⁴ calls Clodius "the fountain," and in another passage the "field and raw material," of Milo's glory. Some things which are not pretty to speak about can also be explained by this means:

They do this lest the field of generation,
dulled by soft living, chokes its unused furrows.⁵

In general terms, Metaphor is a shortened form of Simile; the difference is that in Simile something is *compared with* the thing we wish to describe, while in Metaphor one thing is *substituted for* the other.⁶ It is a comparison when I say that a man acted "like a lion," a Metaphor when I say of a man "he is a lion."

⁶ See Aristotle, *Rhetoric* 3, 1406b20ff.; Demetrius 80; *VPH* 20.

QUINTILIAN

Huius vis omnis quadruplex maxime videtur: cum in rebus animalibus aliud pro alio ponitur, ut de agitatore

gubernator magna contorsit equum vi,

- 10 aut [ut Livius Scipionem a Catone 'adlatrari' solitum refert]² inanima pro aliis generis eiusdem sumuntur, ut

classique inmittit habenas,

aut pro rebus animalibus inanima:

ferron an fato moerus Argivom occidit?

aut contra:

sedet inscius alto

accipiens sonitum saxi de vertice pastor.

- 11 Praecipueque ex his oritur mira sublimitas quae audaci et proxime periculum translatione tolluntur, cum rebus sensu carentibus actum quendam et animos damus, qualis est

pontem indignatus Araxes

- 12 et illa Ciceronis: 'Quid enim tuus ille, Tubero, destructus in acie Pharsalica gladius agebat? Cuius latus ille mucro

² *del. Christ*

⁷ See Trypho, 3.192.11–19 Spengel (and other texts, *ibid.* 3.208, 216, 232, 245); *VPH* 20. The classification is not Aristotelian, but was known to Philodemus (*Rhetorica* 1.171.18 Sudbaus).

⁸ Ennius, *Annales* 486 Vahlen = 445 Warmington (*ROL* 1.166) = 465 Skutsch.

⁹ Livy 38.54. This example is probably interpolated: Q. other-

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Metaphor, as a whole, falls essentially into four classes:⁷

(1) The substitution of one animate thing for another: “the steersman”—meaning the charioteer—“mightily wrenched his horse round”⁸ [or again Livy’s remark that Scipio was regularly “barked at” by Cato].⁹

(2) The substitution of inanimate things for other inanimate things, as in “he gave the fleet more rein.”¹⁰

(3) Inanimate for animate:

By sword or by fate fell the Argives’ wall?¹¹

(4) Animate for inanimate:

Sits ignorant the shepherd, from the tall rock’s head
catching the sound.¹²

In particular, a wonderfully sublime effect is produced if the subject is elevated by a bold and hazardous metaphor, when we attribute some sort of action and feeling to senseless objects:

Araxes, who spurns bridges,¹³

or Cicero’s¹⁴ “What was that sword of yours doing, Tubero, the sword you drew on the field of Pharsalus? At whose

wise gives only one instance of each type, and if it is to be kept we need another <aut> before *inanima*.¹⁰ *Aeneid* 6.1.

¹¹ *Fr. incert. trag.* 35 Klotz = Accius 561 Warmington (*ROL* 2. 514). The “wall” is a fallen hero (Achilles).

¹² *Aeneid* 2.307–308 (with *stupet*, “is amazed,” not *sedet*). Q. apparently refers only to the use of *vertex*, “head,” for “top”; compare 8.2.7.

¹³ *Ibid.* 8.728. The Araxes is the great river of Armenia.

¹⁴ *Pro Ligario* 9; see also 8.4.27.

QUINTILIAN

- petebat? Qui sensus erat armorum tuorum? ‘Duplicatur interim haec virtus, ut apud Vergilium ‘ferrumque armare veneno’, nam et ‘veneno armare’ et ‘ferrum armare’ tralatio est. Secantur haec in pluris <species>,³ ut a rationali ad rationale et item⁴ de inrationalibus et haec invicem, quibus similis ratio est et a toto et a partibus.⁵ Sed iam non pueris praecipimus, ut accepto genere species intellegere non possint.
- 14 Ut modicus autem atque oportunos eius usus inlustrat orationem, ita frequens et obscurat et taedio complet, continuus vero in allegorian et aenigmata exit. Sunt etiam quaedam et humiles tralationes, ut id de quo modo dixi,
- 15 ‘saxea est verruca’, et sordidae. Non enim, si Cicero recte ‘sentinam rei publicae’ dixit, foeditatem hominum significans, idcirco probem illud quoque veteris oratoris: ‘persecuisti rei publicae vomicas.’ Optimeque Cicero demonstrat cavendum ne sit deformis tralatio, qualis est (nam ipsis eius utar exemplis): ‘castratam morte Africani rem publicam’, et ‘stercus curiae Glauciam’: ne nimio maior aut, quod saepius accidit, minor, ne dissimilis. Quorum exempla nimium frequenter deprendet qui scierit haec vitia esse. Sed copia quoque modum egressa vitiosa
- 17 est, praecipue in eadem specie. Sunt et durae, id est a

³ *add. Daniel* ⁴ *D, Halm: idem AB*

⁵ et a toto et a partibus *del. Christ*

¹⁵ *Aeneid* 9.773. ¹⁶ Q.’s expression of this classification here is very crabbed, but compare §§ 9–10 above.

¹⁷ This sentence interrupts the argument, and may well be another interpolation. ¹⁸ 8.3.48. ¹⁹ *In Catilinam* 1.2.

²⁰ Source unidentified. For the metaphor, see *Livy* 25.12.9 (in

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body was that blade pointed? What was the meaning of your appearing under arms?" The effect is sometimes doubled, as in Vergil's "and arm the steel with poison,"¹⁵ since both "arming with poison" and "arming steel" are metaphors. These types are further subdivided into several <species>: (1) from rational to rational, (2) from non-rational to non-rational, (3) from non-rational to rational, (4) from rational to non-rational.¹⁶ A similar classification distinguishes metaphors from "whole" and "part."¹⁷ But I am not now teaching boys incapable of grasping the species when they have been taught the genus!

While moderate and timely use of Metaphor brightens our style, frequent use of it leads to obscurity and tedium, while its continuous application ends up as Allegory and Enigma. Some Metaphors also are low—like the "rocky wart" I mentioned above¹⁸—and some coarse. If Cicero was right to talk about the "sink of the state,"¹⁹ meaning the foul ways of certain people, I am not therefore minded to approve the old orator's "you have lanced the state's abscesses."²⁰ Cicero²¹ did well to point out the need to guard against an ugly metaphor (like "the state was neutered by Africanus' death" or "Glaucia, the excrement of the Senate," to quote his own examples), and against one which is too grand or (as happens more often) inadequate or unlike. Once alerted to the fact that these are faults, one will find instances of them only too often. Excessive amounts of metaphor, especially of the same species, are also a fault. So too are harsh metaphors, that is to say those derived

an oracle), Suetonius, *Augustus* 65 (Augustus' view of his troublesome relatives).

²¹ *De oratore* 3.164.

QUINTILIAN

longinqua similitudine ductae, ut 'capitis nives' et

Iuppiter hibernas cana nive conspuat Alpes.

In illo vero plurimum erroris, quod ea quae poetis, qui et omnia ad voluptatem referunt et plurima vertere etiam ipsa metri necessitate coguntur, permessa sunt convenire
 18 quidam etiam prorsae putant. At ego in agendo nec 'pastorem populi' auctore Homero dixerim nec volucres per aëra 'nare',⁶ licet hoc Vergilius in apibus ac Daedalo speciosissime sit usus. Metaphora enim aut vacantem locum occupare debet aut, si in alienum venit, plus valere eo quod expellit.

19 Quod [aliquando]⁷ paene iam magis de synecdoche dicam. Nam tralatio permovendis animis plerumque et signandis rebus ac sub oculos subiciendis reperta est: haec variare sermonem potest, ut ex uno plura⁸ intellegamus, parte totum, specie genus, praecedentibus sequentia, vel
 20 omnia haec contra. Liberior poetis quam oratoribus, nam prorsa, ut 'mucronem' pro gladio et 'tectum' pro domo recipiet, ita non 'puppem' pro navi nec 'abietem' pro tabellis, et rursus, ut pro gladio 'ferrum', ita non pro equo 'quadru-

⁶ per aera nare *Halm, after Burman*: sperae sanare G: pennis remigare a

⁷ *del. Bonnell*: aliquanto *Regius*

⁸ *D.A.R., cf. Ad Herennium 4.45*: plures AB ('many persons')

²² Horace, *Carmina* 4.13.12.

²³ Furius Bibaculus fr. 15 Courtney (1993); alluded to by Horace, *Sermones* 2.5.40. ²⁴ *Georgics* 4.59, *Aeneid* 6.16.

²⁵ I.e. apply the criterion of use just given for Metaphor.

²⁶ But this is found in Plautus, *Persa* 247. In general, Q.'s di-

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from distant resemblances, like "the snows of the head"²²
or

Jove spat white snow upon the wintry Alps.²³

The biggest mistake however is made by those who believe that everything is appropriate in prose which is permitted to the poets, whose only standard is pleasure and who are often forced into Tropes by the necessities of metre. Personally, I would not say "shepherd of the people," on Homer's authority, in a speech, nor speak of birds "swimming" through the air, though Vergil²⁴ uses this very beautifully for the bees and for Daedalus. Metaphor ought either to occupy a vacant space or, if it replaces something else, to be more effective than the word it banishes.

Synecdoche

I can say this²⁵ almost more forcefully of Synecdoche. While Metaphor is designed generally to affect the emotions, put a clear mark on things, and place them before our eyes, Synecdoche has the power to vary the discourse, enabling the hearer to understand many things from one, the whole from the part, the genus from the species, the consequences from the antecedents, and vice versa. Poets have more scope for it than orators. It may be all right to say "blade" for "sword" or "roof" for "house" in prose, but not "stern" for "ship" or "fir" for "wooden tablets";²⁶ again, "steel" will do for "sword," but not "quadruped" for

viding line between poetry and prose agrees with our knowledge of Latin literature. Note that *quadrupes*, "horse," is poetical, quite unlike English "quadruped."

QUINTILIAN

- pedem'. Maxime autem in orando⁹ valebit numerorum illa libertas. Nam et Livius saepe sic dicit: 'Romanus proelio victor', cum Romanos vicisse significat, et contra Cicero ad Brutum 'populo' inquit 'imposuimus et oratores visi
21 sumus', cum de se tantum loqueretur. Quod genus non orationis modo ornatus sed etiam cotidiani sermonis usus recipit.

Quidam synecdochen vocant et cum id in contextu sermonis quod tacetur accipimus: verbum enim ex verbis intellegi, quod inter vitia ellipsis vocatur:

Arcades ad portas ruere.

- 22 Mihi hanc figuram esse magis placet, illic ergo reddetur. Aliud etiam intellegitur ex alio:

aspice, aratra iugo referunt suspensa iuveni,

unde apparet noctem adpropinquare. Id nescio an oratori conveniat nisi in argumentando, cum rei signum est: sed hoc ab elocutionis ratione distat.

- 23 Nec procul ab hoc genere discedit *μετωνυμία*, quae est nominis pro nomine positio, [cuius vis est pro eo quod dicitur causam propter quam dicitur ponere]¹⁰ sed, ut ait

⁹ orando *Victorius* ('in adding ornament')

¹⁰ *del. Spalding*

²⁷ 2.27.1. ²⁸ *Fr. epist.* VII. 10 Watt. This use of the plural is common in letters, and also in Catullus and the elegists.

²⁹ *Aeneid* 11.142. Q. (like Priscian, *GL* 3. 228 K.) interprets the "historic infinitive" as an ellipse of, e.g., *coepi* or *pergo* ("begin to . . ."). French translators are lucky: "les Arcadiens de se ruer . . ." (Cousin).

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“horse.” In prose it is liberty of number which will be most useful. Livy often says “The Roman was victor in the battle,”²⁷ when he means that the Romans won; conversely, Cicero²⁸ in a letter to Brutus said “We have imposed on the people and are regarded as orators,” when he is speaking only of himself. This sort of thing is not only an oratorical Ornament, but is acceptable usage in everyday speech.

Some use the term Synecdoche also of cases when we grasp from the context something which is not actually expressed: a word, they say, is understood from other words (as a fault, this is called Ellipse):

The Arcadians, a rush to the gates.²⁹

I prefer to think of this as a Figure, and will therefore come back to it in that connection.³⁰

Again, one thing can be understood from another:

See now, the oxen carry back the plough
suspended from the yoke.³¹

This makes it clear that night is coming on. This is perhaps not appropriate for the orator, except in his Argumentation, when there is a Sign of something; but this aspect of it has no connection with Elocution.

Metonymy

There is no great gap between Synecdoche and Metonymy, which is the substitution of one name for another [the force of which is to put the reason for which something is said in place of that which is said] but, as

³⁰ 9.3.58.

³¹ *Eclogues* 2.66.

QUINTILIAN

Cicero, hypallagen rhetores dicunt. Haec inuentas ab inventore et subiectas res ab optinentibus significat, ut 'Cererem corruptam undis', et

receptus
terra Neptunus classes aquilonibus arcet.

- 24 Quod fit retrorsum durius. Refert autem in quantum hic tropos oratorem sequatur. Nam ut 'Vulcanum' pro igne vulgo audimus et 'vario Marte pugnatum' eruditus est sermo et 'Venerem' quam coitum dixisse magis decet, ita 'Liberum et Cererem' pro vino et pane licentius quam ut fori severitas ferat. Sicut ex eo quod <continet id quod>¹¹ continetur: usus recipit 'bene moratas urbes' et 'poculum epotum' et 'saeculum felix', at id quod contra est raro audeat nisi poeta:

iam proximus ardet | Ucalegon.

- 26 Nisi forte hoc potius est a possessore quod possidetur, ut 'hominem devorari', cuius patrimonium consumatur: quo modo fiunt innumerabiles species. Huius enim sunt generis cum 'ab Hannibale' caesa [et apud tragicos aegialeo]¹² apud Cannas sexaginta milia dicimus, et carmina Vergili 'Vergilium', 'venisse' commeatus qui adferantur, 'sacri-legium' deprehensum, non sacrilegum, 'armorum' scientiam habere, non artis.

¹¹ *suppl. rec.* ¹² *del. Zumpt (cf. 8.6.34)*

³² *Orator* 93. ³³ *Aeneid* 1.177. "Ceres" stands for "grain": a standard metonymy; compare Cicero, *De oratore* 3.167.

³⁴ Horace, *Ars Poetica* 63-64.

³⁵ See *OLD* s.v. 6 b, and note Tacitus, *Historiae* 4.35.

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Cicero³² tells us, is called Hypallage by rhetoricians. It indicates inventions by the name of the inventor, or possessions by the name of the possessor: for example, "Ceres by water spoiled"³³ or

Neptune land-locked
protects our fleets from northern winds.³⁴

In reverse the effect is harsher. What matters, however, is to what extent this Trope serves the purposes of the orator. We hear "Vulcan" meaning fire in common speech; "they fought with varying Mars"³⁵ is an educated turn of phrase, and it is more decent to speak of "Venus" than to speak of coitus; yet "Liber" and "Ceres" for "wine" and "bread" are too bold for the seriousness of the courts. Similarly, <a container> may stand for what it contains. Usage permits "cities of good character," "a cup drunk up," and "a happy age." The contrary procedure would hardly be ventured on except by a poet:

Next door, Ucalegon is now on fire.³⁶

But this should perhaps be classified as a case of "possessor for possessed," like "the man is being eaten up," meaning that his estate is being used up. There are innumerable species formed on these lines. For it is an example of the same genus when we say "sixty thousand were killed at Cannae by Hannibal," or when we call Vergil's poems "Vergil," or speak of supplies as "arriving" when they are brought, or say that a "sacrilege" not a "sacrilegious person" has been caught, or that someone has a knowledge "of arms" not "of the art of arms."

³⁶ *Aeneid* 2.311–312. "Ucalegon" means "Ucalegon's house."

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27 Illud quoque et poetis et oratoribus frequens, quo id quod efficit ex eo quod efficitur ostendimus. Nam et carminum auctores

pallida mors aequo pulsat pede pauperum tabernas,

et

pallentesque habitant morbi tristicque senectus,

et orator 'praecipitem iram', 'hilarem adulescentiam', 'segne otium' dicet.

28 Est etiam huictropo <alia>¹³ quaedam cum synecdoche vicinia; nam cum dico 'vultus hominis' pro vultu, dico pluraliter quod singulare est: sed non id ago, ut unum ex multis intellegatur (nam id est manifestum), sed nomen immuto: et cum aurata tecta 'aurea', pusillum ab ea discedo, quia non est pars auratura. Quae singula persequi minutioris est curae etiam non oratorem instruentibus.

29 Antonomasia, quae aliquid pro nomine ponit, poetis utroque modo frequentissima, et per epitheton, quod detracto eo cui adponitur valet pro nomine ('Tydides', 'Pelides'), et ex iis quae in quoque sunt praecipua:

¹³ *add. Winterbottom*

³⁷ Horace, *Carmina* 1.4.13. ³⁸ *Aeneid* 6.275.

³⁹ Without Winterbottom's *alia*, this sentence would mean: "The following trope also has a close connection with Synecdoche." But Q. seems to regard the phenomenon he now describes as a metonymy (*nomen immuto* virtually translates *μετωνυμία*). ⁴⁰ Q. here seems to envisage grammatical and literary teaching which might be suitable for future poets, for example, as well as orators.

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Another type common both in poets and in orators is that by which we indicate cause by effect. The poets have it in

Pale Death with equal foot knocks at the poor man's
cottage³⁷

and

There pale Diseases dwell and grim Old Age,³⁸

while an orator will speak of "headlong anger," "cheerful youth," or "slothful ease."

This Trope has also <another> close relationship with Synecdoche.³⁹ When I speak of a man's *vultūs* (instead of *vultus*, "face") I use a plural form for a singular; but I am not trying to get one thing inferred from many (it is evident that there is only one), I am simply changing the name. And when I call a gilded roof "golden," I am not quite using a Synecdoche, because the gilding is not a part of the roof. But to pursue these points individually involves too much minute study—even if we were not directing our teaching to the needs of the orator.⁴⁰

Antonomasia

Antonomasia, which replaces a name by something else, is very common in the poets, in two forms: the name is replaced (1) by an epithet which acts as a noun when the noun to which it is attached has been removed (Tydides, Pelides),⁴¹ or (2) by the special characteristics of an indi-

⁴¹ I.e. Diomedes (son of Tydeus), Achilles (son of Peleus).

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divum pater atque hominum rex.

[Et ex factis quibus persona signatur:

thalamo quae fixa reliquit

impius.]¹⁴

30 Oratoribus etiamsi rarus eius rei nonnullus tamen usus est. Nam ut 'Tydiden' et 'Peliden' non dixerint, ita dixerint 'impium' et 'parricidam': 'eversorem' quoque 'Carthaginis et Numantiae' pro Scipione et 'Romanae eloquentiae principem' pro Cicerone posuisse non dubitem.¹⁵ Ipse certe usus est hac libertate: 'non multa peccas, inquit ille fortissimo viro senior magister': neutrum enim nomen est positum et utrumque intellegitur.

31 Onomatopoeia quidem, id est fictio nominis, Graecis inter maximas habita virtutes, nobis vix permittitur. Et sunt plurima ita posita ab iis qui sermonem primi fecerunt, aptantes adfectibus vocem: nam 'mugitus' et 'sibilus' et
32 'murmur' inde venerunt. Deinde, tamquam consumpta sint omnia, nihil generare audemus ipsi, cum multa cotidie ab antiquis ficta moriantur. Vix illa, quae *πεποιημένα* vocant, quae ex vocibus in usum receptis quocumque modo declinantur nobis permittimus, qualia sunt 'sullaturit' et 'proscripturit'; atque 'laureati postes' pro illo 'lauru coronati' ex eadem fictione sunt, sed hoc feliciter evaluit. At
33

¹⁴ *del. Christ*

¹⁵ *Francius: dubite A: dubitent edd.*

⁴² *Aeneid* 1.65 (Jupiter).

⁴³ *Aeneid* 4.495–496. There is no antonomasia here; *impius* does not stand for Aeneas, but characterizes his action and alludes to his standing epithet *pius*. The interpolation seems to derive from the mention of "the impious man" in § 30 (so D. C. Innes).

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vidual ("father of gods and king of men")⁴² [or (3) by acts indicating the individual ("the arms the impious man left, fixed on the chamber wall")].⁴³ In the orators, though rare, it has some use. They would not say "Tydides" or "Pelides," but they might say "the impious man" and "the parricide," and I should not hesitate to say "the sacker of Carthage and Numantia" for Scipio or "the prince of Roman eloquence" for Cicero. He himself certainly used this liberty: "You do not have many faults' said the old master to the hero."⁴⁴

Onomatopoeia

Onomatopoeia, that is the creation of words, is regarded as one of the major virtues by the Greeks, but is hardly allowed us at all.⁴⁵ Yet many words were created in this way by the originators of the language, who suited sound to sensation. *Mugitus*, *sibilus*, and *murmur* (lowing, hiss, murmur) came to us in this way. Since then, as if everything was now used up, we do not venture to generate any words ourselves, though many old coinages are daily dying out. Indeed, we hardly allow ourselves what are called *pepoiēmena*,⁴⁶ namely words formed in one way or another from words in common use, like *Sullaturit* ("he wants to be a Sulla") or *proscripturit* ("he wants to have a proscription").⁴⁷ *Laureati postes*, "laurelled doorposts," for "crowned with laurel" is the same sort of invention, but it has successfully established itself. *Oinoio* and

⁴⁴ I.e. Chiron to Achilles: Cicero, *Pro Murena* 60.

⁴⁵ Compare 1.5.71. ⁴⁶ "Made up" or "coined" words: compare Demetrius 94–95; Lausberg §§ 547–551.

⁴⁷ Cicero, *Ad Atticum* 9.10.6. See above 8.3.32.

QUINTILIAN

οἴνοιο et *βίοιο*¹⁶ ferimus in Graecis, Ovidius hoc 'oeo' ludit¹⁷: 'vinoeo bono eo'. Dure etiam iungere arquiteinentem et dividere septentriones videmur.

- 34 Eo magis necessaria catachresis, quam recte dicimus abusionem, quae non habentibus nomen suum accommodat quod in proximo est, sic:

equum [ogra putant]¹⁸
aedificant,

- 35 et apud tragicos 'Aegialeo parentat pater'. Mille sunt haec: 'acetabula' quidquid habent et 'pyxides' cuiuscumque materiae sunt et 'parricida' matris quoque aut fratris interfector. Discernendumque est ab hoc totum tralationis istud genus, quod abusio est ubi nomen defuit, tralatio ubi aliud fuit. Nam poetae solent abusive etiam in iis rebus quibus nomina sua sunt vicinis potius uti, quod rarum in prorsa est. Illa quoque quidam catachresis volunt esse, cum pro temeritate 'virtus' aut pro luxuria 'liberalitas' dicitur. A
- 36

¹⁶ *Heraeus* (*Rh. Mus.* 79 (1930) 258): adoinoia etuio eo A

¹⁷ hoc 'oeo' ludit *Heraeus*: ocoeludit A ¹⁸ *del. Winter-*

bottom: divina Palladis arte *edd. from Verg. Aen.* 2.15

⁴⁸ Ovid fr. 7 Lenz = 15 Courtney. A humorous, macaronic line, in which Ovid applies the Greek poetical genitive ending *-oio* to Latin words. Imitated in Ausonius' macaronic *Epistle* 6.42: *véκτραρ οἴνοιο βόνοιο*.

⁴⁹ *Arquiteinens*, "holding a bow," is a poetical epithet of Apollo (Naevius, Ovid, Statius); for *septentriones* (i.e. the seven stars of Ursa Major) in tmesis, see (e.g.) Ovid, *Metamorphoses* 2.528.

⁵⁰ *Aeneid* 2.15-16: *equum divina Palladis arte aedificant*.

⁵¹ *Fr. trag. incert.* 79 Klotz = *Incert.* 80 Warmington (*ROL* 2,

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bioio ("wine," "life") are tolerable in Greek, and Ovid amuses himself with this *-o eo*:⁴⁸ *vinoeo bonoeo*. Making *arquiteneus* a single word or *septentriones* two also seems harsh.⁴⁹

Catachresis

These limitations of Latin make Catachresis all the more necessary. We rightly translate this as *abusio* ("misuse"); it lends the nearest name to things that have no name:

They *build* a horse⁵⁰

and, in tragedy, "His father gives Aegialeos parental rites."⁵¹ There are thousands of *catachreses*: *acetabula* (vinegar-bottles) may contain anything, "boxes"⁵² may be made of any wood, a "parricide" may be the murderer of his mother or his brother. The whole genus of Metaphor must be distinguished from this, because Catachresis is found where there was previously no word, Metaphor where there was a different word. The poets are in the habit of using closely related words catachrestically even for things which do have names of their own; this is rare in prose. Some say also that it is Catachresis when we say "courage" for rashness or "generosity" for extravagance.⁵³ I

612). The catachresis lies in the fact that it is a *father* (Adrastus) performing these rites, normally due to a parent, for his dead son, killed at Thebes.

⁵² *Pyxis*, like our "box," denotes both a kind of wood and an object which may (but need not) be made of it.

⁵³ Compare 3.7.25.

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quibus equidem dissentio: namque in his non verbum pro verbo ponitur, sed res pro re. Neque enim quisquam putat 'luxuriam' et 'liberalitatem' idem significare, verum id quod fit alius luxuriam esse dicit, alius liberalitatem, quamvis neutri dubium sit haec esse diversa.

- 37 Superest ex his quae aliter significant metalempsis, id est transumptio, quae ex alio [tropo]¹⁹ in aliud²⁰ velut viam praestat, <cuius usus nisi in comoedia>²¹ et rarissimus et improbissimus, Graecis tamen frequentior, qui Centaurum, qui Chiron est, Ἥσσορα et insulas ὀξείας θοάς dicunt. Nos quis ferat si Verrem 'suem' aut Aelium <Catum>²² 'doctum' nominemus? Est enim haec in metalempsi natura, ut inter id quod transfertur <et id quo transfertur>²³ sit medius quidam gradus, nihil ipse significans sed praebens transitum: quem tropum magis adfectamus ut habere videamur quam ullo in loco desideramus. Nam id eius frequentissimum exemplum est: 'cano canto', <et 'canto>²⁴ dico', ita 'cano dico': interest medium illud 'canto'. Nec diutius in eo morandum: nihil enim²⁵ usus admodum video, nisi,²⁶ ut dixi, in comoedis.

¹⁹ *om. edd.* ²⁰ *edd.*: alium A ²¹ *suppl. D.A.R. after Radermacher and Butler* ²² Aelium <Catum> *add. Halm from Parisinus latinus 7530: Aelium <Catum Aelium> M.W.*

²³ *add. Meister, from Par. lat. 7530* ²⁴ *add. Winterbottom: 'cano canto <dico> ut 'canto> dico' Schindler*

²⁵ nihil enim *Regius: innisi A* ²⁶ *Regius: nihil A*

⁵⁴ Cheiron (Χείρων) is a homonym of a common word meaning "worse" or "inferior," which is also a meaning of ἥσσων.

⁵⁵ *Odyssey* 15.299. θοός means "swift," so (sometimes) does ὀξύς; but ὀξύς also means "sharp" or "pointed," and the Metalepsis consists in using θοός in this sense. Same example in

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disagree; for here we do not have word replacing word, but thing replacing thing. No one really thinks "extravagance" and "generosity" signify the same thing, but one man calls a particular piece of behaviour extravagance which another calls generosity, though neither doubts that the two concepts are quite distinct.

Metalepsis

There remains one Trope involving change of meaning, namely Metalepsis or Transumption, which, as it were, makes a path from one thing to another. <Except in comedy> it is very rare and highly incorrect, but commoner with the Greeks, who call Chiron the Centaur "Hēssōn,"⁵⁴ and use *thoai* for *oxeiai* of islands.⁵⁵ Who would tolerate it if *we* were to call Verres "Pig" or Aelius <Catus> "Doctus"?⁵⁶ It is the nature of Metalepsis to be a sort of intermediate step between the term transferred <and the thing to which it is transferred>; it does not signify anything in itself, but provides the transition. This is a trope which we like to be thought to have mastered rather than one which we ever actually need. The commonest example is: *cano* ("I sing") equals *canto*, <*canto* equals> *dico* ("I say"), therefore *cano* equals *dico*; *canto* is the middle term.⁵⁷ We need spend no more time on it, for I see no great use for it, except, as I said,⁵⁸ in comedy.

Tryphon (3.195.10 Spengel) and in *VPH* 21. Same explanation in the *Odyssey* scholia, ad loc. · ⁵⁶ Verres means "boar," Aelius' cognomen Catus means "shrewd" or "clever."

⁵⁷ See *OLD* s.v. *canto* 4.

⁵⁸ This remark justifies the supplement suggested for § 37.

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40 Cetera iam non significandi gratia, sed ad ormandam et²⁷ augendam orationem adsumuntur. Ornat enim ἐπίθερον, quod recte dicimus adpositum, a nonnullis sequens dicitur. Eo poetae et frequentius et liberius utuntur. Namque illis satis est convenire id verbo cui adponitur: itaque et 'dentes albos' et 'umida vina' in his non reprehendemus; apud oratorem, nisi aliquid efficitur, redundat: tum autem efficitur si sine illo <id>²⁸ quod dicitur minus est, qualia sunt: 'o scelus abominandum, o deformem libidinem.' Exornatur autem res tota maxime tralationibus: 41 'cupiditas effrenata' et 'insanae substructiones.' Et solet fieri aliis adiunctis [epitheton]²⁹ tropis, ut apud Vergilium 'turpis egestas' et 'tristis senectus'. Verumtamen talis est ratio huiusce virtutis ut sine adpositis nuda sit et velut 42 incompta oratio, oneretur tamen multis. Nam fit longa et impedita utique si omnibus <nominibus>³⁰ eam iungas similem agmini totidem lixas habenti quot milites, cui et numerus est duplex nec duplum virium. Quamquam non singula modo, sed etiam plura verba adponi solent, ut

coniugio, Anchisa, Veneris dignate superbo.

43 Sed hoc quoque <poeticum>³¹ modo: duo vero uni adposita ne versum quidem decuerint.

²⁷ Spalding: non A ²⁸ add. Meister

²⁹ del. Winterbottom ³⁰ utique si omnibus <nominibus>

D.A.R. after Gertz: uti questionibus A ³¹ quoque <poeticum>

D.A.R. after Winterbottom: quocumque A

⁵⁹ See 2.14.3. ⁶⁰ See Vergil, *Aeneid* 11.681, *Georgics* 3.364; Aristotle, *Rhetoric* 3, 1406a12.

⁶¹ Cicero, *In Catilinam* 1.25, *Pro Milone* 53.

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Epithets

The other devices are employed not to assist meaning but to embellish and enhance style. Epithet (rightly rendered in Latin as *appositum*,⁵⁹ though some say *sequens*) is an Ornament. Poets use it more often and more freely. It is enough for them if the epithet suits the word to which it is applied; we shall not find fault with “white teeth” and “wet wine” in poetry.⁶⁰ In an orator, unless some purpose is served, it is redundant. A purpose is served if the phrase is weaker without it: “O abominable crime! O hideous lust!” But the ornamental effect of the whole is best advanced by Metaphors: “unbridled greed” or “lunatic constructions.”⁶¹ Epithet is often accompanied by other Tropes, as in Vergil’s “disgraceful Poverty” or “sad Old Age.”⁶² The principle governing this device is that a passage is bare and as it were unkempt without any Epithets, but overloaded if there are many. For then it becomes long and involved, especially if you attach an Epithet to every <noun>, and make it like an army which has as many camp followers as soldiers, and has doubled its numbers without doubling its strength. Yet we often find not one but several Epithets brought in:

Anchises, well-deserving your splendid marriage to
Venus.⁶³

But this too <is poetic>, while two epithets applied to one noun are not suitable even in verse.

⁶² *Aeneid* 6.275–276. ⁶³ *Ibid.* 3.475. Q. must mean us to think also of 476: *cura deum, bis Pergameis erepte ruinis*, “beloved of the gods, twice snatched from the ruins of Troy.”

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Sunt autem quibus non videatur hic omnino tropos quia nihil vertat, nec est semper, sed cum id quod est adpositum, si a proprio divideris, per se significat et facit antonomasian. Nam si dicas 'ille qui Numantiam et Carthaginem evertit', antonomasia est, si adieceris 'Scipio' adpositum. [Non potest ergo esse iunctum.]³²

- 44 Allegoria, quam inversionem interpretantur, aut aliud verbis, aliud sensu ostendit, aut etiam interim contrarium. Prius fit genus plerumque continuatis tralationibus, ut

O navis, referent in mare te novi
fluctus: o quid agis? Fortiter occupa
portum,

- totusque ille Horati locus, quo navem pro re publica, fluctus et tempestates pro bellis civilibus, portum pro pace
45 atque concordia dicit. Tale Lucreti

avia Pieridum peragro loca,
et Vergili

sed nos inmensum spatiis confecimus aequor,
et iam tempus equum fumantia solvere colla.

- 46 Sine tralatione vero in Bucolicis:

³² *del. M.W.*: non . . . <se>iunctum *Heinrich* ('it cannot be an epithet if separated from its noun')

⁶⁴ See 8.6.30. On the difficulties of this passage, see Winterbottom, *Problems* p. 148.

⁶⁵ But *Ad Herennium* 4.46 has *permutatio*, and Cicero, *De oratore* 2.261 prefers *immutatio*. See in general Lausberg §§ 895–901.

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Some people do not think this to be a Trope at all, because it involves no change. Nor is it *always* a Trope, but only when the Epithet, if separated from its proper noun, has a sense of its own and produces an Antonomasia. If you say "He who sacked Numantia and Carthage,"⁶⁴ it is Antonomasia; if you add "Scipio," it becomes an Epithet. [So it cannot be a Trope if it is joined to its noun.]

Allegory

Allegory, which people translate *inversio*,⁶⁵ presents one thing by its words and either (1) a different or (2) sometimes even a contrary thing by its sense. (1) The first type generally consists of a succession of Metaphors, as in

O ship, new waves will take you back to sea:
what are you doing? Be resolute, make harbour,

and that whole passage of Horace⁶⁶ in which he represents the state as a ship, the civil wars as waves and storms, and peace and concord as the harbour. So also in Lucretius'

I range untrodden places of the Muses,⁶⁷

and in Vergil's

Vast is the plain we have covered in our travels;
time now to loose our horses' steaming necks.⁶⁸

A form without Metaphor is seen in the *Bucolics*:

⁶⁶ *Carmina* 1.14.

⁶⁷ 4.1 = 1.926.

⁶⁸ *Georgics* 2.541–542.

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certe equidem audieram, qua se subducere colles
incipiunt mollique iugum demittere clivo,
usque ad aquam et veteris iam fracta cacumina fagi,
omnia carminibus vestrum servasse Menalcan.

- 47 Hoc enim loco praeter nomen cetera propriis decisa sunt
verbis, verum non pastor Menalcas sed Vergilius est intel-
legendus.

Habet usum talis allegoriae frequenter oratio, sed raro
totius, plerumque apertis permixta est. Tota apud Cicero-
nem talis est: 'hoc miror, hoc queror, quemquam hominem
ita pessumdare alterum velle ut etiam navem perforet
48 in qua ipse naviget.' Illud commixtum frequentissimum:
'equidem ceteras tempestates et procellas in illis dumtaxat
fluctibus contionum semper Miloni putavi esse subeun-
das.' Nisi adiecisset 'dumtaxat contionum', esset allegoria:
nunc eam miscuit. Quo in genere et species ex arcessitis
verbis venit et intellectus ex propriis.

- 49 Illud vero longe speciosissimum genus orationis in quo
trium permixta est gratia, similitudinis allegoriae tralatio-
nis: 'Quod fretum, quem euripum tot motus, tantas, tam
varias habere creditis agitationes commutationes fluctus,³³
quantas perturbationes et quantos aestus habet ratio comi-
tiorum? Dies intermissus unus aut nox interposita saepe

³³ commutationesque fluctuum *Cicero*

⁶⁹ *Eclogues* 9.7–10, where *veteres . . . fagos* is the generally ac-
cepted reading. That *Eclogues* 1 and 9 especially were covertly au-
tobiographical (Vergil = Tityrus in 1, Menalcas in 9) was widely
held in antiquity (already in Calpurnius Siculus, *Ecl.* 4.64–67).

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I had heard indeed, from where the hills begin
to draw away and with a gentle slope
lower their ridge, right down as far as the water
and the splintered crown of the old beech—all this
has your Menalcas kept safe by his songs.⁶⁹

In this passage, everything is explicit in the words except for the proper name, but it is not the shepherd Menalcas but Vergil who is meant.

Oratory often has a use for Allegory of this kind, but rarely in a pure state, for it is generally combined with words used literally. There is an example of a pure Allegory in Cicero:⁷⁰ “What I marvel at and complain of is that any human being should so much want to destroy another as actually to scuttle the ship in which he is himself sailing.” But the mixed form is the commonest: “I thought that Milo would always have other storms and squalls to weather, I mean in the troubled waves of our public assemblies.”⁷¹ If he had not added “of our public assemblies” it would have been a pure Allegory; as it is, he has given us a mixture. In this type, we get both splendour from the imported words, and intelligibility from those used literally.

Much the most splendid type, however, is that in which the charm of all three—Simile, Allegory, and Metaphor—is combined: “What strait or tide race, do you think, has so many movements or such violent and varied eddies and changes and waves as the disturbance and ebb and flow of our system of elections? The passing of a single day, the interval of a single night, of ten throws everything into con-

⁷⁰ *Fr. orat.* B 13 Schoell (Crawford (1994) p. 295), from an unidentified speech.

⁷¹ *Pro Milone* 5.

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perturbat omnia et totam opinionem parva nonnumquam commutat aura rumoris.'

50 Nam id quoque in primis est custodiendum, ut, quo ex genere coeperis translationis, hoc desinas. Multi autem, cum initium tempestatem sumpserunt, incendio aut ruina finiunt, quae est inconsequentia rerum foedissima.

51 Ceterum allegoria parvis quoque ingeniis et cotidiano sermoni frequentissime servit. Nam illa in agendis causis iam detrita 'pedem conferre' et 'iugulum petere' et 'sanguinem mittere' inde sunt, nec offendunt tamen: est enim grata in eloquendo novitas et emutatio, et magis inopinata delectant. Ideoque iam in his amissimus modum et gratiam rei nimia captatione consumpsimus.

52 Est <et>³⁴ in exemplis allegoria, si non praedicta ratione ponantur. Nam ut 'Dionysium Corinthi esse', quo Graeci omnes utuntur, ita plurima similia dici possunt. Sed allegoria quae est obscurior 'aenigma' dicitur, vitium meo quidem iudicio si quidem dicere dilucide virtus, quo tamen et poetae utuntur:

dic quibus in terris, et eris mihi magnus Apollo,
tris pateat caeli spatium non amplius ulnas?

³⁴ *add. Spalding*

⁷² *Pro Murena* 35.

⁷³ Dionysius II of Syracuse, exiled after 344 BC, taught as a schoolmaster at Corinth. His fate is said to have led the Spartans to give this laconic reminder to Philip of Macedon of what might one day happen to him also: Demetrius 8, Cicero, *Ad Atticum* 9.9.1, *Tusculanae Disputationes* 3.27.

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fusion, and a little breath of rumour sometimes reverses the whole trend of opinion."⁷²

Another very important rule to observe in Allegory is to finish with the same type of Metaphor with which you began. Many begin with a storm and end with a fire or the collapse of a house; this is a horrible incongruity.

Again, Allegory is often put to use by men of no great talent and in everyday speech. The now hackneyed phrases of pleading in court, "hand-to-hand fighting" and "going for the jugular" and "letting blood," come under this head, but they do not cause any offence. It is novelty and change that we enjoy in language, and what is unexpected gives the greater pleasure. This is why we have nowadays lost our sense of proportion in these matters, and exhausted the charm of the thing by striving too hard for it.

There is also a type of Allegory which consists in Examples, if these are not preceded by an explanation. All the Greeks make use of "Dionysius is at Corinth"⁷³ and there are many similar sayings which can be so used. When an Allegory is too obscure, however, we call it an Enigma. It is a fault in my opinion, seeing that Lucidity is a virtue of speech, but the poets use it:

Say in what land—and you'll be my great Apollo—
the space of heaven (*caeli*) is three cubits broad—⁷⁴

⁷⁴ Vergil, *Eclogues* 3.104. Still obscure. Servius reports two explanations: (1) Caelius' tomb, because he had sold all his goods and could only afford this minuscule area; (2) a well at Syene in Egypt, from which a tiny bit of sky (*caeli*) could be seen; used in astronomers' experiments to determine the equator. Q. implies that he knows a solution to the riddle.

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53 et oratores nonnumquam, ut Caelius 'quadrantariam Clytaemestram' et 'in triclinio coam, in cubiculo nolam'. Namque et nunc quidem solvuntur et tum erant notiora cum dicerentur: aenigmata sunt tamen. Nam³⁵ et cetera, si quis interpretetur, intellegas.

54 In eo vero genere quo contraria ostenduntur ironia est (inlusionem vocant): quae aut pronuntiatione intellegitur aut persona aut rei natura; nam si qua earum verbis dis-

55 sentit, apparet diversam esse orationi voluntatem. Quamquam in plurimis id tropis accidit, ut intersit de quo quidque³⁶ dicatur, quia quod dicitur alibi verum est.

Et laudis autem simulatione detrahare et vituperationis laudare concessum est: 'quod C. Verres, praetor urbanus, homo sanctus et diligens, subsortitionem eius in codice non haberet.' Et contra: 'oratores visi sumus et populo imposuimus.'

56 Aliquando cum inrisu quodam contraria dicuntur iis quae intellegi volunt, quale est in Clodium: 'integritas

³⁵ *Christ*: non A

³⁶ de quo quidque *Winterbottom*: quid de quoquo A

⁷⁵ *ORF* p. 486: spoken of Clodia, compared to Clytemnestra and attacked for her adultery and alleged murder of her husband (Quintus Metellus Celer, who died in 59 BC); she charges her lovers a *quadrans* (Plutarch, *Cicero* 29). *Coa* presumably suggests *coitus*, and *Nola* unwillingness. (M.W. compares Columbanus, *Epist.* 6.1 *amator mediocrium, nolus opum*, "a lover of moderation, no lover of wealth.") Again, Q. claims to know the answer.

⁷⁶ "Mockery." Also *simulatio* ("pretence") (Aquila Romanus, *RLM* 24.21 Halm). Lausberg §§ 582, 902.

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and so sometimes do the orators, as when Caelius speaks of the “fourpenny Clytemnestra,” “Coa at dinner, Nola in the bedroom.”⁷⁵ For although we now have the answers, and they were better known when they were first spoken, these are Enigmas all the same. One would understand the others too, if they were explained.

Irony and similar forms of Allegory

(2) Under the type in which meaning and the words are *contrary* comes Irony or, as people call it, *illusio*.⁷⁶ This is revealed either by delivery,⁷⁷ by the character of the speaker, or by the nature of the subject. If any of these is incompatible with the words, it is clear that the speech intends something totally different. It is true of most Tropes, however, that what matters is what anything said is *about*, because the thing said may be literally true in another context.

It is permissible to blame with a pretence of praise and to praise with a pretence of blame: compare “Since Gaius Verres, the urban praetor, a man of blameless character and industry, had no record of this man’s coming on to the panel as a replacement . . .”⁷⁸ Contrast: “We were regarded as orators and we imposed on the people.”⁷⁹

On occasion, the opposite to what is intended is said sarcastically: thus, against Clodius: “Believe me, your in-

⁷⁷ Note *VPH* 68: Irony is “discourse expressing an opposite by means of an opposite, accompanied by a certain characteristic delivery (μετά τινος ἠθικῆς ὑποκρίσεως).”

⁷⁸ See *Pro Cluentio* 91.

⁷⁹ See above § 20.

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tua te purgavit, mihi crede, pudor eripuit, vita ante acta servavit.⁷

- 57 Praeter haec usus est allegoriae ut tristia dicamus melioribus verbis urbanitatis gratia aut quaedam contrariis significemus . . . †aliut textum sp† <ut> 'exta cocta numerabimus'.³⁷

58 Haec si quis ignorat quibus Graeci nominibus appellant, *σαρκασμόν, ἀστεϊσμόν, ἀντίφρασιν, παροιμίαν* dici sciat. Sunt etiam qui haec non species allegoriae sed ipsa tropos dicant, acri quidem ratione, quod illa obscurior sit, in his omnibus aperte appareat quid velimus. Cui accedit hoc quoque, quod genus, cum dividatur in species, nihil habet proprium, ut arbor pinus et olea et cupressus, et ipsius per se nulla proprietas, allegoria vero habet aliquid proprium. Quod quo modo fieri potest nisi ipsa species est?² Sed utentium nihil refert.

- 59 Adicitur his mycterismos, dissimulatus quidem sed non latens derisus.

³⁷ *The lacuna after significemus conceals at least a reference to proverbs; <ut> exta cocta numerabimus (Freund) is secure, but the words obelized have not been satisfactorily emended: A has aliut textum spectaco et enumeravimus.*

⁸⁰ Cicero, *Fr. orat.* XIV. 29 Schoell (Crawford (1994) p. 244). *Mihi crede* is a signal of Irony: without this Cicero would have depended entirely on his delivery of the sentence.

⁸¹ The lacuna conceals at least a mention of proverbs, and perhaps much more, as the connection of thought is hard to reconstruct. The following example (see Otto (1890) s.v. *exta*) is the Latin equivalent of "the proof of the pudding is in the eating."

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tegrity has cleared you, your modesty has rescued you, your past life has been your salvation."⁸⁰

Another use of Allegory is to disguise unpleasant facts in better words to achieve an effect of urbanity, or to give a hint of something by mentioning its contrary . . . ⁸¹ "We shall count the offal when it's cooked."

In case anyone is ignorant of the Greek names for these things, note that they are *sarkasmos*, *asteismos*, *antiphrasis* and *paroimia*.⁸² Some even regard these not as species of Allegory but as Tropes in their own right; this is a shrewd view, because Allegory is more obscure, whereas in all these our intentions are obvious. One may add that when a genus is divided into species, it has no special Properties of its own (a tree may be a pine or an olive or a cypress, but as a tree it has no Property of its own), whereas Allegory does have a Property of its own, and how can this be so unless it is a Species? But this of course does not matter to those who use it!

They add also *myktērismos*,⁸³ a covert but not wholly concealed form of ridicule.

⁸² These terms are all in Trypho (3.204–206 Spengel), but as separate tropes. *Sarkasmos* involves baring the teeth, as Achilles might do in complaining of Agamemnon's unfairness; *asteismos* is "as if a rich man were to say 'I am the poorest person on earth'"; *antiphrasis* uses the opposite word ("he did not rejoice," meaning "he was very much distressed") or a euphemism; *paroimia* is "proverb." But it is hardly possible to attach Q.'s account in detail to any extant Greek discussion.

⁸³ "Turning up the nose": Trypho loc. cit.; see also "Longinus" 34.2.

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Pluribus autem verbis cum id quod uno aut paucioribus certe dici potest explicatur, periphrasin vocant, circum-
itum quendam eloquendi, qui nonnumquam necessitatem
habet, quotiens dictu deformia operit, ut Sallustius 'ad re-
60 quisita naturae', interim ornatum petit solum, qui est apud
poetas frequentissimus:

tempus erat quo prima quies mortalibus aegris
incipit et dono divum gratissima serpit,

61 et apud oratores non rarus, semper tamen adstrictior.
Quidquid enim significari brevius potest et cum ornatu
latius ostenditur periphrasis est, cui nomen Latine datum
est, non sane aptum orationis virtuti, circumlocutio. Ve-
rum hoc ut cum decorem habet periphrasis, ita cum in
vitium incidit perissologia dicitur: obstat enim quidquid
non adiuvat.

62 Hyperbaton quoque, id est verbi transgressionem, quo-
niam frequenter ratio compositionis et decor poscit, non
inmerito inter virtutes habemus. Sit enim frequentissime
aspera et dura et dissoluta et hians oratio si ad necessita-
tem ordinis sui verba redigantur, et ut quodque oritur ita
63 proximis, etiam si vinciri non potest, alligetur. Differenda
igitur quaedam et praesumenda, atque ut in structuris

⁸⁴ *Fr. incert.* 3 Maurenbrecher. ⁸⁵ *Aeneid* 2.268–269.

⁸⁶ In Dionysius of Halicarnassus, *Ad Pompeium* 2 (2.364 Usher) τὴν περιτολογίαν καὶ τὸ καλλιπεῖν, "excessive abundance and fine words," are features of Plato's more extravagant style.

⁸⁷ The Latin term attempts to translate the Greek literally. See Lausberg § 716.

⁸⁸ I.e. euphonious connection, a feature of *compositio* (see 9.4).

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Periphrasis

When we use several words to describe something which can be described in one, or at least fewer, people call this *periphrasis*, meaning a circuitous way of speaking. This is (1) sometimes necessary, when it covers up indecencies (“to meet the call of nature”: Sallust),⁸⁴ (2) sometimes solely for Ornament, as very often in the poets—

It was the time
when the first rest begins for weary mortals,
and creeps upon them, heaven’s most welcome
gift—⁸⁵

and not seldom, though always in a more restrained form, in the orators. For anything which can be expressed more briefly, but is expanded in a decorative fashion, is a *periphrasis*, in Latin *circumlocutio* (“roundabout talk”), though this last is not a very apt term for a good quality. It is however only called *periphrasis* when it has decorative value; if it passes into a fault, it is called *perissologia*,⁸⁶ because whatever is no help is a hindrance.

Hyperbaton

Hyperbaton, that is to say the “stepping across”⁸⁷ of a word, which is often required for reasons of Composition or decoration, is quite properly reckoned as a thing of positive value. Language would very often be rough, harsh, limp, or disjointed if the words were constrained as their natural order demands and each, as it arises, were tied to the next, even if no linkage⁸⁸ can be made. Some words therefore have to be postponed or taken early, and each

- lapidum inpolitorum loco quo convenit quodque ponendum. Non enim recidere ea nec polire possumus quo co-
 agmentata se magis iungant, sed utendum iis qualia sunt,
 64 eligendaeque sedes. Nec aliud potest sermonem facere
 numerosum quam oportuna ordinis permutatio, neque
 alio <consilio in>³⁸ ceris Platonis inventa sunt quattuor illa
 verba, quibus in illo pulcherrimo operum in Piraeum se
 descendisse significat, plurimis modis scripta <quam ut>³⁹
 quo ordine⁴⁰ quodque⁴¹ maxime faceret experiretur.
- 65 Verum id cum in duobus verbis fit, anastrophe dicitur,
 reversio quaedam, qualia sunt vulgo 'mecum', 'secum',
 apud oratores et historicos 'quibus de rebus'. At cum deco-
 ris gratia traicitur longius verbum, proprie hyperbati tenet
 nomen: 'animadverti, iudices, omnem accusatoris orationem
 in duas divisam esse partis.' Nam 'in duas partis divi-
 66 sam esse' rectum erat, sed durum et incomptum. Poetae
 quidem etiam verborum divisione faciunt transgressionem:

Hyperboreo septem subiecta trioni,
 quod oratio nequaquam recipiet. At id quidem proprie dici

³⁸ *add. Watt 1988 after Burman* ³⁹ *add. Schoene*

⁴⁰ *Winterbottom: quod eum A: quo demum Schoene*

⁴¹ *Schoene: quoque A*

⁸⁹ The first words of Plato's *Republic*—κατέβην χθές εἰς Πειραιᾶ μετὰ Γλαύκωνος τοῦ Ἀρίστωνος, "I went down yesterday to the Piraeus with Glaucon the son of Ariston"—were said to have been the final conclusion of much redrafting: Dionysius of Halicarnassus, *On literary composition* 25 (2.226 Usher), Diogenes Laertius 3.57 (quoting Euphorion and Panaetius). See

has to be placed in its proper position, as in a structure of unshaped stones. We cannot cut or polish words to make them fit together better when juxtaposed; we have to take them as they are and choose places for them. Indeed, the only way of making our prose rhythmical is by an opportune change of order. This is why those first four words, in which Plato, in his finest work, says that he “went down to Piraeus,”⁸⁹ were found written on his tablets in many different orders: he wanted to try out which order would make each word most effective.

When the transposition involves only two words, it is called *anastrophe*, i.e. a sort of “reversal.” Everyday examples are *mecum* and *secum*; in the orators and historians we have *quibus de rebus*.⁹⁰ When a word is moved to some distance for decorative purposes, it is properly labelled as a Hyperbaton: “I noted, members of the jury, that the accuser’s entire speech is divided into two (*in duas divisam esse partis*).”⁹¹ The straightforward order would be *in duas partis divisam esse*, but that would be hard and uncouth. The poets produce Hyperbaton by actually dividing words:

Hyperboreo *septem* subiecta *trioni*,⁹²

something which prose will certainly not allow. This may

Riginos (1976) 185–186. The story may be based on *Phaedrus* 278D–E. ⁹⁰ I.e. instead of *cum me* (“with me”), *cum se* (“with himself”), *de quibus rebus* (“concerning which things”).

⁹¹ Cicero, *Pro Cluentio* 1.

⁹² *Georgics* 3.381: “underneath the Hyperborean Seven Stars” (i.e. the Plough: but *trio* in fact means “ox,” and the constellation was seen as seven oxen threshing: see Mynors ad loc.).

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67 tropos possit, quia componendus est e duobus intellectus: alioqui, ubi nihil ex significatione mutatum est et structura sola variatur, figura potius verborum dici potest, sicut multi existimarunt.

Longis autem hyperbatis et confusis quae vitia accidunt, suo loco diximus.

68 Hyperbolen audacioris ornatus summo loco posui. Est autem haec⁴² decens veri superiectio: virtus eius ex diverso par, augendi atque minuendi. Fit pluribus modis; aut enim plus facto dicimus: 'vomens frustis esculentis gremium suum et totum tribunal implevit', et

geminique minantur | in caelum scopuli,

aut res per similitudinem attollimus:

credas innare revulsas | Cycladas,

69 aut per comparisonem, ut

fulminis ocior alis,

aut signis quasi quibusdam:

illa vel intactae segetis per summa volaret
gramina nec teneras cursu laesisset aristas,

vel tralatione, ut ipsum illud 'volaret'.

70 Crescit interim hyperbole alia insuper addita, ut Cicero

⁴² autem haec *a in rasura*

⁹³ 8.2.14. ⁹⁴ Cicero, *Philippics* 2.63.

⁹⁵ *Aeneid* 1.162–163. ⁹⁶ *Ibid.* 8.692.

⁹⁷ *Ibid.* 5.319. ⁹⁸ *Ibid.* 7.808–809.

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be properly called a Trope, because the meaning has to be put together from the two elements. Elsewhere, where there is no change of meaning but only a variation of structure, it may rather be called a Figure of Speech, as many have thought.

I have spoken in the appropriate place⁹³ of the faults resulting from long and confused Hyperbata.

Hyperbole

I have left Hyperbole, which belongs to a bolder kind of Ornament, to the last. It is an appropriate exaggeration of the truth. It has an equal value in the opposite functions of Amplification and Attenuation. There are various forms.

(1) We may say more than the facts: "As he vomited, he filled his lap and the whole platform with gobbets of food,"⁹⁴ or

Twin rocks that threaten skywards.⁹⁵

(2) We may exaggerate by means of a Simile:

You would think they were the Cyclades
uprooted and afloat.⁹⁶

(3) Or by Comparison:

Swifter even than the lightning's wings.⁹⁷

(4) Or by some kind of Sign:

Over the top shoots of the untouched corn
she flew and, running, never bruised the ears.⁹⁸

(5) Or by a Metaphor, as in "flew" in the last example.

One Hyperbole is sometimes enhanced by the addition

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- in Antonium dicit: 'Quae Charybdis tam vorax? Charybdis dico? Quae si fuit, fuit animal unum: Oceanus, medius fidius, vix videtur tot res, tam dissipatas, tam distantibus in
- 71 locis positas tam cito absorbere potuisse.' Exquisitam vero figuram huius rei⁴³ deprendisse apud principem lyricorum Pindarum videor in libro quem inscripsit Hymnus. Is namque Herculis impetum adversus Meropas, qui in insula Coe dicuntur habitasse, non igni nec ventis nec mari sed fulmini dicit similem fuisse, ut illa minora, hoc par esset.
- 72 Quod imitatus Cicero illa composuit in Verrem: 'Versabatur in Sicilia longo intervallo alter non Dionysius ille nec Phalaris (tulit enim illa quondam insula multos et crudelis tyrannos), sed quoddam novum monstrum ex vetere illa inmanitate quae in isdem versata locis dicitur. Non enim Charybdis tam infestam neque Scyllam navibus quam istum in eodem freto fuisse arbitror.'
- 73 Nec pauciora sunt genera minuendi:

vix ossibus haerent.

Et quod †Cicero est†⁴⁴ in quodam ioculari libello:

fundum Vetto⁴⁵ vocat quem possit mittere funda:
ni tamen exciderit qua cava funda patet.

⁴³ generis *Spalding* ('kind')

⁴⁴ Ciceronis est *Spalding*: est *om. D, E*

⁴⁵ Vettu' *Leo*

⁹⁹ *Philippics* 2.67. ¹⁰⁰ Fr. 28 Bowra = 50 Snell. Heracles and Telamon were on their way to Troy.

¹⁰¹ 5.145. Q.'s assertion that Cicero *imitates* Pindar is noteworthy: compare the view that Demosthenes imitated the comic poet Eupolis, "Longinus" 16.3.

¹⁰² Vergil, *Eclogues* 3.102, of starved sheep.

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of another, as by Cicero⁹⁹ in attacking Antony: "What Charybdis is so greedy? Charybdis, do I say? If there ever was a Charybdis, she was only one animal. No: the Ocean, heaven help us, could hardly have swallowed up so many things, so widely scattered, in such distant places, and so quickly!" I have found, I think, a choice model of this in the book entitled *Hymns* by the greatest of the lyric poets, Pindar.¹⁰⁰ When he describes the attack by Hercules upon the Meropes, who are said to have inhabited the island of Cos, he says he was "not like fire nor like the winds nor like the sea, but like the lightning," as though all the other comparisons were inadequate, and only the last matched the facts. Cicero imitated this when he wrote this passage in the *Verrines*:¹⁰¹ "After a long gap, there was now abroad in Sicily not a new Dionysius or a new Phalaris (for that island once bred many cruel tyrants) but a new monster, of that dreadful breed which is said to have haunted those same regions. In my judgement, neither Scylla nor Charybdis was such a menace to ships as he was, in those same narrow seas."

The types of Attenuation by Hyperbole are just as numerous: "they scarcely stick to their bones,"¹⁰² or, as [Cicero] in a humorous book:

Vettus calls it a farm (*fundus*), but he could throw it
 from a sling (*fundā*)—
 unless it fell through where the pouch of the sling is
 open.¹⁰³

¹⁰³ Cicero fr. 4 Morel: Courtney (1993) p. 156. If this were really by Cicero, the scansion *Vettō* would be unlikely and Leo's *Vettu'* (with suppression of final *s*) should be accepted.

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Sed huius quoque rei servetur mensura quaedam. Quamvis enim est omnis hyperbole ultra fidem, non tamen esse debet ultra modum, nec alia via magis in cacozelian itur.

74 Piget referre plurima hinc orta vitia, cum praesertim minime sint ignota et obscura. Monere satis est mentiri hyperbolen, nec ita ut mendacio fallere velit. Quo magis intuendum est quo usque deceat extollere quod nobis non creditur. Pervenit haec res frequentissime ad risum: qui si captatus est, urbanitatis, sin aliter, stultitiae nomen adsequitur.

75 Est autem in usu vulgo quoque et inter ineruditos et apud rusticos, videlicet quia natura est omnibus augendi res vel minuendi cupiditas insita nec quisquam vero contentus est: sed ignoscitur, quia non adfirmamus.

76 Tum est hyperbole virtus cum res ipsa de qua loquendum est naturalem modum excessit: conceditur enim amplius dicere, quia dici quantum est non potest, meliusque ultra quam citra stat oratio. Sed de hoc satis, quia eundem locum plenius in eo libro quo causas corruptae eloquentiae reddebamus tractavimus.

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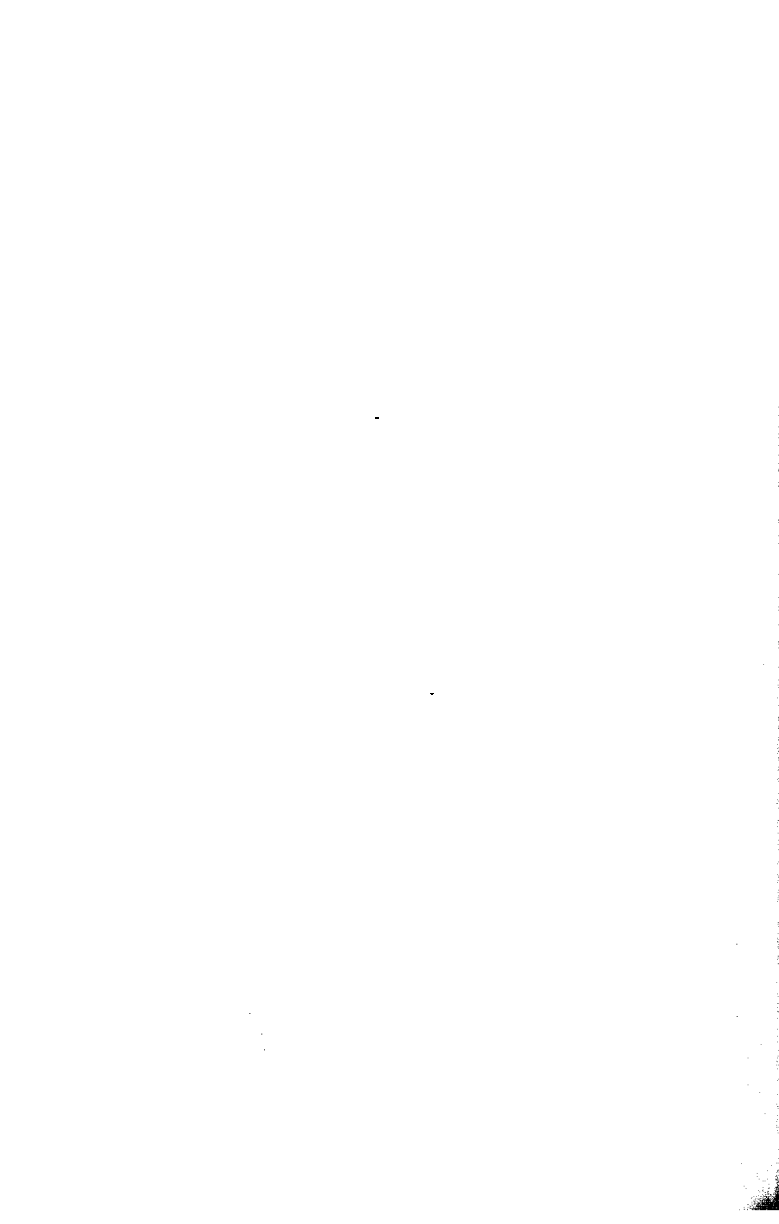
But even here, a certain sense of proportion is necessary. Though every Hyperbole surpasses belief, it must not be beyond all reason; there is no surer route to *cacozelia*.

I feel it distasteful to report the many faults arising from this Trope, especially as they are by no means unfamiliar or obscure. It is enough to remind the reader that Hyperbole is a liar, but does not lie to deceive. We must therefore consider all the more carefully how far it is appropriate to exaggerate a thing which is not believed. The attempt very often raises a laugh. If that is what was aimed at, it comes to be called wit; if not, folly.

It is in ordinary use, too, among the uneducated and with country people, no doubt because everybody has a natural desire to exaggerate or to minimize things, and no one is satisfied with the truth. It is pardoned, however, because we do not vouch for what we say.

Hyperbole only has positive value when the thing about which we have to speak transcends the ordinary limits of nature. We are then allowed to amplify, because the real size of the thing cannot be expressed, and it is better to go too far than not to go far enough. But enough of this, since I have handled the same topic more fully in the book in which I explained the causes of the decadence of eloquence.¹⁰⁴

¹⁰⁴ See General Introduction, vol. I.



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