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## RHETORICAL THEORY IN THE THIRD BOOK OF QUINTILIAN'S *INSTITUTIO ORATORIA*

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nere, eloqui, res, verba, status, sitne?, quid sit?, quale sit?, definitio, qualitas,  
coniectura

**SUMMARY:** Quintilian focuses on presenting the beginnings of rhetorical art, its components, how it is expressed and formed. Rhetoric is an art, though it serves a practical, useful function. Nature gave birth to speech, while observation created the art of speech. Every speech is built out of that which is signified (*quae significantur*) and that which signifies (*quae significant*), that is, out of *res* and *verba*. The ability to speak is perfected by nature, art and practice, though some authors add imitation as well, whereas Quintilian believes imitation to be a part of *ars*. The most important question discussed by Quintilian is *status*, i.e. the basis or foundation, the point of contention in a judiciary dispute. Some call it *constitutio*, others *quaestio*, still others *quod ex quaestione appareat*, while Theodorus of Gadara names it *caput*, that is κεφάλαιον γενικώτατον. The Greeks use the term στάσις and claim this name was not invented by Hermagoras, but by Naucrates, student of Isocrates, or by Zopyros of Clazomenae. This is the moment when the first clash between the two parties takes place or because it forms the basis of the whole case. However, there does not exist any agreement between the authors on the number and definitions of the term *status*, nor on the difference between *status generales* and *speciales*. In every kind of case there is a cause (*causa*), the crux of the matter (*iudicatio*) and the main argument (*continens*). Insistent

begging (*rogare*), foretelling (*iudicare*), argumentation (*rationem reddere*) exist in judiciary, advisory and epideictic speeches. Hermagoras's opinion that we should consider the subject of the case (*quaestio*), line of defense (*ratio*), crux of the matter (*iudicatio*), the main argument (*continens*) or, as others call it, the main point of their accusation or defense (*firmamentum*). There exists a common consensus that *quaestio* originates from another *quaestio* and that *species* can be divided into other *species*. *Quaestio principalis* (fundamental) is called ζήτημα. *Ratio* is a method of defense in a situation when the deed was committed. Quintilian uses a widely known example provided by his predecessors; Orestes killed his mother, he admits it and claims that what he did was right. What counts the most is the authority of the speaker. The orator should possess knowledge and extraordinary virtues of character.

At the beginning of the third book Quintilian proclaims he is aiming to present the beginnings of rhetorical art, its components, how it is expressed and formed. He intends as well to convince the reader that rhetoric is an art, though it serves a practical, useful function (*quid esset rhetorice et quis finis eius, artem quoque esse eam et utilem et virtutem*).<sup>1</sup> He is aware that summarizing various opinions on the subject may be tedious for the readers; he adds that in other parts of the book he will attempt to introduce decorative elements (*aliquid nitoris*) not in order to show his skill, but to induce young people to acquaint themselves with things indispensable for the study of rhetoric. He is also afraid his work can be perceived as less attractive due to the fact that the majority of the precepts he provides are not original, but borrowed from other writers. However, there are multiple differing opinions of the authors who either added their own discoveries to these constituents of rhetorical art which had hitherto been imperfect or unchiselled, or changed the elements, which had been well developed, in order to be original no matter the circumstances.

<sup>1</sup> This is in a sense the continuation of chapters 14-21 from Book II. Cf. Arist., *Rhet.*, 1355 b 25 sqq.: ἔστω δὴ ῥητορικὴ δύναμις περὶ ἕκαστον τοῦ θεωρῆσαι τὸ ἐνδεχόμενον πιθανόν; *Rhet. ad Her.*, I 2, 2: *Oratoris officium est de iis rebus posse dicere quae res ad usum civilem moribus et legibus constitutae sunt, cum assensione auditorum, quoad eius fieri poterit*; Isid., *Orig.* I 1, 1: *Rhetorice est bene dicendi scientia in civilibus quaestionibus ad persuadendum iusta et bona*.

From here Quintilian starts to discuss the authors who contributed to the development of rhetoric. Traditionally, the first one was Empedocles. The oldest textbooks were created by two Sicilians, Corax and Tisias, in whose steps followed Gorgias of Leontini who, it is said, was a disciple of Empedocles,<sup>2</sup> Gorgias, due to his inordinately long life, was a rival to both of the aforementioned rhetors and survived till Socrates's era. In the same time other rhetors flourished: Thrasyarchus of Chalcedon, Prodicus of Ceos, Protagoras of Abdera, Hippias of Elis and Alcidas of Elaea, whom Plato calls Palamedes. Antifon was the first person who wrote down his speeches as well as composed a rhetorical textbook; he is supposed to have been an excellent speaker in his own defence. Quintilian adds to this list Polycrates who wrote a speech against Socrates and Theodorus of Byzantium, a man considered by Plato, *Phaedr.*, 266 E, to be one of the "masters of words" (λογοδάδαλοι). Among the aforementioned rhetors, the first to undertake the study of *topoi* were Protagoras and Gorgias, while the study of emotions was first engaged by Prodicus, Hippias, Protagoras and Thrasyarchus. The rhetors mentioned above had many successors, however Gorgias's most famous student was Isocrates, though this view is not universally acknowledged by all the authors. Quintilian though follows Aristotle's opinion regarding Isocrates. Isocrates's students were excelling in all areas of knowledge and Aristotle started teaching rhetoric during afternoon lectures. Both Aristotle and Isocrates wrote textbooks of rhetoric, but Aristotle's work is more detailed and voluminous. Theophrastus, a disciple of Aristotle, wrote very thorough works. After him philosophers, especially the leaders of stoic and peripatetic schools, surpassed even the rhetors in their dedication to the subject. Next, Hermagoras paved the way which was followed by multiple successors: among his rivals the closest to him was, it seems, Athenaeus. Later Apollonius Molon, Areus, Caecilius and Dionysius of Halicarnassus gained renown. However, greater recognition was won by Apollodorus of Pergamum, teacher of Caesar Augustus in Apollonia, and Theodorus of Gadara who reportedly could consider Tiberius Caesar as one of his attentive students when he gave lectures on Rhodos. These

<sup>2</sup> Lausberg, 2002, p. 45.

rhetors created separate rhetorical systems and their successors were named the Apollodoreans and the Theodoreans, respectively.

According to Quintilian, the first Roman who was interested in rhetoric was Marcus Cato, the famous censor, while the second was Marcus Antonius. An outstanding contribution to the development of rhetorical art was made by Marcus Tullius Cicero not only in the practical, but also in the theoretical field. Yet Cicero himself treated his juvenile works with scepticism. Celsus, Laenas and the contemporaries of Quintilian, Vergil, Pliny and Tullius treated rhetoric with great diligence. Quintilian adds that he will not enumerate names of all the current orators as the time for their praise will come one day: they will receive their due credit from future generations, when they ceased to be objects of human envy (*veniet eorum laudi suum tempus; ad posterum enim virtus durabit, non perveniet invidia*). He states categorically that he is not a devoted follower of any philosophical school and because his book contains a collection of multiple opinions, he leaves the choice between them to his readers. He will be content if his audience praises him for his dedication to the subject, even if he lacks originality.

At the beginning of the short second chapter Quintilian categorically states that nature gave birth to speech, while observation created the art of speech (*initium ergo dicendi dedit natura, initium artis observatio*). A similar process occurred in the case of medicine. Cicero, *de inv.*, I 2, ascribes the beginnings of rhetoric to city founders and creators of laws who had to be gifted with talent for speeches. Quintilian engages in polemics with the Arpinate claiming that there exist nomadic peoples who have no cities or laws, yet their members can perform duties of envoys, they can accuse and defend and judge one man better than another. Chapter three starts with a constatement that rhetorical art, as many outstanding authors believe, is composed out of five parts, i.e. *inventio, dispositio, elocutio, memoria, pronuntiatio* otherwise called *actio*. Every statement which is a vehicle for an announcement (*voluntas*) contains the subject matter (*res*) and words (*verba*). What we say, how and in what circumstances is important. We will not be able to express everything the subject demands nor place things in appropriate order if we are not aided by memory. A speech in which a word or a gesture is used inappropriately becomes almost completely

ruined. Some specialists added *iudicium* to *inventio*, following the rule that the first activity, logically, is *invenire*, while the second – *iudicare*. According to Quintilian *iudicium* is mixed with the other three components of rhetoric to such an extent that even *pronuntiatio* borrows a lot from it. He supports his thesis by referring to Cicero's opinion in *Partitiones oratoriae*, I 3, who writes: *nam cum dupliciter primum divisisset in inventionem atque elocutionem, res ac dispositionem inventioni, verba et pronuntiationem elocutioni dedit: quintam quoque constituit communem ac velut custodem omnium memoriam*. Dion of Prusa taught that the rhetorical art has two parts only, *inventio* and *dispositio*, though both should be divided into further subdivisions, i.e. *res* and *verba*, which is why *elocutio* belongs to *inventio* while *pronuntiatio* – to *dispositio*, *memoria* being the fifth part. The followers of Theodorus divide *inventio* into two parts: the first one pertains to *res*, the second to *elocutio*, and they add to these three remaining parts. Hermagoras subordinates *iudicium*, *partitio*, *ordo* and everything which refers to *elocutio* to the Greek term *oekonomia* which has no equivalent in Latin.

However, there are authors who claim that these are not constituent parts of rhetoric, but rather duties of the orator. The speaker's task is *invenire*, *disponere*, *eloqui* etc. Yet if we support such a view no place shall be left for art. Although the orator is supposed to speak well (*bene dicere*), rhetoric is the art of speaking well (*bene dicendi scientia*). Others claim that the task of an artist is to convince, while the power to convince is inherent to art. Some, as Quintilian emphasizes, preferred to say there are three types of rhetoric, however the ones that expressed this the best are the authors who used the term "kinds of causes" (*genera causarum*), in whose steps followed Cicero in *De oratore*, I 31, 141.<sup>3</sup>

As far as cases not brought before the judge are concerned, they pertain either to the past or the future: we either praise or condemn the past events, while we carefully consider the future ones. Everything we talk about is, out of necessity, either certain or dubious. We praise

<sup>3</sup> *Sed causarum, quae sint a communi quaestione seiunctae, partim in iudiciis versari, partim in deliberationibus; esse etiam genus tertium, quod in laudandis aut vituperandis hominibus poneretur; certosque esse locos, quibus in iudiciis uteremur, in quibus aequitas quaereretur; alios in deliberationibus, quae omnes ad utilitatem dirigerentur eorum quibus consilium daremus; alios item in laudationibus, in quibus ad personarum dignitatem omnia referrentur; cf. Adamietz, 1966, pp. 93-94.*

or condemn the things that are certain, depending on our attitude (*animus*). On the other hand though, if there is a doubt, we can formulate our views ourselves, while in other cases we leave the problem to be judged by others. Anaximenes of Miletus treated speeches delivered in the court or in a public assembly as *genus*. Additionally he identified seven *species*: *hortandi*, *dehortandi*, *laudandi*, *vituperandi*, *accusandi*, *defendendi*, *exquirendi* (ἐξεταστικόν). Two first *species* belong to *genus deliberativum*, the next two to *genus demonstrativum* and the three remaining to *genus iudiciale*. Plato in *Sophist* 223 C added to the judiciary and public rhetoric προσομιλητική which is translated by Quintilian as *sermocinatrix* (dialogical). It differs from judiciary rhetoric as it is suited for private discussions and we can judge it to be identical with the dialectical art of speech. Isocrates thought that in every kind of rhetoric there is both *laus* and *vituperation*.<sup>4</sup> The words *laudativum* and *demonstrativum* are, in common belief, derived from Greek forms, being the equivalents of ἐγκωμιαστικόν and ἐπιδεικτικόν. According to Quintilian ἐπιδεικτικόν has the power not so much of indicating as of creating illusions and it differs greatly from ἐγκωμιαστικόν. It incorporates the *genus laudativum*, but it is not restricted solely to this *genus*. The remaining *species* fall under three *genera*: they contain praise and condemnation, advice for and against something, accusation and defense. Common to all three types of rhetoric are: winning over, narrating, teaching, magnifying, minimizing, forming the minds of the audience by exciting or calming their moods. Quintilian disagrees with the authors who claim that laudatory subject matter pertains only to things which are honest, advisory subject matter to things which are beneficent and the judiciary subject matter to things which are just. For in panegyrics we find elements of justice and benefit, in advisory speeches – of honesty, and in judiciary orations the elements enumerated above can be found at least partially.

Every speech is built out of that which is signified (*quae significantur*) and that which signifies (*quae significant*), that is, out of *res* and *verba*. The ability to speak is perfected by nature, art and practice, though some people add imitation as well, whereas Quintilian believes that imitation is a part of *ars*. An orator should aim at three things:

<sup>4</sup> Cf. Arystoteles, 1988, p. 11.

*docere, movere, delectare*. The best authors maintain that some things in rhetoric need a proof, while some do not; Quintilian shares the opinion. There exists a universal agreement that all questions concentrate on what is written down and what is not. What is written down pertains to judiciary matters while what is not written down, to factual matters. Hermagoras and his followers call these questions rational, while the judiciary ones they name legal: λογικόν and νομικόν. The authors also agree that the questions can be either indefinite (*infinite*) or definite (*finite*). Indefinite questions are the ones which can be used (*tractantur*) without referring to people, time or place. The Greeks call them theses, Cicero *propositum*, others universal questions which relate to civil life, some others questions appropriate for philosophical discussion, whereas Athenaeus parts of the cause. Cicero distinguishes two types: one pertaining to science (*scientia*), the other to action (*actio*). An example of *scientia* is the following phrase: *an providentia mundus regatur*; whereas an example of *actio* is: *an accedendum ad rem publicam administrandam*. *Scientia* contains three questions: *an sit?*, *quid sit?*, *quale sit?*; *actio* two: *quo modo adipiscamur?*, *quo modo utamur?* The definite questions encompass deeds, people, time etc. The Greeks call them ὑποθέσεις, the Romans *causae*. The indefinite questions have a wider range than the definite. Quintilian gives a vivid example: an indefinite question is *an uxor ducenda?*, a definite one *an Catoni ducenda?* Quintilian calls *infinite* questions *generales*, whereas *finite* – *speciales*. Some authors claim that *thesis* has a passive character while *causa* has an active one. In the former we deal with an abstract truth, in the latter with concrete action. However, some think that the indefinite questions are not practical for the speaker as there is no advantage to be gained from proving that we should marry or do politics if we are not prohibited from doing so by our age or health.

Cicero in *Orator*, XIV 45, *De oratore*, III 30, 120 and *Topica*, 21 admonishes us that such discussions should abstract from particular people and circumstances, because we can speak more fully on general topics than on particular ones and whatever relates to the whole, relates to the particular as well. Quintilian provides next two definitions of *causa* as understood by Apollodorus: *causa est negotium omnibus suis partibus spectans ad quaestionem* and *causa est negotium, cuius finis*



*est controversia*. Furthermore, he reminds the readers what Cicero's opinion is, *Top.*, 80: *causa certis personis, locis, temporibus, actionibus, negotiis cernitur, aut in omnibus aut in plerisque eorum*.

Another, perhaps the most important question discussed by Quintilian in book three is *status*, i.e. basis or foundation, the point of contention in a judiciary dispute. Some call it *constitutio*, others *quaestio*, still others *quod ex quaestione appareat*, while Theodorus names it *caput*, that is κεφάλαιον γενικώτατον. The Greeks use the term στάσις and claim this name was not invented by Hermagoras, but by Naucrates, student of Isocrates, or by Zopyros of Clazomenae. According to Quintilian, the term *status* was forged because this is the moment when the first clash between the two parties takes place or because it forms the basis of the whole case. Every question has its own *status* as it is based on prosecution (*intentio*) and defense (*depulsio*). Questions can have more than one basis. For example, the accused says *Etiam si feci, recte feci*; then he uses the basis of quality (*qualitas*). If he adds *sed non feci*, it is conjecture. Cornelius Celsus argues that the basis originates not from refuting the accusation, but from the person who confirms the nature of the case (*propositio*). If the accused denies having killed a man, *status* originates from the accuser as he is trying to prove the murder. If the accused claims that the act of killing was justified, then the burden of proof becomes transferred and the basis now originates from the accused and will be confirmed by him. The same question can make the same person either the accuser or the accused, like in the following example: *qui artem ludicram exercuerit, in quattuordecim primis ordinibus ne sedeat*. A man who staged a play in his gardens but did not present it ever before the public, ἀπὸς took place in one of the fourteen rows. The accusation is: *artem ludicram exercuisti*; the defense: *non exercui artem ludicram*. Hence arises the question: *quid sit artem ludicram exercere*? Hermagoras states that *status* is the thing due to which the case can be resolved and to which the proofs of both parties will refer. The conclusion is that there does not exist any agreement between the authors on the number and definitions of the term *status*, nor on the difference between *status generales* and *speciales*.

Aristotle defined ten categories which influence the form of *quaestio*, i.e. οὐσία (Plautus calls it *essentia*), *qualitas*, *quantitas*, *ad aliquid*,



*ubi et quando, facere, pati, habere, κείσθαι*. Others established nine categories, namely *persona*, *tempus* (also known as χρόνος), *locus*, *tempus* (καιρός), *actum* (πράξις), *numerus*, *causa*, τρόπος, *occasio factorum* (ἔργων ἀμορφαί). Many later writers divided *status* into the ones which pertain to either confirmed or uncertain facts. Apollodorus says the same, as he assumes that *quaestio* exists in external things which allow for conjecture, or in our own imaginings: the former he calls πραγματικός, the latter περι ἔννοιας. The same view is held by those who use the terms ἀπρόληπτος (dubious) and προληπτικός (obvious, foregone). An identical approach is manifested by Theodorus, according to whom a question pertains to περὶ οὐσίας καὶ συμβεβηκότων. Posidonius divides *quaestio* into two groups, i.e. *vox* and *res*. To *vox* refer the following questions: *an significet, quid, quam multa, quo modo*. To *res* belongs *coniectura*, which he calls κατ' ἄσθησιν, *qualitas, finitio*, which he describes as κατ' ἔννοιαν, *ad aliquid*. Hence originates the division between the things written down and not written down. Cornelius Celsus established two *status generales*, i.e. *an sit?*, *quale sit?* A great number of writers distinguish only three *status generales*. Cicero uses them in the *Orator* and claims that everything which can shape the topic of a dispute is an answer to the three basic questions: *sitne?*, *quid sit?*, *quale sit?* Marcus Antonius made a similar classification: *paucae res sunt, quibus ex rebus omnes orationes nascuntur, factum non factum, ius iniuria, bonum malum*. Athenaeus established four bases: προτρεπτική στάσις or παρορμητική, which means encouraging, close to advisory subject matter; συντελική, i.e. conjectural; ὑπαλλακτική, i.e. defined; δικαιολογικός, i.e. judiciary. Other writers, such as Cicero and Theon, agreed as well on four *status*, yet they named them differently: *an sit?*, *quid sit?*, *quale sit?*, *quantum sit?* Aristotle in the *Rhetoric* 1416 b; 1374 a enumerates *an sit?*, *quale?*, *quantum?*, *quam multum sit?* Cicero in *De inventione*, I 8; 10 described four *status* related to *factum*, *nomen*, *genus*, *actio*; with *factum* there is a connection with *coniectura*, with *nomen* *finitio*, with *genus* *qualitas*, while with *actio* *ius*. In *Part. or.*, 31, 38 the Arpinate treats *quaestiones legales* as *species actionis*.

However, there are some authors who distinguish five *status*, i.e. *coniectura, finitio, qualitas, quantitas, ad aliquid*. Quintilian suggests

a for division into three *status rationales* (that is *coniectura*, *qualitas*, *finitio*) and *status legalis* which he further divides into five *species*, i.e. *scriptum et voluntas*, *leges contrariae*, *collectivum*, *ambiguitas*, *translatio*. He believes the reason of *translatio* (transfer of competence) is especially important, e.g. *non debes apud praetorem petere fidei commissum, sed apud consules, maior enim praetoria cognitione summa est*. He claims that we need to follow the example of Cicero in agreeing with some scholars who argue that there are three elements which are being sought in every case: *an sit?*, *quid sit?*, *quale sit?* No legal cause can be discussed, if it is not succoured by the definition of term (*definitio*), quality (*qualitas*), conjecture (*coniectura*). The first and strongest method of self-defence is denying the accusation (*si quod obiicitur negari potest*). The second is denying that the deed of which we are being accused has ever been committed (*si non id, quod obiicitur, factum esse*), the third and most honourable is arguing that the deed was righteous (*qua recte factum defenditur*). The prosecutor has to take into account four situations: he needs to prove that the deed was committed (*ut probet factum esse*), that it is this particular deed which is the subject of accusation (*hoc esse factum*), that the law was broken (*non recte factum*) and that the accusation is in accordance with the law (*iure se intendere*). Quintilian returns again to the term *status* and claims that it is the best when the orator is allowed to show the greatest strength. For example, Cicero and Brutus used various arguments in defence of Milo. The Arpinate says Clodius was murdered in accordance with the law, because he was preparing an assassination attempt on Milo, but Milo did not intend to kill him. Brutus, who wrote his speech as a form of a rhetorical exercise, boasts as well that a vile citizen was murdered. In every kind of case there is a cause (*causa*), the crux of the matter (*iudicatio*) and the main argument (*continens*). It is impossible to say anything which would not contain a rational argument (*ratio*) nor anything that would not be the subject of the judge's decision nor anything that would not pertain to the crux of the matter.

In the beginning of chapter seven Quintilian discusses categories of cases which concentrate on praise (*laus*) and reprimand (*vituperatio*). Aristotle, *Rhet.*, 1358 b. 2, and, following in his steps, Theophrastus, divided this type of cases from pragmatic (πραγματική) rhetoric

believing that its only purpose is to delight the audience. Yet Roman custom included praise and reprimand in the pragmatic cases. Funerary speeches often have to be delivered by state officials on the basis of the senate's decree. According to Quintilian those who think that a speaker will be restricted only to speeches on contentious matters are entirely wrong. An excellent example to the contrary are laudations for Capitoline Jupiter, a constant theme of the holy Capitoline Games founded by Domitian in the year 86 A.D. Panegyrics delivered in pragmatic cases demand a proof and equally, something resembling proof is required in panegyrics created only to show off the orator's skill (*ostentatio*). The true purpose of panegyric is to glorify the subject matter and make it more beautiful. This form of speech is directed mainly to praise gods and people, though sometimes it is used also to praise animals or even inanimate objects. Greater diversity is required when people are lauded. At first there must be mentioned the time in which they lived and the time which preceded their birth; in case of death, the time preceding it should be included as well. Moreover, great importance is attributed to information on the home country, parents and ancestors. This subject matter should be presented in a twofold way: either by giving due praise to the noble descent, or to glorify a man with inferior birth by his noble deeds. The praise of man is based on moral qualities, physical predispositions and external circumstances. Fortune gifts people, especially kings and *principes* (as they have greater possibility to display their positive features) also with dignity (*dignitas*), though on the other hand scarce talents can be magnified by the glory of noble deeds. Goods which are given to people externally are not praised due to the fact they are possessed by said people, but due to the noble way in which they are used. Wealth, power and influence, being the source of great strength, are the surest test of character against good and evil: they can make us better or worse. Praise given for the moral attributes is always honest, though it can be expressed in many various ways. Rare is the case when we can glorify divine honours, decrees and statues erected at public cost. Among these, Quintilian adds, we can name the testimonies of genius which survived the trials of time. Some extraordinary people like Menander have been more justly judged by future generations than by their contemporaries.

A similar method can be applied to *vituperatio*, though the results will be diametrically different. Inglorious birth was for many a disgrace and in some cases noble birth only amplified people's vices. Some were censured after their death, like Sp. Maelius, whose house has been razed to the earth, and Marcus Manlius, whose name was removed from the family for eternity. But even in the case of living people the judgement of other people is treated as proof of their character, whereas respect or disgrace make the praise or reprimand credible. Aristotle, *Rhet.*, 1366 a sqq., believes though that there are major differences regarding to the place and subject matter of praises and reprimands. The greatest weight is placed on the character and opinions of the audience – they need to be convinced that the virtues which they approve of are the most characteristic for the praised people, while the vices which they hate are characteristic for the reprimanded. The judge is most in favour of the speaker whose opinions are closest to his own. Aristotle reminds us as well that the border between virtues and vices is unclear and that is why we should use words which slightly deviate from their real meaning, in order to, for instance, call an audacious man brave, an extravagant one generous, a greedy one continent. This process, if needed, can be of course reverted. The orator, i.e. an honourable man, will never apply this measure, unless he is being guided by the common good. Cities are praised in a way similar to people. The place of the parent is taken by the founder and ancient origins add authority, as in case of such inhabitants which, according to hearsay, were born out of earth. Yet virtues derived from location or fortification are treated in case of cities in a special manner. The citizens make the glory of the cities greater, as children bring glory to their parents. Praise is also given to public buildings, which should be glorified for their greatness, utility, beauty and architect use. Moreover, towns and geographical regions, such as Sicily,<sup>5</sup> are praised. Beauty is visible in charming seaside settlements, or sheltered villages on the plains; utility can be found in salubrious and fertile lands. Praise can be also given to noble words and deeds. In the conclusion of this chapter Quintilian stresses that though he does not agree with the opinion that the panegyric pertains only to things which are honest (*honestum*), yet it does not transgress the borders of

<sup>5</sup> Cf. Cicero, *in Verr.*, II 1 sqq.; IV 48.

*qualitas*. Three *status*, i.e. *qualitas*, *coniectura*, *finitio* can be present in a panegyric; Cicero observed that these were used also by Gaius Caesar when he reprimanded Cato.

Chapter eight is devoted to advisory speeches (*genus deliberativum*). Quintilian shares the opinion of Cicero (expressed in *De oratore*, II 82, 334) that this kind of speech concentrates primarily on things which are honourable (*dignitate contineri*). Nothing though can be useful which at the same time is not honourable. If we express our opinions in front of an uneducated audience, especially in front of an assembly, we must differentiate between what is profitable and honest and we need to adjust our speech so that it expresses opinions which are widely understood. Sometimes people are guided only by appearances of honesty, as can be seen in the example of Numantine treaty and the surrender in Caudine Forks. It is not enough to narrow down the basis of advisory speeches to *qualitas*. Often there is place for conjecture, other times for definition, or even legal problems, especially if advice is to be given in private matters. An example of *finitio* can be found in the question posed by Demosthenes: *Det Halonnesum Philippus, an reddat?* Advisory speech, contrary to a judicial one, does not require a *prooemium*, because the person who asks the speaker for advice is naturally well predisposed towards him. Yet the beginning of a speech delivered in front of the senate or assembly should have a *ratio* similar to a judiciary speech and striving to obtain the judges' benevolence is advisable in such a case. There is nothing strange in this, adds Quintilian, as even in panegyrics we solicit the favour of the audience, when our aim is solely selfless praise, instead of seeking gain. Aristotle, *Rhet.*, 1414 b, claims, not without a reason, that in advisory speeches we can begin from relating either to ourselves or to our opponent, borrowing this practice from judiciary speakers and sometimes giving an impression that the subject matter is more or less grave than it truly is. On the other hand the Stagirite thinks that the *prooemium* in *genus demonstrativum* can be treated with more ease. Often it abstracts from the main subject, as in the praise of Helen by Isocrates. It can also pertain to the subject closely, as in Panegyric of the same author, when he complains that the virtues of the body gain greater honours than the virtues of the spirit. Gorgias is doing something similar when he praises in the

*Olympic Speech* people who first established national games. According to Quintilian, in their steps followed Sallust when he introduced in *Bellum Iugurthinum* and *Bellum Catilinae* prefaces (*principia*) which do not have anything to do with historical narration.

When it comes to presenting facts, they are not necessary in speeches on private topics, at least if they concern a subject on which only an opinion should be given, because everyone knows well the thing on which he gives advice. Often there can be introduced information from outside, provided that it pertains to the subject. Speakers often appeal to emotions. Anger should be either incited or calmed, the minds of the audience should be turned to either fear, passion, hate or acceptance. Yet the greatest weight in advisory speeches is carried by the authority of the speaker. Whoever wants all people to trust his opinions regarding what is profitable and honest should possess real knowledge and extraordinary virtues of character. It is universally accepted that in judiciary speeches the speaker is allowed to let his passions (*studium*) flow to a certain extent. Everyone agrees that advice given by the speaker should be congruent with his moral principles. Most of the Greek authors believe that this type of rhetoric applies solely to public assemblies and is restricted solely to political questions.<sup>6</sup> Speakers who intend to advise in questions of peace, war, army, public works or taxes should acquaint themselves particularly with two things, namely the strength of the country and the customs of the people, so that the method used in advising could be founded on the political reality and nature of the intended audience. According to Quintilian, this type of rhetoric seems to give various possibilities, as there is a great number of people who ask for advice and receive it.

Because of that there are three basic points which should be taken into account when giving advice: the nature of the subject matter, the nature of people participating in the discussion, the nature of the speaker who gives advice. As far as the subject matter is concerned, it can be either certain or uncertain. If it is uncertain, it constitutes the main, or even the only point under discussion; for often it can happen that at first we will ensure the people that something should not be done, even were it possible to be done, then we will say it cannot be done. In such

<sup>6</sup> Even Cicero, *De orat.*, II 19, 82 gives a similar opinion.

cases we use conjecture, for example: can Isthmus be dug through, can Pomptine Marshes be dried, can the port in Ostia be built, can Alexander discover the land across the Ocean? Yet even in cases when the things are possible, there can be a place for conjecture, for instance in the following questions: can the Romans ever conquer Carthage, can Hannibal return to Africa if Scipio transfers there his army, can the Samnites keep their word (*fides*) if the Romans lay down their arms. Moreover, there are added causes to undertake certain actions or not to undertake them, as, for example, when senators debate whether they should hand the Fabii over to the Gauls who threaten war, or when Gaius Caesar ponders whether he should continue the campaign in Germany, when his soldiers are writing their last wills *en masse*. Some believe that there are three fundamental parts of an advisory speech, i.e. this, which is honest, useful and necessary. Quintilian discards the last part and prefers to describe it as τὸ δυνατόν, that is *possibile*. However strong is the violence which can petrify us, there might occur a necessity to bear it, but we are not forced to do anything. If by the term necessity (*necessitas*) we understand the things to which people are forced by fear of grave danger, then we are looking at the problem of utility (*utilitas*). Quintilian thinks that where necessity exists there is no place for debating and advice (*consilium*), especially when it is clear that something is impossible. *Deliberatio* is always focused on questions which raise doubts. *Fas*, *iustum*, *pium*, *aequum*, *mansuetum* (Greek τὸ ἥμερον), as well as all other virtues which someone might add to these, belong to the category of *honestum*. On the other hand *facile*, *magnum*, *iucundum*, *sine periculo* we subscribe to category *utile*. However, some claim that in some cases we have only the category of pleasure (*iucundum*), for instance when we discuss whether to build a theatre or establish new games. Religion (*religio*) will also have a role in such a discussion, as theatre is a kind of a temple for making festive sacrifices. Often we will also persist that *honestum* should take precedence over *utile*: for example we will advise the inhabitants of Opitergium not to surrender to their enemies, despite the fact that such a decision means certain death. And, contrarily, we will place *utile* over *honestum* when we advise to arm the slaves during the Punic war. *Utilitas* itself is argued against by those who claim that *honestas* are not only



more precious from *utilia*, but they even cannot be *utilia* if they are not *honestia*. Almost every advisory speech is based on comparison (*comparatio*) and we have to pay attention to what we can gain and by what means so that we can judge whether there is more use in what we are trying to achieve or more loss in the means which we employ to attain our goal. We consider benefit in regards to time (*expedit sed non nunc*), place (*non hic*), person (*non nobis, non contra hos*), method of action (*non sic*), rank (*non in tantum*). We need to consider also personality in regard to what is proper, and positions of ourselves and the people who are supposed to take decisions in our case. In advisory speeches it is the examples (*exempla*) which have the greatest importance, because making references to historical parallels is the easiest method of soliciting unanimity. A lot depends on whose authority we use and to whom we recommend it. For those who ask for advice are either particular people or communities. Other things which should be taken into account are sex, office, age and customs which make the greatest difference. The mind of a deliberating man should be moved not by discussion on the sense of *honestum*, as he will not take this into account anyway, but by praise, common opinion, benefit which might be obtained by a specific action or by negative consequences. Naturally, adds Quintilian, the behaviour of the majority of people is influenced to a greater degree by fear of misery than by hope for benefit, as it is easier for them to understand what is depraved than what is noble. On some occasions we advise good people to take a slightly dishonest course of action, while we propose to people of not the best character to take actions which, in the end, will be beneficial for those who seek our advice. If someone advises a good man to do something dishonest, he should remember not to do it again and to avoid the actions of some orators who persuade Sextus Pompeius into piracy solely because it is a dishonourable and cruel undertaking. For no one is bad enough to want others to consider him as such. Catilina in Sallust's work says that he found courage to commit terrible crimes not because of villainy, but outrage. If we advise Cicero to ask Antonius for mercy or even to burn the *Philippics* then we will not underline natural desire to survive, but encourage him to save himself for the Republic's benefit, since he needs such encouragement in order not to feel shame in begging someone like Antonius

for mercy. If we encourage Julius Caesar to accept the royal crown we will say that the Republic is doomed to fail if a monarch does not take it over. For whoever decides to commit a crime he strives to make his deed seem less noxious. A speech which is at variance with the character of the speaker is as full of errors as a speech which digresses from the subject matter. This is why it is believed that Lysias shows exemplary credibility (*veritatis fides*) in speeches he wrote for uneducated people. Quintilian is aware that for training purposes there are used topics both poetic and historical, such as Priam's speech to Achilles or the words Sulla spoke to the people about resigning from dictatorship. Insistent begging (*rogare*), foretelling (*indicare*), argumentation (*rationem reddere*) exist in judiciary, advisory and epideictic speeches. Often fictitious speeches of historical figures are introduced. For instance Cicero in his *pro Caelio* allows Appius Caecus and Clodius to speak. In fictitious judiciary speeches (*controversiae*) the tone of the discourse is usually lowered in *prooemium*, presenting the facts (*narratio*), and conclusions based on proofs (*argumentum*). If these three parts are removed what remains is the essence of an advisory speech, though it is more uniform, free from confusion and agitation.

When it comes to magnificence of language (*magnificentia*) then in the case of advisory speeches it seems to be perfectly natural. It is connected with the choice of people, e.g. kings, princes, senators, the nation. Because words are adjusted to the topic, they gain additional brilliance (*nitor*) due to the magnificence of the topic. Theophrastus believed that in advisory speeches language should be as devoid of any emotions (*adfectio*) as possible. Aristotle though, *Rhet.*, 1414 a claims that an epideictic speech is the most appropriate for writing down, and closest to it is a judiciary speech. The former concentrates solely on ostentatious show (*ostentatio*), the latter demands application of art that can be used to deceive the audience, if it is required due to benefits such an action would bring, while advice demands only honesty and prudence. As far as judiciary and advisory speeches are concerned, Quintilian believes that their style should be adjusted to the topic which is to be discussed. The *Philippics* of Demosthenes have the same merits as his judiciary speeches, while Cicero's opinions proclaimed before the senators and the Roman people are as excellent as his accusatory

and defensive speeches delivered in front of the judge. The Arpinate says about advisory speeches that all of them should be simple and dignified, and their ornamentation should be rather the result of important sentences than of current words. A special place is devoted to examples, as history tends to repeat itself and the experiences of the past are as if testimonies of reasoning ability (*rationis testimonium*). Brevity or profusion is based not so much on nature as on the magnitude of the subject matter. For as in advisory speeches the problem is usually less complicated, in judiciary ones it often does not have great importance. Everyone who finds pleasure not only in reading speeches, but also in historical works will realise the truth of these words: in histories speeches delivered in front of the people and in the senate often provide examples of advice and dissuasion.

The audience will not find in advisory speeches any abruptly ended beginnings and will notice that the style of judiciary speeches is often impulsive, while in both cases the words are adjusted to the content; moreover judiciary speeches are often more brief than advisory ones. A listener will not notice in them those errors which are made by some Roman orators, that is boorish insulting of the opponents and a tendency to speak in such a way as to make an impression that the opinions of the speaker differ from the opinions of the people who are seeking his advice. The result of such an approach is that invective rather than persuasion becomes the aim of the speeches. These words should be taken to heart especially by young people so that they are not tempted to acquire a certain style while their exercise, different from the one they will employ in real performances and so that they are not hindered by getting out of the habit they acquired.

In chapter nine Quintilian starts the discussion of judiciary speeches (*genus iudiciale*). This kind of speeches is extraordinarily complicated, but its functions are for the main part twofold, i.e. accusing and defending against accusation.<sup>7</sup> The majority of the authors divide judici-

<sup>7</sup> Cf. Arist., *Rhet.*, 1354 a 1 sqq.: 'Ἡ ῥητορική ἐστιν ἀντίστροφος τῇ διαλεκτικῇ· ἀμφότεραι γὰρ περὶ τοιούτων τινῶν εἰσὶν ἃ κοινὰ τρόπον τινὰ ἀπάντων ἐστὶ γνωρίζειν καὶ οὐδεμιᾶς ἐπιστήμης ἀφωρισμένης, διὸ καὶ πάντες τρόπον τινὰ μετέχουσιν ἀμφοῖν· πάντες γὰρ μέχρι τινος καὶ ἐξετάζειν καὶ ὑπέχειν λόγον καὶ ἀπολογεῖσθαι καὶ κατηγορεῖν ἐγχειροῦσιν.

ary speeches into five parts: *prooemium*, *narratio*, *probatio*, *refutatio*, *peroratio*. Some add to these *partitio*, *propositio*, *excessus* – the first two are subordinate to *probatio*. *Partitio* is the only one of the aspects of *dispositio*, which is a part of rhetoric and is equally divided in every topic of rhetorical art, such as *inventio* and *elocutio*. Therefore we have to consider *partitio* to be not a part of the whole speech, but a part of every particular question. As far as digression (*egressio*), commonly known as *excessus*, is concerned, if it is outside the case (*causa*), it cannot be its part, and if it is in the case, then it only supports or ornaments these parts of the case from which digression starts. Quintilian adds that he does not agree with the authors who, like Aristotle, *Rhet.*, 1403 a remove *refutatio*, claiming it is subordinate to *probatio*. For *probatio* has constructive character, *refutatio* – destructive. We do not necessarily need to think in the first instance about what we should say first. But before anything else we have to consider the nature of the case, the debatable question, the arguments for and against. Next we should contemplate which points should be made stronger and which should be discarded, as well as how to present the facts. Finally we should think over how to solicit the good will of the judge. For we cannot be certain what impression we want to make on him until we investigate all parts of the case diligently: should we make him more strict, pacify him, excite him, hasten him, make him more benevolent or independent, or perhaps susceptible to influences. The topic of the case should be considered in such an order as we have established previously, but the speech itself should be written down the way it will be delivered.

Chapter ten starts with a constataion that every case in which one side attacks while the other defends itself consists of one or several conflicting questions. If there is one controversy we call it *simplex*, if there are many, *coniuncta*. As an example of controversy *simplex* there can be given burglary or adultery. In the case of *coniuncta* we have an example identical with *simplex*, if we consider extortion, or a complex one, if someone is simultaneously accused of sacrilege and murder. There is also a third group of controversies called comparative (*comparativum*) which is used in certain parts of a case, for instance in legal proceedings in front of centumviral court, when the question pondered is which of two claimants deserves more to receive

inheritance. Some add also a fourth group, that is mutual accusation called ἀντικατηγορία. When it becomes clear what the type of case we are engaged in is, we will deliberate whether the deed which forms the basis of accusation can be denied or should be defended, or perhaps called by another name, or even excluded from the trial. In this way we will establish the *status* of every case.

In the last chapter Quintilian recollects Hermagoras's opinion that next we should consider the subject of the case (*quaestio*), line of defense (*ratio*), crux of the matter (*iudicatio*), the main argument (*continens*) or, as others call it, the main point of their accusation or defense (*firmamentum*). There exists a common consensus that *quaestio* originates from another *quaestio* and that *species* can be divided into other *species*. *Quaestio principalis* (fundamental) is called ζήτημα. *Ratio* is a method of defense in a situation when the deed was committed. Quintilian uses a widely known example provided by his predecessors; Orestes killed his mother, he admits it and claims that what he did was right. *Status* is based on *qualitas*, *quaestio* pertains to whether his actions were legal, *ratio* flows from the fact that Clytemnestra killed her husband, father of Orestes – this is called αἴτιον, i.e. motive, cause. *Iudicatio* is called κρινόμενον and comes down to the question whether it was necessary for the son to kill his mother, even if she committed a crime. Some make a distinction between αἴτιον and αἰτία, that is they say αἴτιον means the cause of the trial, i.e. the murder of Clytemnestra, while αἰτία means the cause provided by the defense, i.e. the murder of Agamemnon. Regarding this division there are, however, doubts and other authors interpret it the other way round. It seems that *causa* begins from *causa*, i.e. αἴτιον ἐξ αἰτίου; for example Clytemnestra killed Agamemnon because he sacrificed their daughter and took to his home a captive concubine. Some authors say that with one *quaestio* there can be multiple *rationes*: Orestes postulates that he killed his mother because he was driven to commit such a deed by the oracles of the gods. Therefore there are as many reasons to commit a crime as many there are *iudicationes*: it can be justly asked whether he should follow the dictates of oracles. Moreover one *causa* can have multiple *quaestiones* and *iudicationes*, for example in a situation when a husband caught his wife on adultery and killed her first, then killed the adulterer, who ran

away, on a public square. There is one *causa*: “he was an adulterer”. *Quaestiones* and *iudicationes* are whether the law allowed to kill the man in such a place and time. Συνέχον named also *continens* or *firmentum* is called by Cicero, *de inv.*, I 14; 19, the strongest argument of the defense and the one making greatest influence on the decision of the judge. The motive of the deed cannot be found in all controversial cases. Quintilian points out that even Cicero was inconsistent in this matter: *in Rhetoricis [...] Hermagoran est secutus; in Topicis ex statu effectam contentionem krino; menon existimat. [...] at in Partitionibus oratoriis firmentum, quod opponitur defensionis, quia continens, quod primum sit, ab accusatore dicatur; ratio a reo, ex rationis et firmenti quaestione disceptatio sit iudicationum*. However, Quintilian agrees with the authors who consider *status*, *continens* and *iudicatio* identical. These writers believe *continens* to be the most important part, without which there can be no trial. This part allows to contain in itself both questions, i.e. that Orestes killed his mother and that Clytemnestra killed Agamemnon. Quintilian warns though not to debate these two questions in an overly emotional and detailed way (*adfectata subtilitas*). A person who understands the crux of the controversy and senses which means should be used during the trial will undoubtedly use the knowledge he gained while reading this book. Everyone who gains even the most basic knowledge of rhetorical practice will discover what the essence of judiciary case is (which bear the name *causa* or *continens*), the contention between the sides of the trial, the point regarding which the judge needs to decide. Our task is not so much to instruct of *quaestio*, *continens*, *iudicatio*, as to remember not to digress from the topic or, if we make a digression, not to lose the crux of the matter while trying to gain applause.

To recapitulate, in book three Quintilian tried to present the origins of rhetoric, its constituent parts, methods of depiction and formation. It seems that his fear of lacking originality was ungrounded. We can confirm the opinion of the author that he is not a blind follower of one philosophical school but, by providing a collection of various opinions, gives the reader a chance to choose from among them. He will be truly happy if he is praised for his zeal, even if he lacked originality. His observation that nature gave birth to speech and observation created

the art of rhetoric is very accurate. The author of *Institutio oratoria* shares the opinion of many specialists that the rhetorical art consists of five parts, i.e. *inventio*, *dispositio*, *elocutio*, *memoria*, *pronuntiatio* (otherwise called *actio*). Dion of Prusa believed that speech is built only out of *inventio* and *dispositio*, though both of them can be divided into two parts, i.e. *res* and *verba*, which results in *elocutio* belonging to *inventio* and *pronuntiatio* to *dispositio* while *memoria* is the fifth part. Yet there are other authors who claim that we are talking here not about parts of rhetoric, but about the duties of the speaker whose task is *invenire*, *disponere*, *eloqui*. Quintilian argues with this opinion stressing that if we accept such a view there will be no place for art. The theory that every speech consists of the signified and signifying, i.e. *res* and *verba*, is convincing. All questions concentrate on what is written down and what is not. A special and in a sense central place in this book is taken by *status*. According to Quintilian, *status* received its name because this is the moment when the first clash between the two parties takes place or because it forms the basis of the whole case. The orator from Calagurris reminds us that many writers distinguish three *status generales* and everything which can form the topic of the dispute is brought down to following questions: *sitne?*, *quid sit?*, *quale sit?* No legal question can be discussed if it is not supported by a definition of the term (*definitio*), quality (*qualitas*), conjecture (*coniectura*). There are major differences between the place and subject matters of praises and reprimands. The audience needs to be convinced to believe that the virtues they approve of are the most characteristic ones for the praised people while the vices which they hate – for the criticised. Advisory speeches concentrate mainly on what is honourable. The beginning of a speech delivered in the senate or in front of an assembly should have *ratio* similar to judiciary speeches and the speaker should strive to solicit the benevolence (*benevolentia*) of the judges. A prooemium in *genus demonstrativum* can be treated with greater ease and does not have to be connected to the main topic. What counts the most is the authority of the speaker. The orator should possess knowledge and extraordinary virtues of character. When one is advising for or against something three basic points should be taken into account, that is the nature of the topic, the nature of people involved in the discussion and the nature of



the speaker who advises. In advisory speeches the most important role is played by examples (*exempla*), because by referring to historical parallels it is easier to elicit unanimity. Cicero says of advisory speeches that every such speech should be simple and dignified and their ornamentation should be rather the result of important sentences than of current words. As far as judiciary speeches are concerned, most of the authors divide them into five parts: *prooemium*, *narratio*, *probatio*, *refutatio*, *peroratio*. First, the *status* of every case should be considered, next its subject matter (*quaestio*), line of defence (*ratio*), crux of the matter (*iudicatio*), the main argument (*continens*) or, as others call it, the main point of their accusation or defense (*firmamentum*).

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