LIMITS OF SPEECH

Studies on Silence and Omissions

in Ancient Oratory and Rhetoric

Thesis submitted

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Declaration of Authorship

I, Ulrike Claudia Ariane Stephan, hereby declare that this thesis and the work presented in it is entirely my own. Where I have consulted the work of others, this is always clearly stated.

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Abstract

This thesis is concerned with a number of phenomena in ancient oratory and rhetoric connected to *limits of speech*: being silent, pausing, not treating a topic. All of this can happen either as a matter of incapacity or failure—or deliberately.

Research in this particular area is scarce. A first desideratum is therefore a phenomenology, or typology, of these *limits of speech* in antiquity, both as they occur and are dealt with in practical oratory, and as they are discussed in rhetorical theory. This thesis focuses on Cicero, in whose works both sides can be studied, but also considers earlier and later authors.

A comprehensive typology of the large area of *omissions* of topics, facts, opinions, and even words and styles, from a speech leads especially to the phenomenon of *explicit* omission, usually termed *praeteritio*. This figure, widely used in practice but quite underrated in (ancient) theory, is the most prominent example of ancient oratory *making use of its limits*.

Similar observation are made in other areas: the issue of *structural pauses* within a speech is closely related to prose rhythm; less studied, but equally interesting are *longer pauses* used to leave time for something else, especially for interaction with the audience or individuals, or enforced when the orator is *interrupted* by the audience.

Another reason for *interruptions* is the orator's own *incapacity*: memory failure, voice failure, or other health issues. The rhetorical writings provide some instruction for prevention and remedies; but also in practice, orators not only avoided or handled possible failures, but turned the issue around into a rhetorical device, employable to their advantage.

All these aspects provide a fresh perspective on the (ancient) principle of *artem arte celare* and contribute to a new view on *oratorical practice and rhetorical theory*: although the gap between theory and practice has been seen and stated in research often enough, the point of this thesis is the rarely observed influence (or rather lack of influence) of practice on theory: the fact that oratorical practice develops far beyond the theoretical instructions, and yet no rhetorician reintegrates these developments fully and systematically into rhetorical theory. The explanation suggested here is that written rhetorical theory separated itself from oratorical practice quite early on and developed an independent existence of its own throughout antiquity, and that this is especially evident in the oratorical use of *limits of speech*.

Contents

1 Introduction

1.1 Approach

This thesis is concerned with a number of phenomena in ancient oratory and rhetoric connected to *limits of speech*: being silent, pausing, not treating a topic. All of this can happen either as a matter of incapacity or failure, or deliberately, with a specific rhetorical purpose.

In spite of the vast literature on ancient oratory and rhetoric, research in this particular area is scarce.[1] While the topic of silence has been considered for other (ancient) literary genres, in particular drama[2] and epic,[3] as well as in sociology[4] and other subject areas, "gibt es bislang jedoch keinen Ansatz, der das Thema [Schweigen] aus einer konsequent rhetorischen Perspektive behandeln würde".[5] This is true not only for *silence* and *pauses*, but also for *omissions* (which in German may be included in the term *(Ver-)Schweigen*), and *failure*.

A first desideratum has therefore been a phenomenology, or typology, of these *limits of speech* in antiquity, in two different but connected areas: on the one hand, silence and omission as they occurred and were dealt with and used in practical oratory, i.e. actual speeches; on the other, silence and omission as they were discussed in rhetorical theory. Throughout this typol-

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[1] Some aspects relevant to my topic have indeed been covered thoroughly in modern research: e.g. prose rhythm (see section 3.2.2); rhetorical figures, including *praeteritio* and its variants, in particular by Lausberg (1990); procedures in court and political assemblies (see in particular sections 2.5.2 "External time limits" and 3.4 "Interruption by the audience").

[2] E.g. Taplin (1972), Taplin (1978), Clay (1982), Aélion (1983), Thalmann (1985), Buxton (1987), Jäkel and Timonen (2001) (with contributions on Aeschylus, Sophocles, Euripides, Aristophanes, Menander, Plautus, and others), Chong-Gossard (2004), Foucher (2007), Chong-Gossard (2008), Poochigian (2007), Rood (2010).

[3] E.g. Cramer (1976), Foley (1995), Anzinger (2007).

[4] E.g. Bellebaum (1992).

[5] Mayer (2007, c. 686).

ogy, I will consider the relationship between these two areas, and how they interacted, i.e. how the handling of silence and omission in practice was reflected in theory, and how the rules and claims of theory were applied in practice.[6] It is not surprising that both areas do not correspond completely: in any relationship of theory and practice, one will find that some theoretical rules are rarely or never followed in practice, and that some issues found in practice are not thoroughly or not at all treated in theory. Furthermore, it must be taken into account for each theoretical work whether its purpose is rather *prescriptive* or *descriptive* (or somewhere in between): a *descriptive* treatise is by definition intended to cover all issues and devices occurring in practice (even if not in every detail), with or without judging these; whereas a *prescriptive* treatise is likely to be quite selective, i.e. to cover only those phenomena observed in practice which the author deems "correct", or worthy (and suitable) to be taught.

Consequently, the observation that some topic or device is used in practice but not treated in a *prescriptive* treatise need not be remarkable in itself, and the question *why* it is not treated in the theoretical work is hard to approach: the author may have considered it as insignificant, or as not suited for written instruction, or he may have disapproved of it or even not have noticed its use in practice.

On the other hand, there is more room for conclusion if some topic or device is used in practice but not treated in a *descriptive* treatise: provided that the phenomenon is frequent enough in practice, a comprehensive descriptive work on the subject should have something to say about it.

Therefore, when looking at discrepancies between theory and practice in the area of silence and omission in ancient oratory and rhetoric, significant observations are most likely in comparison of *descriptive* theoretical works and (contemporaneous or earlier) examples of oratorical practice (i.e. speeches), preferably those speeches which are actually analysed in the the-

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[6] Of course we have only limited access to the speeches as they were delivered, and our only reliable source are the written versions as we have them. However, if we accept that Cicero's and other orators' written speeches "must at least be plausible and procedurally correct reconstructions" (Powell, 2010, p. 35), we can examine them as authentic examples of Greek or Roman oratory, and of what might have been said in a trial or assembly, regardless of whether it actually was.

oretical work(s). Among the extant ancient rhetorical treatises, it is therefore the *Institutio oratoria* by Quintilian which lends itself most to further investigation: although it is indubitably written in a prescriptive mood, aiming at the training of an "ideal orator", it is the most comprehensive of its kind (not least by its sheer length) and does discuss a large number of examples from practical oratory, and not only examples for what Quintilian considers "good" oratory but negative examples as well. Consequently, although it is by no means an exhaustive description of oratorical practice, it has a decidedly descriptive side. Besides, it is all the more suited for examination by us today as the great majority of the examples in Quintilian's *Institutio* is taken from Cicero's speeches, which are avaible to us for analysis.

On this basis, I intend to show that the area of silence and omission provides a valuable perspective for the investigation of the relationship between theory and practice in ancient rhetoric.

1.2 Sources

As my work focuses in particular on the relationship of oratorical practice and rhetorical theory, a particularly important author must be Marcus Tullius Cicero (106–43 BC) as the only ancient author of extant works in both genres, i.e. speeches as examples of practical oratory as well as theoretical treatises on rhetoric. Since I am primarily interested in theory's reaction to practice, Quintilian (Marcus Fabius Quintilianus, 35 – ca. 96 AD) comes into view next, who analysed the corpus of Ciceronian speeches (much as we do today) for his extensive treatise *Institutio oratoria*. In order to examine how Quintilian's theoretical work reacts to Cicero's practical oratory, we need to take into account that Quintilian also drew on earlier rhetorical theory, especially Greek, and although much of his sources are lost, we can see some lines of development by analysing the extant treatises. For the development of oratorical practice up to Cicero, his Greek predecessors are to be considered, i.e. the so-called Attic Orators.

My main ancient sources therefore concerning the practical side are a selection of speeches by Lysias, Demosthenes, and Aeschines (which represent

Attic oratory as it took place in Athenian courts and assemblies) and all of the 58 extant speeches by Cicero.

For the theoretical side, Cicero's and Quintilian's *rhetorica* are considered: Cicero's *De inventione*, *De oratore*, *Orator*, *Brutus*, *Partitiones oratoriae*, and Quintilian's *Institutio oratoria*. Additionally, the earlier theoretical treatises are used: the Ῥητορική (or *[Ars] Rhetorica*) by Aristotle (384–322 BC), the Pseudo-Aristotelian Ῥητορική πρὸς Ἀλέξανδρον (or *Rhetorica ad Alexandrum*), and the Pseudo-Ciceronian *Rhetorica ad Herennium*.

For all ancient texts, their historical context and their intention must be taken into view. For the speeches, this regards especially the type of speech (forensic, political etc.), the historical circumstances, and the relationship between the extant written version and the speech as it was actually given (as far as this can be determined).

For the rhetorical treatises, the main distinction can be drawn (in a very generalising way) between "technical" and "philosophical" works: on the one hand, we have the rather technical "manuals" or "textbooks" of the *ars rhetorica*, of which the *Rhetorica ad Alexandrum*, the *Rhetorica ad Herennium*, and Cicero's *De inventione* and *Partitiones oratoriae* are the only extant examples in classical antiquity (although many more were written especially in Hellenistic times[7]). On the other hand, there are those treatises which have a more "philosophical" approach, combining technical instruction with ethical considerations. Aristotle's *Rhetoric* is to be named here: "[i]m Vordergrund steht der Gedanke, dass die zu entwickelnde Rhetorik an die philosophische Disziplin der Dialektik anknüpfen kann"; such a rhetoric "bemüht sich anders als die konventionellen Anleitungen nicht darum, den Hörer abzulenken und zu verwirren, sondern ist um den rhetorischen Beweis zentriert".[8] An even broader approach is used in Cicero's *De oratore*, which belongs in the genre of philosophical dialogue[9] (together with *De re publica* and *De legibus*) and discusses the traditional five *officia oratoris*, but "the subject is the ideal orator",[10] which comprises much more than oratorical techniques: not least,

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[7] Vanderspoel (2007, p. 124).

[8] Rapp (2002, p. 172–173).

[9] Wisse (2002).

[10] Wisse (2002, p. 378).

universal knowledge. Quintilian's *Institutio oratoria* has, beyond its thorough and systematic treatment of oratorical procedures and devices, even an over-arching ethical approach, visible e.g. in the formula of the *vir bonus dicendi peritus* borrowed from Cato,[11] its emphasis on early education, and its advice to the orator in matters of career tactics.

Two works are difficult to place in this division: Cicero's *Orator* contains both a rather philosophical discussion of the "ideal orator" and many technical details on prose rhythm.[12] Cicero's *Brutus* is a history of Roman oratory and thus belongs to a different genre altogether, all the same containing some enlightening remarks on rhetorical theory and oratorical practice.

1.3 Outline

A search within the considerable corpus of oratorical and rhetorical text for phenomena of, or related to, silence and omissions produces a collection of widely differing topics. While all of these share the point that they have, obviously, something to do with silence, their role within the entire area of oratory and rhetoric sets some of them far apart. This is in itself a result of this study—that phenomena of silence and omission occur all over oratory and rhetoric, in various forms and on various levels—but beyond this, I set out to show that many of these phenomena share a peculiarity in their treatment in the relationship between oratorical practice and rhetorical theory.

Three broad categories have proved reasonably suitable to organise the findings. The richest material can be found in the area of (intentional) *omission or avoidance* of topics, facts, opinions, and even words and styles, from a speech (chapter 2). The question of *what* is omitted overlaps with the question of *why*: the advice to omit something appears most natural for facts or notions detrimental to one's case; the same advice is at least plausible for superfluous material and topics outside the case, as well as for matters already known to the audience and a number of other points. A full typology of omissions, as provided in chapter 2, not only gives an overview of the topic but leads to the third question (after *what?* and *why?*): i.e. *how* something is

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[11] Quint. *Inst.* 12.1.1.

[12] Cf. Narducci (2002).

omitted, and especially the phenomenon of *explicit* omission (usually termed *praeteritio* in modern research).

Silence within a speech, i.e. *pauses,* is the second major manifestion of *limits of speech* (chapter 3). The issue of *structural pauses* within a speech is most closely related to the topic of prose rhythm, which has been studied intensely in ancient and modern scholarship. Less studied but equally interesting are *longer pauses* which are not used to structure a speech into κῶλα and περίοδοι but occur in situations of a *dialogical* character: intentional interaction with the audience or opponent (fictitious or real), deliberate interruptions by other persons, the figure of *prosopopoeia* in which another person is imagined speaking (to whom the orator "yields the stage"), and pauses in the speech for procedural reasons.

On the other hand, the orator may be *interrupted* in his speech by the audience: here not only the phenomenon of θόρυβος (uproar) comes into view,[13] but audience applause and laughter as well, and thus even the question of audience silence, which can be (perceived as, and/or presented as) attentive, hostile, or ambiguous.

Another reason for interruptions of the speech is the orator's own *incapacity* (chapter 4): mainly memory failure and voice failure, but also the more personality-related problems of nervousness and lack of talent. At first sight, these issues are mainly obstacles to the orator's purpose which need to be avoided or overcome, but beyond this they can also be employed as rhetorical devices, when the orator anticipates or simulates a possible failure.

I will suggest that many of these aspects contribute to a differentiated view on *oratorical practice and rhetorical theory* (chapter 5): while the gap between theory and practice has been observed and stated in research often enough, it is usually seen to indicate that oratorical practice goes beyond and around the rules stated by the writers of rhetorical theory. In contrast to this, I am going to focus in particular on the inverse influence: how oratorical practice is reflected in theory. (Since practical oratory naturally came into existence before rhetorical theory, this influence may indeed be considered the more original one.) The topics outlined above lead to the question of how the

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[13] Which has been studied e.g. by Bers (1985).

theoretical instructions of rhetoric developed under the influence of and in response to oratorical practice. I intend to demonstrate a significant gap between theory and practice, and attempt a cautious explanation.

2 Limits of content: omissions

2.1 Introduction

The first phenomenon I shall consider is *silence within a speech about something*, i.e. *omission* of a fact, an opinion etc. Omissions in extant speeches are most prominent when announced as such by the speaker, producing a *praeteritio*, so that occurrences of this figure form a major part of the material discussed here. Otherwise omissions can be traced if a topic is announced for a later part of the speech, but never spoken about; if some point is to be expected due to the circumstances of the speech, but not covered (provided that we know enough about the circumstances, preferably from sources independent of the speech itself); or if some point is to be expected from the inner logic of the speech, or from comparison to similar speeches.

Omissions can be categorised according to *what* is omitted (e.g. adverse, superfluous, or obvious points, names, or even stylistic elements), *why* (e.g. due to a time limit, or for strategical reasons), and *how* (e.g. explicitly in one of many forms of *praeteritio*, or quietly). It is unavoidable that the resulting groups of omissions overlap and that some instances of omission will appear in more than one category, thus the structure of this chapter can only be an imcomplete attempt to identify, analyse and assess common features of various classes of omissions; the categories employed will therefore be somewhat artificial at times and not always on the same level. The most prominent case of *how* something is omitted is the *praeteritio*; I shall show that it appears throughout all categories of *what* is omitted and *why*, and is employed to achieve a range of rhetorical purposes, depending on the argumentative structure and the circumstances of a speech. Therefore, in the first sections of this chapter, I shall discuss various types of omission (sections 2.2 to 2.6) and from there provide a typology of *praeteritiones* (section

2.7), and examine their use in Cicero's speeches and their consideration in the theoretical works.

Silent omissions in speeches (i.e. omissions which are not announced explicitly by the speaker) are rhetorically relevant only if there is an undeniable gap in the speech, i.e. if the omitted point is a necessary component of the case or subject of the speech. There is a discussion in ancient rhetorical theory on this question which I shall therefore focus on in the following section (2.8): the question whether or not to include points which are adverse to one's case. This leads to the question whether the orator should rather lie about an uncomfortable point or avoid it altogether, and thus to the general question of using or avoiding lies in oratory (section 2.9).

Related to the issue of omission is the avoidance of inappropriate language and topics in a speech, which I shall discuss in the next section of this chapter (2.10). The last section (before some concluding remarks) deals with the advice that an orator must, sometimes, *artem arte celare*, i.e. in some way ban rhetoric itself from his oratory (section 2.11).

2.2 Omission of the "superfluous"

2.2.1 Introduction

> atque ut aliquando de rebus ab isto cognitis iudicatisque et de iudiciis datis dicere desistamus, et, quoniam facta istius in his generibus infinita sunt, nos modum aliquem et finem orationi nostrae criminibusque faciamus, pauca ex aliis generibus sumemus.[1]

This statement from Cicero's *actio secunda* against Verres is a rarity, as Cicero seldom ever admits that there must be *modus aliqui et finis* to his speech. This concept that any speech has a "natural time limit",[2] beyond which additional material can only render the speech longer, but not better (i.e. more likely to achieve its purpose), is not spelt out as playing any important role in the ancient rhetorical writings. However, this may partly be a problem of

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[1] Cic. Verr. 2.2.118.

[2] As opposed to an external time limit, set by a law or a person.

transmission: among the extant works, only Quintilian mentions *iudicium*, the decision on what to include in a speech and what to omit, as an *officium oratoris*[3]—this *officium* points to an awareness that a considerable part of the topics found in the *inventio* must be dismissed, just because they are superfluous to the speech. But Quintilian refers here to *quidam*, i.e. a certain minor tradition in rhetorical theory (apparently not transmitted), where the *iudicium* was an established *officium oratoris*. Quintilian goes on to say that Cicero treated *iudicium* as a part of *inventio*, and that he himself regards it as belonging to the first three *officia* (*inventio, dispositio, elocutio*), not as a separate *officium*, i.e. not as a vital step in the development of a speech, rather a minor operation.[4] Nevertheless, while there is no concept of a "natural time limit" made explicit, most of the rhetorical treatises discuss the topic of *iudicium*, i.e. choosing from possible arguments, in some way, thereby implying that the orator may be well advised to omit some of the points that present themselves as useful for his case; for details see below section 2.2.3.

The Attic Orators apparently had some concept of a "natural end" to a speech or a section of a speech (though not necessarily as a defined rhetorical feature), as we find repeatedly variants of "I have said enough on the matter".[5] Usually it is said or implied that the orator could find more material to speak about, if he really wanted or had a good reason, but that this would, as matters stand, not be likely to help the case, i.e. that any additional material would be superfluous.

This figure is nowhere to be found in Cicero's speeches, and one might conclude that Cicero would generally think it useful to add *more* arguments to his case, as long as he can think of anything to speak about. By this contrast to the Attic Orators, D. Berry's statement that the Roman orators over-

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[3] Quint. *Inst.* 3.3.5 "his adiecerunt quidam sextam partem, ita ut inventioni iudicium subnecterent, quia primum esset invenire, deinde iudicare. ego porro ne invenisse quidem credo eum qui non iudicavit; neque enim contraria communia stulta invenisse dicitur quisquam, sed non vitasse." Cf. 6.5.5 "nam quid dicendum, quid tacendum, quid differendum sit exigere consilii est"; 9.2.4 "quae delectatio aut quod mediocriter saltem docti hominis indicium nisi alia repetitione, alia commoratione infigere, digredi a re et redire ad propositum suum scierit, removere a se, in alium traicere, *quae relinquenda*, quae contemnenda sint iudicare?"

[4] On *iudicium* in *De oratore* cf. Wisse (1989, p. 205–206).

[5] E.g. Lys. *or.* 10.31 (peroration), 22.22, 29.8; Dem. *or.* 3.36, 4.13, 6.37, 10.75 (peroration), 34.52, 36.62; Aischin. *Tim.* 196 (peroration), *leg.* 183, 184 (peroration), *Ctes.* 24.

all "seem to have found it advantageous to make use of every argument at their disposal, not merely the decisive ones",[6] however generalised, may be justified. On the other hand it has been shown for Cicero's speeches by D. Mack that Cicero employs a very careful choice of arguments, and especially according to the audience:[7] at the beginning of the two speeches *post redi- tum*, given before the senate and the people respectively, Cicero lists in both cases the things he has regained by his return, but in the senate it is but a short list, with *ordo* and *dignitas* coming first after his brother and children, while in the *contio* his closest family is given more space than in the senate speech and then followed by *res familiaris [. . .], fortunae [. . .], amicitiae, con- suetudines, vicinitates, clientelae, ludi denique et dies festi*, with *honos, dignitas, locus, ordo, beneficia* coming only afterwards.[8] Later in the speech before the people Cicero argues that even the gods had wished his return, as shown by the decreased grain prices; in the corresponding passage in the senate speech he makes the connection to the grain, but not to the gods.[9] Similarly, in *Phil. 4* (a *contio*), Cicero has the gods' consent, shown in prodigies, as a strong ar- gument against Antonius,[10] while in the corresponding senate speech *Phil. 3* the gods are mentioned, but not employed in argumentation.

In contrast, Cicero does not mention these specific strategies of using an argument in one context but not in another as being of general importance in his rhetorical writings (although he does discuss adapting speeches to au-

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6   Berry (2004, p. 301).

7   Mack (1937, p. 75) (in conclusion to the analysis of Cic. *Post red.* and *Phil.* 3/4) "daß der Redner in der [Senatsrede] die möglichen Argumente auf ihre Beweiskraft hin prüft und darauf eine Auswahl trifft, während er sich vorm Volk auf eine möglichst große Zahl in ihrem Wert oft recht zweifelhafter Gründe zu stützen sucht." The following after Mack (1937, p. 21, 43, 57).

8   Cic. p. red. in sen. 1; p. red. ad Quir. 2–4.

9   Cic. p. red. ad Quir. 18 "dis denique immortalibus frugum ubertate, copia, vilitate redi- tum meum comprobantibus mihi", p. red. in sen. 34 "mecum leges, mecum quaestiones, mecum iura magistratuum, mecum senatus auctoritas, mecum libertas, mecum etiam frugum ubertas, mecum deorum et hominum sanetitates omnes et religiones afuerunt. quae si semper abessent, magis vestras fortunas lugerem, quam desiderarem meas; sin aliquando revocarentur, intellegebam mihi cum illis una esse redeundum." Mack (1937, p. 43) "Im Senat kann Cicero so nicht sprechen; denn die Höhe der Getreidepreise ist ja durchaus abhängig von der jeweiligen politischen Lage."

10 Cic. Phil. 4.10 "iam enim non solum homines, sed etiam deos immortales ad rem publi- cam conservandam arbitror consensisse. sive enim prodigiis atque portentis di immor- tales nobis futura praedicunt, ita sunt aperte pronuntiata, ut et illi poena et nobis libertas adpropinquet".

diences, e.g. *Orat.* 123); he comes closest in a remark that often being silent on something will bring the orator no applause, just spare him from protest.[11]

While the concept of a "natural time limit" is thus rarely recognisable directly in the ancient speeches and rhetorical writings, it very often plays its part in the background of oratorical actions, to be observed only indirectly. It is plausible that it lies behind the most common occurrence of omission in ancient speeches (i.e. by the Attic Orators and Cicero), and probably in speeches in general: the omission of *superfluous* points, i.e. points which may come up in connection with the matter at hand (especially during the orator's procedure of *inventio*), but which are deemed not important enough to be included in the speech itself. Anyone preparing a speech and thinking freely about what might be said on a particular issue is likely to come up with quite some material which does not support the argumentation and which is thus easily dismissed—but it would not be dismissed in a world where a speech were always the longer the better.

Most of these omissions during *inventio* leave no trace in the speech itself; but sometimes the omission is made explicit. The explicit omission of a point from a speech, usually termed *praeteritio* in modern research,[12] is used widely throughout oratory and other genres;[13] and while it can take various forms and structures (which I shall show below) its simplest form, the plain statement "I shall not talk about . . . ", implies in most cases that the omitted point is "superfluous", or not relevant (enough) to the matter at hand, even though it may inherently belong to the case or some aspects of it, or be interesting in itself.

2.2.2 Practice

It is in the area of the superfluous that some of the most common types of *praeteritio* are found (although the phenomenon is present in almost all as-

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[11] Cic. *De orat.* 2.301 "homines enim imperiti facilius quod stulte dixeris reprehendere quam quod sapienter tacueris laudare possunt".

[12] The term *praeteritio* is first attested in the 3rd c. AD rhetor Aquila Rhetor (Lausberg, 1990, § 885). The most usual Greek term was παράλειψις; Cicero has no fixed term for the figure, he describes it with the words "ut aliquid reticere se dicat" (Cic. *Orat.* 138). Further terms are *occultatio, omissio, praetermissio* (Rowe, 1997, p. 149).

[13] *Praeteritio* is used already in Homer (however rarely, e.g. *Od.* 12.450–453); in Latin literature it is found as early as in Ennius's *Medea*, cf. Manuwald (2013, p. 283–284).

pects of omission and avoidance)—types where both the value of a "natural time limit" and the classification of a topic as not necessary for the case are not expressed in words, but implied as the most general reasons to omit something from the speech. These are the types which I propose to call "standard *praeteritio*", "*praeteritio* of the rest*", and "*praeteritio* of argument", which are related to the classification of something as superfluous, and which I shall cover here.

The most basic (though not most frequent) type is the "standard *praeteritio*" where one or more facts or aspects are simply stated to be left out: "I pass over . . . ", "I shall not speak about . . . ", or words to that effect. This is quite rarely found in the Attic Orators;[14] in Cicero's speeches, examples abound, using variants of *praetereo / praeteream, praetermitto / praetermittam, non dico / nihil dicam* etc.[15] Sometimes this *praeteritio* is phrased in a question, mostly in the standard form *quid dicam?* or *quid multa?*,[16] sometimes in a more elab-

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[14] E.g. Dem. *or.* 18.99 "ἀλλ' οὔπω περὶ τούτων", 18.146 "ἐῶ γὰρ τοῦτό γε", 24.145 "οὐ γὰρ ἐρῶ ὅτι αὐτὸς Ἀνδροτίων . . . "

[15] Examples are: Cic. *Q. Rosc.* 44 "quid exspectas quam mox ego [. . .] dicam [. . .] ? non faciam"; Cic. *Div. in Caec.* 29 "nec ea dico, quae si dicam tamen infirmare non possis", "sunt et haec et alia in te falsi accusatoris signa permulta, quibus ego nunc non utor"; Cic. *Verr.* 2.1.33 "omne illud tempus quod fuit antequam iste ad magistratus remque publicam accessit, habeat per me solutum ac liberum. sileatur de nocturnis eius bacchationibus ac vigiliis; lenonum, aleatorum, perductorum nulla mentio fiat; damna, dedecora, quae res patris eius, aetas ipsius pertulit, praetereantur; lucretur indicia veteris infamiae; patiatur eius vita reliqua me hanc tantam iacturam criminum facere", 2.1.43 "in quibus illud tempus Sullanarum proscriptionum ac rapinarum praetermittam", 2.4.7 "non loquor de integris, innocentibus, religiosis", 2.4.56 "nihil nimium vetus proferam", 2.5.20–22 "nihil de hominis frugalitate, virtute, diligentia dicam; [. . .] omnia tibi ista concedam et remittam", 2.5.38 "mitto enim et praetereo quid tum sit actum"; Cic. *Cluent.* 99 "non dico hoc tempore, iudices, id quod nescio an dici oporteat, illum maiestatis esse condemnatum"; Cic. *Sull.* 75 "mitto rem publicam, quae fuit semper Sullae carissima", 82 "neque ego praecipue de consularibus disputo"; Cic. *Flacc.* 7 "praetereo illa quae praetereunda non sunt", 12 "sed non dilatabo orationem meam", 14 "sed ut hanc vim omittam"; Cic. *Sest.* 104 "quae cum omnia atque etiam multo alia maiora, quae consulto praetereo, accidissent"; Cic. *Prov. cons.* 40 "ac primum illud tempus familiaritatis et consuetudinis, quae mihi cum illo, quae fratri meo, quae C. Varroni, consobrino nostro, ab omnium nostrum adulescentia fuit, praetermitto."; Cic. *Phil.* 1.3 "multa praetereo, eaque praeclara; ad singulare enim M. Antoni factum festinat oratio.", 2.39 "sed omittatur bellum illud, in quo tu nimium felix fuisti.", 2.53 "omitto, quam haec falsa, quam levia, praesertim cum omnino nulla causa iusta cuiquam esse possit contra patriam arma capiendi. sed nihil de Caesare"; 2.63 "sed haec, quae robustioris improbitatis sunt, omittamus"; 2.70 "sed omitto ea peccata, quae non sunt earum partium propria".

[16] Cic. *Verr.* 2.4.149 "quid multa?"; Cic. *Sull.* 64 "sed quid ego de hoc plura disputem?"; Cic. *Har.* 41 "nam quid ego de Sulpicio loquar? cuius tanta in dicendo gravitas, tanta iucunditas, tanta brevitas fuit, ut posset vel ut prudentes errarent, vel ut boni minus bene sentirent perficere dicendo." (cf. 42 "tam multa"); Cic. *Sest.* 95 "nam quid ego de aedili ipso loquar, qui *etc.*"; Cic. *Mil.* 75 "quid enim ego de . . . dicam?"; Cic. *Lig.* 33 "quid de fratribus dicam?"; Cic. *Phil.* 2.62 "quid ego istius decreta, quid rapinas, quid hereditatum posses-

orate manner;[17] the question can also be combined with a reference to the evidence that makes the elaboration of the point superfluous.[18]

All of these examples, different though they may be in phrasing and wording, have in common that they are simple statements of omission, without a reason given. A particular reason can be implied (e.g. in *Verr.* 2, where Cicero does not want to go into detail about the political background of Sulla's proscriptions[19]), but most examples appear to dismiss a point as not necessary or not relevant, giving the audience the impression that the orator has considered the point, but has more important things to say, thus implying a strong bargaining position.[20] Put as a rhetorical question, the same notion is conveyed in a less patronising way, reducing the distance between orator and audience.

The most frequent type of *praeteritio* (both in the speeches by the Attic Orators and Cicero) concerns a group of similar points, some of which are treated in the speech, while the rest is expressly left out; again, usually no explicit reason is given for the omission. Examples for this type abound both in the Attic Orators and in Cicero's speeches. This *praeteritio* appears in four subtypes, although the boundaries can be blurred:

◇ in the first sub-type the orator, after presenting some of the points, declares to omit the rest.[21]

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siones datas, quid ereptas proferam?", 2.97 "quid ego de commentariis infinitis, quid de innumerabilibus chirographis loquar?", 2.101 "quid iam querar de agro Leontino?", 2.107 "quid ego illas istius minas contumeliasque commemorem, quibus *etc.*", 3.26 "quid ego de L. Cinna loquar?", 7.22 "nam quid ego de universo populo Romano dicam?", 11.6 "quid loquar de caede civium Romanorum, de direptione fanorum?", 11.13 "quid dicam de Apulo Domitio?", 11.33 "quid de patre dicam?", 11.34 "quid de Cn. Pompeio loquar?", 13.2 "nam quid ego de proximo dicam, cuius acta defendimus, auctorem ipsum iure caesum fatemur?"

17 Cic. *Verr.* 2.1.154 "quaerimus etiam quid iste in ultima Phrygia, quid in extremis Pamphyliae partibus fecerit, qualis in bello praedonum praedo ipse fuerit qui in foro populi Romani pirata nefarius reperiatur? dubitamus quid iste in hostium praeda molitus sit, qui manubias sibi tantas ex L. Metelli manubiis fecerit, qui maiore pecunia quattuor columnas dealbandas quam ille omnis aedificandas locaverit? exspectemus quid dicant ex Sicilia testes?"

18 Cic. *Verr.* 2.2.104 "quid a nobis, iudices, exspectatis argumenta huius criminis? nihil dicimus; tabulae sunt in medio, quae se corruptas atque interlitas esse clamant."

19 Cic. *Verr.* 2.1.33, see note 15.

20 This implication is perhaps most obvious in two of Lysias' speeches which end in a variation of "I could say much more; but I will not." (Lys. *or.* 12.95, 31.34) This statement in the peroration is found nowhere else in the Attic Orators or in Cicero.

21 Attic Orators: e.g. Dem. *or.* 1.13, 9.25, 10.10, 20.13, 18.50, 18.138, 18.296, 18.313, 20.163, 22.14–15, 22.68, 23.63, 36.30; Aischin. *Tim.* 157; Cicero: Cic. *Verr.* 2.3.92 "hic Venerius quem

◇ Secondly, the orator claims from the beginning that it is not possible
or not advisable to enumerate all instances of some kind;[22] this type is
less frequent than the other three in Cicero's speeches.

◇ This sometimes coincides with the third sub-type, where the orator
starts out with the intent to give an example and leaves out the rest.[23]

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ad modum aratores eluserit, ex una pactione hominis honesti gratiosique cognoscite; in
eodem enim genere sunt cetera", 2.3.103 "non versabor in uno genere diutius, et ita cetera
de oratione mea tollam ut in causa tamen relinquam", 2.5.166 "hoc teneo, hic haereo,
iudices, hoc sum contentus uno, omitto ac neglego cetera"; Cic. *Leg. agr.* 2.90 "multae
in hac re publica seditiones domesticae quas praetermitto"; Cic. *Sull.* 73 "quid reliquae
constantiam vitae commemorem, dignitatem, liberalitatem, moderationem in privatis re-
bus, splendorem in publicis?"; Cic. *Flacc.* 66 "equidem mihi iam satis superque dixisse
videor de Asiatico genere testium; sed tamen vestrum est, iudices, omnia quae dici pos-
sunt in hominum levitatem, inconstantiam, cupiditatem, etiam si a me minus dicuntur,
vestris animis et cogitatione comprendere", 79–80 "mitto quod aliena, mitto quod pos-
sessa per vim, mitto quod convicta ab Apollonidensibus, mitto quod a Pergamenis re-
pudiata, mitto etiam quod a nostris magistratibus in integrum restituta, mitto quod nullo
iure neque re neque possessione tua; [80] illud quaero sintne ista praedia censui censendo,
habeant ius civile, sint necne sint mancipi, subsignari apud aerarium aut apud censorem
possint."; Cic. *Har.* 40 "sed quoniam de iis omnibus quae haruspices commissa esse di-
cunt satis est dictum"; Cic. *Lig.* 9 (after a series of questions) "nimis urgeo; commoveri
videtur adulescens"; Cic. *Deiot.* 37 "quid de virtute eius dicam? de magnitudine animi,
gravitate, constantia?"; Cic. *Phil.* 1.22 "sed quid plura de lege disputo?", 2.27 "longum
est persequi ceteros, idque rei publicae praeclarum, fuisse tam multos, ipsis gloriosum.",
2.56 "sed omitto ceteros", 10.2 "itaque mihi, qui plurimis officiis sum cum Bruto et max-
ima familiaritate coniunctus, minus multa de illo dicenda sunt. quas enim ipse mihi par-
tis sumpseram, eas praecepit oratio tua. sed mihi, patres conscripti, necessitatem attulit
paulo plura dicendi sententia eius, qui rogatus est ante me".

22 Attic Orators: e.g. Lys. *or.* 3.45, 13.67, 14.28; Dem. *or.* 8.52, 10.54, 18.69–70, 18.100, 18.110,
19.145, 19.276, 19.288, 20.33, 20.52, 20.107, 21.182, 23.111, 24.51, 24.61, 24.177, 24.194, 27.58;
Aischin. *Tim.* 43, 81, 106, 170; Cicero: Cic. *Verr.* 2.2.156 "enumerare omnis non est necesse",
2.3.53 "etenim quoniam summam ac numerum iniuriarum vobis, iudices, non possum
expromere, singillatim autem de unius cuiusque incommodo dicere infinitum est, genera
ipsa iniuriarum, quaeso, cognoscite", 2.3.58 "genera iam dudum innumerabilium iniuri-
arum, iudices, singulis nominibus profero, infinitam multitudinem iniuriarum praeter-
mitto", 2.4.49 "neque ego nunc istius facta omnia enumerare conor, neque opus est nec
fieri ullo modo potest", 2.4.59 "iam enim non libet omnia criminari"; Cic. *Prov. cons.* 21
"atque, ut vetera, quae sunt innumerabilia, mittam", 22 "multa praetereo"; Cic. *Planc.* 74
"quod omnes enumerari nullo modo possent, scelus autem esset quemquam praeteriri";
Cic. *Deiot.* 12 "itaque Cn. Pompeii bella, victorias, triumphos, consulatus admirantes nu-
merabamus: tuos enumerare non possumus."

23 Attic Orators: e.g. Dem. *or.* 5.9, 9.26, 9.59, 20.58, 21.116, 24.107; Aischin. *leg.* 71; Cicero:
Cic. *S. Rosc.* 87 "quam sis audax, ut alia obliviscar, hinc omnes intellegere potuerunt quod
etc."; Cic. *Verr.* 2.1.96 "consistam in uno nomine; multa enim sunt ex eodem genere", 2.2.1
"multa mihi necessario, iudices, praetermittenda sunt, ut possim aliquo modo aliquando
de his rebus quae meae fidei commissae sunt dicere", 2.2.82 "dixi iam ante me non om-
nia istius quae in hoc genere essent enumeraturum, sed electurum ea quae maxime ex-
cellerent", 2.2.125 "nolite exspectare dum omnis obeam oratione mea civitates: hoc uno
complector omnia", 2.3.104 "horum ego agrorum missos faciam quaestus trienni; unum
annum eligam, quo facilius id quod institui explicare possim", 2.4.102 "immo vero alia
complura; ex quibus eligam spoliationem nobilissimi atque antiquissimi fani", 2.4.104 "ne
multis morer", 2.4.105 "nimium mihi diu videor in uno genere versari criminum; sen-
tio, iudices, occurrendum esse satietati aurium animorumque vestrorum. quam ob rem
multa praetermittam; ad ea autem quae dicturus sum reficite vos, quaeso, iudices, per

◇ This again blends into the fourth sub-type, where from a number of similar arguments only the strongest[24] are chosen.[25]

All these "*praeteritiones* of the rest" support a particular argument rather than the whole case, as the omitted items provide additional backing to the point which is explicitly made. Yet by using them frequently within a speech (like in *Verr.* 2 or *Phil.* 2, which together provide about half of the examples from Cicero's speeches) the orator can also convey a sense of abundance of evidence, but without being under pressure to prove it.

However, this argument is sound only if the instances the orator leaves out are sufficiently analogous to the example he has given, in the respect relevant to the matter at hand. In fact, Cicero rarely claims explicitly that this is the case—a claim which would open the argumentation to closer examination by the opposing party. In a few cases of the third sub-type (i.e. announcing a single example out of a larger number) he does say that the examples he will

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deos immortalis—eos ipsos de quorum religione iam diu dicimus,—dum id eius facinus commemoro et profero quo provincia tota commota est", 2.5.34 "omnia vetera praetermittam, duo sola recentia sine cuiusquam infamia ponam, ex quibus coniecturam facere de omnibus possitis", 2.5.141 "quasi enim ulla possit esse causa cur hoc cuiquam civi Romano iure accidat, ita quaero quae in Servilio causa fuerit. ignoscite in hoc uno, iudices; in ceteris enim non magnopere causas requiram"; Cic. *Font.* 12 "ut vetera mittam"; Cic. *Leg. agr.* 2.24 "ne cum P. Rullo—taceo de ceteris—"; Cic. *Sull.* 70 "ut alia mittamus", 71 "omitto ceteros, ne sit infinitum"; Cic. *Phil.* 2.38 "spe victoriae elati obstitissent, ut alia omittam", 2.47 "sed reliquum vitae cursum videte; quem quidem celeriter perstringam", "etsi incidamus, opinor, media ne nimis sero ad extrema veniamus.", 12.12 "ut media praeteream", 13.2 "exempli causa paucos nominavi; genus infinitum inmanitatemque ipsi cernitis reliquorum", 13.42 "omitto alia; 'fidem Dolabellae', sanctissimi viri, deserere homo pius non potest."

[24] Cf. p. 33 on the omission of weak arguments.

[25] Attic Orators: e.g. Lys. *or.* 3.5, 31.20; Dem. *or.* 19.205, 21.15, 21.129 (with *post-praeteritio* 131), 36.12, 36.22; Aischin. *Tim.* 109, Aischin. *Ctes.* 165; Cicero: Cic. *S. Rosc.* 123 "quae praeteriri nullo modo poterant, ea leviter, iudices, attigi, quae posita sunt in suspicionibus de quibus, si coepero dicere, pluribus verbis sit disserendum, ea vestris ingeniis coniecturaeque committo"; Cic. *Div. in Caec.* 33 "atque ego haec quae in medio posita sunt commemoro: sunt alia magis occulta furta, quae ille, ut istius, credo, animos atque impetus retardaret, benignissime cum quaestore suo communicavit"; Cic. *Verr.* 2.1.62 "sed ego omnia quae negari poterunt praetermittam; etiam haec quae certissima sunt et clarissima relinquam; unum aliquod de nefariis istius factis eligam, quo facilius ad Siciliam possim aliquando, quae mihi hoc oneris negotique imposuit, pervenire", 2.4.97 "iam enim mihi non modo breviter de uno quoque dicendum, sed etiam praetereunda videntur esse permulta, ut ad maiora istius et inlustriora in hoc genere furta et scelera veniamus", 2.4.131 "iam illa quae leviora videbuntur ideo praeteribo"; Cic. *Leg. agr.* 2.78 "at videmus, ut longinqua mittamus, agrum Praenestinum a paucis possideri"; Cic. *Sest.* 7 "rei publicae dignitas, quae me ad sese rapit, haec minora relinquere hortatur"; Cic. *Phil.* 2.2 "quid enim plenius, quid uberius quam mihi et pro me et contra Antonium dicere?", 2.112 "sed praeterita omittamus: hunc unum diem, unum, inquam, hodiernum diem, hoc punctum temporis, quo loquor, defende, si potes.", 7.24 "ut omittam multitudinem".

pass over are of the same or a similar kind as the one he is about to discuss in detail;[26] conversely, in the fourth sub-type (i.e. announcing the strongest out of a number of examples) he concedes from the beginning that the instances left out are *not* fully equivalent to the one he treats in detail. But as can be inferred from the vast majority of cases, a certain vagueness is a dominating characteristic of the "*praeteritio* of the rest*", making it at least slightly a deceptive device. It is more than likely, at any rate, that Cicero, when choosing one supportive example from a larger number, chose the strongest example much more often than in the explicit cases classifiable as the "fourth sub-type" above; the vague allusion to further, similar examples would rather work in his favour.

Conversely, the orator can leave out an entire argument explicitly (implying that stronger ones are available), which results in the type of "*praeteritio* of argument". This can be done directly in the form "I shall not claim that ... ";[27] the more sophisticated form (which is much more frequently employed by Cicero) presents a fact but then takes the form "I shall not use this fact to argue that ... but to show that ... ", e.g. "non mehercule augendi criminis causa, iudices, dicam, sed, quem ipse accepi oculis animoque sensum, hunc vere apud vos et, ut potero, planissime exponam".[28] In this latter case,

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26 Cic. *Verr.* 2.1.96 "consistam in uno nomine; multa enim sunt ex eodem genere", 2.2.125 "nolite exspectare dum omnis obeam oratione mea civitates: hoc uno complector omnia" (with a particularly clear conclusion towards the entirety of the examples), 2.5.34 "omnia vetera praetermittam, duo sola recentia sine cuiusquam infamia ponam, ex quibus coniecturam facere de omnibus possitis"; Cic. *Phil.* 13.2 "exempli causa paucos nominavi; genus infinitum inmanitatemque ipsi cernitis reliquorum".

27 Examples: Attic Orators: e.g. Dem. *or.* 1.19, 5.11, 5.15, 10.65, 9.73, 18.111, 18.120, 18.206, 18.293, 19.157, 21.25–28, 21.122; Cicero: Cic. *S. Rosc.* 75 "praetereo illud quod mihi maximo argumento ad huius innocentiam poterat esse, in rusticis moribus, in victu arido, in hac horrida incultaque vita istius modi maleficia gigni non solere", 106 "non enim ego ita disputabo"; Cic. *Verr.* 2.5.7 "durum hoc fortasse videatur, neque ego ullam in partem disputo", 2.5.46 "nunc non modo te hoc crimine non arguo, sed ne illa quidem communi vituperatione reprehendo", 2.5.133 "etiam illud praecidas licet"; Cic. *Cluent.* 103 "non numero hanc absolutionem"; the examples for ἀντίφρασις in Quintilian (Quint. *Inst.* 9.2.47) belong here, too.

28 Attic Orators: e.g. Lys. *or.* 19.56; Dem. *or.* 3.36, 4.27, 21.8, 21.143, 24.200; Aischin. *Tim.* 41, Aischin. *Ctes.* 26; Cicero: Cic. *Verr.* 2.3.46; further examples: Cic. *Quinct.* 30 "decernit—quam aequum, nihil dico, unum hoc dico, novum; et hoc ipsum tacuisse mallem, quoniam utrumque quivis intellegere potuit—sed iubet [...]"; Cic. *Verr.* 2.5.154 "sed non licet me isto tanto bono, iudices, uti, non licet", 2.5.4 "non agam summo iure tecum, non dicam id quod debeam forsitan obtinere, cum iudicium certa lege sit—non quid in re militari fortiter feceris, sed quem ad modum manus ab alienis pecuniis abstinueris abs te doceri oportere; non, inquam, sic agam, sed ita quaeram, quem ad modum te velle intellego, quae tua opera et quanta fuerit in bello", 2.5.19 "non agam ista ratione; tua sequar iudicia,

the orator insinuates that a certain way of argumentation is open to him, and that his audience might expect him to use it; he then distances himself from this way of argumentation, most frequently for moral reasons. He thus strengthens his own moral position, more than by simply not using this particular way of argumentation—especially since he cannot be certain that this possible argumentation would indeed have occurred to his audience without his first mentioning it. Even when it is probable that the audience would not have thought of this point by themselves (when therefore no distancing is needed), the orator still makes a moral point.

Sometimes the argumentation which is waved aside concerns the aim of the entire speech, i.e. the *praeteritio* takes the form of "I speak to you not in order to . . . , but to . . . ". This is, quite naturally, most often the case in prosecution speeches in public trials, where the orator must avoid the suspicion of pursuing private and/or base motives. This type is therefore found more frequently in the Attic Orators than in Cicero's speeches.[29]

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tuam defendam auctoritatem, quoad tu voles"; Cic. *Leg. agr.* 3.4 "caput est legis XL de quo ego consulto, Quirites, neque apud vos ante feci mentionem, ne aut refricare obductam iam rei publicae cicatricem viderer aut aliquid alienissimo tempore novae dissensionis commovere, *neque vero nunc ideo disputabo quod* hunc statum rei publicae non magno opere defendendum putem, praesertim qui oti et concordiae patronum me in hunc annum populo Romano professus sim, *sed ut doceam* Rullum posthac in eis saltem tacere rebus in quibus de se et de suis factis taceri velit"; Cic. *Sull.* 9 "qua re necesse est, quod mihi consuli praecipuum fuit praeter alios, id iam privato cum ceteris esse commune. neque ego hoc partiendae invidiae, sed communicandae laudis causa loquor; oneris mei partem nemini impertio, gloriae bonis omnibus.", 14 "sed ego nondum utor hac voce ad hunc defendendum; ad purgandum me potius utar, ut mirari Torquatus desinat me qui Autronio non adfuerim Sullam defendere"; Cic. *Sull.* 85 "non dico id quod grave est, dico illud quod in his causis coniurationis non auctoritati adsumam, sed pudori meo"; Cic. *Planc.* 93"ego autem Cn. Pompeium non dico auctorem, ducem, defensorem salutis meae—nam haec privatim fortasse officiorum memoriam et gratiam quaerunt—sed dico hoc quod ad salutem rei publicae pertinet: [. . .]"; Cic. *Scaur.* 31–32 "hic ego Appium Claudium, consulem fortissimum atque ornatissimum virum mecumque, ut spero, fideli in gratiam reditu firmoque coniunctum, nullo loco, iudices, vituperabo. fuerint enim eae partes aut eius quem id facere dolor et suspicio sua coegit, aut eius qui has sibi partis depoposcit, quod aut non animadvertebat quem violaret, aut facilem sibi fore in gratiam reditum arbitrabatur; [32] ego tantum dicam quod et causae satis et in illum minime durum aut asperum possit esse", 39 "neque ego Sardorum querelis moveri nos numquam ⟨dico⟩ oportere"; Cic. *Phil.* 14.17 "haec interposui, patres conscripti, non tam ut pro me dixerim (male enim mecum ageretur, si parum vobis essem sine defensione purgatus)".

29 Attic Orators: e.g. Lys. *or.* 12.2, 26.15, 31.2, 33.3; Dem. *or.* 3.21–32, 9.1–5, 19.102, 23.1; Aischin. *Tim.* 1–2; Cicero: Cic. *Sull.* 89 "nuper is homo fuit in civitate P. Sulla ut nemo ei se neque honore neque gratia neque fortunis anteferret, nunc spoliatus omni dignitate quae erepta sunt non repetit; quod fortuna in malis reliqui fecit, ut cum parente, cum liberis, cum fratre, cum his necessariis lugere suam calamitatem liceat, id sibi ne eripiatis vos, iudices, obtestatur." In Cicero's only prosecution trial, he does not phrase it this way, but the point is still present; cf. Tempest (2007, p. 22), referring to Cic. *Div. Caec.* 2:

Another variant of the "*praeteritio* of argument" can be observed where the *praeteritio* circles around a single word: "non condicio, non sponsio, non denique ulla umquam intercessit postulatio, *mitto aequa,* verum ante hoc tempus ne fando quidem audita",[30] i.e. Cicero ostentatiously backs away from the term *aequa*, which would carry further implications, and settles with a less risky word—but of course these implications still stick with the audience. In another case, the contrast is not between different conclusions from a fact but between different audiences the argument is aimed at.[31] Related to the latter variant is the choice not to use particular stylistic devices before a particular audience: e.g. the common crowd surrounding a criminal court (*corona*) is well served with some rough jokes, which would be inappropriate in a philosophical discussion among learned men, like in *De finibus* (Cicero speaking to Cato): "non ego tecum iam ita iocabor, ut isdem his de rebus, cum L. Murenam te accusante defenderem. apud imperitos tum illa dicta sunt, aliquid etiam coronae datum; nunc agendum est subtilius."[32]

Especially in the passages where a fact is mentioned but then explicitly not used for a particular argumentation, the underlying concept of a "natural time limit" is present only very faintly; here the *praeteritio* announces rather a substitution than an omission, by which the speech does not decrease in length. Instead, the orator plays with the audience's expectation: he presents a particular fact or consideration (which, in some cases, he might

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"The *topos* of the reluctant prosecutor, deployed here by Cicero, had its roots firmly in the ideology of the Athenian democracy".

[30] Cic. *Quinct.* 71.

[31] Cic. *Rab. Post.* 13 "hic ego nunc non vos prius implorabo, equites Romani, quorum ius iudicio temptatur, quam vos, senatores, quorum agitur fides in hunc ordinem"; Cic. *Flacc.* 66 "sequitur auri illa invidia Iudaici. hoc nimirum est illud quod non longe a gradibus Aureliis haec causa dicitur. ob hoc crimen hic locus abs te, Laeli, atque illa turba quaesita est; scis quanta sit manus, quanta concordia, quantum valeat in contionibus. sic submissa voce agam tantum ut iudices audiant; neque enim desunt qui istos in me atque in optimum quemque incitent; quos ego, quo id facilius faciant, non adiuvabo."

[32] Cic. *Fin.* 4.74; cf. van der Wal (2007, p. 189).

The concept of different expectations and reactions from different audiences is also used in other ways, e.g. "si haec apud Scythas dicerem, non hic in tanta multitudine civium Romanorum, non apud senatores, lectissimos civitatis, non in foro populi Romani de tot et tam acerbis suppliciis civium Romanorum, tamen animos etiam barbarorum hominum permoverem" (Cic. *Verr.* 2.5.150); "si haec non ad civis Romanos, non ad aliquos amicos nostrae civitatis, non ad eos qui populi Romani nomen audissent, denique si non ad homines verum ad bestias, aut etiam, ut longius progrediar, si in aliqua desertissima solitudine ad saxa et ad scopulos haec conqueri ac deplorare vellem, tamen omnia muta atque inanima tanta et tam indigna rerum acerbitate commoverentur" (Cic. *Verr.* 2.5.171).

have wanted to avoid altogether, but cannot do so) and connects it with a particular argumentation that is somehow adverse to his case. The audience may have made the connection themselves, and thus expected this particular argumentation, or they may not—whether they actually did, and whether the connection is even plausible, is irrelevant eventually: the orator implies that the connection could have easily been made, and at the same time rejects it in favour of another connection to another line of argumentation. He thus creates a moment of favourable surprise in his audience, if they agree that they expected (or might have expected) otherwise, and of affirmation if they reject the suggested connection by themselves. The argument thus gains both emphasis and acceptance with the audience.

2.2.3 Theory

As shown in the preceding sections, the Attic Orators and Cicero were in their practical work obviously aware of good reasons and of a variety of suitable ways to omit superfluous topics from their speeches.[33] The significance of the issue is not fully reflected by the ancient writers of rhetorical theory, as they recognise, in varying degrees, the value of omitting superfluous material, but overall fail to treat the opportunities of explicit omission, i.e. *praeteritio*.

The *Rhetorica ad Alexandrum* shows a differentiated and practical approach to the topic. In the first chapter, common topics of oratory are listed (which might be seen as advice on εὕρησις / *inventio*), under the categories of justice, legality, expediency, honour, pleasure, facility, practicability and necessity, of which the first three are then further illustrated. In these further instructions, the orator is advised to use any argument available, most directly under the heading of expediency.[34] In a more special discussion on exhortation to war,

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[33] A different attitude is expressed one and a half centuries later in Pliny's letter on Regulus: "et hercule ut aliae bonae res ita bonus liber melior est quisque quo maior; [...] idem orationibus evenit" (Plin. minor *Epist.* 1.20.4–5). Pliny, however, was (unlike Cicero) subject to set time limits for court speeches, and accustomed to an overall different position of oratory in society; without ever actually having the freedom to speak for as long as he wished, he was prone to seeing exactly this as an ideal to aspire to.

[34] *Rhet. Alex.* 1422b26–28 "τὸ δὲ συμφέρον αὐτὸ μὲν οἷόν ἐστιν ἐν τοῖς πρότερον ὥρισται, δεῖ δὲ λαμβάνειν εἰς τοὺς λόγους ⟨ὡς ἐκ⟩ τῶν προειρημένων καὶ ἐκ τοῦ συμφέροντος, ἂν ὑπάρχῃ τι", cf. *Rhet. Alex.* 1423a12–13 "καὶ περὶ μὲν τούτων ἐντεῦθεν εὐπορήσομεν.", and many more similar passages.

the orator is even told to use as many arguments as possible.[35] In contrast, the thought of a careful choice among available arguments occurs only in a rather special context of different types of trial;[36] the *Auctor* does not propose in general that the orator has to choose between available arguments, discarding some. However, beyond the collection of arguments, there is repeated advice that as soon as an argument, or the whole argumentation, is accepted by the audience (or likely to be), any further elaboration or general comment is superfluous and should be omitted or kept short[37] (while, conversely, the συντομία required in the *narratio* is achieved by omitting τὰ μὴ ἀναγκαῖα[38]). The same practical approach as for arguments is used again for proofs: the orator should, in general, use all available proofs,[39] but none at all if the statement is convincing in itself or is conceded (by the opponent or the audience).[40]

Aristotle in his *Rhetoric*, in the section on the canonical parts of a (forensic) speech, refutes the common view that every speech must contain all of these parts, arguing that any of the parts can be deemed superfluous, or does not

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[35] *Rhet. Alex.* 1425a17–20 "ὅταν μὲν οὖν ἐπὶ τὸ πολεμεῖν παρακαλῶμεν, τούτων τε τῶν προφάσεων ὅτι πλείστας συνακτέον καὶ μετὰ ταῦτα δεικτέον, [ὡς] ἐξ ὧν ἔστι περιγενέσθαι τῷ πολέμῳ, τούτων ὅτι πλεῖστα τοῖς παρακαλουμένοις ὑπάρχοντά ἐστι.", cf. on exhortation *Rhet. Alex.* 1439a32–33 "ὅταν δὲ πάντα διέλθῃς, ἐξ ὧν ἐνδέχεταί σοι βεβαιῶσαι τὴν προτροπήν κτλ."

[36] *Rhet. Alex.* 1426b37–1427a3 "δεῖ δὲ καὶ τοῦτο παρατηρεῖν τοὺς κατηγοροῦντας, ἐπὶ ποίοις τῶν ἀδικημάτων οἱ νόμοι τὰς τιμωρίας τάττουσι καὶ περὶ ἃ τῶν ἀδικημάτων οἱ δικασταὶ τὰς ζημίας τιμῶσιν. ὅταν μὲν οὖν ὁ νόμος διωρικὸς ᾖ, τοῦτο δεῖ μόνον σκοπεῖν τὸν κατήγορον, ὅπως ἐπιδείξῃ τὸ πρᾶγμα γεγενημένον. ὅταν δὲ οἱ δικασταὶ τιμῶσιν, αὐξητέον ἐστὶ τὰ τοῦ ἐναντίου ἀδικήματα κτλ."; similarly 1427b1–8 "δεῖ δὲ τὸν ἀπολογούμενον πάλιν θεωρεῖν, ἐφ' οἷς τῶν ἀδικημάτων οἵ τε νόμοι τὰς τιμωρίας ἔταξαν καὶ ἐφ' οἷς οἱ δικασταὶ τὰς ζημίας τιμῶσι· καὶ ὅταν ὁ νόμος ὁρίζῃ τὰς τιμωρίας, δεικτέον, ὡς οὐκ ἐποίησε τὸ παράπαν, ἢ ὡς ἔννομα καὶ δίκαια ἐποίησεν· ὅτε δὲ οἱ δικασταὶ καθεστήκασι τιμηταὶ τῆς ζημίας, ὁμοίως πάλιν οὐ φατέον, ὅτι ταῦτα οὐκ ἐποίησεν, ἀλλὰ μικρὰ βεβλαμμένον τὸν ἐναντίον καὶ ἀκούσια ἀποφαίνειν πειρατέον." This may be seen as a precursor of *stasis* theory in specific context of ἀγῶνες τιμητοί vs. ἀγῶνες ἀτιμητοί.

[37] *Rhet. Alex.* 1431b23–26 "ὅταν μὲν οὖν τὸ μαρτυρούμενον ᾖ πιθανὸν καὶ ὁ μάρτυς ἀληθινός, οὐδὲν δέονται αἱ μαρτυρίαι ἐπιλόγων, ἐὰν μὴ βούλῃ γνώμην ἢ ἐνθύμημα συντόμως εἰπεῖν τοῦ ἀστείου ἕνεκεν·"; *Rhet. Alex.* 1436b19–22 "ἐὰν μὲν οὖν εὖνοι τυγχάνωσιν ὄντες, περίεργον λέγειν περὶ εὐνοίας· ἂν δὲ πάντως βουλώμεθα, χρὴ συντόμως μετ' εἰρωνείας εἰπεῖν τοῦτον τὸν τρόπον· κτλ."

[38] *Rhet. Alex.* 1438a38–1438b1 "συντόμως δέ [δηλώσομεν], ἐὰν ἀπὸ τῶν πραγμάτων καὶ τῶν ὀνομάτων περιαιρῶμεν τὰ μὴ ἀναγκαῖα ῥηθῆναι, ταῦτα μόνα καταλείποντες, ὧν ἀφαιρεθέντων ἀσαφὴς ἔσται ὁ λόγος."

[39] *Rhet. Alex.* 1438b35–36 (after a list of sources for proofs) "χρηστέον δὲ καὶ ἄν τις τῶν ἄλλων πίστεων παρεμπέσῃ."

[40] *Rhet. Alex.* 1439a8–9 "ἐὰν δὲ πιστεύηται τὰ πράγματα εὐθέως ῥηθέντα, τὰς μὲν πίστεις παραλειπτέον"; *Rhet. Alex.* 1443a3–4 "ἐὰν δὲ ὁμολογῆται τὰ πράγματα, τὰς μὲν πίστεις ἐατέον".

even make sense, in some speaking situation.[41] Remarkably, this—parts of a speech—is the only point where he uses this selective approach; he does not apply it when he presents his rich repertories of possible arguments for all sorts of speaking occasions, which make up large parts of the first two books.

Quintilian names an earlier author named Hermagoras[42] who counted *iudicium* (usually identified with the Greek term κρίσις[43]) as a major task of the orator,[44] but does not give any details on how or to which purpose Hermagoras wanted the *iudicium* to be exercised.

The *Rhetorica ad Herennium* provides, in the section on *narratio*, a list of instructions how to achieve *brevitas*, which can be summarised as "leave out everything which is not strictly necessary".[45] In another section, it gives advice similar to that in the *Rhetorica ad Alexandrum*: that the orator must avoid to speak *diutius, quam satis sit*, however not by choice of arguments but in their elaboration (i.e. *elocutio*).[46] Another interesting passage[47] deals with *argumentatio*, the line of reasoning which in its most complete form consists of five steps (*propositio, ratio, rationis confirmatio, exornatio, conplexio*); here the *Auctor* states that in some cases not all five steps are necessary, and he enumerates which of the five steps *can* be left out, and under which circumstances—but he does not explicitly recommend to omit superfluous

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[41] Aristot. *Rhet.* 1414a37–b7 νῦν δὲ διαιροῦσι γελοίως· διήγησις γάρ που τοῦ δικανικοῦ μόνου λόγου ἐστίν, ἐπιδεικτικοῦ δὲ καὶ δημηγορικοῦ πῶς ἐνδέχεται εἶναι διήγησιν οἵαν λέγουσιν, ἢ τὰ πρὸς τὸν ἀντίδικον, ἢ ἐπίλογον τῶν ἀποδεικτικῶν; προοίμιον δὲ καὶ ἀντιπαραβολὴ καὶ ἐπάνοδος ἐν ταῖς δημηγορίαις τότε γίνεται ὅταν ἀντιλογία ᾖ. καὶ γὰρ ἡ κατηγορία καὶ ἡ ἀπολογία πολλάκις, ἀλλ᾽ οὐχ ἡ συμβουλή· ἀλλ᾽ ὁ ἐπίλογος ἔτι οὐδὲ δικανικοῦ παντός, οἷον ἐὰν μικρὸς ὁ λόγος ᾖ τὸ πρᾶγμα εὐμνημόνευτον· συμβαίνει γὰρ τοῦ μήκους ἀφαιρεῖσθαι.

[42] The recent Budé edition (Woerther, 2012, 205–208) prefers an identification with Hermagoras, disciple of Theodoros of Gadara, instead of the usual attribution to Hermagoras of Temnos.

[43] Matthes (1958, p. 187–188). The term is also thought to be referred to in Dionysios' of Halicarnassos praise of Lysias as κριτικός (Dion. Hal. *Lys.* 15).

[44] Quint. *Inst.* 3.3.9.

[45] *Rhet. Her.* 1.14 "rem breviter narrare poterimus, si inde incipiemus narrare, unde necesse erit; et si non ab ultimo initio repetere volemus; et si summatim, non particulatim narrabimus; et si non ad extremum, sed usque eo, quo opus erit, persequemur; et si transitionibus nullis utemur, et si non deerrabimus ab eo, quod coeperimus exponere; et si exitus rerum ita ponemus, ut ante quoque quae facta sint, scire possint, tametsi nos reticuerimus".

[46] *Rhet. Her.* 2.27 "nam fere non difficile est invenire, quid sit causae adiumento, difficillimum vero est inventum expolire et expedite pronuntiare. haec enim res facit, ut neque diutius, quam satis sit, in eisdem locis commoremur".

[47] *Rhet. Her.* 2.28–30.

steps,[48] even though the full five-step type is rarely used in practical oratory.[49]

In Cicero's *De Inventione*, we also find a definition of *brevitas* for the *narratio*, providing even more detailed instructions on how to cut off the superfluous (an instruction itself so lengthy and tautological as to yield a certain unintended irony).[50] Though he is not partial to *brevitas* in general, at least in his later works (cf. p. 68), Cicero does regard it as important in the *narratio*, and apart from the (fairly self-evident) advice of cutting out unrelated parts, unnecessary details, self-evident facts and duplicates, the most important bit seems to me to lie in a point which the orator might not have in mind from the outset when working on his *inventio*: it is not enough to sort the facts, evidence and arguments into positives and negatives, but there is a third category of neutral material, and this the orator must not use (in the *narratio*, that is—by implication there is no restriction for this kind of material in other parts).

Yet this would still imply that all the supportive material, even if a vast amount, should be used (even in the *narratio*), as long as it belongs to and is indeed supportive of the case. Some thirty years later, in *De oratore*, we find that Cicero's opinion has somewhat shifted: first he gives, in the section on

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[48] E.g. *Rhet. Her.* 2.30 "ergo absolutissima est argumentatio ea, quae ex quinque partibus constat; sed ea non semper necesse est uti."

[49] An extensive example is found in Cic. *Quinct.* 37–60: *propositio*, first sentence of 37 (there was no reason for Naevius to submit a request for transfer of ownership); *ratio*, rest of 37 (Quinctius did not owe anything); *rationis confirmatio*, 38–41 (further reasoning about the question of debt); *exornatio*, 42–59 (wide-stretching account of Quintius' character and his present situation under trial); *conplexio*, 60 (claim that the *propositio* has been thoroughly proven).

[50] Cic. *Inv.* 1.28 "oportet igitur [narratio] tres habere res: ut brevis, ut aperta, ut probabilis sit. brevis erit, 1. si, unde necesse est, inde initium sumetur et non ab ultimo repetetur, 2. et si, cuius rei satis erit summam dixisse, eius partes non dicentur—nam saepe satis est, quid factum sit, dicere, ut ne narres, quemadmodum sit factum—, 3. et si non longius, quam quo opus est, in narrando procedetur, 4. et si nullam in rem aliam transibitur, 5. et si ita dicetur, ut nonnumquam ex eo, quod dictum est, id, quod non est dictum intellegatur, 6. et si non modo id, quod obest, verum etiam id, quod nec obest nec adiuvat, praeteribitur, 7. et si semel unum quicque dicetur, 8. et si non ab eo, quo in proxime desitum erit, deinceps incipietur." It is obvious that these rules do not apply to *De Inventione* itself (which is no contradiction, since it is not a *narratio*): no 2 would violate itself (the *quid factum sit* and *quemadmodum factum sit* constitute, at least as an example, the *partes* of the *summa*); if the reader can be entrusted with this elaboration, no 2 would also violate no 5; unless the whole enumeration is strictly necessary for the reader, the entire passage would violate no 5; no 7 and 8 are not identical, but similar enough so that together they would violate no 7.

"pathos", the advice not to put exaggerated effort into *nugae* or into points by which the audience cannot be effectively influenced (i.e. this advice aims at omission of aspects which are not simply "too much" but rejected because they cannot be brought to practical relevance for the speech).[51] Later a more restrictive point is made (by Iulius Caesar Strabo speaking in the dialogue): "memoria teneo dixisse me cum ceteris tuis [i.e. Antonii] laudibus hanc esse vel maximam quod non solum quod opus esset diceres, sed etiam quod non opus esset non diceres".[52] Although this is presented not as a rule, but as a praiseworthy habit, it implies that it can be better not to say *quod non opus sit*, even if it is a favourable argument in itself: i.e., that a positive argument can be detrimental just by being superfluous to the speech or case. This is also in line with the advice to discard weak arguments (see below p. 33). Another, similar passage is not quite as precise: here Crassus praises Cotta, saying that he "haeret in causa semper et quid iudici probandum sit cum acutissime vidit, *omissis ceteris argumentis* in eo mentem orationemque defigit";[53] this could mean omission of arguments favourable to the case itself, but less useful than others for persuading a particular group of judges. Finally, another decade later, the *Orator* contains the most articulate and succinct advice to the point (and this refers, as already the passages from *De oratore*, not only to the *narratio*, but to oratory in general): "faciet igitur hic noster [. . .] ut, quoniam loci certi traduntur, percurrat omnis, utatur aptis, generatim dicat [. . .]. nec vero utetur imprudenter hac copia, sed omnia expendet et seliget [. . .]. iudicium igitur adhibebit nec inveniet solum quid dicat sed etiam expendet".[54] Here the advice is clearly not to use the whole *copia* of favourable arguments, but to examine (*expendere*) them and choose some of them, discarding the others (*seligere*).

Quintilian's approach to (omission of) superfluous points is guided by practical considerations (perhaps influenced by the official time limits for court speeches which became usual in the Empire, cf. p. 59). The point of

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[51] Cic. *De orat.* 2.205 "nam neque parvis in rebus adhibendae sunt hae dicendi faces neque ita animatis hominibus, ut nihil ad eorum mentis oratione flectendas proficere possimus, ne aut inrisione aut odio digni putemur, si aut tragoedias agamus in nugis aut convellere adoriamur ea, quae non possint commoveri."

[52] Cic. *De orat.* 2.296.

[53] Cic. *De orat.* 3.31.

[54] Cic. *Orat.* 47–48.

carefully choosing from available arguments is also present in his *Institutio*, though only in the special context of the *suasoria*,[55] and the instructions on achieving *brevitas* in the *narratio* are also in line with the tradition (though put much more succinctly here).[56] But he does not in general recommend cutting off anything just because it may be "too much"; the statement "vitium est ubique quod nimium est",[57] though phrased very generally, is in its context clearly related to *ornatus*.

More direct advice is given by Quintilian when it comes to omitting ineffective parts of the speech: in general, arguments on points which the orator cannot influence;[58] furthermore, particular parts or aspects of a speech can in certain cases be superfluous and must therefore be omitted: the *prooemium*,[59] especially in the *genus deliberativum*,[60] and the *narratio* in private *orationes deliberativae*;[61] a less promising *status*, if a stronger one is available;[62] invective if it has no argumentative value;[63] and arguments used by the opponent, if

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[55] Quint. *Inst.* 3.8.26 "quas partes [i.e. honestum, utile, possibile] non omnes in omnem cadere suasoriam manifestius est quam ut docendum dum sit."

[56] Quint. *Inst.* 4.2.40 "brevis erit narratio ante omnia si inde coeperimus rem exponere unde ad iudicem pertinet, deinde si nihil extra causam dixerimus, tum etiam si reciderimus omnia quibus sublatis neque cognitioni quicquam neque utilitati detrahatur".

[57] Quint. *Inst.* 8.3.42.

[58] Quint. *Inst.* 6.4.15 "nocet etiam diu pugnare in iis quae optinere non possis." Cf. n. 51.

[59] Quint. *Inst.* 4.1.72 "nam et supervacuum aliquando [prooemium] est, si sit praeparatus satis etiam sine hoc iudex aut si res praeparatione non egeat."

[60] Quint. *Inst.* 3.8.6 "prohoemio quale est in iudicialibus non ubique eget [oratio deliberativa], quia conciliatus est ei quisque quem consulit."

[61] Quint. *Inst.* 3.8.10 "narrationem vero numquam exigit privata deliberatio, eius dumtaxat rei de qua dicenda sententia est, quia nemo ignorat id de quo consulit."

[62] Quint. *Inst.* 3.6.8 "namque et illud frequens est, ut ea quibus minus confidimus, cum tractata sunt, omittamus, interim sponte nostra velut donantes, interim ad ea quae sunt potentiora gradum ex iis fecisse contenti." Cf. Quint. *Inst.* 3.11.10 "causa facti non in omnis controversias cadit; nam quae fuerit causa faciendi ubi factum negatur?"; an exception is the *status* of competence/responsibility: Quint. *Inst.* 7.5.3 "cum ex praescriptione lis pendet, de ipsa re quaeri non est necesse. [. . .] quotiens tamen poterimus, efficiendum est ut de re quoque iudex bene sentiat; sic enim iuri nostro libentius indulgebit".

[63] Quint. *Inst.* 12.9.8 "at quidam, etiam si forte susceperunt negotia paulo ad a dicendum tenuiora, extrinsecus adductis ea rebus circumlinunt, ac si defecerunt alia conviciis implent vacua causarum, si contingit, veris, si minus, fictis, modo sit materia ingenii mereaturque clamorem dum dicitur. quod ego adeo longe puto ab oratore perfecto ut eum ne vera quidem obiecturum nisi id causa exiget credam."

they are plainly false[64] or too insignificant.[65] Besides, Quintilian ist the only one to mention the figure of "*praeteritio* of argument", even if only in a list of figures which are sub-types of πρόληψις, with an example from Cicero, but without further comment.[66]

In case of *ornatus* and everything related to emotion, the question "how much is too much" depends on the audience.[67] Quintilian implies here as elsewhere that on most "real" speaking occasions (as opposed to declamation and to the concept of an "ideal" orator) the audience will need more emotional appeal than would be strictly necessary for the argumentation, i.e. some *ornatus* may be superfluous in argumentative logic, but still rhetorically valuable.[68]

And in general the audience is Quintilian's most important point of reference here: with regard to the *laudatio* he advises to choose arguments according to what the audience values most;[69] and he instructs the orator not to burden the judge with weaker arguments if there is a strong one,[70] al-

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[64] Quint. *Inst.* 5.13.15–17 "id autem quod erit ab adversario dictum, quo modo refutari debeat, intuendum est. nam si erit palam falsum, negare satis est, ut pro Cluentio Cicero eum, quem dixerat accusator epoto poculo concidisse, negat eodem die mortuum. [16] palam etiam contraria et supervacua et stulta reprendere nullius est artis, ideoque nec rationem eorum nec exempla tradere necesse est. id quoque (obscurum vocant), quod secreto et sine teste aut argumento dicitur factum, satis natura sua infirmum est (sufficit enim, quod adversarius non probat), item si ad causam non pertinet. [17] sed tamen interim oratoris est efficere, ut quid aut contrarium esse aut a causa diversum aut incredibile aut supervacuum aut nostrae potius causae videatur esse coniunctum."

[65] Quint. *Inst.* 5.13.37 "alii diligentia lapsi verbis etiam vel sententiolis omnibus respondendum putant, quod est et infinitum et supervacuum; non enim causa reprehenditur sed actor".

[66] Quint. *Inst.* 9.2.17 "quaedam praedictio, ut 'dicam enim non augendi criminis gratia'".

[67] Quint. *Inst.* 12.10.52 "quod si mihi des consilium iudicum sapientium, perquam multa recidam ex orationibus non Ciceronis modo sed etiam eius qui est strictior multo, Demosthenis. neque enim adfectus omnino movendi erunt nec aures delectatione mulcendae, cum etiam prohoemia supervacua esse apud talis Aristoteles existimet; non enim trahentur his illi sapientes: proprie et significanter rem indicare, probationes colligere satis est."

[68] Quint. *Inst.* 5.12.12 "altera ex adfirmatione probatio est: 'ego hoc feci: tu mihi hoc dixisti', et 'o facinus indignum!' similia; quae non debent quidem deesse orationi et, si desunt, multum nocent, non tamen habenda sunt inter magna praesidia, cum hoc in eadem causa fieri ex utraque parte similiter possit."

[69] Quint. *Inst.* 3.7.24 "ipsorum etiam permiscenda laus semper (nam id benivolos facit), quotiens autem fieri poterit, cum materiae utilitate iungenda. minus Lacedaemone studia litterarum quam Athenis honoris merebuntur, plus patientia ac fortitudo. rapto vivere quibusdam honestum, aliis cura legum. frugalitas apud Sybaritas forsitan odio foret, veteribus Romanis summum luxuria crimen. eadem in singulis differentia."

[70] Quint. *Inst.* 4.5.8 "praeter haec in omni partitione est utique aliquid potentissimum, quod cum audivit iudex cetera tamquam supervacua gravari solet".

though some qualification follows with regard to different attitudes within the audience,[71] and later the point is extended by the warning not to weaken strong arguments by weaker ones and thus lose credibility.[72]

2.2.4 Special case: weak arguments

This last point constitutes a subgenre of "omission of superfluous points": omission of weak arguments, which are not really adverse but could possibly be used by the opponent, to show that *his* opponent's case is not sound. The obvious conclusion is not to rely upon them unless necessary; equally obvious is that one still has to rely on them if strong arguments are wanting.

The topic of including or omitting weak arguments was apparently more on the mind of ancient orators and writers of rhetorical theory than omission of other superfluous, and adverse, topics—at least in Rome.[73] Cicero puts the point succinctly in *De Oratore*: "quae autem utilia sunt atque firma, si ea tamen, ut saepe fit, valde multa sunt, ea, quae ex eis aut levissima sunt aut aliis gravioribus consimilia, secerni arbitror oportere atque ex oratione removeri".[74] We can see from his practice that if there are indeed enough strong arguments, not only are others omitted but their omission is conveniently used as a *praeteritio*, e.g. "praetermittam minora omnia, quorum simile forsitan alius quoque aliquid aliquando fecerit; nihil dicam nisi singulare, nisi id quod, si in alium reum diceretur, incredibile videretur"[75] and "dixi

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[71] Quint. *Inst.* 4.5.14 "at si quid in eo quod est fortius timebimus, utraque probatione nitemur. alius enim alio moveri solet".

[72] Quint. *Inst.* 5.12.8 "nec tamen omnibus semper, quae invenerimus, argumentis onerandus est iudex, quia et taedium adferunt et fidem detrahunt. neque enim potest iudex credere satis esse ea potentia, quae non putamus ipsi sufficere qui diximus"; Quint. *Inst.* 7.2.34 "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 quam tacere maluerit."

[73] The Attic Orators would only imply very allusively that the arguments they are going to leave out are less supportive to their case, e.g. Dem. *or.* 23.125 "ὅτι μὲν τοίνυν ὁ Χαρίδημος οὔτε τῶν ἀναμαρτήτων ἐστὶ πρὸς ὑμᾶς οὔτε τῶν ἵνα μή τι πάθῃ ταῦθ' εὑρισκομένων, ἐάσω· ἀλλ' ὡς οὐδὲ πιστὸς εἰς τὸν ἔπειτα χρόνον, ἀκούσατέ μου, καὶ σκοπεῖτε, ἂν ὑμῖν ὀρθῶς ἐξετάζειν δοκῶ": Demosthenes asks his audience to examine the argument which he does use, perhaps implying that they better not examine whether the one which he omits would be just as sound. Similarly Dem. *or.* 24.127; Aischin. *Ctes.* 51–53.

[74] Cic. *De orat.* 2.309. Later (2.313–314) he deals with the ideal arrangement: i.e. weaker arguments in the middle, surrounded by stronger ones at the beginning and end.

[75] Cic. *Verr.* 2.1.44.

iam ante me non omnia istius quae in hoc genere essent enumeraturum, sed electurum ea quae maxime excellerent";[76] another *praeteritio*, also from the *Verrines*, gives a quasi-definition of a weak argument: "non dicam id quod probare difficile est; hoc dicam quod ostendam multos ex te viros primarios audisse".[77] This notion may also be seen in one of Cicero's attacks against Antonius in *Phil.* 2: Cicero scorns Antonius' arguments which are so weak that they are unworthy of a human being, let alone an orator, implying that Antonius is either incapable as an orator, or has no stronger arguments than these.[78]

Quintilian adds nothing of significance on omission of weak arguments but mentions only arrangement, albeit with a rather vague rule: if both strong and weak arguments are to be used, the weak ones should be grouped together;[79] beyond this he gives no rule of arrangement (referring rather to the πρέπον again), except that the weakest arguments must not be the last in line.[80]

2.2.5 Conclusion

To sum up: we find both ancient orators and writers of rhetoric aware that superfluous material (i.e. material belonging to the case but without much argumentative weight) can support the case better by being left out, even though in theory, the inherent value of brevity is hardly acknowledged, and there is a tendency to concentrate on finding as many arguments as possible. However, the frequent and versatile use of *praeteritiones* in this field in practical oratory is not reflected in the theoretical works.

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[76] Cic. *Verr.* 2.2.82.

[77] Cic. *Verr.* 2.1.157.

[78] Cic. *Phil.* 2.9 "quid enim est minus non dico oratoris, sed hominis quam id obicere adversario, quod ille si verbo negarit, longius progredi non possit, qui obiecerit?" Cf. Wisse (2013, p. 169).

[79] Quint. *Inst.* 5.12.4 "firmissimis argumentorum singulis instandum, infirmiora congreganda sunt, quia illa per se fortia non oportet circumstantibus obscurare, ut qualia sunt appareant, haec inbecilla natura mutuo auxilio sustinentur."

[80] Quint. *Inst.* 5.12.14 "quaesitum etiam, potentissima argumenta primo ne ponenda sint loco, ut occupent animos, an summo, ut inde dimittant, an partita primo summoque, ut Homerica dispositione in medio sint infirma †aut animis† crescant. quae, prout ratio causae cuiusque postulabit, ordinabuntur, uno (ut ego censeo) excepto, ne a potentissimis ad levissima decrescat oratio."

2.3 Omission of the known and obvious

2.3.1 Introduction

Somewhat different from the area of simply "superfluous" topics are those points which are obvious or known to everybody anyway (while still being crucial points of the case, and strong arguments): here we find a certain awareness that it may be better not to include every aspect of the actual case into one's speech, i.e. these points should be cut out, or covered only briefly.

2.3.2 Practice

In their speeches both the Attic Orators and Cicero make virtuoso use of the point, again mostly for justifying a *praeteritio*, e.g. "neque necesse est me id persequi voce quod vos mente videatis";[81] sometimes with special variations: omitting something not exactly known to the audience, but indubitable,[82] or omitting not the facts themselves, but any additional elaboration,[83] or alluding to somebody but omitting the actual names.[84] However, it is not a matter of course that the point which the orators claims to be known is indeed known or obvious to his audience. And for the orator's argumentation this is not even crucial: if the audience accepts that the point *should* be known or obvious to them (and this is likely, as the alternative is to admit their ignorance or stupidity), the argument is made.

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[81] Cic. *Planc.* 56; further examples are: Attic Orators: e.g. Lys. *or.* 10.5; Dem. *or.* 8.11, 18.89, 18.110, 18.129, 18.168, 22.10, 19.94, 19.217, 19.329; Aischin. Ctes. 53; Cicero: Cic. *Q. Rosc.* 8 "ego quae clara sunt consuetudine diutius dicere non debeo", 24 "quid ego nunc illa dicam quae vobis in mentem venire certo scio?"; Cic. *Prov. cons.* 8 "itaque omnia illa, quae et saepe audistis et tenetis animis, etiamsi non audiatis, praetermitto"; Cic. *Phil.* 2.100 "quem ad modum illinc [Capua] abieris vel potius paene non abieris, scimus", 3.8 "atque ea quidem, quae dixi de Caesare deque eius exercitu, iam diu nota sunt nobis."

[82] Attic Orators: e.g. Dem. *or.* 18.88; Cicero: Cic. *Tull.* 55 "et ut rem perspicuam quam paucissimis verbis agam"; Cic. *Verr.* 2.2.119 "quid porro argumenter, qua de re dubitare nemo possit?"; Cic. *Leg. agr.* 2.65 "hic ego iam illud quod expeditissimum est ne disputo quidem, Quirites"; Cic. *Prov. cons.* 3 "quid est quod possimus de Syria Macedonia dubitare?"

[83] Cic. *Cluent.* 107 "quae cognita sunt ab omnibus verborum ornamenta non quaerunt", consequently followed by a *percursio*.

[84] Cic. *Leg. agr.* 2.64 "sed quod ego nondum statuo mihi esse dicendum, vos tamen id potestis cum animis vestris cogitare" (referring to the *homines* in the previous paragraph); Cic. *Sest.* 141 "summi eiusdem civitatis viri, quos nominatim appellari non est necesse"; Cic. *Cael.* 43 "ex quibus neminem mihi libet nominare; vosmet vobiscum recordamini." Cf. p. 81 on the "*praeteritio* of name".

On a more technical line, a point can be omitted as known because the orator himself, or a witness, or another advocate for the same party, has spoken about it before. This last case was quite usual: it must have happened regularly, both in Athenian and Roman courts, whenever one side was represented by several "advocates" (συνήγοροι or *patroni*), that these divided the material of the case between themselves, each speaking only about part of the topics. In particular, several of Cicero's defence speeches are the last of a set,[85] and in fact interpretation is sometimes rendered difficult by the fact that Cicero does not speak about much of the actual charge,[86] which probably had sufficiently been dealt with by his fellow orators.[87] But the situation is rarely made explicit by the orators: we find the "backward reference" to the same or another speech introducing a *praeteritio* in very few cases in Lysias' and Cicero's speeches,[88] but much less often than its counterpart, the forward reference or "*alio loco* figure".[89]

The explicit omission of something "known" to the audience is obviously much more attractive rhetorically if referring to a rather vague point. There are degrees to this vagueness: in some cases the point of omission is not really omitted at all (as in Dem. *or.* 8.11: "ἴστε γὰρ δήπου τοῦθ᾽ ὅτι οὐδενὶ τῶν πάντων πλέον κεκράτηκε Φίλιππος, ἢ τῷ πρότερος πρὸς τοῖς πράγμασι γίγνεσθαι"), but mostly the actual point is rather alluded to than spelt out (as in Cic. *Prov. cons.* 3: "quid est quod possimus de Syria Macedonia dubitare?"). Here the *praeteritio* is "real" and un-ironic, as there actually is something which is not said explicitly. Sometimes, however, the *praeteritio*

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[85] *Pro Murena, Pro Rabirio perduellionis reo, Pro Sulla, Pro Flacco, Pro Sestio, Pro Caelio, Pro Balbo, Pro Scauro, Pro Plancio.*

[86] Especially so in *Pro Murena, Pro Rabirio perduellionis reo, Pro Sestio, Pro Caelio.*

[87] Most prominently in *Pro Caelio*: while Cicero does here speak about two charges which had not been dealt with by the other orators of his party, the case as a whole consisted of even more charges, and altogether this speech is probably the best-known example where we get only a portion of the "big picture" due to this procedural issue.

[88] The orator himself: Lys. *or.* 5.1, 14.3; Cic. *Sull.* 82 "sed quia sunt descripti consulares, de his tantum mihi dicendum putavi quod satis esset ad testandam omnium memoriam, neminem esse ex illo honoris gradu qui non omni studio, virtute, auctoritate incubuerit ad rem publicam conservandam"; another advocate: Cic. *Sull.* 51 "si vetera, mihi ignota, cum Hortensio communicata, respondit Hortensius", Cic. *Flacc.* 41 "sed quoniam de hoc teste totoque Mithridatico crimine disseruit subtiliter et copiose Q. Hortensius, nos, ut instituimus, ad reliqua pergamus"; witness: Cic. *Verr.* 2.3.178 "ut hoc praeteream, quod multorum est testimoniis expositum".

[89] See p. 76.

is rendered a purely rhetorical question when the explicitly omitted point is then explicitly stated, as in Cic. *Q. Rosc.* 24 "quid ego nunc illa dicam quae vobis in mentem venire certo scio? fraudabat te in societate Roscius!" In this case the *praeteritio* implodes, as there is nothing actually left out, and becomes a completely self-sufficient figure, a formula for a connection between speaker and audience by shared knowledge and mutual understanding.[90] It keeps this function even though it is logically contradicted in the next phrase: obviously the orator *cannot* rely here on his audience's knowledge and understanding, or else he would not make explicit what he has announced to omit.[91] This might (in a strictly logical reasoning) be taken as an immediate sign of distrust towards the audience and an offence, but obviously is not, because the preceding *praeteritio*-question is not understood literally, rather as a *topos*-formula, especially in the generic wording "quid … dicam?"

With irony, the point is turned against Clodius in *De domo sua*: "*videsne me* non radicitus evellere omnis actiones tuas *neque illud agere, quod apertum est*, te omnino nihil gessisse iure, non fuisse tribunum plebis, *hodie esse patricium*?"[92] where the next five paragraphs indulge in the adoption problem, i.e. the question whether Clodius is a patrician or a plebeian at this time. There is a technical difference in the figure, as the addressee of this phrase is not the entire audience but Clodius, Cicero's opponent in this speech; but *quod apertum est* obviously refers to common knowledge of the entire audience. By the following lengthy explanation Cicero makes clear that he does want to explain this point, no matter whether it is known or to whom, and that he does want to destroy Clodius' doings root and branch.

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[90] On rhetorical devices of building a connection with the audience in a *contio* see Hölkeskamp (2013), e.g. "the *ego* of the orator addresses the public *in contione* as part of, and partner in, an 'imagined community' of the *Quirites* sharing a common universe of 'Romanness'. Therefore, the *contio* a speech invariably, explicitly or implicitly, directly or indirectly aims at the rhetorical construction of a consensus" Hölkeskamp (2013, p. 19), furthermore on uses of *ego*, *nos*, *vos*; cf. Tan (2013) on Clodius' negotiating boundaries within and around *contiones*.

[91] This reasoning is even valid in a case as this, where the entire figure is, on top of everything else, ironical, as the point is eventually implied to be untrue (because—unusually—, it is to the speaker's disadvantage). One might "translate" the irony here as follows: "what am I to say about that which I know comes to your mind anyway (and of which you know immediately that it is not true)?" Even under these conditions, the orator could let this allusion stand and *not* state explicitly what he has announced to omit.

[92] Cic. *Dom.* 34.

This argumentation can also be used with a limited scope: what the specific audience of a speech is familiar with need not be mentioned or at least not be detailed, even if it is not common knowledge. In the *De domo sua*, Cicero is speaking before an assembly of priests, and part of his arguments relates to religious law, therefore:

> sed hoc compensabo brevitate eius orationis quae pertinet ad ipsam causam cognitionemque vestram; quae cum sit in ius religionis et in ius rei publicae distributa, religionis partem, quae multo est verbosior, praetermittam, de iure rei publicae dicam. quid est enim aut tam adrogans quam de religione, de rebus divinis, caerimoniis, sacris pontificum conlegium docere conari, aut tam stultum quam, si quis quid in vestris libris invenerit, id narrare vobis, aut tam curiosum quam ea scire velle de quibus maiores nostri vos solos et consuli et scire voluerunt?[93]

In the following course of the speech, Cicero does indeed not speak about detailed questions of cults or sacrifices—whether his main intention really was not to bore the priests with these details, or whether he had other, stronger reasons (e.g. that he was himself not too versed in the subtleties of religious law), must remain open to speculation; but Cicero was obviously able to make his point without these details (as he won his "case" in the end), and maybe the priests were indeed grateful to be spared the discussion of cultic details. At any rate, the promise made in the *praeteritio* is kept, and the flattering reference to the audience's special knowledge is made; on the other hand, this passage is followed immediately by the ironical one cited above (note 92) and the lengthy explanation of adoption law, so that the reference to the audience's general knowledge is led *ad absurdum*; apparently Cicero's desire to leave no doubt whatsoever about Clodius' situation was stronger here.

In other cases, a *praeteritio* is phrased by a simple address to the audience, where the wording refers to the audience's general knowledge or understanding ("as you know"), rather than common knowledge ("as everybody

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[93] Cic. *Dom.* 32–33

knows"), but without pointing to any specialised proficiency;[94] sometimes an explicit (and thus quite flattering) reference to the general intelligence and knowledgeability of the audience is made.[95] All of these tactics make it even harder, if only a little bit, for the audience to admit their *not* knowing what the orator refers to, so the orator's point is got across even more effectively.

On the other hand, there are also reasons for explicitly stating and using the known or obvious. In the Verres trial, for example, the audience is confronted with masses of unfamiliar evidence, and this fact makes it interesting but also hard to understand. It is here a profitable strategy, therefore, to make much use of those events which the judges know from personal experience, as these make strong, emotionally charged arguments.[96]

Another reason is given in *Pro lege Manilia*: the speech for Pompey's command is not decisive for the political process—the proposal to send Pompey on a campaign against Mithridates IV of Pontus is supported by Caesar and highly popular with the Roman citizens, and is therefore, although opposed by the aristocracy, very likely to be carried anyway by the *contio*[97]—, and much of what can be said about Pompey should be sufficiently known at

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[94] Cic. *Font.* 42 "qua re si etiam monendi estis a me, iudices, quod non estis *etc.*"; Cic. *Flacc.* 66 "equidem mihi iam satis superque dixisse videor de Asiatico genere testium; sed tamen vestrum est, iudices, omnia quae dici possunt in hominum levitatem, inconstantiam, cupiditatem, etiam si a me minus dicuntur, vestris animis et cogitatione comprendere"; Cic. *Phil.* 13.30 "quid reliquos clarissimos viros commemorem? nostis omnes. magis vereor, ne longum me in enumerando quam ne ingratum in praetereundo putetis." Similarly Cic. *Q. Rosc.* 18 "sed quid ego ineptus de Roscio apud Pisonem dico? ignotum hominem scilicet pluribus verbis commendo. estne quisquam omnium mortalium de quo melius existimes tu?"

[95] Cic. *Cluent.* 115 "cuius rei quae consuetudo sit, quoniam apud homines peritissimos dico, pluribus verbis docere non debeo".

[96] This holds true even though the strategy is *not* used here in the end, even though these "known" point are in fact omitted: Cicero turns the point around by apologising that he still has other, stronger reasons to omit these parts, due to the sheer mass of material, so the omission is made *although*, not *because* the events under question are known to the audience. The apology thus functions again as a connection-builder with the audience.

Cic. *Verr.* 2.1.103 "verum ad illam iam veniamus praeclaram praeturam, criminaque ea quae notiora sunt his qui adsunt quam nobis qui meditati ad dicendum paratique venimus; in quibus non dubito quin offensionem neglegendae vitare atque effugere non possim. multi enim ita dicent, 'de illo nihil dixit in quo ego interfui; illam iniuriam non attigit quae mihi aut quae amico meo facta est, quibus ego in rebus interfui.' his omnibus qui istius iniurias norunt, hoc est populo Romano universo, me vehementer excusatum volo non neglegentia mea fore ut multa praeteream, sed quod alia testibus integra reservari velim, multa autem propter rationem brevitatis ac temporis praetermittenda existimem."

[97] Fuhrmann (1970, vol. 1, p. 328); cf. Christ (2004, p. 68–69).

Rome. Cicero cannot help but say it nevertheless, having not much else to say: "atque haec qua celeritate gesta sint quamquam videtis, tamen a me in dicendo praetereunda non sunt".[98] A variant is used in *Phil.* 7 in the explicit non-omission of good advice for consul Pansa: Cicero feels obliged to mention that Pansa (of course) does not need his advice, before stating nevertheless what he wants him to do.[99]

Finally, also the common figure "τίς οὐκ οἶδε / quis enim ignorat / nescit / non videt"[100] works as a "*praeteritio* of the known": the orator implies again that what he is to say is well-known and may thus be omitted from his speech, and this way of putting it even more indirect, especially in the form "quis enim *nostrum* ignorat". Besides, the figure always works as a pure formula, outside argumentative logic, as it is always followed by the known, and thus omissible, fact.

And even in general, it is not crucial for the figure "*praeteritio* of the known" that the point is indeed known or obvious (whether in general or to the specific audience), nor in fact that it is actually omitted. The figure has developed an independent existence as a pure formula, so the audience probably expected rather an elaboration on the topic (which was indeed what followed in most cases) than the omission which was actually announced. For example, the figure "quid dicam de Hirtio?" from *Phil.*

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[98] Cic. *Manil.* 34; similarly: Cic. *Phil.* 2.47 "quae peto ut, quamquam multo notiora vobis quam mihi sunt, tamen ut facitis, attente audiatis. debet enim talibus in rebus excitare animos non cognitio solum rerum, sed etiam recordatio", 2.57 "scio me in rebus celebratissimis omnium sermone versari eaque, quae dico dicturusque sum, notiora esse omnibus, qui in Italia tum fuerunt, quam mihi, qui non fui; notabo tamen singulas res, etsi nullo modo poterit oratio mea satis facere vestrae scientiae. etenim quod umquam in terris tantum flagitium exstitisse auditum est, tantam turpitudinem, tantum dedecus?"

[99] Cic. *Phil.* 7.27 "te ipsum, Pansa, moneo (quamquam non eges consilio, quo vales plurimum, tamen etiam summi gubernatores in magnis tempestatibus a vectoribus admoneri solent), *etc.*"

[100] E.g. Dem. *or.* 21.37, 21.132, 21.137, 21.141, 21.173; Aischin. *Tim.* 158, 189; Cic. *Font.* 31 "quis enim ignorat eos usque ad hanc diem retinere illam immanem ac barbaram consuetudinem hominum immolandorum?"; Cic. *Sest.* 91 "quis enim nostrum, iudices, ignorat ita naturam rerum tulisse ut quodam tempore homines . . ."; Cic. *Leg. agr.* 2.41 "quis enim vestrum hoc ignorat, dici illud regnum testamento regis Alexae populi Romani esse factum?"; Cic. *Cael.* 57 "quis enim hoc non videt, iudices, aut quis ignorat, in eius modi domo . . ."; Cic. *Phil.* 2.79 "nihil queror de Dolabella, qui tum est inpulsus, inductus, elusus. qua in re quanta fuerit uterque vestrum perfidia in Dolabellam, quis ignorat?", 4.4 "quis est enim, qui hoc non intellegat, nisi Caesar exercitum paravisset, non sine exitio nostro futurum Antoni reditum fuisse?"; also Cic. *De orat.* 1.53; Tac. *Dial.* 5.2, 28.2. On the topos of "everyone knows", modeled by Cicero on Greek precedents, cf. Tempest (2007, p. 28).

14[101]—a figure which usually implies "do I need to say anything at all?"—is followed by an entire paragraph about Hirtius, and neither the (announced, or at least implied) omission nor the (actual) non-omission is commented on in any way. The *praeteritio* stands here only as a loose hint to Hirtius' great (and thus well-known) achievements and as a nod towards the audience's knowledge, but in so vague a way that it does not conflict with the orator's further explanations on the topic. Similar, even a little more paradoxical, is the figure "nihil est, quod moneam vos. nemo est tam stultus, qui non intellegat *etc.*" in *Phil.* 3 followed by exactly this "superfluous", detailed and urgent appeal.[102] The suggestive (perhaps even autosuggestive) effect of shared knownledge and agreement between orator and audience dominates the passages and pushes the paradoxical element out of sight.

2.3.3 Theory

Omission of well-known facts is also considered in theory: Aristotle notes that there can in general be no serious debate about facts that cannot possibly be otherwise,[103] but of course this does not exclude the orator's using such points in a speech; similarly, in a logical argument, the orator need not spell out those parts of the argument that the hearer can supply by himself[104]—but again, Aristotle does not actually advise against using these parts. Later on, however, Aristotle explicitly advises the orator not against mentioning, but against elaborating such points:"δεῖ δὲ τὰς μὲν γνωρίμους ἀναμιμνήσκειν· διὸ οἱ πολλοὶ οὐδὲν δέονται διηγήσεως, οἷον εἰ θέλεις Ἀχιλλέα ἐπαινεῖν (ἴσασι

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[101] Cic. *Phil.* 14.27.

[102] Cic. *Phil.* 3.34–36 "nihil est, quod moneam vos. nemo est tam stultus, qui non intellegat, si indormierimus huic tempori, non modo crudelem superbamque dominationem nobis, sed ignominiosam etiam et flagitiosam ferendam esse. [35] nostis insolentiam Antoni, nostis amicos, nostis totam domum. libidinosis, petulantibus, impuris, impudicis, aleatoribus, ebriis servire, ea summa miseria est summo dedecore coniuncta. quodsi iam, quod di omen avertant! fatum extremum rei publicae venit, quod gladiatores nobiles faciunt, ut honeste decumbant, faciamus nos principes orbis terrarum gentiumque omnium, ut cum dignitate potius cadamus quam cum ignominia serviamus. [36] nihil est detestabilius dedecore, nihil foedius servitute. ad decus et ad libertatem nati sumus; aut haec teneamus aut cum dignitate moriamur."

[103] Aristot. *Rhet.* 1357a4–7 "βουλευόμεθα δὲ περὶ τῶν φαινομένων ἐνδέχεσθαι ἀμφοτέρως ἔχειν· περὶ γὰρ τῶν ἀδυνάτων ἄλλως ἢ γενέσθαι ἢ ἔσεσθαι ἢ ἔχειν οὐδεὶς βουλεύεται οὕτως ὑπολαμβάνων· οὐδὲν γὰρ πλέον"; cf. *Rhet.* 1359a32–34.

[104] Aristot. *Rhet.* 1357a17–19"ἐὰν γὰρ ᾖ τι τούτων γνώριμον, οὐδὲ δεῖ λέγειν· αὐτὸς γὰρ τοῦτο προστίθησιν ὁ ἀκροατής".

γὰρ πάντες τὰς πράξεις), ἀλλὰ χρῆσθαι αὐταῖς δεῖ."[105] Commenting (in another context) on the figure "who does not know …?", he notes its being used in excess (κατακόρως), but acknowledges its effectiveness.[106]

The *Rhetorica ad Alexandrum* and *Rhetorica ad Herennium* do not contain any general statements on this point. The former only advises the orator not to support a claim which is generally accepted with further reasoning (but does not recommend to leave it out altogether).[107] In another passage the author mentions that the orator can flatter the audience by offering the first half of a consideration and leaving the conclusion to them;[108] this recommendation to actually omit the (obvious) conclusion corresponds to Aristotle's slight aversion to the figure "who does not know …?", where the (presumably obvious) point is in fact spelt out.

Some minor point may be mentioned: the *Rhetorica ad Herennium* lists as a criterion of *brevitas* in the *narratio* that the orator starts his narration not earlier than necessary, i.e. at a point so that the preceding events are known or obvious to the audience;[109] and in the section on the *exordium* of epideictic speeches, we find as one possible topic a *captatio benevolentiae* referring to the audience's previous knowledge of the person who is to be praised or criticised.[110]

In Cicero's writings, we find first in *De inventione* the plain statement that at least in the *narratio* "erit considerandum, […] *ne quid*, quod ad rem pertineat, *praetereatur*",[111] i.e. omission of anything pertaining to the matter is

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[105] Aristot. *Rhet.* 1416b26–29.

[106] Aristot. *Rhet.* 1408a32–36 "πάσχουσι δέ τι οἱ ἀκροαταὶ καὶ ᾧ κατακόρως χρῶνται οἱ λογογράφοι, 'τίς δ' οὐκ οἶδεν;', 'ἅπαντες ἴσασιν'· ὁμολογεῖ γὰρ ὁ ἀκούων αἰσχυνόμενος, ὅπως μετέχῃ οὗπερ καὶ οἱ ἄλλοι πάντες.

[107] *Rhet. Alex.* 1430b3–5 "ὅταν μὲν οὖν ἔνδοξον λέγῃς, οὐδὲν δεῖ τὰς αἰτίας φέρειν· οὔτε γὰρ ἀγνοεῖται οὔτ' ἀπιστεῖται τὸ λεγόμενον".

[108] *Rhet. Alex.* 1434a35–37 "ἀστεῖα μὲν οὖν λέγειν ἐκ τούτου τοῦ τόπου ἔστιν, οἷον τὰ ἐνθυμήματα λέγοντας ὅλα ἢ ἡμίση ὥστε τὸ ἥμισυ αὐτοὺς ὑπολαμβάνειν τοὺς ἀκούοντας."

[109] *Rhet. Her.* 1.14 "*rem breviter narrare poterimus,* si inde incipiemus narrare, unde necesse erit; et si non ab ultimo initio repetere volemus; et si summatim, non particulatim narrabimus; et si non ad extremum, sed usque eo, quo opus erit, persequemur; et si transitionibus nullis utemur, et si non deerrabimus ab eo, quod coeperimus exponere; *et si exitus rerum ita ponemus, ut ante quoque quae facta sint, scire possint, tametsi nos reticuerimus*".

[110] *Rhet. Her.* 3.12 "ab auditorum persona, si laudabimus: quoniam non apud ignotos laudemus, nos monendei causa pauca dicturos; aut si erunt ignoti, ut talem virum velint cognoscere, petemus: […] contraria vituperatio: quoniam norint, pauca de nequitia eius dicturos; quod si ignorent, petemus, uti gnoscant, uti malitiam vitare possint".

[111] Cic. *Inv.* 1.29.

strongly rejected; later, however, he recommends for agreed points to cut short any explanation.[112] Although this discrepancy may partly be due to a difference between *narratio* and *confirmatio / argumentatio*, I would like to point out that even in the first passage 1. *considerare* does not imply actual use, but can very well result in discarding the point, and 2. that *quod ad rem pertineat* can be understood in a strong sense of "what makes a difference to the case", rather than "what belongs to the matter",[113] and thus does not conflict with the later advice.

Further on in *De inventione*, Cicero even constructs a useful argument from the assumption that also others, and authors of laws in particular, do not state the obvious: thus, if an orator does not find in the written law what he needs for his case, but can claim it to be obvious and generally agreed upon, he may employ it just as if it were stated in the law;[114] and shortly afterwards Cicero himself turns the point into an elegant *praeteritio*:[115] "ex his horum contraria facile *tacentibus nobis* intellegentur",[116] i.e. "goes without saying".

Quintilian follows this line of thought far enough to drop the entire *narratio*, if it is agreed upon:

> plerique semper narrandum putaverunt: quod falsum esse pluribus coarguitur. sunt enim ante omnia quaedam tam breves causae ut propositionem potius habeant quam narrationem. id accidit aliquando utrique parti, cum vel nulla expositio est, vel de re constat de iure quaeritur[117]

though not without employing his usual balanced approach:

> nec hoc quidem simpliciter accipiendum, quod est a me positum, supervacuam esse narrationem rei quam iudex noverit: quod sic

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[112] Cic. *Inv.* 1.62 "quae propositio in se quiddam continet perspicuum et quod stare inter omnes necesse est, hanc velle approbare et firmare nihil attinet".

[113] Cf. OLD s.v. pertinere 4a "To relate or pertain (to), have to do (with)" vs. 4c "to be relevant or to the point". Cf. Cic. *Leg.* 1.54, Cic. *Tusc.* 1.35 where this stronger meaning of *pertinere* is also used.

[114] Cic. *Inv.* 2.140 "atqui lex nusquam excepit; non ergo omnia scriptis, sed quaedam, quae perspicua sint, tacitis exceptionibus caveri".

[115] Cf. p. 79ff.

[116] Cic. *Inv.* 2.157.

[117] Quint. *Inst.* 4.2.4–5.

> intellegi volo, si non modo factum quid sit sciet, sed ita factum
> etiam ut nobis expedit opinabitur.[118]

The same point occurs in other contexts, e.g. on narrating events in their proper temporal order: if the earlier event is obvious from the later, the first is to be dropped.[119]

2.3.4 Conclusion

As a result, arguments known or obvious to the audience are the most likely points to be omitted from a speech (except for strictly adverse points). They are not only superfluous, counting against a possible (assumed or actual) time limit, but their omission can be used for flattering the audience for their intelligence, or for establishing a connection between speaker and audience based on shared knowledge, in particular when some knowledge specific to the present audience is referred to. This reasoning has developed into a *topos* that can be used as a standard figure even in cases when its logic does not hold: when the explicitly omitted point is then still spoken about, or when the point "known to everybody" is in fact not so common knowledge.

While some of the writers of rhetoric advise on omitting known and obvious points, they do not mention the advantages of doing it explicitly in a *praeteritio*, nor do we hear about the possibility of using such a *praeteritio* even though the omitted fact is *not* known or obvious, thus deceiving the audience.

2.4 Not speaking off-topic

2.4.1 Introduction

The question if the orator can and should include in his speech topics that do not actually belong to his case or subject, or if he should first and foremost stick to the matter at hand, is one of the most controversial areas of omissions. This is partly due to a lack of precise definition: there is no con-

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[118] Quint. *Inst.* 4.2.20.

[119] Quint. *Inst.* 4.2.87. Cf. also Quint. *Inst.* 5.11.16 "quaedam significare satis erit [exempla]. haec ita dicentur, *prout nota erunt* vel utilitas causae aut decor postulabit."

sensus (ancient or modern) whether e.g. arguments from the character of the accused in a criminal case are to be considered as belonging to the case.[120] Topics from grey areas like this can be treated as being *ad rem* or as *digressiones*, depending on the specific situation and purpose.

2.4.2 Practice

While Athenian courts had some legal restrictions on speaking ἔξω τοῦ πράγματος (see below p. 49), there was no law against digression in Rome,[121] and one might come under the impression that *digressiones* were indeed somewhat more accepted and frequent in Rome than in Athens, since it has been concluded by Rhodes that "there were exceptions, but on the whole, if we grant that the point includes its wider context, Athenian litigants were much better than we have allowed at keeping to the point",[122] and on the other hand we find all variants of dealing with *digressio* in Cicero's speeches: sometimes he digresses, explicitly or not, without any further comment; sometimes he apologises for digressing; and sometimes he employs *praeteritio*-like claims *not* to speak off-topic.

But all of this depends very much on the material left to us by transmission (which, on the Athenian side, contains many court speeches which were under a strict time limit) and on the assumed definition or concept of *digressio*, so that an actual comparison is near to impossible. Besides, as Canter (1931) has shown, Cicero's actual digressions always follow a precise, if not immediately obvious, purpose within the speech, and Cicero spends considerable efforts to embed the *digressio* organically in the rest of the speech. This suggests that he is reluctant to stray too far from the point, apparently or actually, and consequently he uses, in other cases, the explicit silence (i.e. *praeteritio*) on unrelated topics for his aims.

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[120] This is a different issue from "superfluous" points as treated above: there can be topics which belong directly to the case but are still discarded as "superfluous" for the argumentation, because a sufficient amount of other material is available; on the other hand, a point can be without any direct connection to the case, but still crucial for the orator's argumentation (e.g. some supporting point by which a claim about the client's character is substantiated). Of course these two categories cannot always be clearly distinguished.

[121] Cf. Mommsen (1899, p. 421–422), Kaser (1966, p. 86–87, 276–279).

[122] Rhodes (2004, p. 156).

Indeed, several variants of explicit omission of points not belonging to the case, or "*praeteritio* of off-topic points", can be found both in the Attic Orators and in Cicero's speeches. A direct *praeteritio* is somewhat more frequent in the Attic Orators,[123] but also used in Cicero's *Pro Caecina*, "multa enim, quae sunt in re, quia remota sunt a causa, praetermittam".[124] In Cicero's speeches the intent to omit is mostly implied: more openly in *Pro Quinctio*, where Cicero argues a juridic detail, i.e. that there has been a proper *procurator* in the previous procedure, and continues: "qualis is [procurator] fuerit, si modo absentem defendebat per ius et per magistratum, nihil ad rem arbitror pertinere";[125] the final conclusion, that he will not further discuss the character of the *procurator*, is not made explicit.[126] Less immediate is the conclusion in *Pro Sulla*, "oratoris vitium non videre, quid quaeque causa postulet",[127] where it is implied that Cicero, as a good orator, does see clearly what each case requires, and further, that he will therefore omit the points which this particular case does not need. In *Pro Sestio*, Cicero claims an abundance of evidence towards his client's general moral integrity, and dismisses it as "minora" in order to hasten to his client's achievements for the *res publica*;[128] this lies in the overall line of the speech which, while being technically a forensic speech, dealt much with the political attitudes and actions of Sestius and others. In *Pro Flacco*, the omission is justified by a comparison with other, more important topics (and clad in a rhetorical question): "sed quid ego de epistulis Falcidi aut de Androne Sextilio aut de Deciani censu tam diu disputo, de salute omnium nostrum, de fortunis civitatis, de summa re publica taceo?"[129] By not making the final conclusion to the point explicit, i.e. by leaving it to the audience, the orator builds a kind of an intellectual-emotional connection with them. He guides them along his argument, but also leaves room for them to think for themselves (though in a very limited

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[123] E.g. Lys. *or.* 7.42, 12.43, 19.8; Dem. *or.* 18.44, 18.60, 20.63, 22.3, 29.50; Aischin. *Ctes.* 76, 176.

[124] Cic. *Caecin.* 11.

[125] Cic. *Quinct.* 68.

[126] Similarly implicit e.g. in Lys. *or.* 32.11.

[127] Cic. *Sull.* 31.

[128] Cic. *Sest.* 7 "possum multa dicere de liberalitate, de domesticis officiis, de tribunatu militari, de provinciali in eo magistratu abstinentia; sed mihi ante oculos obversatur rei publicae dignitas, quae me ad sese rapit, haec minora relinquere hortatur".

[129] Cic. *Flacc.* 94.

space, in these cases), and the conclusion drawn by the judge himself, however much suggested to him, will have a stronger effect than the same point presented explicitly by the orator. The audience is thus effectively led to the opinion that the orator has sensibly decided which points are relevant to the case, and which are not. This consequently heightens his authority on all matters pertinent to the case.

A more positive view of speaking off-topic is employed in *Pro Caelio*, not only because the speech as a whole is quite off-topic in relation to the official charges,[130] but because Cicero even jokes about this very fact: "res est omnis in hac causa nobis, iudices, cum Clodia, muliere non solum nobili, sed etiam nota; de qua ego nihil dicam nisi depellendi criminis causa."[131] In fact, neither is the *res* primarily about Clodia, as far as the charges brought forward by the prosecution are concerned (only one of the numerous charges against Caelius was directly connected to Clodia)—in fact, Cicero's whole speech is based on the notion that Clodia is behind the prosecution, of course—, nor is Cicero about to restrict himself to arguments *depellendi criminis causa*.[132] The obvious irony was a means to gain the jury's sympathy.

In (another passage of) the speech *Pro Caecina* the point of not speaking off-topic is used to imply abundant evidence, together with a polite nod to both the audience's knowledge and time: "veniunt in mentem mihi permulta, vobis plura, certo scio. verum ne nimium multa complectamur atque ab eo quod propositum est longius aberret oratio *etc.*".[133] A similar bow to the audience is found in *De domo sua*, but even more elegantly flattering, as Cicero is adressing not a normal court but a highly distinguished board of priests: "intellego, pontifices, me plura extra causam dixisse quam aut opinio tulerit aut voluntas mea; sed cum me purgatum vobis esse cuperem, tum etiam vestra in me attente audiendo benignitas provexit orationem meam."[134]

This "tactical" usage, where this type of *praeteritio* is employed to achieve some positive connection to the audience, or even a *captatio benevolentiae*, is

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[130] Though due to court proceedings, see below p. 98.

[131] Cic. *Cael.* 31.

[132] On Clodia's role in the trial see Skinner (2011, 96–120) with much detail; cf. Dorey (1958).

[133] Cic. *Caecin.* 55.

[134] Cic. *Dom.* 32.

also found in the Attic Orators, e.g. in Dem. *or.* 18.214, where Demosthenes claims to omit an episode which would appear a μάταιον ὄχλον to his hearers,[135] and in Aischin. *Tim.* 39, where Aischines presents himself as rather gracious towards his opponent by passing over all his childhood offences.

On the other hand, both the Attic Orators and Cicero repeatedly choose to explicitly spend some sentences or paragraphs on a topic not directly related to the case (though arguably pertaining to their strategy in court or assembly). Sometimes an excuse or justification is provided;[136] in other cases, an excuse for straying from the point at issue might be expected, but there is nothing but the announcement to do so.[137] This silence, where a justification could be expected, is a statement in itself: i.e., that the orator is absolutely confident of his case and in no need to ask for understanding or lenience. It does not matter much for the argument whether this is a statement of a matter of fact, i.e. of real confidence, or whether it only indicates feigned confidence, as long as the audience accepts the orator's self-presentation. Finally, any *digressio*, whether announced in advance or not, can be concluded by the figure which has become quite a topos, "but to return to the matter at hand...".[138] It turns out that the area of "(not) speaking off-topic" is handled in practice by the Attic Orators and Cicero without any consistent general rule, the orators rather follow the requirements of each speaking situation. Accordingly, topics not directly pertaining to the matter at hand can be employed or left out, explicitly or implicitly, and any such announcement can be made in advance or *ex post*.[139] Not all of this, however, is considered in the theoretical rhetorical writings.

2.4.3 Theory

Treatment of the point in rhetorical theory starts with discussion of the external factors: Aristotle's often cited statement about the Athenian regulation

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[135] Cf. p. 70 on the advice not to annoy the audience.

[136] E.g. Lys. *or.* 14.24, 16.9; Dem. *or.* 18.34, 18.59; Aischin. *Tim.* 117, *leg.* 167; Cic. *Sest.* 119, *Tull.* 37.

[137] E.g. Lys. *or.* 13.3, 32.21; Dem. *or.* 24.122; Cic. *Verr.* 2.3.163, 2.4.82, *Cluent.* 10, *Arch.* 32.

[138] Used e.g. in Lys. *or.* 3.46; Dem. *or.* 13.9, 18.42, 18.211, 21.196; Cic. *Leg. agr.* 2.28, *Sull.* 35, *Rab. Post.* 6, 7, *Lig.* 20, *Phil.* 2.56.

[139] Cf. p. 93 on "*post-praeteritio*".

on the point, "διομνύουσιν οἱ ἀντίδικοι εἰς αὐτὸ τὸ πρᾶγμα ἐρεῖν",[140] is quite imprecise: it is not certain how strict this rule was, to which type of trials it applied, and especially, we cannot assume that speaking εἰς τὸ πρᾶγμα excluded talking about the litigants' character,[141] and conclude that the oath involved was ignored.[142] On the other hand, Adriaan Lanni's analysis of homicide and maritime cases in Athens[143] suggests that character traits and wider circumstances of a case could (in these particular types of trial) be considered off-topic and therefore inadmissible.[144] In the majority of cases, however, "there was no significant attempt to limit the information available to the juries. The only exception in Athens was the Areopagos, the chief homicide court, where procedural rules forbade the introduction of matters 'outside the issue'. Aristotle makes clear that this was unusual not just in Athens but in Greece in general. The result of the absence of such a restriction may be seen in surviving oratory."[145] Carey has shown especially how far insults were tolerated in many Athenian court speeches.[146] But although these matters were not legally forbidden in court speeches, they could still

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[140] Aristot. *Ath. pol.* 67.1. Cf. Rhodes (1981) *ad locum*: "The implication of *A. P.*'s including this clause at this point, that this oath was taken in private suits only, is regularly accepted [...]: many have supposed that this was made necessary by the shorter time allowed for private suits, but Harrison points out that the water clock should have been sufficient to keep speeches short and suggests that the oath is a survival from a time when the clock was not yet used. But, although it clearly is the implication of *A. P.*'s text, I am not confident that the oath was taken in private suits only: it is dangerous to rely on *A. P.*'s silences in such matters, and the distinction between public and private suits in these chapters is not clearly maintained. It is in any case abundantly clear from surviving speeches that the Athenians did not observe standards of relevance which would satisfy the modern critic, either in public or in private suits (but we should not follow Lipsius in concluding that the oath must have been instituted not long before *A. P.* was written)."

[141] On the contrary, it has been argued that "the life and character of both defendant and prosecutor are viewed not only as relevant but as essential to the argument" (Hunter, 1990, p. 306), and even "what constituted slander under Athenian law was so defined as to ignore most of what we might regard as slander and abuse in the courts" (Hunter, 1990, p. 305).

[142] Cf. Lanni (2005, p. 113) "if in fact it existed, it appears to have had no effect".

[143] Lanni (2005).

[144] Canter (1931), too, counts "denunciation of persons [...]; criticism, blame, censure, or ridicule of persons [...]; eulogy of persons" (p. 358) as *digressiones*, some of which at least may well have been considered as part of the case in Cicero's time.

[145] Carey (1994, p. 176).

[146] "In the case of statements about human beings, a casual glance at the work of any of the orators indicates the high tolerance of Athenian juries to the most outrageous of allegations tangential to the main action." Carey (1999, p. 374) "The narrowness of the legal definitions of *kakegoria* meant that a wide range of allegations could be hurled in court with complete freedom." Carey (1999, p. 376)

be disputed on factual and moral grounds, and attacked both by the opponent and the audience, as "*[t]horubos* served [...] to curb excursions from the true issue".[147] So "one had the right to reproach the plaintiff for attacking his character instead of sticking to the object of litigation [...], but also [...] to defend oneself by specifying that questions related to one's character are indeed relevant".[148] Thus the orator could, by explicit silence (i.e. *praeteritio*) on off-topic matters, claim to obey the law, implying that he had the stronger case and did not need to resort to slander and gossip.[149]

The *Rhetorica ad Alexandrum* calls for concentration on the most relevant points repeatedly, in specific advice on speeches exhorting the audience to war[150] and on using γνῶμαι in the speech;[151] the most general statement is part of the definition of σαφήνεια: "[σαφῶς μὲν οὖν δηλώσομεν] ἐὰν μὴ προαπολιπόντες τὴν πρᾶξιν, περὶ ἧς ἂν ἐγχειρήσωμεν λέγειν, πάλιν ἑτέραν ἐξαγγείλωμεν."[152]

Aristotle at the beginning of his *Ars rhetorica* also generally agrees with this line, and the Areopagus regulation mentioned above, as far as forensic speech is concerned;[153] in the following paragraph on deliberative speech he states that it is *less useful* in political speeches to speak about points not directly related to the fact or question at hand, ἔξω τοῦ πράγματος, implying that doing so might be *more useful* in court[154]—here he is in agreement with the oratorical practice. In the third book of the same work,[155] we find him

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[147] Bers (1985, p. 13).Cf. Carey (1999, p. 378)

[148] Montiglio (2000, p. 117, n. 9).

[149] E.g. Lys. *or.* 3.46 "ἔχοιμι δ' ἂν καὶ ἄλλα πολλὰ εἰπεῖν περὶ τούτου, ἀλλ' ἐπειδὴ παρ' ὑμῖν οὐ νόμιμόν ἐστιν ἔξω τοῦ πράγματος λέγειν, ἐκεῖνο ἐνθυμεῖσθε κτλ.".

[150] *Rhet. Alex.* 1425a24–26 "τούτων οὖν καὶ τῶν τούτοις ὁμοιοτρόπων τὰ τοῖς πράγμασιν οἰκειότατα λαμβάνοντες ἐμφανιοῦμεν, ὅταν ἐπὶ τὸ πολεμεῖν παρακαλῶμεν".

[151] *Rhet. Alex.* 1430b7–9 "δεῖ δὲ τὰς γνώμας οἰκείας φέρειν τῶν πραγμάτων, ἵνα μὴ σκαιὸν καὶ ἀπηρτημένον φαίνηται τὸ λεγόμενον."

[152] *Rhet. Alex.* 1438a31–33.

[153] Aristot. *Rhet.* 1354a21–24 "ἅπαντες γὰρ οἱ μὲν οἴονται δεῖν οὕτω τοὺς νόμους ἀγορεύειν, οἱ δὲ καὶ χρῶνται καὶ κωλύουσιν ἔξω τοῦ πράγματος λέγειν, καθάπερ καὶ ἐν Ἀρείῳ πάγῳ, ὀρθῶς τοῦτο νομίζοντες"; cf. *Rhet.* 1355a1–3.

[154] Aristot. *Rhet.* 1354b27–28 "ὅτι ἧττόν ἐστι πρὸ ἔργου τὰ ἔξω τοῦ πράγματος λέγειν ἐν τοῖς δημηγορικοῖς".

[155] Which is considered as somewhat independent from the first two: Rapp (2002, vol. 1, p. 172) "Obwohl sich die beiden Abhandlungen des dritten Buches an die wichtigsten Ziele von Buch I & II heranführen lassen, ist daher klar, dass die Themen der sprachlichen Gestaltung und der Anordnung der Redeteile Erweiterungen einer ursprünglich enger gefassten Konzeption darstellen."

quite inclined towards deviation, even for mere entertainment: "ἅμα δὲ καὶ ἐὰν ἐκτοπίσῃ, ἁρμόττει, καὶ μὴ ὅλον τὸν λόγον ὁμοειδῆ εἶναι".[156] A little later he seems even to contradict his earlier advice of sticking to the case when he declares that slander and other deviations (which are used by everyone in the *prooemion* anyway) might be especially advisable for those with a weak case, as for them it is βέλτιον to speak about anything but their actual case;[157] but βέλτιον here is unlikely to mean "better" in a moral or artistic sense in this context, but must mean "better for these orators' purpose", in a utilitarian way. Pointing towards omission is the more specific advice "περὶ τὸ ὁμολογούμενον οὐ διατριπτέον, ἐὰν μή τι εἰς ἐκεῖνο συντείνῃ"[158] (see above p. 41). Overall Aristotle is, as per usual, more inclined towards including than to omitting, and follows a rather pragmatic, utilitarian argumentation.

Cicero's theoretical writings quite accurately reflect his practical attitude towards speaking off-topic: he makes a point against *digressiones* in *De inventione*[159] and even recommends exploiting an unnecessary *digressio* made by the opponent,[160] in line with the *Rhetorica ad Herennium*, which gives a similarly practical advice against straying from the case.[161]

This corresponds to Cicero's tentative approach in the early speeches. In the later *De oratore*, however, he considers a *digressio* as possible and poten-

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[156] Aristot. *Rhet.* 1414b28–30

[157] Aristot. *Rhet.* 1415b18–23 "πάντες γὰρ ἢ διαβάλλουσιν ἢ φόβους ἀπολύονται ἐν τοῖς προοιμίοις· [. . .] καὶ οἱ πονηρὸν τὸ πρᾶγμα ἔχοντες ἢ δοκοῦντες· πανταχοῦ γὰρ βέλτιον διατρίβειν ἢ ἐν τῷ πράγματι".

[158] Aristot. *Rhet.* 1417a10–11.

[159] Cic. *Inv.* 1.97 "nobis autem non placuit [digressionem] in numerum [partium orationis] reponi, quod de causa digredi nisi per locum communem displicet"; cf. the reverse approach earlier in the same work, *Inv.* 1.29 "[in narratione] erit considerandum, [. . .] ne quid, quod ad rem pertineat, praetereatur".

[160] Cic. *Inv.* 1.94.

[161] *Rhet. Her.* 2.43 "item verendum est, ne de alia re dicatur, cum alia de re controversia sit; inque eiusmodi vitio considerandum est, ne aut ad rem addatur quid aut quippiam de re detrahatur, aut tota causa mutata in aliam causam derivetur [. . .]. item considerandum est, ne aliud accusatoris criminatio contineat, aliud defensoris purgatio purget, quod saepe consulto multi ab reo faciunt angustiis causae coacti; ut si quis, cum accusetur ambitu magistratum petisse, ab imperatoribus saepe numero apud exercitum *** donatum esse. hoc si diligenter in oratione adversariorum observaverimus, saepe deprehendemus eos de ea re quod dicant non habere."

tially useful at any point in the speech,[162] except in the *exordium*[163] and the *narratio*[164] (the part of the speech which according to tradition, even though Cicero disagrees, should be rather short, see below p. 69).

In the *Orator*, Cicero mentions digression in a list of recommended figures of thought: "sic igitur dicet ille [orator] quem expetimus [...] ut declinet a proposito deflectatque sententiam".[165] In the *Brutus*, he quite favorably mentions a work by Servius Sulpicius Galba (a leading orator of the 2*nd* c. BC), who "princeps ex Latinis illa oratorum propria et quasi legitima opera tractavit, *ut egrederetur a proposito ornandi causa*, ut delectaret animos, ut permoveret, ut augeret rem, ut miserationibus, ut communibus locis uteretur".[166] This agrees with Cicero's using digression more freely in later speeches like *Pro Caelio*.[167]

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[162] Cic. *De orat.* 2.311–312 "sed his partibus orationis quae, etsi nihil docent argumentando, persuadendo tamen et commovendo perficiunt plurimum, quamquam maxime proprius est locus et in exordiendo et in perorando, digredi tamen ab eo, quod proposueris atque agas, permovendorum animorum causa saepe utile est; [312] itaque vel re narrata et eita saepe datur ad commovendos animos digrediendi locus, vel argumentis nostris confirmatis vel contrariis refutatis vel utroque loco vel omnibus, si habet eam causa dignitatem atque copiam, recte id fieri potest; eaeque causae sunt ad augendum et ad ornandum gravissimae atque plenissimae, quae plurimos exitus dant ad eius modi digressionem, ut eis locis uti liceat, quibus animorum impetus eorum, qui audiant, aut impellantur aut reflectantur." A more special application of *digressio* is mentioned in the almost contemporary *Partitiones oratoriae*, in the answer to the question "quid faciendum est contra reo?": "firmamenta ad fidem posita aut per se diluenda aut obscuranda aut degressionibus obruenda" (Cic. *Part. or.* 15, cf. 52, 128).

[163] Cic. *De orat.* 2.325 "conexum autem ita sit principium consequenti orationi, ut non tamquam citharoedi prooemium adfictum aliquid, sed cohaerens cum omni corpore membrum esse videatur. nam non nulli, cum illud meditati ediderunt, sic ad reliqua transeunt, ut audientiam fieri sibi non velle videantur." This point, too, corresponds to the *Rhetorica ad Herennium*, "item vitiosum [exordium] est, [...] quod non ex ipsa causa natum videatur, ut proprie cohaereat cum narratione" (*Rhet. Her.* 1.11).

[164] Cic. *De orat.* 2.329 "erit autem perspicua narratio, si verbis usitatis, si ordine temporum servato, si *non interrupte* narrabitur."

[165] Cic. *Orat.* 137. In fact, this list contains several almost identical items which denote a *digressio*: "ut declinet a proposito deflectatque sententiam"; "ut ab eo quod agitur avertat animos"; "ut a proposito declinet aliquantum".

[166] Cic. *Brut.* 82.

[167] An analogous development is shown by Davies (1988) who observes that the "postlinkage", i.e. the *reditus ad rem* after a *digressio*, "which occur in speeches later than the *pro Roscio Amerino* tend to be more concise than those in the earlier speeches" (Davies, 1988, p. 306), corresponding to the call for conciseness reported by Cicero (quoting from earlier rhetorical handbooks) in *De orat.* 3.203 "et ab re digressio, in qua cum fuerit delectatio, tum reditus ad rem aptus et concinnus esse debebit".

Quintilian, when calling for *brevitas* in the *narratio*, defines this basically as cutting off what does not belong to the case;[168] but outside the particular area of the *narratio*, he is less strict: he has admitted earlier that whatever is relevant about the person of the orator can be relevant in the trial, even though it does not refer to the case,[169] and that some common topics should be treated in any case, even if they are not directly relevant, only in order to prevent their being occupied by the opponent.[170] Afterwards he devotes an entire chapter to the very useful and welcome *digressio* at any point in the speech[171]—even if he notes that digression is again least advisable in the *narratio*[172] and, as a general caveat, that the orator ought not to spend so much time there that the judges become bored or tired and forget what has been said before.[173] A few side points may be added which seem to be based on Quintilian's experience in school and court: the advice neither to annoy a philosophically untrained audience with too many syllogisms[174] nor to employ flashy *digressiones* for show effects, calling for applause;[175] and the

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[168] Quint. *Inst.* 4.2.40 "brevis erit narratio ante omnia si inde coeperimus rem exponere unde ad iudicem pertinet, deinde si nihil extra causam dixerimus, tum etiam si reciderimus omnia quibus sublatis neque cognitioni quicquam neque utilitati detrahatur"; similarly *Inst.* 4.2.111 "effugiendae sunt enim morae [in narratione]" and 4.5.26 "propositio [. . .] brevis nec ullo supervacuo onerata verbo", and 4.1.62 on the prooemium "evitanda est inmodica eius longitudo, ne in caput excrevisse videatur et quo praeparare debet fatiget". Cf. also Quint. *Inst.* 5.10.83 "recte autem monemur causas non utique ab ultimo esse repetendas".

[169] Quint. *Inst.* 4.1.12 "negat haec prohoemia esse Cornelius Celsus quia sint extra litem: sed ego cum auctoritate summorum oratorum magis ducor, tum pertinere ad causam puto quidquid ad dicentem pertinet, cum sit naturale ut iudices iis quos libentius audiunt etiam facilius credant."

[170] Quint. *Inst.* 4.1.33 "faciunt favorem et illa paene communia, non tamen omittenda vel ideo ne occupentur: optare, abominari, rogare, sollicitum agere *etc.*"

[171] Quint. *Inst.* 4.3.

[172] Quint. *Inst.* 4.2.104, with exception of the *epidiegesis*, 4.2.128.

[173] Quint. *Inst.* 4.3.8 "verum haec breviter omnia; iudex enim ordine audito festinat ad probationem et quam primum certus esse sententiae cupit. praeterea cavendum est ne ipsa expositio vanescat, aversis in aliud animis et inani mora fatigatis."

See also p. 70 on (not) annoying the audience.

[174] Quint. *Inst.* 5.14.27 "namque ego, ut in oratione syllogismo quidem aliquando uti esse fas duco, ita constare totam aut certe confertam esse adgressionum et enthymematum stipatione minime velim. dialogis enim et dialecticis disputationibus erit similior quam nostri operis actionibus, quae quidem inter se plurimum differunt.", justification in 5.14.29.

[175] Quint. *Inst.* 3.11.25–26 "sed non perpetuo intendimus in haec animum et cupiditate laudis utcumque adquirendae vel dicendi voluptate evagamur, quando uberior semper extra causam materia est, quia in controversia pauca sunt, extra omnia, et hic dicitur de iis quae accepimus, illic de quibus volumus. [26] *nec tam hoc praecipiendum est, ut quaestionem continens iudicationem inveniamus* (nam id quidem facile est), *quam ut intueamur semper, aut certe, si digressi fuerimus, saltem respiciamus*, ne plausum adfectantibus arma excidant."

advice to have a *digressio* ready in case of interruptions, so that no important part of the speech is lost in *tumultus*.[176]

Quintilian also adds a deceptive twist to the issue: he gives advice (twice in the *Institutio*) to take an unfavourable argument made by the opponent and *present* it as off-topic, and thus irrelevant to the case; this also justifies that the orator only speaks briefly about it, which again lowers the audience's attention towards the point[177] (an attention which is already present, as the opponent has spoken earlier about the topic; of course there may be cases where it is more advisable to omit the point altogether, i.e. not to draw attention to it again by way of the *praeteritio*; but if the point is very present on the audience's mind already, this strategy can be useful).

Overall, Quintilian has no objection against speaking off-topic; he welcomes *digressiones* as Cicero does in his later works and treats the topic in due detail and with a practical approach. Like all his predecessors, however, Quintilian does not mention the "*praeteritio* of *digressio*" as a tool in rhetorical argumentation.

2.4.4 Special case: insult and invective

Insults and unsubstantiated personal attacks against the opponent, outside the argumentation for the case, have always been part of practical oratory and have always been considered critically by rhetorical theory.[178]

Cf. p. 171.

[176] Quint. *Inst.* 4.3.16 "innumerabilia sunt haec, quorum alia sic praeparata adferimus, quaedam ex occasione vel necessitate ducimus si quid nobis agentibus novi accidit, interpellatio, interventus alicuius, tumultus."

[177] Quint. *Inst.* 5.13.22 "nonnumquam tamen quaedam bene et contemnuntur vel tamquam levia vel tamquam ad causam nihil pertinentia. multis hoc locis facit Cicero. et haec simulatio interim huc usque procedit, ut, quae dicendo refutare non possumus, quasi fastidiendo calcemus."; Quint. *Inst.* 7.2.29 "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 [et] dissimilia sed etiam aliquando contraria".

[178] Cf. Arena (2007) (with further bibliography) on Roman oratorical invective in general, Powell (2007) on aspects of invective in Cicero.

Invective as a genre of speech is rare;[179] on the other hand, invective
and insults are a frequent element of forensic and political oratory both in
Greece[180] and Rome.[181] Plato and Solon proposed laws against insulting on
public occasions,[182] but neither these ideas nor the actual law against speak-
ing off-topic[183] seem to have had much effect in Athens; in Rome "[t]he
extent to which members of Rome's ruling elite could shower each other
with abuse in the senate or the lawcourts is striking",[184] even *de mortuis nil
nisi bonum* was apparently "no constraining principle",[185] as can be seen e.g.
from Cicero's attacks on the dead Clodius in *Pro Milone*.[186] Conversely, Ci-
cero uses the (apparently rare) case where his opponent, the prosecutor, had
made no personal attack against his client as an argument in favour of his
client's character.[187]

There was, however, in late Republican Rome an idea that personal insults
were somehow inappropriate,[188] depending on the context,[189] to which Ci-
cero could refer and present himself as a "decent" orator: either by distanc-

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[179] Koster (1980) discusses as a complete invective speech only Cicero's *In Pisonem*, aside
from the faked or fictitious speeches by Sallustius against Cicero, Cicero against Sallustius,
and Calenus against Cicero; I would tend to add Cicero's second *Philippica*, which Koster
accepts to be "von Cicero [...] sowohl am Anfang als auch am Ende deutlich als *suasio*
charakterisiert" (Koster, 1980, p. 129).

[180] Cf. the material in Süß (1910, p. 245–262); Craig (2004, p. 190–191).

[181] Arena (2007, p. 150) "Invective was often a crucial factor in an orator's success, whether
he was speaking in a judicial prosecution or defense or a political battle fought in the
senate or popular assembly (*contio*). This is because the highlighting of an individual's
faults in an abusive or humorous manner provided a powerful means of manipulating
the audience's emotions."

[182] Montiglio (2000, p. 128).

[183] See p. 49.

[184] Gildenhard (2007, p. 174).

[185] Craig (2004, p. 203).

[186] Koster finds significant amounts of "Invektivisches" in the following of Cicero's speeches:
the *Verrines*; the fragmentary *In senatu in toga candida contra C. Antonium et L. Catilinam
competitores*; against Clodius, Gabinius, Piso and others in the speech mentioned in *Att.*
1.16.8, other fragmentary or lost speeches, *Post reditum in senatu*, *De domo sua*, *Pro Sestio*,
De haruspicum responso, *De provinciis consularibus*, *Pro Plancio*; and the second *Philippica*
(Koster, 1980, p. 113–133). Smaller examples of insults are found in even more speeches.

[187] Cic. *Font.* 37 "de quo homine, iudices—iam enim mihi videor hoc prope causa duabus ac-
tionibus perorata debere dicere—de quo vos homine ne ab inimicis quidem ullum fictum
probrorum non modo crimen sed ne maledictum quidem audistis".

[188] The Attic Orators usually do not refrain explicitly from personal attacks, only from using
indecent language or topics, cf. p. 113. A rare example is Dem. *or.* 21.208.

[189] Arena (2007, p. 154) "Given these important functions of invective, it is clear why the or-
ator could not resort to unbridled abuse against his opponent. To employ obscene insults
would risk compromising his own *dignitas* [...]."

ing himself from inappropriate attacks in a *praeteritio*,[190] or by introducing them in an excusing manner;[191] or he accuses his opponent of improper attacks.[192]

All of these figures, however, are rather rare in Cicero's speeches, especially the reproach of the opponent, and Cicero must have been well aware how vulnerable he was himself in this respect.

The writers of rhetorical theory concentrate on practical aspects of invective: the *Rhetorica ad Herennium* argues that it would be detrimental to the case if the orator attacked someone or something associated with the judges[193]—which means that it does not oppose invective in general, only if unreasonable under practical aspects. The line of thought is taken up by Cicero and supplemented by advice against venting personal anger if speaking as someone else's advocate[194] (which implies that personal invective can have its place in political speeches).

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[190] Cic. *S. Rosc.* 94 "quae non modo idcirco praetereo quod te ipsum non libenter accuso verum eo magis etiam quod, si de illis caedibus velim commemorare quae tum factae sunt ista eadem ratione qua Sex. Roscius occisus est, vereor ne ad pluris oratio mea pertinere videatur"; Cic. *Verr.* 2.5.107 "non enim possum quemquam insimulare falso"; Cic. *Cael.* 6–7 "sed aliud est male dicere, aliud accusare. accusatio crimen desiderat, rem ut definiat, hominem ut notet, argumento probet, teste confirmet; maledictio autem nihil habet propositi praeter contumeliam quae si petulantius iactatur, convicium, si facetius urbanitas nominatur. [7] quam quidem partem accusationis admiratus sum et moleste tuli potissimum esse Atratino datam. neque enim decebat neque aetas illa postulabat neque, id quod animadvertere poteratis, pudor patiebatur optimi adulescentis in tali illum oratione versari"; Cic. *Phil.* 2.6 "quid est dictum a me cum contumelia, quid non moderate, quid non amice?" Cf. Cic. *Phil.* 12.21 "sed vincam animum mihique imperabo, dolorem iustissimum, si non potuero frangere, occultabo" which does not refer directly to insults but to a strong emotion which, if not suppressed, could lead to those.

[191] Cic. *Phil.* 1.27 "ego, si quid in vitam eius aut in mores cum contumelia dixero, quo minus mihi inimicissimus sit, non recusabo", 8.9 "invitus dico, sed dicendum est", 9.8 "vos enim, patres conscripti (grave dictu est sed dicendum tamen), vos, inquam, Ser. Sulpicium vita privastis".

[192] Cic. *Sull.* 40 "exclusus hac criminatione Torquatus rursus in me inruit"; Cic. *Lig.* 16 "nunc quid dicis? 'cave ignoscas!' haec nec hominis nec ad hominem vox est; qua qui apud te, C. Caesar, utetur, suam citius abiciet humanitatem quam extorquebit tuam"; Cic. *Phil.* 2.46 "haec tu cum per me acta meminisses, nisi illis, quos videmus, gladiis confideres, maledictis me provocare ausus esses?" Similarly Dem. *or.* 19.213.

[193] *Rhet. Her.* 2.43 "item vitiosum est, quod dicitur contra iudicis voluntatem aut eorum, qui audiunt, si aut partes, quibus illi student, aut homines, quos illi caros habent, laedantur aut aliquo eiusmodi vitio laeditur auditoris voluntas."

[194] Cic. *De orat.* 2.305 "quid, si, quae vitia aut incommoda sunt in aliquo iudice uno aut pluribus, ea tu in adversariis exprobrando non intellegas te in iudices invehi, mediocrene peccatum est? quid, si, cum pro altero dicas, litem tuam facias aut laesus efferare iracundia, causam relinquas, nihilne noceas?"

The same purely practical advice occurs also in Quintilian,[195] but in a later passage he goes further and classifies invective not only as detrimental in certain cases but as *indecora*, i.e. morally bad in general.[196]

2.4.5 Conclusion

Throughout antiquity, one might say that we find oratorical practice more open towards speaking off-topic than in modern times; from another perspective, however, we may consider this the result of a wider concept of what is relevant to a case or topic, especially in court. *Digressiones* without any argumentative weight, however, are rare at all times. Consequently, there is not much advice in theory against straying from the point. Since there is not much to be gained from explicitly omitting *digressiones*, *praeteritiones* of this type are in general comparatively rare in Athenian and Ciceronian practice, but especially Cicero makes use of this type on a few occasions, in context with other rhetorical devices and mostly with the aim of building a sympathetic connection with the audience. This usage of "(not) speaking off-topic" is not treated at all in rhetorical theory.

2.5 Omissions *brevitatis gratia*

2.5.1 Introduction

Omission of not strictly necessary points from a speech becomes a necessity in case of an external time limit to the speech, a feature which was more usual

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[195] Quint. *Inst.* 4.1.10 "vitandum etiam ne contumeliosi maligni superbi maledici in quemquam hominem ordinemve videamur, praecipueque eorum qui laedi nisi adversa iudicum voluntate non possint." To this may be added his advice against raging against fate (Quint. *Inst.* 6.3.28 "sed hic quoque tamen inhumana videri solet fortunae insectatio, vel quod culpa caret vel quod redire etiam in ipsos qui obiecerunt potest").

[196] Quint. *Inst.* 11.1.29 "impudens, tumultuosa, iracunda actio omnibus indecora, sed, ut quisque aetate dignitate usu praecedit, magis in ea reprendendus." On the moral side is also the advice against *petulantia* towards groups of people in jokes (Quint. *Inst.* 11.1.86–87 "illud etiam in iocis monui, quam turpis esset fortunae insectatio, et ne in totos ordines aut gentes aut populos petulantia incurreret").

Two side points made by Quintilian combine practical and moral views: he rejects the practice of filling argumentative gaps with insults, as this is only effective during the speech and unworthy of the *orator perfectus* (Quint. *Inst.* 12.9.8); and he mentions that it can be wise to meet the opponent's invective with silence, ridiculing him (Quint. *Inst.* 6.2.16), or to ignore it and thus show a good conscience (Quint. *Inst.* 9.2.93).

in Greece than in Rome. Beyond this, the idea of shortness for shortness'
sake or of a "natural time limit" to any speech, or part of a speech, was
implicitly present in omissions of many kinds in practice, as shown above
in sections 2.2–2.4. Yet brevity as a rhetorical concept or virtue was, as far
as the textual transmission allows us to tell, almost nonexistent in rhetorical
theory in antiquity (except for the custom of relatively short speeches in the
political assemblies); most of the writers of rhetorical theory mention it only
in particular aspects.

2.5.2 External time limits

Official regulations for the duration of speeches on public occasions were
known throughout antiquity, though not all occasions had such restrictions.
The probably best known feature of time limits in ancient oratory is the
Greek κλεψύδρα, the so-called water-clock, as it was used in Athenian courts
for both private and public trials.[197]

It served two purposes: 1. to ensure that both parties had equal amounts
of time at their disposal; 2. that the entire trial, or a certain number of tri-
als, were completed before sunset. The rather complex system of speaking
times for different types of trials, with many technical details, is described
in Aristotle's Ἀθηναῖων Πολιτεία.[198] Thus any orator preparing a speech for
an Athenian court would know beforehand how much time he had at his
disposal; if there were several speakers, they had to divide the time between
themselves.

In contrast, we know scarcely anything in case of political speeches in
Athens, i.e. the situation in the ἐκκλησία. There seems to have been no
legal or otherwise official time limit for a single speech (beyond the limit for
the entire meeting), but I would suggest that an orator who went on speak-
ing for too long was inevitably interrupted either by the audience or by the
πρυτάνεις when they thought it was enough,[199] although we have no proper

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[197] For the archeological evidence cf. Young (1939), Armstrong and Camp II (1977), Boegehold
(1995, p. 77–78, 226–230).

[198] A thorough analysis and interpretation can be found in Hommel (1927); for a more recent
commentary cf. Rhodes (1981) *ad locum*.

[199] Especially as the πρυτάνεις would have been responsible for ensuring that all items got a
hearing, cf. Carey (2000, p. 47–54).

evidence for this; it follows that planning the length of an ἐκκλησία speech beforehand was near to impossible.

The whole situation, both in court and in politics, was quite different in Rome. In the courts of the Roman Republic, there were no legal time limits for a long time; the meetings were restricted to daytime[200] for practical reasons, but trials could and often did go on for several days.[201] How the legal situation changed in the late Republic is not clear; a remark in Cicero's speech *Pro Flacco* that "sex horas omnino lex dedit"[202] is taken to refer to the *lex Iulia de repetundis* (59 BC), although other evidence about the law does not mention time limits. Tacitus claims[203] that before the *lex Pompeia* (52 BC), orators in court were completely free to speak for as long as they wanted.[204] However, already in the trial against Verres in 70 BC we find references to legal restrictions of the speaking time.[205] The *lex Pompeia* set, among other regulations, a limit of three hours for each speaker which in most cases meant that the trial was concluded in a single day;[206] in the Milo trial at least the speeches were concluded in one day, while the presentation of the evidence took up two more (exceptionally in the case before the speeches—usually the evidence was examined after the main speeches had been given). For exceptions from the freedom of speaking time in the Republic see below p. 61.

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[200] *Lex XII tab.* 1.9 "sol occasus suprema tempestas esto".

[201] Cf. Cic. *Planc.* 37 "disputata hesterno die copiosissime a Q. Hortensio".

[202] Cic. *Flacc.* 82 "non est, mihi crede, corruptus. quid enim fuit quod ab eo redimeretur? ut duceret iudicium? cui sex horas omnino lex dedit, quantum tandem ex his horis detraheret, si tibi morem gerere voluisset?"

[203] Dismissed already by Mommsen (1899, p. 428, n. 4).

[204] Tac. *Dial.* 38 "modum in dicendo sibi quisque sumebat et numerus neque dierum neque patronorum finiebatur".

[205] Cic. *Verr.* 2.1.25 "hic tu fortasse eris diligens ne quam ego horam de meis *legitimis horis* remittam; nisi omni *tempore quod mihi lege concessum est* abusus ero, querere, deum atque hominum fidem implorabis, circumveniri C. Verrem quod accusator nolit tam diu quam diu liceat dicere. *quod mihi lex mea causa dedit*, eo mihi non uti non licebit? nam accusandi mihi tempus mea causa datum est, ut possem oratione mea crimina causamque explicare: hoc si non utor, non tibi iniuriam facio, sed de meo iure aliquid et commodo detraho."; similarly Cic. *Verr.* 2.1.32 "nunc mihi *temporis eius quod mihi ad dicendum datur*, quoniam in animo est causam omnem exponere, habenda ratio est diligenter."

[206] Cic. *Brut.* 324 "cum lege Pompeia ternis horis ad dicendum datis ad causas simillimas inter se vel potius easdem novi veniebamus cotidie".

A water-clock is attested in Rome as early as 159 B.C.,[207] but can only have come into use as a permanent institution for measuring speaking time in court after legal time limits were introduced, i.e. in the late Republic or under Augustus. As Ker says,[208] the κλεψύδρα was probably present even in Cicero's time, for he is confronted with a time limit in a speech during his consulate,[209] but this was not standard procedure before the Empire. After some gap in the evidence for the Augustan age, we find the use of the κλεψύδρα in court as common practice for Pliny the Younger; he reports about a *clepsydra* in a trial where he spoke.[210] The same passage, along with others,[211] implies that in some cases there was not a definite amount of time for certain types of cases, but that the judges were responsible for setting the speaking times in each trial separately. For other cases we know of a legal time limit: e.g. in extortion courts six hours were allowed for the prosecution and nine for the defence.[212]

We see a development in Roman courts from (allegedly) complete freedom from time limits in the early and Mid-Republic, to first attempts of legal time limits in the late Republic, and on to actual and sometimes quite narrow time limits in the Empire; however, at no time do we find a differentiated system of speaking times like in the Athenian courts.

The Roman Senate,[213] too, was somewhat different from the Athenian ἐκκλησία:[214] in the Republic, the presiding magistrate had the right to determine the speaking order (beyond the order set by the ranks of the magistrates), but once a senator had started to speak he could not stop him, not

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[207] Plin. maior *Nat.* 7.215 "Scipio Nasica collega Laenati primus aqua divisit horas aeque noctium ac dierum idque horologium sub tecto dicavit anno urbis DXCV."

[208] Ker (2009, p. 285).

[209] Cic. *Rab. perd.*

[210] Plin. minor *Epist.* 2.11.14 (of a trial held in January) "dixi horis paene quinque; nam duodecim clepsydris, quas spatiosissimas acceperam, sunt additae quattuor."

[211] E.g. Plin. minor *Epist.* 1.20.10 "sequitur ergo ut actio sit absolutissima, quae maxime orationis similitudinem expresserit, si modo iustum et debitum tempus accipiat; quod si negetur, nulla oratoris maxima iudicis culpa est."

[212] Plin. minor *Epist.* 4.9.9 "cum e lege accusator sex horas, novem reus accepisset".

[213] The Roman Senate is in its political function more similar to the Athenian βουλή, but in oratorical terms, it is equivalent to the ἐκκλησία as the place where most of the important political speeches were given.

[214] I follow both Mommsen (1871) and Lintott (1999) here.

even if he went off-topic. According to Cicero[215] it was good custom in the senate to speak briefly and to the point. But the opposite was legally possible, and could be used for filibustering, as the meeting had to be adjourned by sunset;[216] filibustering was a speciality of Cato Uticensis, but also used e.g. by Clodius.[217] The speaking time in the senate was first limited by Augustus, and restricted further in the later Empire.[218]

However, at no time was there a general time limit for a senate speech as there was for court speeches; apparently this was not considered appropriate for a situation of live discussion.

The issue of time limit naturally figures quite often in speeches by the Attic Orators, both in purely technical remarks and with rhetorical purpose. The most common feature is the *praeteritio* in the form "I don't have time to say...",[219] made all the more plausible to the audience by the well-visible κλεψύδρα.[220] Besides, the most important type of rhetorical use of the time limit is the figure of granting part of one's own time to the opponent, at least in fiction:[221] by offering his own speaking time to his opponent, the orator

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[215] Cic. *Leg.* 3.11 "loco senator et modo orato, causas populi teneto".

[216] Cic. *Catil.* 4.6 "nunc quicquid est, quocumque vestrae mentes inclinant atque sententiae, statuendum vobis ante noctem est"; "gesetzliche[r] Schluss der Sitzung bei Sonnenuntergang" (Mommsen, 1871, vol. 3, p. 939, n. 3); debates of several days were not uncommon, e.g. 1st–4th of January, 43 B.C., cf. Cic. *Phil.* 5+6.

[217] Lintott (1999, p. 78); Mommsen (1871, vol. 3, p. 940, n. 2) "Absichtliches Verschleppen der Verhandlung ist natürlich oft vorgekommen; aber die crude Form des Redens bis zum Schluss der Sitzung ist, wie Freund [...] und Feind [...] gleichmässig bezeugen, eine Specialität Catos". Mommsen's sources are: Cic. *Leg.* 3.40 "ne sit infinitus; nam brevitas non modo senatoris sed etiam oratoris magna laus est in sententia, nec est umquam longa oratione utendum—quod fit ambitione saepissime—, nisi aut peccante senatu nullo magistratu adiuvante tolli diem utile est, aut cum tanta causa est ut opus sit oratoris copia vel ad hortandum vel ad docendum; quorum generum in utroque magnus noster Cato est"; Caes. *B.C.* 1.32 "Catone vero acerrime repugnante et pristina consuetudine dicendi mora dies extrahente".

[218] Mommsen (1871, vol. 3, p. 940).

[219] E.g. Dem. *or.* 21.129, 24.61, 27.12, 40.38, 41.30, 45.48, 45.86, 47.82, 53.3, 54.44, 59.20; Aischin. *leg.* 118; Isocr. *Or.* 15.320, 18.51.

[220] Also the converse statement is used, "there is enough time left to ...": Aischin. *leg.* 126.

[221] E.g. Lys. *or.* 20.11; Dem. *or.* 18.139, 19.57, 50.2, 57.61; Aischin. *leg.* 59, 126, *Ctes.* 165–166.

An example of this figure by Demosthenes (Dem. *or.* 19.57 is quoted by Rowe (1997, p. 147) as an instance of the figure of thought ἐπιτροπή ("occurs when the speaker pretends to allow, even to dare, someone (the judges or one's opponent) to decide or to act independently of or contrary to the speaker's position"); however, the definitions for ἐπιτροπή by Rufinianus and for *permissio* by Quintilian, quoted by Lausberg (1990, § 857), do not actually include this.

underlines the strength of a particular argument or of the whole of his argumentation.

The picture for Rome is not completely different, but there is some shift of focus. In Cicero's speeches, we find nothing of the technicalities of the Attic Orators, since the matter was not as technical in the Republic. On the contrary, in the rare cases when Cicero was subject to a time limit, he complains about this disadvantage and thus produces a *captatio benevolentiae*: In the speech *Pro Quinctio*,[222] Cicero sets up a fictional dialogue between his opponent and himself, with the opponent arbitrarily setting a time limit, "horae". Cicero implies that he did not expect to be restricted in the length of his speech when speaking in court.

Another, quite extreme example is the trial of C. Rabirius *de perduellione* in 63 B.C. Due to an old-fashioned procedure, Cicero (as the defending orator) had to speak before the people for just half an hour. This seems to have been a deliberate move by the presiding magistrate, and ultimately by Caesar. But Cicero was not the type of orator to accept this without protest: after the introduction, he lashed out furiously,[223] came back to the point later in his speech[224] and made absolutely clear that he thought this restriction outrageous. The whole trial was finally abandoned without a result,[225] but in any case Cicero could regard the limit as an unfair disadvantage in his argumentation.[226]

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[222] Cic. *Quinct.* 71 "'non licet.'—at ea controversia est. 'nihil ad me attinet; causam capitis dicas oportet.'—accusa ubi ita necesse est.—'non,' inquit, 'nisi tu ante novo modo priore loco dixeris.'—dicendum necessario est.—*'praestituentur horae ad arbitrium nostrum, iudex ipse coercebitur.'*—quid tum?—'tu aliquem patronum invenies, [. . .].' haec est iniqua certatio [. . .]".

[223] Cic. *Rab. perd.* 6 "nunc quoniam, T. Labiene, diligentiae meae temporis angustiis obstitisti meque ex comparato et constituto spatio defensionis in semihorae articulum coegisti, parebitur et, quod iniquissimum est, accusatoris condicioni et, quod miserrimum, inimici potestati. quamquam in hac praescriptione semihorae patroni mihi partis reliquisti, consulis ademisti, propterea quod ad defendendum prope modum satis erit hoc mihi temporis, ad conquerendum vero parum".

[224] Cic. *Rab. perd.* 9, 17, 35, 38.

[225] Cassius Dio 37.26–28.

[226] The scornful wording of Cic. *De orat.* 3.138 "at hunc [i.e. Periclem] non declamator aliqui ad clepsydram latrare docuerat, sed, ut accepimus, Clazomenius ille Anaxagoras vir summus in maximarum rerum scientia" also implies that Cicero thought a strict time limit unworthy of a decent orator (or at least that he could argue along this line before the people).

Considering the technical differences between Athens and Rome, it is rather astonishing to find not only *praeteritiones* referring to a lack of time[227] but also the most rhetorical way of using the time limit in Rome just as in Greece, the figure of granting part of one's own time to the opponent: e.g. in the *Pro S. Roscio*, Cicero offers to his opponent: "ita quaero abs te, C. Eruci: quo modo, et sic tecum agam ut meo loco vel respondendi vel interpellandi tibi potestatem faciam vel etiam, si quid voles, interrogandi",[228] i.e. that the opponent may stand up in Cicero's allotted time[229] to make statements or ask questions of his own. In the strict sequence of a Roman trial, it is to be assumed that this offer was not meant seriously, but just a rhetorical formula.[230] It may have been a real offer in *contio* speeches, although the instances in the *contio* speeches *De lege agraria* do not show any sign of someone else speaking in between.[231]

On the other hand, Cicero also knows how to turn the Roman regulations into an argument: in *Pro Tullio*, he scorns with great irony the prosecutor's behaviour in a previous trial, where he has spoken until sundown so that the judges' verdict had to be postponed to the next day.[232]

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[227] Cic. *Cael.* 29 (with a *percursio*, omitting further illustration) "dies iam me deficiat, si, quae dici in eam sententiam possunt, coner expromere: de corruptelis, de adulteriis, de protervitate, de sumptibus immensa oratio est"; Cic. *Verr.* 2.2.2 "quo mihi maturius ad Siciliae causam veniendum est relictis ceteris eius furtis atque flagitiis, ut et viribus quam integerrimis agere et ad dicendum temporis satis habere possim".

[228] Cic. *S. Rosc.* 73.

[229] The issue of a strict time slot may be of less importance in Rome than under the precise time regulations of Athenian courts, and the figure can certainly also be read in the sense that the orator (fictitiously) concedes his right to an uninterrrupted speech. However, in my view, the notion that an amount of time "on stage" which belonged rightfully to the orator is used the opponent, would also be of importance.

[230] Similarly in the *Verrines*: Cic. *Verr.* 2.1.25 (speaking to Hortensius) "hic tu fortasse eris diligens ne quam ego horam de meis legitimis horis remittam; nisi omni tempore quod mihi lege concessum est abusus ero, querere, deum atque hominum fidem implorabis, circumveniri C. Verrem quod accusator nolit tam diu quam diu liceat dicere. quod mihi lex mea causa dedit, eo mihi non uti non licebit? nam accusandi mihi tempus mea causa datum est, ut possem oratione mea crimina causamque explicare: hoc si non utor, non tibi iniuriam facio, sed de meo iure aliquid et commodo detraho", 2.1.51 (speaking to Verres) "postea quam nostris testibus nos quam horis uti malle vidisti, nullum signum domi reliquisti".

[231] Cic. *Leg. agr.* 2.78 "quod si vestrum commodum spectat, veniat et coram mecum de agri Campani divisione disputet.", 3.1 "nunc, si videtur eis, in meam contionem prodeant et, quo provocati a me venire noluerunt, revocati saltem revertantur".

[232] Cic. *Tull.* 6 "unum hoc abs te, L. Quincti, pervelim impetrare—quod tametsi eo volo quia mihi utile est, tamen abs te idcirco quia aequum est, postulo—ut ita tibi multum temporis ad dicendum sumas ut his aliquid ad iudicandum relinquas. namque antea non defensionis tuae modus, sed nox tibi finem dicendi fecit; nunc, si tibi placere potest, ne idem facias,

Beyond these cases, we also have the Verres trial where Cicero, as the prosecutor, gave up a large part of his first continuous speech in order to begin as soon as possible with the presentation of evidence and witnesses, and to speed up the entire trial, so that it would not be continued into the next calendar year. This tactic was neither innovative, as Cicero says himself,[233] nor extraordinary, as Cicero mentions in a later trial about the prosecutor using the same tactic.[234] Only to us may it seem quite special, for lack of extant speeches from similar cases.

In fact, one may even wonder why Cicero, if he was pressed for time, still gave[235] an *actio prima* of 55 paragraphs (which, compared to other court speeches by him, is not exactly a *short* speech[236]). Two reasons may be considered: 1. since we have no examples of prosecution speeches from other trials, neither *repetundae* nor otherwise, it is quite possible that an *actio prima* of the prosecution of 55 paragraphs is indeed extraordinarily short; 2. more importantly, the major point in Cicero's tactic is not the shortness of the first speech, but that in this first speech he mostly speaks about the political circumstances, the specifics of the festival calendar and the delaying tactics of his opponents (§§ 3–32) and his resulting tactic of shortening parts of the trial in order to speed up the procedure (§§ 32–55). Only in the very last paragraph he names the charge that he brings against Verres (§ 56). So it may be said that Cicero, while giving a first speech longer than most of his political speeches, and longer than *Pro Archia* and *Pro Rabirio Postumo*, completely cancelled his *actio prima* in terms of what was usually expected of an *actio prima*, i.e. a presentation and substantiation of the charges. Thereby he

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id abs te postulo. neque hoc idcirco postulo quod te aliquid censeam praeterire oportere aut non quam ornatissime et copiosissime dicere, verum ut semel una quaque de re dicas; quod si facies, non vereor ne dicendo dies eximatur."

[233] Cic. *Verr.* 1.55 "faciam hoc non novum, sed ab eis qui nunc principes nostrae civitatis sunt ante factum, ut testibus utar statim".

[234] Cic. *Scaur.* 30 "omnis ista celeritas ac festinatio, quod inquisitionem, quod priorem actionem totam sustulisti".

[235] We may in this case assume a fairly close relationship between the delivered and the written version of the speech, as the trial had drawn much attention, so the delivered speech was quite widely known, and was a success, so that there cannot have been much necessity or room for editing before publication.

[236] *Pro Archia poeta* (32§§), *Pro Rabirio Postumo* (48§§) are shorter, *Pro Balbo* (65§§) is not much longer.

frustrated Hortensius' plans, who found nothing in Cicero's speech to reply to.[237]

The "technical" part of Cicero's tactic, his using the specifics of the Roman calendar, is a valuable source for political and social history—more important from a rhetorical-oratorical point of view, however, is his tactic of omitting the usual content (i.e. the support of the charges) from his *actio prima*, by breaking off with the announcement "ut testibus utar statim".[238] Under different circumstances[239] all the previous content of the speech might have formed an extended *prooemium* on procedural details, with the actual prosecution speech to follow. Exactly at this point Cicero places a major *praeteritio* comprising almost all the remainder of his speech (if considered in the usual structure of a prosecution speech). This move did not only render Cicero's own speech unusually short, it also had the effect of shortening Hortensius' reply, as it left him with little material to build his own speech upon. Since Cicero could not start the examination of the witnesses and evidence before Hortensius had given his first speech, this effect further promoted Cicero's technical tactic of speeding up the entire trial as much as possible.

The differences in the official regulations on time limits across different periods of antiquity, as well as the differences in the oratorical reactions to them, are also reflected in rhetorical theory. Considering the importance of time limits in practical oratory in Greece, it is no surprise to find the most practical instruction in the *Rhetorica ad Alexandrum*,[240] a short but systematic survey on how to adjust a speech to a particular length,[241] which is not taken up by the Roman writers of rhetorical theory. Cicero mentions the point in a side remark, which is nonetheless interesting: in *De oratore*, Crassus ends his last contribution with the statement "edidi, quae potui, non ut volui, sed ut me temporis angustiae coegerunt; scitum est enim causam conferre in

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[237] Cic. *Verr.* 2.1.24 "nunc ne novo querimoniae genere uti possit Hortensius et ea dicere, [...] me [...] eum, quem contra dicerem, quia non dixerim, perdidisse".

[238] Cic. *Verr.* 1.55.

[239] I.e. if Cicero had not started to announce his tactic in § 33.

[240] Even though the evidence does not correspond exactly (since the *Rhet. Alex.* is not necessarily a strictly Athenian treatise, while almost all our evidence on practical oratory relates to Athens only), the connection is plausible enough.

[241] *Rhet. Alex.* 1434b1–27.

tempus, cum adferre plura, si cupias, non queas."[242] This description not only of a *praeteritio* (a figure which is in general ignored in theory by Cicero, cf. p. 95) but even of a rather dishonest type is only possible because it is offered in the background narration of *De oratore*, outside the actual treatise parts, and with a self-ironical attitude.

In the Empire, when official time limits become relevant, Tacitus mentions the issue rather in passing in the *Dialogus*, when Marcus Aper calls for a new way of oratory due to a new type of judges who, among other things, set a (possibly arbitrary) time limit for the orator.[243] But the *Dialogus* is a description and evaluation of oratory, not a textbook, and consequently gives no advice. More could be expected of Quintilian, but even here we find nothing but a few general side remarks: a note specifically on the *prooemium*,[244] another on the *actio*,[245] and the observation that time limits set by the judge often make the given speech shorter than the published version, but without specifying the cut-out parts.[246] From another passage, however, we can infer that the issue must have played a role in his practice as a teacher of rhetoric, since he warns his students against the situation where at their first appearance in court "laboratam congestamque dierum ac noctium studio actionem aqua deficit";[247] but we are not told how Quintilian himself prepared his students for this mishap.

Official time limits and length of speeches were an issue throughout ancient oratory, and they were dealt with in varying degrees of technicality. Naturally we have most evidence in areas where there were strictest limits,

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[242] Cic. *De orat.* 3.228.

[243] Tac. *Dial.* 19 "qui vi et potestate, non iure et legibus cognoscunt, *nec accipiunt tempora, sed constituunt,* nec exspectandum habent oratorem, dum illi libeat de ipso negotio dicere, sed saepe ultro admonent atque alio transgredientem revocant et festinare se testantur".

[244] Quint. *Inst.* 4.1.72 "aliquando tamen uti nec si velimus eo [prooemio] licet, cum iudex occupatus, cum angusta sunt tempora, cum maior potestas ab ipsa re cogit incipere"; Quintilian adopts this advice on the *prooemium* from his sources, although, as he says before, this should be a reason for brevity in the whole speech.

[245] Quint. *Inst.* 11.3.52 "vitium nimiae tarditatis: nam et difficultatem inveniendi fatetur et segnitia solvit animos, et, in quo est aliquid, *temporibus praefinitis aquam perdit.* promptum sit os, non praeceps, moderatum, non lentum".

[246] Quint. *Inst.* 12.10.55 "quid ergo? semper sic aget orator ut scribet? si licebit, semper. sed erunt quae *impediant brevitate tempora a iudice data*: multum ex eo quod potuit dici recidetur, editio habebit omnia."

[247] Quint. *Inst.* 12.6.5.

i.e. the courts—the Athenian[248] and, to a somewhat lesser degree, the Roman courts, especially in the Empire. Beyond just coping with the time limit, it was employed for rhetorical purposes, mainly in *praeteritiones* and in the figure of granting one's own speaking time to the opponent. The most striking finding here, however, is the lack of advice from the writers of rhetorical theory, especially from Quintilian, who in other areas shows great diligence and attention to practical problems and their consequences.

2.5.3 "Natural" time limits

The concept of a "natural" time limit to a speech, i.e. the idea of shortness for shortness' sake,[249] has found little more echo than external time limits in the extant theoretical works on rhetoric.[250] The *Rhetorica ad Alexandrum* recommends only very specifically that when the orator recapitulates the opponent's arguments, "δεῖ δὲ τούτων ἕκαστα συνάγειν ὡς εἰς βραχύτατα καὶ φράζειν ὅτι μάλιστα ἐν ὀλίγοις τοῖς ὀνόμασι."[251] In Aristotle's *Ars rhetorica* the point is to be found in two aspects, first quasi *ex negativo*, in a rather unexpected place in book 2, mentioned in passing in the section on ἐνθυμήματα: "οὔτε γὰρ πόρρωθεν οὔτε πάντα δεῖ λαμβάνοντας συνάγειν· τὸ μὲν γὰρ ἀσαφὲς διὰ τὸ μῆκος, τὸ δὲ ἀδολεσχία διὰ τὸ φανερὰ λέγειν",[252] implying that less μῆκος of a speech will lead to greater σαφήνεια, that cutting off unnecessary topics will help to avoid ἀδολεσχία, the *loquacitas* for which the Greek were so notorious. In the second passage, Aristotle mentions συντομία as a means to de-emphasise certain aspects against others.[253]

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[248] While we have some evidence also for the legal situation in other Greek cities (especially in inscriptions), our sources for practical oratory handling these time limits are virtually exclusively Athenian.

[249] This was implicitly present in omissions of many kinds in practice, as shown above in sections 2.2–2.4.

[250] I do not discuss here aspects of stylistic brevity (which figures e.g. most prominently in the Stoics which counted συντομία among oratory's stylistic virtues, cf. Diog. Laert. 7.59), since there is hardly any *omission* from the speech to be grasped in it.

[251] *Rhet. Alex.* 1430a36–38.

[252] Aristot. *Rhet.* 1395b25–27.

[253] Aristot. *Rhet.* 1416b4–7 "ἄλλος τῷ διαβάλλοντι, τὸ ἐπαινοῦντα μικρὸν μακρῶς ψέξαι μέγα συντόμως, ἢ πολλὰ ἀγαθὰ προθέντα, ὃ εἰς τὸ πρᾶγμα προφέρει ἓν ψέξαι."

The praise of *brevitas* in the *Rhetorica ad Herennium*[254] mentions the issue of time limits, but it refers exclusively to stylistic brevity, not to omission of speech contents. Where the *Auctor* is concerned with contents, he only makes a negative point against a proliferating argumentation;[255] besides, he gives a few specific pieces of advice for brevity in the *exordium*,[256] in the *narratio*,[257] in arousing commiseration[258] and in conclusions.[259]

For Cicero βραχύτης or *brevitas* is not a virtue of a speech as a whole or of oratory as a genre; in fact, Cicero in the *Brutus* states succinctly that "brevitas autem laus est interdum in aliqua parte dicendi, in universa eloquentia laudem non habet"[260] (a point which a few sentences later is turned against the Asianist orators[261]). The same is implied later when he praises *brevitas* as particularly appropriate for historiography.[262] But Cicero at the same time, instead of banning *brevitas* from oratory altogether, allows for some balance, like in his praise for Crassus as "quodque difficile est, idem et perornatus et perbrevis",[263] or twice in the *Orator*, both times in enumerations of what a "good" orator ought to do: he must structure his speech "ut nulla neque praetermittatur neque redundet"[264] and "[sequetur] brevitatem, si res petet".[265] Apparently, the idea of a "natural time limit" or of omissions *brevitatis gratia* is not completely alien to Cicero's thinking about oratory, but he would not himself consider it a rhetorical concept.

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[254] *Rhet. Her.* 4.68 "brevitas est res ipsis tantummodo verbis necessariis expedita [...]. habet paucis conprehensa brevitas multarum rerum expeditionem. quare adhibenda saepe est, cum aut res non egent longae orationis aut tempus non sinet commorari."

[255] *Rhet. Her.* 2.27 "haec enim res [*i.e. a well-structured argumentation*] facit, ut neque diutius, quam satis sit, in eisdem locis commoremur".

[256] *Rhet. Her.* 1.11 "item vitiosum [exordium] est, quod nimium apparatis conpositum est aut nimium longum est".

[257] See below p. 69.

[258] *Rhet. Her.* 2.50 "conmiserationem brevem esse oportet; nihil enim lacrima citius arescit."

[259] *Rhet. Her.* 3.15 "conclusionibus brevibus utemur".

[260] Cic. *Brut.* 50; the "aliqua pars dicendi" might be seen as referring to the *narratio*, where *brevitas* was traditionally requested, see below p. 69; however, Cicero had already before, in the *De oratore*, expressly rejected *brevitas* in the *narratio*, see p. 69.

[261] Cic. *Brut.* 51 "Asiatici oratores non contemnendi quidem nec celeritate nec copia, sed parum pressi et nimis redundantes", cf. Quint. *Inst.* 11.3.52, see p. 139, n. 44.

[262] Cic. *Brut.* 262 "nihil est enim in historia pura et inlustri brevitate dulcius". Oratory and historiography are also contrasted in the use of pauses, see p. 132.

[263] Cic. *Brut.* 158.

[264] Cic. *Orat.* 117.

[265] Cic. *Orat.* 139.

Similarly, Quintilian's general remarks on *brevitas* result in no statement at all: *brevitas* and *copia* ought to be employed, or not, in whatever way suits the matter.[266]

There are indeed discussions of brevity in the rhetorical literature, but they almost exclusively refer to the διήγησις or *narratio*, the exposition of the case in a court speech. The canonical, but not unchallenged view in rhetorical tradition is that the *narratio* should be short: the *Rhetorica ad Alexandrum* states that in a διήγησις within a speech (as in a forensic speech) "συντόμως δέ [δεῖ τούτων ἕκαστον ποιεῖν], ἵνα μνημονεύσωσι τὰ ῥηθέντα"[267] (in contrast to a speech which consists only of a διήγησις, like a report of an embassy[268]); later ταχεῖα is listed under the virtues of the διήγησις.[269] Isocrates is a prominent supporter.[270] Aristotle objects to the common view, pointing to τὸ μετρίως instead;[271] he allows for references to the speaker's character and to emotion, and generally leaves the length or brevity of the διήγησις to the orator's own judgment.

The *Auctor ad Herennium* takes for granted what was established in the rhetorical tradition (see above *Rhet. Alex.*), that "tres res convenit habere narrationem, ut brevis, ut dilucida, ut veri similis sit", and provides an extensive explanation how to achieve *brevitas*.[272]

Cicero, by contrast, rejects the point openly and completely, claiming through Antonius' voice in *De oratore* that brevity "saepe obest vel maxime in narrando, non solum quod obscuritatem adfert, sed etiam quod eam virtutem, quae narrationis est maxima, ut iucunda et ad persuadendum accom-

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[266] Quint. *Inst.* 3.8.67 "brevitas quoque aut copia non genere materiae sed modo constat"; Quint. *Inst.* 10.5.8 "sua brevitati gratia, sua copiae"; Cic. *Orat.* 139 "brevitatem, si res petet" is cited in Quint. *Inst.* 9.1.45.

[267] *Rhet. Alex.* 1438a23–24.

[268] *Rhet. Alex.* 1438a14–17.

[269] *Rhet. Alex.* 1446a8–11 "ἀντὶ δὲ τοῦ ταχεῖαν καὶ σαφῆ καὶ μὴ ἄπιστον τὴν διήγησιν λέγεσθαι τὰς πράξεις δεῖ τοιαύτας ποιεῖσθαι. ταχέως μὲν οὖν ἐπιτελέσεις, ἂν μὴ ****" (where an unfortunate *lacuna* has been proposed).

[270] According to Quint. *Inst.* 4.2.32.

[271] Aristot. *Rhet.* 1416b33–36 "δεῖ γὰρ μὴ μακρῶς διηγεῖσθαι ὥσπερ οὐδὲ προοιμιάζεσθαι μακρῶς, οὐδὲ τὰς πίστεις λέγειν. οὐδὲ γὰρ ἐνταῦθά ἐστι τὸ εὖ ἢ τὸ ταχὺ ἢ τὸ συντόμως, ἀλλὰ τὸ μετρίως".

[272] *Rhet. Her.* 1.14.

modata sit, tollit".[273]   At this point, Cicero's consistent rejection of *brevitas* collides most visibly with the rhetorical tradition.

The most balanced account on *brevitas* in the *narratio* is found, as usual, in Quintilian, who briefly reviews the previous discussion of the point[274] and then indulges in a thorough consideration,[275] and although he first declares to generally agree with the tradition,[276] he later feels time and again obliged to warn against too much brevity,[277] so that he eventually rather comes to terms with Aristotle's call for measurement.[278]

Another aspect of *brevitas*,[279] which in rhetorical theory is treated exclusively by Quintilian, is the point that sometimes even useful parts of the speech are better left out, so that the audience does not become annoyed and bored simply by being kept too long (in court, on a particular topic, etc.).[280]   The most important point, however, as stated by Quintilian, is to

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[273] Cic. *De orat.* 2.326; similarly *De orat.* 3.202 "nam et commoratio una in re permultum movet et inleustris explanatio rerumque, quasi gerantur, sub aspectum paene subiectio; quae et in exponenda re plurimum valent et ad inlustrandum id, quod exponitur, et ad amplificandum [. . .]; et huic contraria saepe percursio est et plus ad intellegendum, quam dixeris, significatio et distincte concisa brevitas et extenuatio".

[274] Quint. *Inst.* 4.2.32.

[275] Quint. *Inst.* 4.2.40–51, cf. 4.2.104, 111.

[276] Quint. *Inst.* 4.2.32 "eadem nobis placet divisio".

[277] E.g. Quint. *Inst.* 4.2.43 "nos autem brevitatem in hoc ponimus, non ut minus sed ne plus dicatur quam oporteat", 44 "non minus autem cavenda erit, quae nimium corripientes omnia sequitur, obscuritas, satiusque aliquid narrationi superesse quam deesse", 47 "neque mihi umquam tanta fuerit cura brevitatis ut non ea quae credibilem faciunt expositionem inseri velim".

[278] Quint. *Inst.* 4.2.45 "ut fortasse ubique, in narratione tamen praecipue media haec tenenda sit via dicendi: 'quantum opus est et quantum satis est'".

Quintilian makes another point for *brevitas* in the *partitio* and *propositio* (*Inst.* 4.5.24–26); this is self-evident at first, since much detail would be illogical in these parts, but Quintilians tactics go further: a little earlier (*Inst.* 4.5.6) he puts not only *brevitas*, but even *obscuritas* to a practical use, "interim refugienda non modo distinctio quaestionum est, sed omnino tractatio: adfectibus turbandus et ab intentione auferendus auditor. non enim solum oratoris est docere, sed plus eloquentia circa movendum valet. cui rei contraria est maxime tenuis illa et scrupulose in partis secta divisionis diligentia eo tempore quo cognoscenti iudicium conamur auferre", i.e. it is easier to deceive the audience if the orator does not tell them too clearly what he intends to say. It also gives the orator more liberty for changes later in his speech, since "turpissimum vero non eodem ordine exsequi quo quidque proposueris" (*Inst.* 4.5.28).

[279] See also p. 163 on the orator's asking the audience for attentive silence.

[280] Even Horace agrees: "quicquid praecipies, esto brevis, ut cito dicta / percipiant animi dociles teneantque fideles. / omne supervacuum pleno de pectore manat" (Hor. *Ars* 337).

appear brief[281] and keep the audience's attention by *announcing* brevity, especially when speaking before a tired jury.[282] But Quintilian also repeatedly recommends actual omissions with the argument of the annoyed audience: avoid an overlong *prooemium*,[283] a long *narratio*,[284] a long *digressio*.[285]

Ignored in all discussions of *brevitas* in rhetorical theory is the possibility of constructing a *praeteritio* from the topic, though both the Attic Orators and Cicero widely employ this device in their speeches. A very common figure in the Attic Orators is the "*praeteritio* of details", often phrased as "it would be a lengthy affair to tell you all the details",[286] implying that the speech will profit from the brevity which is achieved by omitting said details, and that the orator strive not to annoy his audience by boring them.

Even more often, the orator would announce to be brief about some point of his case (or, sometimes, the whole case): mostly without giving any justification,[287] but in a few cases with an explicit effort, again, not to annoy his audience with lengthy explanations or narrations.[288]

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[281] Quint. *Inst.* 4.1.34 "sunt et illa excitandis ad audiendum non inutilia, *si nos neque diu moraturos neque extra causam dicturos existiment.* docilem sine dubio et haec ipsa praestat attentio, sed et illud, *si breviter et dilucide summam rei de qua cognoscere debeat indicarimus*".

[282] Quint. *Inst.* 4.1.48 "his etiam de causis insinuatione videtur opus esse si adversarii actio iudicum animos occupavit, si dicendum apud fatigatos est; quorum alterum promittendo nostras probationes et adversas eludendo vitabimus, alterum spe brevitatis et iis quibus attentum fieri iudicem docuimus."

[283] Quint. *Inst.* 4.1.62 "nec minus evitanda est inmodica eius [prooemii] longitudo, ne in caput excrevisse videatur et quo praeparare debet fatiget."

[284] Quint. *Inst.* 4.2.47 "quibus [longis narrationibus] extrema, ut praecepi, prohoemii parte ad intentionem praeparandus est iudex, deinde curandum ut omni arte vel ex spatio eius detrahamus aliquid vel ex taedio."

[285] Quint. *Inst.* 4.3.8 "verum haec breviter omnia; iudex enim ordine audito festinat ad probationem et quam primum certus esse sententiae cupit. praeterea cavendum est ne ipsa expositio vanescat, aversis in aliud animis et inani mora fatigatis."

Other aspects related to "avoid annoying the audience", but not to omissions, are: use *ornatus* to keep the audience's attention (Quint. *Inst.* 4.2.22 "in quo genere [i.e. factis notis] plurimis figuris erit varianda expositio ad effugiendum taedium nota audientis"), and do not appear as if you mistrust or underestimate the audience's memory (Quint. *Inst.* 6.1.2 "quae autem enumeranda videntur, cum pondere aliquo dicenda sunt et aptis excitanda sententiis et figuris utique varianda: alioqui nihil est odiosius recta illa repetitione velut memoriae iudicum diffidentis.").

[286] Examples: Lys. *or.* 18.3, 24.21, 30.2, 32.26; Dem. *or.* 3.27, 9.60, 9.64, 10.3, 18.215, 18.258, 32.17; Aischin. *Tim.* 40, 52, *leg.* 22, 112, 118

[287] E.g. Lys. *or.* 12.3, 12.62, 13.33, 13.62, 16.9, 19.55, 23.1, 24.4; Dem. *or.* 6.6, 8.76, 14.2, 15.22, 18.95, 18.229, 20.75, 21.77, 21.184, 23.21, 23.102, 23.144, 23.215, 24.6, 24.10, 24.17, 24.159, 190, 27.3, 29.25, 34.3, 36.3, 36.36; Aischin. *Tim.* 155, *Ctes.* 9, 28, 69, 213.

[288] E.g. Dem. *or.* 14.14, 14.41, 23.88

Cicero (who is, in theory, more strictly against *brevitas* than the other writers of rhetoric) uses the figure in his speeches, too, but with a somewhat different focus: he rather rarely just announces that he will treat a certain point briefly,[289] more often he gives the *brevitas* a connotation as positive[290] or necessary;[291] the latter case does allude to a kind of time limit, not an official one, but the necessity or wish to conclude the speech within a certain time frame.[292] An ironical touch is in the remark in *Pro Quinctio*, "et a me, qui neque excogitare neque pronuntiare multa possum, brevitas postulatur, quae mihimet ipsi amicissima est"[293] (though we have to take into account that Cicero is in the very first stage of his career at this point), and in the passages of *In Verrem* 2 where this not particularly short speech is presented as *brevis* compared to the mass of possible arguments against Verres.[294] A very special reason for *brevitas* is the situation of the speeches before Caesar, mentioned in the *peroratio* of the *Pro Ligario*: with Caesar as the only judge and audience, the whole matter depends more on him, Caesar, than on anything Cicero could say (so Cicero argues), therefore the speech may as well

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[289] Cic. *Caecin.* 17 "ut in pauca conferam"; Cic. *Sull.* 62 "cuius ego de virtute et constantia, iudices, tantum dico [. . .]"; Cic. *Phil.* 2.20 "nec vero tibi de versibus plura respondebo; tantum dicam breviter [. . .]".

[290] Cic. *Flacc.* 34 "quas ego non solum propter longitudinem sed etiam propter turpissimam obscenitatem verborum praetereundas puto"; Cic. *Flacc.* 12 "sed non dilatabo orationem meam"; cf. the implied connotation of *longum* as negative: Cic. *Verr.* 2.1.156 "iam vero in bonis Q. Opimi vendendis quas iste praedas, quam aperte, quam improbe fecerit, longum est dicere".

[291] Cic. *Verr.* 2.1.32 "nunc mihi temporis eius quod mihi ad dicendum datur, quoniam in animo est causam omnem exponere, habenda ratio est diligenter. itaque primum illum actum istius vitae turpissimum et flagitiosissimum praetermittam", 2.1.42 "nolite, quaeso, iudices, brevitate orationis meae potius quam rerum ipsarum magnitudine crimina ponderare; mihi enim properandum necessario est, ut omnia vobis quae mihi constituta sunt possim exponere", 2.2.2 "quo mihi maturius ad Siciliae causam veniendum est relictis ceteris eius furtis atque flagitiis, ut et viribus quam integerrimis agere et ad dicendum temporis satis habere possim", 2.4.57 "nullo modo possum omnia istius facta aut memoria consequi aut oratione complecti: genera ipsa cupio breviter attingere"; Cic. *Flacc.* 75 "vellem tantum habere me oti, ut possem recitare psephisma Smyrnaeorum"; also used in Cic. *De orat.* 3.209 "his autem de rebus sol me ille admonuit, ut brevior essem, qui ipse iam praecipitans me quoque haec praecipitem paene evolvere coegit".

[292] A similar reference is Cic. *Q. Rosc.* 41 "frustra tempus contero".

[293] Cic. *Quinct.* 34.

[294] Cic. *Verr.* 2.4.35 "tametsi iam dudum ego erro qui tam multa de tuis emptionibus verba faciam, et quaeram utrum emeris necne et quo modo et quanti emeris, quod verbo transigere possum", 2.4.38 "sed quid ego istius in eius modi rebus mediocris iniurias colligo, quae tantum modo in furtis istius et damnis eorum a quibus auferebat versatae esse videantur? accipite, si vultis, iudices, rem eius modi ut amentiam singularem et furorem iam, non cupiditatem eius perspicere possitis."

be cut short.[295] This argumentation is, of course, mainly a figure of flattery towards the dictator.

Also the point of "(not) annoying the audience" is used in a number of *praeteritiones*. This is the clearest expression of the "natural time limit" concept; it is suggested as a reason for omission in several passages of Cicero's rhetorical writings[296] and used for *praeteritio* in some of his speeches: in the *Pro S. Roscio Amerino*, which is indeed a rather long speech (154§§), he indicates in the middle of the *narratio* that the complicated nature of the case is no fault of his, though he puts it with some irony, as his "ne diutius teneam, iudices"[297] is followed by another eight paragraphs of *narratio*, and another 130 paragraphs of speech altogether. And he apologises once more later on: "vereor ne aut molestus sim vobis, iudices, aut ne ingeniis vestris videar diffidere, si de tam perspicuis rebus diutius disseram".[298] Here he cleverly suggests that his argument so far has been more detailed and clear than necessary, and flatters the judges' intellect, making it difficult for his audience to claim that the case has *not* been made perfectly clear to them, even if they felt that more explanation would have been necessary.

Sometimes Cicero expresses fear to annoy the judges not just by talking for too long, but by keeping their curiosity in suspense: "ne diutius oratione mea suspensa exspectatio vestra teneatur, adgrediar ad crimen".[299] But as might be expected, apologies like this are most needed in the *actio secunda* of the Verres trial, Cicero's longest speech by far.[300] Here we find general remarks

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[295] Cic. *Lig.* 38 "longiorem orationem causa forsitan postulet, tua certe natura breviorem. quare cum utilius esse arbitrer te ipsum quam aut me aut quemquam loqui tecum, finem iam faciam".

[296] Cic. *Inv.* 1.28 "oportet igitur [narrationem] tres habere res: ut brevis, ut aperta, ut probabilis sit. brevis erit, [...] si non modo id, quod obest, verum etiam id, quod nec obest nec adiuvat, praeteribitur"; *De orat.* 3.31 "haeret in causa semper et quid iudici probandum sit cum acutissime vidit, omissis ceteris argumentis in eo mentem orationemque defigit", 2.296 "dixisse me cum ceteris tuis laudibus hanc esse vel maximam quod non solum quod opus esset diceres, sed etiam quod non opus esset non diceres"; *Orat.* 47 "faciet igitur hic noster [...] ut, quoniam loci certi traduntur, percurrat omnis, utatur aptis, generatim dicat [...]. nec vero utetur imprudenter hac copia, sed omnia expendet et seliget".

[297] Cic. *S. Rosc.* 21.

[298] Cic. *S. Rosc.* 82.

[299] Cic. *Cluent.* 8, remarkably early in the speech.

[300] The length of this speech, though exceptional in the Ciceronian corpus, may have been rather typical of the genre of prosecution *de repetundis*. The figure of apologising for the length of the speech may thus well have been just as typical for this type of speech, of which we have no other example.—It does not matter for the oratorical analysis here

about the judges' weariness (*satietas*)[301] as well as apologies for lingering on the same subject for too long,[302] a feature obviously brought about by his organising the material into five books (or speeches) according to the subject matter. The last example in particular, being at the same time one of the many *praeteritiones* in the *Verrines*,[303] shows Cicero's unease about the problem as he first states the necessity of elaborating the point at hand, but immediately afterwards[304] apologises for it.

Remarkably the point of (not) annoying the audience is to be found only in forensic speeches of Cicero's, not in his political oratory; the main reason is probably that most of Cicero's political speeches are indeed much shorter than the forensic speeches, with exception of the "invectives" *In Pisonem* and *Phil.* 2, but even in these two the point is not mentioned. In *Phil.* 2, this did not matter much, as the speech was not actually delivered, and in *In Pisonem* Cicero probably did not really care, since he had no need to convince the senators of anything and thus did not need their goodwill. Furthermore I would speculate that senators, being exposed to a lot more speeches than the men acting as judges in court, were expected to have more stamina in this respect. Cicero's speeches to the people, however, are normally much shorter than the average forensic speeches, suggesting less patience in the crowd.[305]

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whether *Verr.* 2 was actually given, intended to be given, or purely fictitious, and whether it should be considered as one speech or five connected speeches: for the argumentation within the speech, it is assumed in any case that the judges would have to listen to its entirety—hence the apologies about the length.

[301] Cic. *Verr.* 2.3.103 "sentio, iudices, moderandum mihi esse iam orationi meae fugiendamque vestram satietatem."

[302] E.g. Cic. *Verr.* 2.3.126 "si ego accusator totiens de re eadem dicerem, vererer ne animos vestros offenderem, iudices.", 2.4.105 "nimium mihi diu videor in uno genere versari criminum; sentio, iudices, occurrendum esse satietati aurium animorumque vestrorum. quam ob rem multa praetermittam; ad ea autem quae dicturus sum reficite vos, quaeso, iudices, per deos immortalis—eos ipsos de quorum religione iam diu dicimus,—dum id eius facinus commemoro et profero quo provincia tota commota est."

[303] See below p. 94.

[304] Cic. *Verr.* 2.4.109 "non obtundam diutius; etenim iam dudum vereor ne oratio mea aliena ab iudiciorum ratione et a cotidiana dicendi consuetudine esse videatur."

[305] Approximately 30 against 100 paragraphs; exceptions are the early speeches *Pro lege Manilia* (71 §§) and *De lege agraria 2* (103 §§).

The argument of not annoying one's audience is adopted later in Horace's *Satires*: "ergo non satis est risu diducere rictum / auditoris; et est quaedam tamen hic quoque virtus. / est brevitate opus, ut currat sententia neu se / inpediat verbis lassas onerantibus auris" (Hor. *Sat.* 1.10.9).

2.5.4 Conclusion

In his rhetorical writings, Cicero expresses his aversion against brevity, quite consistently and sometimes (regarding the *narratio*) against the rhetorical tradition. This may be a personal preference, but it is quite possible that, especially where Cicero defends his style in the Asianism/Atticism debate, he occupies a much more extreme position than would have matched his actual opinion. From this point it appears consequent that he also avoids mentioning the possibilities of *brevitas* as an argument for *praeteritio*. Quintilian, however, with his more balanced view on *brevitas* in the *Institutio*, does not make the point either, although he could have more easily pointed out the practical advantage of explicitly not annoying the audience.

2.6 "Spare your ammunition"

Another aspect of omissions is the concept of "sparing one's ammunition": it can be advisable not to use some element of a speech in a certain passage, even though it is appropriate there, if it can be more beneficial at a different point of the speech, or in another, later speech; and especially one should sometimes not concentrate all facets of an aspect in one spot, but spread them over the speech.

Cicero in his speeches only once directly mentions the point of "spare your ammunition", here rather "spare your strength", in the *Philippicae*:

> nec enim omnia effundam, ut, si saepius decertandum sit, ut erit, semper novus veniam; quam facultatem mihi multitudo istius vitiorum peccatorumque largitur ...

> hunc ego diem expectans M. Antoni scelerata arma vitavi, tum cum ille in me absentem invehens non intellegebat, ad quod tempus me et meas vires reservarem ...

> quamquam animus mihi quidem numquam defuit, tempora defuerunt, quae simul ac primum aliquid lucis ostendere visa sunt, princeps vestrae libertatis defendendae fui. quodsi id ante facere conatus essem, nunc facere non possem.[306]

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[306] Cic. *Phil.* 2.43, 3.33 , 4.1.

Apparently Cicero pays credit here to the special (political) situation, where a prolonged conflict was repeatedly discussed in the senate over several months with varying alliances and shifting political opinions.[307]

In other cases where this thought is made explicit in the speech it usually results in a special variety of *praeteritio*, the expressed intent to consider the omitted point at a later point in the speech, *"alio loco"*. The point at issue is therefore only postponed to a more suitable section of the speech (or a different speech), at least if the orator keeps his promise; if not, i.e. if the point is announced for a later part of the speech but actually never treated, the figure is used as a means of deception.

2.6.1 Practice

The figure is used already, however rarely, by the Attic Orators.[308] In Cicero's speeches, the majority of examples where he announces that some topic will be treated later in the speech are found in the *actio secunda* of the Verres trial.[309] Obviously in this text (no matter whether it is considered as a single speech or as five interconnected speeches) the need to organise and categorise the material is far greater than elsewhere in the extant speeches, as well as some necessity to keep the audience informed about what is yet to come. Furthermore, Cicero deals not with a single event or sequence of events, but with numerous parallel stories which connect to each other by people, locations, and crime categories, so that any arrangement of them for a speech will make forward cross-references necessary.[310] While almost

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[307] These passages come from speeches early in Cicero's corpus of "Philippic speeches", but the conflict since Caesar's death had by this time already been dragging on for more than six months.

[308] E.g. Dem. *or.* 16.3, 18.42, 29.4; Aischin. *Ctes.* 84

[309] Other examples are: Cic. *Flacc.* 6 "at a testibus laeditur. ante quam dico a quibus, qua spe, qua vi, qua re concitatis, qua levitate, qua egestate, qua perfidia, qua audacia praeditis, dicam de genere universo et de condicione omnium nostrum"; Cic. *Har.* 56 "sequitur illud, 'ne deterioribvs repvlsisqve honos avgeatvr'. repulsos videamus, nam deteriores qui sint, post docebo"; Cic. *Deiot.* 35 "nihil a me arbitror praeteritum, sed aliquid ad extremum causae reservatum"; Cic. *Phil.* 2.3 "cui priusquam de ceteris rebus respondeo, de amicitia quam a me violatam esse criminatus est, quod ego gravissimum crimen iudico, pauca dicam", 2.8 "quantam iam proferam", 2.43 "sed dicam alio loco et de Leontino agro et de Campano".

[310] Cic. *Verr.* 2.1.45 "iam quae iste signa, quas tabulas pictas ex Achaia sustulerit, non dicam hoc loco: est mihi alius locus ad hanc eius cupiditatem demonstrandam separatus", 2.1.61 "alio loco hoc cuius modi sit considerabimus; nunc nihil ad me attinet", 2.2.13 "atque ea

all occurrences of the *alio loco* figure are in the first three books of the *actio secunda*—logically, being forward references—there are, in the later books, also cross-references to earlier passages, though not as many as might be expected: "verum haec et dicentur alio loco et dicta sunt",[311] and "ac iam illa omitto quae disperse a me multis in locis dicentur ac dicta sunt",[312] which both at the same time function as forward references. Apparently Cicero deemed it more important to keep his audience's (or his readers') attention and expectation awake than to expose clearly at any point the structure of all five parts of the speech.[313]

Forward references to another speech or another part of the trial do not occur in Cicero's extant speeches (with one exception, see below). This is partly due to technical reasons: when there was a group of orators speaking for a client, forward references to a later speech may plausibly have been used, but not in Cicero's speech, as he usually spoke last.[314] On the contrary, forward references to the examination of witnesses were decidedly avoided, as Powell (2010) has shown for Cicero's speeches: "[i]t seems fairly clear that

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ipsa civitas [Mamertinorum] quo ratione isti amica sit, dicetur certo loco", 2.2.15 "tamen vobis alio loco ut se tota res habeat, quod ad eam civitatem [Syracusarum] attineat, demonstrabitur", 2.2.50 "qua de re alius mihi locus ad dicendum est constitutus", 2.2.88, "verum hasce eius cupiditates exponam alio loco; nunc ad Sthenium revertar", 2.2.150 "verum esto; alio loco de aratorum animo et iniuriis videro", 2.2.184 "quae vobis alio loco planius explicabuntur", 2.3.38 "sicut ostendam", 2.3.59 "mitto, inquam, haec omnia atque in aliud dicendi tempus reicio", 2.3.80 "qua de paucitate aratorum alio loco dicam: nunc illud quod praeterii non omnino relinquendum videtur", 2.3.84 "itaque hoc mihi reservabo genus totum integrum: ad illam quam institui causam frumenti ac decumarum revertar".

[311] Cic. *Verr.* 2.3.10.

[312] Cic. *Verr.* 2.4.116.

[313] The effect of keeping the audience's attention is similarly achieved by announcing the structure of the speech: e.g. Cic. *Tull.* 1 "⟨la⟩borabam ut, quod arguebam, id factum esse ostenderem; nunc in eo consumenda est oratio ut ne adversarii, quod infitiari nullo modo potuerunt, cum maxime cuperent, id cum confessi sunt, meliore loco esse videantur."; Cic. *Planc.* 4 "haec mihi sunt tractanda, iudices, et modice, ne quid ipse offendam, et tum denique cum respondero criminibus"; Cic. *Scaur.* 21–22 "est enim unum maximum totius Sardiniae frumentarium crimen, de quo Triarius omnis Sardos interrogavit, quod genus uno testimoni foedere et consensu omnium est confirmatum. quod ego crimen ante quam attingo, peto a vobis, iudices, ut me totius nostrae defensionis quasi quaedam fundamenta iacere patiamini. quae si erunt, ut mea ratio et cogitatio fert, posita et constituta, nullam accusationis partem pertimescam. [22] dicam enim primum de ipso genere accusationis, postea de Sardis, tum etiam pauca de Scauro; quibus rebus explicatis tum denique ad hoc horribile et formidolosum frumentarium crimen accedam."; Cic. *Phil.* 1.11 "quoniam utriusque consilii causam, patres conscripti, probatam vobis esse confido, priusquam de re publica dicere incipio, pauca querar de hesterna Antoni iniuria".

[314] Backward references from Cicero to earlier speeches of the same trial do occur, however rarely (most prominently in *Pro Caelio*); cf. above p. 35.

neither the prosecution nor the defence were entirely in a position to predict what the witnesses would say, or even, in the case of voluntary witnesses, whether they would appear at all",[315] so that Cicero would make sure not to give away too much too early, and avoid suspicion of having the witnesses prepared. This accounts for some non-explicit omissions (where an *alio loco* figure might be expected) in Cicero's speeches.[316] It is not contradicted by the sole occurrence of a forward reference to a witness account,[317] as this comes from the *actio secunda* of the Verres trial, at which point Cicero already had a fairly secure case (no matter whether in the real trial or in the fictitious speech setting).

2.6.2 Theory

In rhetorical theory the possibility of the *alio-loco praeteritio* is not mentioned before Quintilian. In the earlier writings, the advice to spread one's material over the speech (without making this explicit in a *praeteritio*) is made for specific elements of a speech: Aristotle makes the point about enthymemes,[318] Cicero about *ornamenta*.[319] Quintilian gives similar advice about emotion[320] and arguments.[321] But he also takes into account strategical considerations:

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[315] Powell (2010, p. 27). On the other hand, retrospective references to witnesses were standard procedure when they had already been heard *priore actione*, e.g. in the case of Cic. *Flacc.*, *Font.*, *Scaur.* (Powell, 2010, p. 32–33)

[316] E.g. "Cicero is at first sight surprisingly cagey about the details of Verres' misdeeds in the *Diuinatio in Caecilium*, but the surprise disappears when one realises that he is deliberately avoiding giving too much away." (Powell, 2010, p. 30)

[317] Cic. *Verr.* 2.1.86 "nam quid a Milesiis lanae publice abstulerit, item de sumptu in adventum, de contumeliis et iniuriis in magistratum Milesium tametsi dici cum vere tum graviter et vehementer potest, tamen dicere praetermittam eaque omnia testibus integra reservabo".

[318] Aristot. *Rhet.* 1418a6–7 "οὐ δεῖ δὲ ἐφεξῆς λέγειν τὰ ἐνθυμήματα, ἀλλ' ἀναμιγνύναι· εἰ δὲ μή, καταβλάπτει ἄλληλα."

[319] Cic. *De orat.* 3.96 "ut porro conspersa sit quasi verborum sententiarumque floribus, id non debet esse fusum aequabiliter per omnem orationem, sed ita distinctum, ut sint quasi in ornatu disposita quaedam insignia et lumina *etc.*"

[320] Quint. *Inst.* 4.1.14 "degustanda tamen haec [miseratio] prohoemio, non consumenda"; cf. Quint. *Inst.* 6.1.51 "omnis autem hos adfectus, etiam si quibusdam videntur in prohoemio atque in epilogo sedem habere, in quibus sane sint frequentissimi, tamen aliae quoque partes recipiunt, *sed breviores, ut cum ex iis plurima sint reservanda.* at hic, si usquam, totos eloquentiae aperire fontes licet."

[321] Quint. *Inst.* 4.3.3 "in quo vitium illud est, quod sine discrimine causarum atque utilitatis hoc tamquam semper expediat aut etiam necesse sit faciunt, eoque sumptas ex iis partibus quarum alius erat locus sententias in hanc congerunt, ut plurima aut iterum dicenda sint aut, quia [alia] alieno loco dicta sunt, dici suo non possint"; cf. Quint. *Inst.* 4.2.82 "at enim quaedam argumenta turba valent, diducta leviora sunt" and Quint. *Inst.* 4.5.7 "quid quod

in order to keep the *narratio* short, some points should be reserved for a later passage, rather than omitted;[322] if a point is difficult to defend on the spot, it may wisely be kept for the *altercatio*;[323] and sometimes it is useful to omit some arguments at the point where the audience would expect them in the speech, so that the opponent is tricked into asking for them, and the orator can then present the argument as a triumphant answer.[324] Furthermore Quintilian, going beyond all preceding (extant) treatises, recommends the figure of *alio loco*: once with his advice to defer material from the *narratio* to the *probatio*,[325] and once as a means to support the effect of *varatio*.[326] This is thus one of the rare cases where the *explicit* omission is recognised in rhetorical theory, even if only by Quintilian.

2.7 *praeteritio*: summary and further aspects

2.7.1 Summary of common types and applications

So far the most common types of *praeteritio* have been discussed; in this section I am going to consider some additional, rarer features of the figure, before presenting the treatment of *praeteritio* in rhetorical theory, with a conclusion on the topic of *praeteritio*, in section 2.7.9.

In general, forms of *praeteritio* may be classified by asking three questions: 1. what is omitted?, 2. why is it omitted?, and 3. how is the omission framed?

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interim quae per se levia sunt et infirma, turba valent, ideoque congerenda sunt potius, et velut eruptione pugnandum?"

[322] Quint. *Inst.* 4.2.48 "ut minus longa sit [narratio] efficiemus quae poterimus differendo".

[323] Quint. *Inst.* 6.4.14 "nonnumquam tamen solet hoc quoque esse artis genus, ut quaedam in actione dissimulata subito in altercando proferantur (est inopinatis eruptionibus aut incursioni ex insidiis factae simillimum); id autem tum faciendum est cum (est) aliquid cui responderi non statim possit, potuerit autem si tempus ad disponendum fuisset."

[324] Quint. *Inst.* 6.4.17 "ideo quaedam bene dissimulantur instrumenta; instant enim et saepe discrimen omne committunt quod deesse nobis putant et faciunt probationibus nostris auctoritatem postulando."

[325] Quint. *Inst.* 4.2.48 "ut minus longa sit efficiemus quae poterimus differendo, non tamen sine mentione eorum quae differemus: 'quas causas occidendi habuerit, quos adsumpserit conscios, quem ad modum disposuerit insidias, probationis loco dicam.'" Cf. Quint. *Inst.* 4.2.54 "semina quaedam probationum spargere, verum sic ut narrationem esse meminerimus, non probationem".

[326] Quint. *Inst.* 9.2.63 "faciunt illa quoque iucundam orationem, aliqua mentione habita differre et deponere apud memoriam iudicis et reposcere quae deposueris et iterare quaedam schemate aliquo".

The most common types of *praeteritio* are those where neither the "what" nor the "why" of the omission are much specified, where rather something which is implied to to be superfluous to the case is omitted due to an implied "natural time limit". These types (*praeteritio* of unrelated topics, "standard" *praeteritio*, "*praeteritio* of the rest", "*praeteritio* of argument", and *praeteritio* of the known and obvious) are covered above from section 2.2.

A comparison of these types reveals that the common view that any *praeteritio* is somewhat ironical, since it mentions what it claims to omit,[327] holds true in general only for the "standard" *praeteritio*. Other types give a vague notion at best of what is omitted: the "*praeteritio* of the rest" in particular gives an indication of the content of the omission (it is necessarily similar to the example the orator has used in detail), but no specifics. Likewise, some instances of the *praeteritio* of off-topic matters provide no information about the omitted content (e.g. "ne [. . .] ab eo quod propositum est longius aberret oratio"[328]), and the *praeteritio* of known facts sometimes rather implies than states what could be said (e.g. "neque necesse est me id persequi voce quod vos mente videatis"[329]).

By using these unspecific *praeteritiones* the orator can cover a lack of arguments and convey a (however vague) impression of strength, without opening himself to specific attacks. Similarly the "standard" *praeteritio* and the more specific instances of other types can shield the orator against attacks on his lack of evidence: he can always deny that he made a particular claim, which nevertheless has found its way to the audience's ears. While this is sometimes indeed a matter of irony (see also below p. 92), it can also be used as a non-ironical rhetorical tactic.

More special types of *praeteritio* in terms of *what* is omitted include: "*praeteritio* of name" (see below), where a person is mentioned and identified beyond doubt, but his or her name is explicitly left out; and the *praeteritio* of insults (see from p. 54), where the orator expressly avoids strong or indecent language, sometimes referring to the dignity of the situation or the audience.

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[327] E.g. Lausberg (1990, § 884) "Die Kundgabe der Absicht der Auslassung einerseits, die Tatsache der aufzählenden Nennung andererseits [. . .] ergeben für die *praeteritio* das Vorliegen einer Ironie".

[328] Cic. *Caecin.* 55.

[329] Cic. *Planc.* 56.

These types, too, are not ironical in themselves, as the announced omission is indeed made. They are used not to express that something should not be said at all, but that it should not be said in a particular way; this is taken further to the point that the orator declares himself unable to say something in any way, something which in itself could well be mentioned, resulting in pretended voice failure (see p. 184) or the "topos of the inexpressible" (see p. 214).

Another quite rare kind of *praeteritio* is the promise not to use any invented arguments; this should be a matter of course anyway (although the orator is not bound to truth, cf. p. 111), but the *praeteritio* makes it explicit and thus demonstrates the truth to be outrageous enough.[330]

2.7.2 *praeteritio* of name

While most *praeteritiones* more or less share the irony that the figure itself mentions what it promises to omit, one type of *praeteritio* in particular does not: the "*praeteritio* of name" which declares that certain people are not to be named, and the orator does indeed not say these names. The crucial point is, of course, that the audience knows nevertheless who the orator is talking about.

The figure is thus connected to pure allusion[331] but makes the omission explicit. In Athens it is rare and seems to have been a specialty of Aischines; Cicero uses it rather widely in his speeches. The intent not to give names is sometimes stated without giving a particular reason,[332] sometimes explic-

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[330] E.g. Cic. *Verr.* 1.15 "ut mihi magis timendum sit, ne multa crimina praetermittere, quam ne qua in istum fingere, existimer", 2.2.179 "quod cum ita sit, nihil fingam tamen", 2.2.180 "quapropter nihil est quod metuas ne quid in te confingam: etiam quod laetere habes."

[331] Like Dem. *or.* 20.91; Aischin. Ctes. 81; Cic. *S. Rosc.* 1 "tot summi oratores hominesque nobilissimi"; Cic. *Quinct.* 68 "illis dominantibus" (i.e. Marius' followers).

[332] Aischin. *Tim.* 58; Cic. *Div. in Caec.* 13 "deinde sunt testes viri clarissimi nostrae civitatis, quos omnis a me nominari non est necesse: eos qui adsunt appellabo, quos, si mentirer, testis esse impudentiae meae minime vellem"; Cic. *p. red. in sen.* 32 "quem ego inimicum mihi fuisse non dico, tacuisse, cum diceretur esse inimicus, scio"; Cic. *Dom.* 30 "si utile rei publicae fuit haurire me unum pro omnibus illam indignissimam calamitatem, etiam hoc utile est, quorum id scelere conflatum sit, me occultare et tacere"; Cic. *Sest.* 141 "summi eiusdem civitatis viri, quos nominatim appellari non est necesse"; Cic. *Cael.* 43 "ex quibus neminem mihi libet nominare; vosmet vobiscum recordamini."; Cic. *Phil.* 2.1 "nec vero necesse est quemquam a me nominari; vobiscum ipsi recordamini", 2.15 "neminem nominabo", 2.25 "quis enim meum in ista societate gloriosissimi facti nomen audivit? cuius autem, qui in eo numero fuisset, nomen est occultatum? occultatum dico; cuius non sta-

itly out of politeness[333] or (alleged) caution,[334] for strategic reasons[335] or as a *praeteritio brevitatis causa*.[336] The figure occurs also as allusion not to a person or persons but to a thing, fact, event etc.[337] In some cases the allusion is very dark; while a part of the audience, at least the judge(s) and/or opponent in forensic speeches, must have understood the allusion (otherwise it would have been useless), the omitted name(s) could probably not be supplemented with certainty and in detail by the *corona* or, in senate speeches, senators of lower ranks who were not privy to the discussions of "inner circles" of the socio-political elite.[338]

On the other hand there are instances where the allusion is so open that nothing is actually hidden any more, which makes the figure purely ironical and a means of mocking the opponent; the best example is in *Pro Caelio*,

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tim divulgatum? citius dixerim iactasse se aliquos, ut fuisse in ea societate viderentur, cum conscii non fuissent, quam ut quisquam celari vellet, qui fuisset."

[333] Cic. *S. Rosc.* 47 "verum homines notos sumere odiosum est, cum et illud incertum sit velintne ei sese nominari"; Cic. *Leg. agr.* 2.63 "non consuevi homines appellare asperius, Quirites, nisi lacessitus"; Cic. *Sull.* 72 "quos ego nominarem—neque enim ipsi nolunt et huic animo gratissimo adsunt—sed, quia maius est beneficium quam posse debet civis civi dare, ideo a vobis peto ut quod potuit, tempori tribuatis, quod fecit, ipsi."

[334] Aischin. *Tim.* 158, 165, 172; Cic. *Manil.* 37 "vestra admurmuratio facit, Quirites, ut agnoscere videamini qui haec fecerint; ego autem nomino neminem; qua re irasci mihi nemo poterit nisi qui ante de se voluerit confiteri."

[335] Aischin. *Tim.* 193.

[336] Cic. *Phil.* 2.27 "longum est persequi ceteros, idque rei publicae praeclarum, fuisse tam multos, ipsis gloriosum." Cf. also p. 71.

[337] Aischin. *Ctes.* 128; Cic. *S. Rosc.* 94 "quae non modo idcirco praetereo quod te ipsum non libenter accuso verum eo magis etiam quod, si de illis caedibus velim commemorare quae tum factae sunt ista eadem ratione qua Sex. Roscius occisus est, vereor ne ad pluris oratio mea pertinere videatur", 139 "nolo in eos gravius quicquam ne ominis quidem causa dicere, unum hoc dico: *etc.*"; Cic. *Div. in Caec.* 28 "quare negent ex me non audies: hos patere id suspicari quod necesse est"; Cic. *Cael.* 69 "audita et percelebrata sermonibus res est. percipitis animis, iudices, iam dudum, quid velim vel potius quid nolim dicere"; Cic. *Phil.* 11.34 "in quo quid faciendum Deiotaro, quid omnino rectius fuerit, dicere non est necesse, praesertim cum contra, ac Deiotarus sensit, victoria belli iudicarit", 11.35 "maximam eius et singularem laudem praetermitto; cuius enim praedicatio nondum omnibus grata est, hanc memoriae potius quam vocis testimonio conservemus."

[338] Cic. *Cluent.* 6 "tum autem, cum ego una quaque de re dicam et diluam, ne ipsi quae contraria sint taciti cogitationi vestrae subiciatis, sed ad extremum exspectetis meque meum dicendi ordinem servare patiamini: cum peroraro, tum, si quid erit praeteritum, animo requiratis", 167 "multa sunt quae dici possunt, sed non committam ut videar non dicendo voluisse dicere; res enim iam se ipsa defendit"; Cic. *Sest.* 52 "quae cum omnia atque etiam multo alia maiora, quae consulto praetereo, accidissent", 62 "[Sestius] adiit tum periculum, sed adiit ob eam causam quae quanta fuerit iam mihi dicere non est necesse"; Cic. *Pis.* 3 "nihil dicam gravius, quam quod omnes fatentur"; Cic. *Mil.* 14 "divisa sententia est, postulante nescio quo: nihil enim necesse est omnium me flagitia proferre"; Cic. *Phil.* 1.27 "ne gravius quidpiam dicam", 2.48 "quid dicam, ipse optime intellegit."

where Cicero ostentatiously and explicitly does not name some "non nupta mulier", only to address Clodia directly in the next paragraph.[339]

Also the counterpart to the "*praeteritio* of name" is used, in the figure where a person or persons are indeed named, but with an excuse or qualification.[340]

In rhetorical theory the topic of allusion has a firm place. The *Rhetorica ad Herennium* devotes an entire chapter to it and recommends it as a figure of style.[341] Cicero mentions it briefly in *De oratore*,[342] probably relying on his readers' knowledge of common rhetorical textbooks.[343] Quintilian treats the topic *in extenso* in *Inst.* 9.2.65–80, with a definition,[344] occasions for using it,[345] the aspect of *artem celare*,[346] and practical considerations.[347] In other contexts,

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[339] Cic. *Cael.* 48–50.

[340] Cautious excuse: Dem. *or.* 21.58, 24.132; Cic. *S. Rosc.* 6 "de viro fortissimo et clarissimo L. Sulla, quem honoris causa nomino", 15 "nam cum Metellis, Serviliis, Scipionibus erat ei non modo hospitium, verum etiam domesticus usus et consuetudo, quas, ut aequum est, familias honestatis amplitudinisque gratia nomino", 27 "Caeciliam, Nepotis sororem, Baliarici filiam, quam honoris causa nomino"; Cic. *Verr.* 1.18 "C. Curio; quem ego hominem honoris [potius quam contumeliae] causa nominatum volo"; *percursio*: Cic. *Sest.* 94 "omitto iam Numerium, Serranum, Aelium, quisquilias seditionis Clodianae; sed tamen hi quoque . . . "; *post-praeteritio*: Cic. *Phil.* 2.12 (after a long enumeration) "sed quid singulos commemoro?"

[341] *Rhet. Her.* 4.67.

[342] Cic. *De orat.* 2.268 "arguta etiam significatio est, cum parva re et saepe verbo res obscura et latens inlustratur".

[343] He does so explicitly in other passages, e.g. in his description of mnemotechnics, cf. p. 195.

[344] 65 "in quo per quandam suspicionem quod non dicimus accipi volumus, non utique contrarium, ut in εἰρωνείᾳ, sed aliud latens et auditori quasi inveniendum".

[345] 66 "eius triplex usus est: unus si dicere palam parum tutum est, alter si non decet, tertius qui venustatis modo gratia adhibetur et ipsa novitate ac varietate magis quam si relatio sit recta delectat."

[346] 69 "hoc parcius et circumspectius faciendum est, quia nihil interest quo modo offendas, et aperta figura perdit hoc ipsum quod figura est". Cf. section 2.11 on the concept of *artem arte celare*.

[347] E.g. the figure is useful especially as it cannot be attacked (75 "haeret enim nonnumquam telum illud occultum, et hoc ipso quod non apparet eximi non potest: at si idem dicas palam, et defenditur et probandum est.") and nice for the listener who feels smart when he gets the point (78 "adiuvat etiam quod auditor gaudet intellegere et favet ingenio suo et alio dicente se laudat").

figures similar to allusion are included as a type of ἔμφασις[348] and of irony;[349] besides, Quintilian mentions the opportunity to exploit an allusion made by the opponent.[350] While Quintilian does not differentiate between explicit and implicit allusions (i.e. whether it is framed as a *praeteritio* or not), he thoroughly treats the points, especially with all practical aspects employed by the Attic Orators and Cicero.

2.7.3 *percursio*

Under the question of *how* a *praeteritio* is staged (the third categorial question after the *what* and the *why* of the omission), we come across the related figures *percursio*[351] and ἀποσιώπησις.[352]

The *percursio* is, in Lausberg's wording, "die kurze Aufzählung von Gegenständen, von denen jeder eigentlich eine eingehendere Behandlung (auf die verzichtet wird) verdient hätte".[353] If the omission of the "eingehendere Behandlung" is made explicit, it is also a *praeteritio*. Conversely, if the *praeteritio* refers to omission of several items, "so enthält die *praeteritio* eine Aufzählung, d.h. eine *percursio*".[354] The figure suggests, like the "*praeteritio* of the rest" and the "*praeteritio* of argument", that the orator has abundant details and evidence which he could provide, but no need to do so as his case is strong enough anyway. The *percursio* can be phrased as an announce-

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[348] Quint. *Inst.* 8.3.85 "sequens [i.e. the second type of ἔμφασις] positum in voce aut omnino suppressa aut etiam abscisa. supprimitur vox, ut 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 inpellant. absciditur per ἀποσιώπησιν, quae quoniam est figura reddetur suo loco." Cf. on ἀποσιώπησις Quint. *Inst.* 9.2.54 and 9.3.60.

[349] Quint. *Inst.* 8.6.54 "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 dissentit, apparet diversam esse orationi voluntatem."

[350] Quint. *Inst.* 9.2.94 "atque etiam si fuerint crebriores figurae quam ut dissimulari possint, postulandum est ut nescio quid illud quod adversarii obliquis sententiis significare voluerint, si fiducia sit, obiciant palam, aut certe non exigant ut, quod ipsi non audent dicere, id iudices non is modo intellegant sed etiam credant." Cf. p. 145 on exploiting the opponent's silence in argumentation.

[351] Sometimes (e.g. Rowe (1997, p. 148–149)) also referred to under the much later term ἐπιτροχασμός, attested first in Phoebammon (6 c. AD) (Lausberg, 1990, § 881).

[352] These three are covered as *figurae per detractionem* in Lausberg (1990, §§ 880–889).

[353] Lausberg (1990, § 881).

[354] Lausberg (1990, § 882).

ment,[355] but it develops its whole force in its largest form and in combination with a *praeteritio*, e.g. in the *Pro Sestio*:

> *omitto* gratulationes, epulas, partitionem aerari, beneficia, spem, promissa, praedam, laetitiam paucorum in luctu omnium. vexabatur uxor mea, liberi ad necem quaerebantur, gener, et Piso gener, a Pisonis consulis pedibus supplex reiciebatur, bona diripiebantur eaque ad consules deferebantur, domus ardebat in Palatio: consules epulabantur. quod si meis incommodis laetabantur, urbis tamen periculo commoverentur. *sed ut a mea causa iam recedam, reliquas illius anni pestis recordamini*—sic enim facillime perspicietis quantam vim omnium remediorum a magistratibus proximis res publica desiderarit—[356]

Cicero's task in this speech is the defence of Sestius against the charge *de vi*, but he connects it (here and elsewhere) with his own experiences concerning his exile. By sweeping over a long list of offences, some of which were committed against himself and his family, topping it with the silence on all the details which could be said about each, and then turning to the actually "relevant" points, Cicero evokes an impression of having abundant material

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[355] E.g. Cic. *S. Rosc.* 83 "desinamus aliquando ea scrutari quae sunt inania; quaeramus ibi maleficium ubi et est et inveniri potest; iam intelleges, Eruci, certum crimen quam multis suspicionibus coarguatur, tametsi neque omnia dicam et leviter unum quidque tangam".

[356] Cic. *Sest.* 54–55.

against his opponents, plus sympathy for himself, without being pressed for details.[357]

2.7.4 ἀποσιώπησις

The third *figura per detractionem* (after *praeteritio* and *percursio*), the ἀποσιώπησις or *reticentia*, is "die durch Abbruch eines begonnenen Satzes kenntlich gemachte, manchmal auch nachträglich ausdrücklich festgestellte Auslassung der Äußerung eines Gedankens",[358] i.e. it can also coincide with a *praeteritio* (and if not, the omission is implied all the same). Being an "affektische Auslassung"[359] and thus a very expressive means, it is used rarely throughout ancient oratory; we find it in Demosthenes and Cicero, sometimes in its pure form,[360] sometimes without an incomplete sentence, only breaking off the line of thought,[361] and in the notorious passage from the *Verrines*, in comical

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[357] Further examples are: Dem. *or.* 9.21, 22.69, 23.148; Cic. *Verr.* 2.1.33 "omne illud tempus quod fuit antequam iste ad magistratus remque publicam accessit, habeat per me solutum ac liberum. sileatur de nocturnis eius bacchationibus ac vigiliis; lenonum, aleatorum, perductorum nulla mentio fiat; damna, dedecora, quae res patris eius, aetas ipsius pertulit, praetereantur; lucretur indicia veteris infamiae; patiatur eius vita reliqua me hanc tantam iacturam criminum facere", 2.4.48 "hic nolite exspectare dum ego haec crimina agam ostiatim, ab Aeschylo Tyndaritano istum pateram abstulisse, a Thrasone item Tyndaritano patellam, a Nymphodoro Agrigentino turibulum. cum testis ex Sicilia dabo, quem volet ille eligat quem ego interrogem de patellis, pateris, turibulis: non modo oppidum nullum, sed ne domus quidem ulla paulo locupletior expers huius iniuriae reperietur"; Cic. *Leg. agr.* 1.21 "non queror deminutionem vectigalium, non flagitium huius iacturae atque damni, praetermitto illa quae nemo est quin gravissime et verissime conqueri possit, nos caput patrimoni publici, pulcherrimam populi Romani possessionem, subsidium annonae, horreum belli, sub signo claustrisque rei publicae positum vectigal servare non potuisse, eum denique nos agrum P. Rullo concessisse, qui ager ipse per sese et Sullanae dominationi et Gracchorum largitioni restitisset; non dico solum hoc in re publica vectigal esse quod amissis aliis remaneat, intermissis non conquiescat, in pace niteat, in bello non obsolescat, militem sustentet, hostem non pertimescat; praetermitto omnem hanc orationem et contioni reservo; de periculo salutis ac libertatis loquor."; Cic. *Prov. cons.* 3–4 "quid est quod possimus de Syria Macedonia dubitare? mitto quod eas ita partas habent ii, qui nunc obtinent, ut non ante attingerint, quam hunc ordinem condemnarint, quam auctoritatem vestram e civitate exterminarint, quam fidem publicam, quam perpetuam populi Romani salutem, quam me ac meos omnis foedissime crudelissimeque vexarint. [4] omnia domestica atque urbana mitto".

[358] Lausberg (1990, § 887).

[359] Lausberg (1990, § 880).

[360] E.g. Dem. *or.* 16.18, 20.157; Cic. *Verr.* 2.4.33 "at ita studiosus est huius praeclarae existimationis, ut putetur in hisce rebus intellegens esse, ut nuper—videte hominis amentiam: posteaquam est comperendinatus, *etc.*"; 2.4.45 "tu dignior, Verres, quam Calidius? qui, ut non conferam vitam neque existimationem tuam cum illius—neque enim est conferenda".

[361] Cic. *Cael.* 60 "sed revertor ad crimen; etenim haec facta illius clarissimi ac fortissimi viri mentio et vocem meam fletu debilitavit et mentem dolore impedivit".

imitation of memory failure.[362] It is quite likely, and is well imaginable for the instances of ἀποσιώπησις mentioned above, that Cicero sometimes broke off a sentence and substituted the remainder by a gesture, as A. L. Boegehold[363] has demonstrated for several instances of incomplete sentences in the Attic Orators (though the precise form of these gestures is subject to speculation).

In the theoretical writings the *reticentia* is named among figures of speech in *De oratore*,[364] but not discussed further. The *Rhetorica ad Herennium* gives a definition and examples of the figure under the term *praecisio*,[365] but no advice on usage. Quintilian relates that the figure has been treated by several previous writers of rhetorical theory and that it is used to convey emotion, and gives examples.[366] He does not mention any use of gestures in the context of ἀποσιώπησις.[367]

Another special case in the "how" of a *praeteritio* is the figure of *alio loco* (see p. 76), where something is omitted only temporarily and postponed to a later part of the speech.

2.7.5 "*anti-praeteritio*"

As a counterpart to *praeteritio*, we frequently find a figure that may be called *anti-praeteritio*: the explicit statement that something is *not omitted*, i.e. that a possible or expectable omission, with or without *praeteritio*, is not made. Mostly this is worded with some kind of necessity, claiming that someone or

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[362] Cic. *Verr.* 2.4.6 "sed earum artificem—quem? quemnam? recte admones—Polyclitum esse dicebant.", commented on by Quintilian (*Inst.* 9.2.61) and classified there among *venusti transitus*. On memory failure cf. p. 187.

[363] Boegehold (1999, ch. 7).

[364] Cic. *De orat.* 3.205 "reticentia"; on the problems of the term, which can here be taken to mean ἀποσιώπησις, but also *praeteritio*, see Leeman et al. (1981, vol. 5, p. 319). The passage is cited in Quint. *Inst.* 9.1.31.

[365] *Rhet. Her.* 4.41.

[366] Quint. *Inst.* 9.2.54 "ἀποσιώπησις, quam idem Cicero reticentiam, Celsus obticentiam, nonnulli interruptionem appellant, et ipsa ostendit adfectus, vel irae, ut [exemplum], vel sollicitudinis et quasi religionis: [exemplum]; vel alio transeundi gratia [exemplum]".

[367] Gestures as a substitute for words are mentioned only once, insofar as pointing can substitute adverbs and pronouns; this, however, would usually not mean breaking off the sentence. (Quint. *Inst.* 11.3.87 "[manus] non in demonstrandis locis atque personis adverbiorum atque pronominum optinent vicem?")

The figure is treated in more detail in late antiquity, e.g. by Menander Rhetor who divides it into ἀποσιώπησις and ὑποσιώπησις, cf. Carbone and Spina (2008).

something just cannot be ignored; this can be an (otherwise unrelated) historical *exemplum*,[368] but in most cases it is implied or stated that the crime (or badness of character) at hand is too formidable to be passed over.[369] In this rhetorical figure, the orator suggests that the facts of the case are stronger than any oratorical artistry,[370] implying both a strong case and that he is not trying to deceive his audience. Building a connection of trust with the audience is also the aim of *anti-praeteritiones* where the orator announces to speak more freely about a delicate issue than he or his client initially intended.[371] The *anti-praeteritio* can also be used tactically, like Cicero does in the *Pro Tullio* and *Pro Plancio*, where he explicitly takes up a point made by his opponent, which he would (he claims) otherwise not have mentioned.[372]

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[368] E.g. Cic. *Cluent.* 134 "non enim mihi exemplum summi et clarissimi viri, P. Africani, praetereundum videtur"; cf. p. 81 on *praeteritio* of names.

[369] Already in the Attic Orators, e.g. Lys. *or.* 8.2, 32.1. Cicero: See above Cic. *Verr.* 2.1.86 (p. 78 n. 317) and e.g. Cic. *Verr.* 2.1.90 "tamen hoc tantum facinus non modo negare interrogati, sed ne producti quidem reticere poterunt", 2.2.141 "non mihi praetermittendum videtur ne illud quidem genus pecuniae conciliatae", 2.2.155 "hi cum de tuis factis publice conqueruntur, nonne hoc indicant, tantas esse iniurias ut multo maluerint de suo more decedere quam de tuis moribus non dicere?", 2.4.86 "nihil enim praetermittendum de istius impudentia videtur", 2.5.16 "quid? de Apollonio, Diocli filio, Panhormitano, cui Gemino cognomen est, praeteriri potest? ecquid hoc tota Sicilia clarius, ecquid indignius, ecquid manifestius proferri potest?", Cic. *Vatin.* 1 "si tantum modo, Vatini, quid indignitas postularet spectare voluissem, fecissem id quod his vehementer placebat, ut te, cuius testimonium propter turpitudinem vitae sordisque domesticas nullius momenti putaretur, tacitus dimitterem".

[370] Cf. p. 120 on *artem arte celare*.

[371] Attic Orators: e.g. Dem. *or.* 3.3, 4.51, 8.21, 8.24, 8.32, 10.35, 16.18, 20.57; Aischin. *Tim.* 177, *leg.* 70; Cicero: Cic. *Verr.* 2.2.11 "videor enim mihi iam liberius apud vos pro Siculis loqui debere quam forsitan ipsi velint", 2.2.176 "dicam paulo promptius; neque enim iam vereor ne quis hoc me magis accusatorie quam libere dixisse arbitretur"; Cic. *Cluent.* 89 "vultus enim vestri, iudices, me invitant ut quae reticenda putaram libeat iam libere dicere."

παρρησία / *licentia* is itself treated as figure of thought by Rowe (1997, p. 139) and Lausberg (1990, § 761).

[372] Cic. *Tull.* 37 "et tamen dicendum est ad ea quae dixit Quinctius, non quo ad rem pertineat, sed ne quid, quia a me praetermissum sit, pro concesso putetur."; Cic. *Planc.* 83 "sed haec nescio quo modo frequenter in me congessisti saneque in eo creber fuisti, te idcirco in ludos causam conicere noluisse ne ego mea consuetudine aliquid de tensis misericordiae causa dicerem, quod in aliis aedilibus ante fecissem. non nihil egisti hoc loco; nam mihi eripuisti ornamentum orationis meae. deridebor, si mentionem tensarum fecero, cum tu id praedixeris; sine tensis autem quid potero dicere?" A similar argument is used in *Verr.* 2: Cic. *Verr.* 2.1.24 "nunc ne novo querimoniae genere uti possit Hortensius et ea dicere, opprimi reum de quo nihil dicat accusator, nihil esse tam periculosum fortunis innocentium quam tacere adversarios; et ne aliter quam ego velim meum laudet ingenium, cum dicat me, si multa dixissem, sublevaturum fuisse eum quem contra dicerem, quia non dixerim, perdidisse". Similar manoeuvres in Dem. *or.* 18.56, 20.78, 22.4.

Besides, a very formalised type of *anti-praeteritio* is the common figure "paene excidit mihi",[373] in Cicero's speeches more common in the form "paene praeterii".[374] In its formality it has only a weak notion of omission or non-omission, and is rather used as a common figure of emphasis.

2.7.6 Whistle-blowing

Explicit non-omission of a point or topic is especially prominent in the phenomenon of "whistle-blowing", where an entire case, or a significant part of it, is built around the point that some fact has been kept in silence so far, but is revealed now by the orator, for his client's or his party's benefit. It means not only commenting on an omission by the opponent, but includes the perception that there is a reason to the orator's joining this silence (because the orator does not know about it at all, or has not thought or inquired far enough, or because the orator has some self-interest to keep silent about it). It is against this expectation that the orator breaks the (allegedly complete) silence and lays bare the topic in question. The phenomenon need not include a direct statement "I shall not keep silent about ...", it can also take the form of antithesis of "my opponent has deceived you into believing that ... but I reveal to you that instead ...".

The device is used already by the Attic Orators,[375] and three of Cicero's most important and most famous speeches or speech compounds are dominated by the phenomenon of whistle-blowing: *Pro S. Roscio Amerino*, the *Verrines*, and *De lege agraria*. There are quite different circumstances to be considered for the three cases.

The speech *Pro S. Roscio Amerino* relies much on Cicero's claim that the accusation of patricide against Roscius is a pretext to cover up the crimes of the prosecutors, committed under Sulla's dictatorship. Cicero aims at the judges' sympathy for his boldness as he stands up, in the name of truth,

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[373] Lausberg (1990, § 886).

[374] E.g. Cic. *Verr.* 2.2.87 "quod paene praeterii"; Cic. *Cluent.* 138 "est etiam reliqua permagna auctoritas, quam ego turpiter paene praeterii; mea enim esse dicitur"; Cic. *Phil.* 11.14 "lumen et decus illius exercitus paene praeterii". The figure is not nearly as common in the Attic Orators, but it does occur, in the form "μιϰροῦ παρῆλϑεν", e.g. in Dem. *or.* 19.234, 21.110.

[375] E.g. Dem. *or.* 8.7, 13.15, 23.3, 28.9.

against men of power for his innocent client.[376] For all we know this is basically true: Roscius was innocent,[377] and his opponents still politically powerful, so Cicero was probably right in principle when he alleged that the prosecutors expected no one to dare to lay open their atrocities,[378] even though a certain degree of exaggeration must be assumed as usual.

The case of the *Verrines* is more complicated. Here Cicero reveals two "secrets": 1. that Caecilius, who wants to act as Verres' prosecutor, is actually his friend;[379] and 2. the tactical moves of Verres, Hortensius, and Metellus.[380] Especially in the latter case the situation is not quite clear: Cicero argues that his opponent would rely on his, Cicero's, fear for his own political career,[381] while actually it is equally probably that they either thought Cicero would not see the connection, or that he would think it useless exploiting the point, or that he would bring it up without achieving anything, or that he would even achieve some advantage but the connection would still work in their favour—they certainly did not expect Cicero's procedural strategy, but Cicero insinuates a reasoning on his opponents' side which may or (rather) may not be true, and which he exploits in his favour.

We can even observe several nested levels of whistle-blowing in Cicero's argumentation: Cicero not only lays open his opponents' "real intentions" (which may or may not be true) against some assumed "false intentions"

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[376] Explicitly Cic. *S. Rosc.* 31–32 "certum est deliberatumque, quae ad causam pertinere arbitror, omnia non modo dicere, verum etiam libenter, audacter libereque dicere; nulla res tanta exsistet, iudices, ut possit vim mihi maiorem adhibere metus quam fides *etc.*"

[377] This is the *communis opinio* (e.g. in Badian (2003), Fündling (2006), Seager (2007), all the while various other possible culprits are discussed); A. Dyck / Dyck (2003), Dyck (2010)) is careful not to decide on the question, but claims that the pictures painted by Cicero "have their weaknesses" (Dyck, 2010, p. 5), and his statement that "[t]he *corona* and the senatorial jury fell under the speel of the young, impassioned orator" (Dyck, 2010, p. 18) implies a tendency against Roscius' innocence.

[378] Cic. *S. Rosc.* 60–61.

[379] Cf. e.g. Cic. *Div. in Caec.* 33–34 "atque ego haec quae in medio posita sunt commemoro: sunt alia magis occulta furta, quae ille, ut istius, credo, animos atque impetus retardaret, benignissime cum quaestore suo communicavit. [34] haec tu scis ad me esse delata; quae si velim proferre, facile omnes intellegent vobis inter vos non modo voluntatem fuisse coniunctam, sed ne praedam quidem adhuc esse divisam.", 55 "nam id quoque ad rem pertinere arbitror, qualis iniuria dicatur quae causa inimicitiarum proferatur. cognoscite ex me; nam iste eam profecto, nisi plane nihil sapit, numquam proferet".

[380] Explained in *Verr.* 1.26.

[381] Cic. *Verr.* 1.27 "an me taciturum tantis de rebus existimavistis? et me, in tanto rei publicae existimationisque meae periculo, cuiquam consulturum potius quam officio et dignitati meae?"

(which the opponents may or may not have voiced), he even claims that his opponents have insinuated certain intentions on his own side (if this had happened, it might have taken the form of whistle-blowing, too) against which he now puts his "real intentions"—while it might be intriguing in itself to analyse (or speculate) who has actually said what and whose intentions, claimed or alleged, are true or not, it is eventually not relevant for Cicero's argumentation, and it may even work in his favour that for his audience, and for most of his readers, finding out the truth is a complicated task here. For Cicero's success it is sufficient if his audience accepts the underlying message, i.e. that he, Cicero, has unravelled this tangle and wants to share it, honestly, with his audience.[382]

An even more complicated case an be observed in the three speeches *De lege agraria*: these are political, not forensic speeches, and deal with a very long political controversy in Rome (the essential point had been introduced in the debate by Tiberius Gracchus seventy year earlier, and was settled by Caesar four years after Cicero's speeches); besides, the extant speeches are incomplete. They are part of a discussion in which both sides tried to present themselves as *populares* (meaning in this case: generous to the "common people") and the other side as snobbish and selfish. Even more than in the *Verrines*, thus, Cicero's claims of truth and honesty, and of the opponents' dishonesty,[383] must be seen less in relationship to a "historical reality" than as

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[382] Another question that might be asked here is why Cicero was so eager to prevent the tactical move of his opponents', although he had a watertight case. Unless he was just overzealous (which is unlikely) he seems to have known that the question of the presiding magistrates would indeed have a greater influence on the trial than it should—but this question leads in the field of sociopolitics in Rome and is not to be covered here.

[383] E.g. Cic. *Leg. agr.* 1.13 "quasi vero non intellegamus", again 1.14 "quasi vero non intellegamus", 1.17 "id cuius modi esset neminemne nostrum intellecturum existimavistis?", 2.15 "atque ego a primo capite legis usque ad extremum reperio, Quirites, nihil aliud cogitatum, nihil aliud susceptum, nihil aliud actum nisi uti x reges aerari, vectigalium, provinciarum omnium, totius rei publicae, regnorum, liberorum populorum, orbis denique terrarum domini constituerentur legis agrariae simulatione atque nomine. sic confirmo, Quirites, hac lege agraria pulchra atque populari dari vobis nihil, condonari certis hominibus omnia, ostentari populo Romano agros, eripi etiam libertatem, privatorum pecunias augeri, publicas exhauriri, denique, quod est indignissimum, per tribunum plebis, quem maiores praesidem libertatis custodemque esse voluerunt, reges in civitate constitui.", 2.20 "hoc dicam planius", 2.36 "cur hoc tam est obscurum atque caecum? quid? ista omnia de quibus senatus censuit nominatim in lege perscribi nonne potuerunt? duae sunt huius obscuritatis causae, Quirites *etc.*", 2.50 "quam ob rem, cum intellegam totam hanc fere legem ad illius [sc. Pompei] opes evertendas tamquam machinam comparari, et resistam consiliis hominum et perficiam profecto, quod ego video, ut id vos universi non solum videre verum etiam tenere possitis.", 3.6 "quam procul a suspicione fugit, quod

rhetorical means to appear credible and trustworthy. Cicero succeeded insofar as the proposed law against which he argued was withdrawn in that year.

Like in the *anti-praeteritio*, the most important effect of "whistle-blowing" is an emphasis on the point which would not be achieved by simply mentioning it; secondly, the orator presents himself as honest and (in cases like *Pro S. Roscio Amerino*) a bold and fearless defender of the truth (regardless whether it really is the truth that he is defending, and whether it has been attacked at all).

2.7.7 Irony

In a number of occasions, *praeteritiones* are used ironically. The figure in itself is ironical in many cases (though by no means always, see above p. 80), since the point which is not to be mentioned is mentioned in the figure itself, drawing attention to it; but there are ironical ways of using it beyond this, and one might be surprised that these are not employed by Cicero even more often, given his tendency to "σκώμματα καὶ παιδιά".[384]

Ironical is constructing the *praeteritio* as a hypothetical clause "I would say ..., if not ...", especially if the hypothetical statement spans a whole paragraph:

> "ego, si Metellus statuas Centuripinos reponere non coegisset,
> haec dicerem: videte, iudices, quantum et quam acerbum do-
> lorem sociorum atque amicorum animis inusserint istius iniuriae,
> cum Centuripinorum amicissima ac fidelissima civitas, quae tan-
> tis officiis cum populo Romano coniuncta est ut non solum rem
> publicam nostram, sed etiam in quovis homine privato nomen
> ipsum Romanum semper dilexerit, ea publico consilio atque auc-
> toritate iudicarit C. Verris statuas esse in urbe sua non oportere.
> recitarem decreta Centuripinorum; laudarem illam civitatem, id
> quod verissime possem; commemorarem decem milia civium
> esse Centuripinorum, fortissimorum fidelissimorumque socio-

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eos consules qui adversarii Sullae maxime fuerunt potissimum nominavit! si enim Sul-
lam dictatorem nominasset, perspicuum fore et invidiosum arbitratus est."

[384] Plut. *Cic.* 5.4.

rum; eos omnis hoc statuisse, monumentum istius in sua civitate nullum esse oportere. haec tum dicerem, si statuas Metellus non reposuisset".[385]

Ironical are the ten lines of not saying something in the speech *Pro lege Manilia*:

> "non dicam hoc loco maiores nostros semper in pace consuetudini, in bello utilitati paruisse; semper ad novos casus temporum novorom consiliorum rationes adcommodasse: non dicam duo bella maxima, Punicum atque Hispaniense, ab uno imperatore esse confecta, duasque urbis potentissimas, quae huic imperio maxime minitabantur, Karthaginem atque Numantiam, ab eodem Scipione esse deletas: non commemorabo nuper ita vobis patribusque vestris esse visum, ut in uno C. Mario spes imperi poneretur, ut idem cum Iugurtha, idem cum Cimbris, idem cum Teutonis bellum administraret."[386]

And ironical is the type of *praeteritio* which announces the intent of omitting something only after it has been said—even though here, just as for the "normal" *praeteritio*, "omission" can (and in many cases must) mean no (further) elaboration, rather than no mentioning; I call this figure *post-praeteritio*.[387] The effect is enhanced if an expectation is raised for some elaboration to come,[388] or if the fact is particularly stressed that the point at issue has indeed been said.[389] Special cases are the somewhat hypothetical *post-*

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[385] Cic. *Verr.* 2.2.163–164.

[386] Cic. *Manil.* 60.

[387] Examples are: Attic Orators: e.g. Dem. *or.* 18.231, 21.126, 32.27; Cic. *Cael.* 27 "sed haec omittam; ad illa, quae me magis moverunt, respondebo"; Cic. *Verr.* 2.3.178 "ut hoc praeteream, quod multorum est testimoniis expositum", 2.3.200 "quamquam haec omitto: de cella loquor". This figure can be regarded as a subspecies of the μετάβασις, the figure of returning to the subject after a *digressio*, classified as a figure of thought by Rowe (1997, p. 145), cf. Lausberg (1990, § 848). It appears first in late antiquity in Rutilius Lupus 2.1 and the *Carmen de figuris vel schematibus* 88 (Halm).

[388] Cic. *Cael.* 54 "sed haec, quae sunt oratoris propria, quae mihi non propter ingenium meum, sed propter hanc exercitationem usumque dicendi fructum aliquem ferre potuissent, cum a me ipso elaborata proferri viderentur, brevitatis causa relinquo omnia".

[389] Cic. *Verr.* 2.3.106 "audistis haec, iudices; quae nunc ego omnia praetereo et relinquo."

praeteritio "nollem dixisse",[390] and a *post-praeteritio* which is immediately re-
voked.[391]

In rhetorical theory the *post-praeteritio* is mentioned only by Quintilian,[392]
in a series of figures which are sub-types of πρόληψις, but without any further
comment.

2.7.8 *praeteritiones* in the *Verrines*

It cannot go unnoticed that the majority of, and in some areas all, exam-
ples of *praeteritio* in Cicero's speeches come from the *Verrines*, in particular
the *actio secunda*. At first sight it may seem contradictory to find so many
signs of omissions in a text which as a single speech is by far the longest of
Cicero's speeches; but this may be caused by the transmission situation, as
Verr. 2 is the only extant prosecution speech from a *repetundae* trial[393] and
may well have been typical of this kind of speech,[394] and only to us does
it look like mockery when Cicero speaks of *brevitas orationis* here: "nolite,
quaeso, iudices, brevitate orationis meae potius quam rerum ipsarum mag-
nitudine crimina ponderare; mihi enim properandum necessario est, ut om-
nia vobis quae mihi constituta sunt possim exponere."[395] He is serious: even
in what seems a vast text he can only cover a fraction of the evidence he has
collected in Sicily, thus his speech is short in comparison to what he could
say (and this again could have been even more if he had spent the entire al-
lotted time in Sicily). This crass disproportion is reflected in the massive use
of all varieties of *praeteritio*, incessantly reminding the audiences that there
is always more that could be said. There is no chance to check if there really

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[390] Cic. *Verr.* 2.4.43.

[391] Cic. *Sest.* 13 "verum haec ita praetereamus ut tamen intuentes et respectantes relinqua-
mus".

[392] Quint. *Inst.* 9.2.17 "quaedam emendatio, ut 'rogo ignoscatis mihi, si longius sum evec-
tus'", where also the *praedictio* (= "*praeteritio* of argument") is mentioned, cf. p. 32.

[393] The question in how far the *actio secunda* against Verres was delivered is open. J. G. F.
Powell, among others, has argued recently that the speech was possibly delivered, at least
in parts (Powell and Paterson (2004, p. 56, n. 201–211) and Powell (2010, p. 32, n. 24) with
further literature). For my argument the question of actual delivery is irrelevant, and I
accept that the speech is, overall, at least a plausible specimen of its kind.

[394] However, "their length was felt burdensome by some even in antiquity (*quis quinque in
Verrem libros exspectabit?*, 'who will last through five books against Verres?', Tac. *Dial.*
20.1)". (Craig, 2007, p. 269)

[395] Cic. *Verr.* 2.1.42.

were evidence and witnesses behind each and every omission (except for the *alio loco* figure), but while some *praeteritiones* might have had only weak or doubtful support from evidence, the majority very probably were sound; had they not been, this would have been used against Cicero once the speech was published and open to verification.[396]

2.7.9 Theory and conclusion

The evidence in the theoretical writings about *praeteritio* provides a diverse picture, especially in view of the situation in oratorical practice. The concept does not figure at all in Aristotle's *Ars rhetorica*—a surprising fact, given the long passage about figures of speech in book 3, but not so surprising as Aristotle appears in general quite unconcerned about omitting possible topics (cf. above p. 51). In the *Rhetorica ad Alexandrum*, the figure of παράλειψις is not treated in its own right, but referenced twice in a casual way which suggests that it was a common stock item in contemporary rhetorical theory.

In the *Rhetorica ad Herennium*, the *occultatio*[397] is one of the stylistic figures treated in detail in book 4; however, as it is defined here, it does not include all kinds of explicit *praeteritio*, but only those cases where the orator claims to omit something, but speaks about it *nunc maxime*; and only where the figure is used as a kind of insurance, in case the orator is attacked for having said something inappropriate (in particular, something off-topic or unverifiable). In contrast, the most common purposes of *praeteritio* found in Cicero's speeches, i.e. emphasis on the point at hand, and reference to an abundance of material (especially in the "*praeteritio* of the rest"), are not included here.

Much more important is the situation in Cicero's own rhetorical writings: even though none of these is exactly a comprehensive "textbook" of rhetoric, one would expect the phenomenon to be covered; but in *De oratore*, the only (rather faint) hint at the figure of *praeteritio* is made at the end of the passage on *inventio* of ("rational") arguments, in an appendix rounding off the sec-

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[396] The question whether *praeteritio* is characteristic of prosecution speeches, or of *repetundae* cases, or of prosecution speeches in *repetundae* cases, cannot be decided on the singular examples of the *Verrines*; further research on speeches of different types of the Attic Orators might shed some light on the point.

[397] *Rhet. Her.* 4.37.

tion with some random advice on presenting the *inventa*: "tractatio autem varia esse debet: [...] ex eisdem illis locis interdum concludere [oportet], *relinquere alias* alioque transire; saepe *non proponere* ac ratione ipsa adferenda quid proponendum fuerit, declarare *etc.*"[398] Beyond this, *De oratore* only contains some ironical examples of *praeteritio*, e.g. Crassus "almost omitting" some topics about which he talks for 13 paragraphs.[399] Only in the *Orator* is the *praeteritio* actually mentioned,[400] but even there only in a quite cursory enumeration and, on top of it, in the list of figures of words, not figures of thought where it belongs. In the quite extensive list of figures of speech in *De oratore*,[401] we find *reticentia* (i.e. ἀποσιώπησις), but not the concept of *praeteritio*.[402]

Clearly the abstract concept of *praeteritio*, which had long been part of the rhetorical tradition as visible in the *Rhetorica ad Herennium* and indirectly in the *Rhetorica ad Alexandrum*, was not something Cicero thought worth including in any detail in his rhetorical writings. Most likely it had virtually no relevance for him when thinking and writing about oratory in theory (other than in his speeches), especially with the more "philosophical" approach of his major rhetorical works. Moreover, since Cicero's ideal orator "is a good man, in the sense that he will use his eloquence for good purposes",[403] he possibly found that a technique like the *praeteritio*, which often has a manipulative and thus dishonest touch to it, should not be given space in this context, that he found it disreputable and maybe even that did not want to give away his own addiction to it (although, even according to *De oratore*, "in the harsh reality of Roman politics, he [the ideal orator] will not hesitate to manipulate his audience if those purposes demand it"[404]).

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[398] Cic. *De orat.* 2.177.

[399] Cic. *De orat.* 3.38–50; 3.52 "quas modo percucurri vel potius paene praeterii".

[400] Cic. *Orat.* 138 "ut aliquid reticere se dicat".

[401] Cic. *De orat.* 3.202–207, which is in itself a *percursio*.

[402] The term *praeteritio* is not found until the 3rd c. AD (Aquila Rhetor). Since Cicero did actually coin new Latin terms for philosophical concepts (like *qualitas*: Cic. Ac. post. 1.25 "qualitates igitur appellavi quas ποιότητας Graeci vocant, quod ipsum apud Graecos non est vulgi verbum sed philosophorum"), he might well have done so here, especially as the Greek term παράλειψις was used e.g. by Demetrius of Phaleron (Demetr. *Eloc.* 263).

[403] May and Wisse (2001, 12)

[404] May and Wisse (2001, ibid.)

Nor does the situation change much with Quintilian: he, who usually treats even minor aspects in exhaustive detail, does not discuss the figure of *praeteritio* either; he quotes both lists from *De oratore* and *Orator*[405] without commenting on them, and he himself treats the figure as a subcategory of (a subcategory of) irony,[406] without clearly defining it. Among the figures of word (where Cicero had filed it in the *Orator*) Quintilian has a category of *figurae per detractionem*,[407] but there we find only a cross-reference to the ἀποσιώπησις, and not a hint that Quintilian has thought also of figures of thought *per detractionem*; *occultatio*[408] is an item in the list of figures which Quintilian cites from other authors (Cornificius, for this particular figure), but discards himself.

This result is striking, in particular for Cicero, who appears widely unaware of, or unwilling to talk about (or both), a rhetorical means that he used throughout his speeches, in all genres and in a large variety of forms.

Altogether we find *praeteritiones* used by Cicero in a variety of ways, which is an odd discrepancy when compared to his neglect of the phenomenon in theory. All of his rhetorical works, except *De inventione*, were written after the *Verrines*, where he made most use of *praeteritiones*, yet we find no mention of the tool which he had so successfully used. Furthermore, even Quintilian, who knew the *Verrines* well, does not consider the phenomenon in his *Institutio*.

2.8 Omission of adverse points

I shall now turn, after *explicit* omissions within a speech, to *silent* omissions, i.e. points in a case which the orator wishes to avoid completely.[409] Naturally, the most obvious points to omit are adverse aspects of a case, i.e. anything

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[405] Quint. *Inst.* 9.1.26–36, Quint. *Inst.* 9.1.37–45.

[406] Quint. *Inst.* 9.2.44–53, in which §§ 47–48 deal with ἀντίφρασις; and even there only some of the examples constitute a *praeteritio* proper.

[407] Quint. *Inst.* 9.3.58–65.

[408] Quint. *Inst.* 9.3.98.

[409] It must be stressed again here that we cannot normally tell whether there are in fact such omissions in a speech as we have it (and even less whether such omission were made in the speech as delivered). We must again rely on cases where we have external evidence about the case or speech topic, and (with caution) on speeches where the omission can be somehow deducted from the text.

which might be necessary for a full account, but could get in the way of the orator's purpose. However, often enough this is impossible in practice, as the orator must deal with any adverse point which his opponent has already mentioned. And this would be the normal case in a defence speech, where the most adverse point of all, the charge, is difficult to avoid altogether.

2.8.1 Practice

Yet it is possible, as Cicero shows in *Pro Caelio*: the actual charges ("[crimina] quae in hunc proprie conferuntur"[410]), which have been brought forward by the prosecution, are passed over in half a paragraph, while the speech only deals with Caelius' and Clodia's reputation.[411] It has to be considered, however, that in this case Cicero spoke only after two other defence orators had dealt with the charges. Cicero was successful with the tactic in this case, which in others, with only one defence speech, would have been impossible, and more than dangerous to the client. Similarly, as described by Ch. Craig, Cicero manages in *Pro Sestio* to avoid the actual charge, discussing various topics and persons "while the expected treatment of Sestius' specific act disappears completely, never to return";[412] "[f]inally, without ever admitting the fact that Sestius has raised armed bands that have engaged in violence, Cicero explicitly tries to justify Sestius' doing just that, plainly invoking the arguments of the *status* of quality [...], but without ever having admitted the act that he is justifying."[413]

A complementary case is the trial against Verres, in which Hortensius complained that he had nothing to defend his client against, since Cicero had in his *actio prima* presented *nothing but* the actual charge (or at least not the usual elaborations); therefore, Hortensius may be understood, Cicero has defeated his client "by saying nothing", because he had left Hortensius no chance to avoid speaking about the charge.[414] Of course this was part of Ci-

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[410] Cic. *Cael.* 30.

[411] Cf. van der Wal (2007, p. 194–195) *ad locum*.

[412] Craig (2001, p. 113)

[413] Craig (2001, p. 116)

[414] Cic. *Verr.* 2.1.24 "nunc ne novo querimoniae genere uti possit Hortensius et ea dicere, opprimi reum de quo nihil dicat accusator, nihil esse tam periculosum fortunis innocentium quam tacere adversarios; et ne aliter quam ego velim meum laudet ingenium, cum dicat

cero's particular tactic, and he explicitly catches up on the manifold details of the charge, as well as related arguments about Verres' character, in the *actio secunda*.

Almost as dangerous is the omission of adverse points for the orator who speaks first, and must expect his opponent to blow the whistle afterwards. This does not occur in most of Cicero's speeches, as they are defence speeches which were delivered after the prosecution speeches. Cicero heavily complains about the loss of this advantage in the *Pro Quinctio*, where he acts, at least officially, for the prosecution.

On the other hand, there are numerous examples, from Cicero as well as already from the Attic Orators, in which the orator exploits the fact that the opponent must either admit or deny or keep silent about a major adverse fact. These take slightly varying shapes; sometimes the orator just states the opponent's being silent,[415] sometimes he predicts the opponent's future silence,[416] and frequently he reports some past silence as being in effect a con-

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me, si multa dixissem, sublevaturum fuisse eum quem contra dicerem, quia non dixerim, perdidisse".

[415] Attic Orators: e.g. Lys. *or.* 4.5; Dem. *or.* 18.76, 18.112, 18.150, 19.32, 19.75, 21.98, 29.41, 31.9, 35.49; Aischin. *Ctes.* 165–166; Cicero: Cic. *S. Rosc.* 45 "neque haec tu non intellegis, sed usque eo quid arguas non habes, ut non modo tibi contra nos dicendum putes verum etiam contra rerum naturam contraque consuetudinem hominum contraque opiniones omnium.", 54 "ea [...] quae, cum taces, nulla esse concedis", 120 "res [servos in quaestionem] porro abs te eius modi postulabatur ut nihil interesset, utrum eam rem recusares an de maleficio confiterere. quae cum ita sint, quaero abs te quam ob causam recusaris", 123 "ego sic existimo, qui quaeri velit ex eis quos constat, cum caedes facta sit, adfuisse, eum cupere verum inveniri; qui id recuset, eum profecto, tametsi verbo non audeat, tamen re ipsa de maleficio suo confiteri"; Cic. *Q. Rosc.* 8 "quaero: quam pridem hoc nomen, Fanni, in adversaria rettulisti? erubescit, quid respondeat nescit, quid fingat extemplo non habet."; Cic. *Tull.* 35 "quid ad haec Quinctius? sane nihil certum neque unum, in quo non modo possit verum putet se posse consistere"; Cic. *Verr.* 2.4.104 "omnibus in rebus coarguitur a me, convincitur a testibus, urgetur confessione sua, manifestis in maleficiis tenetur—et manet etiam ac tacitus facta mecum sua recognoscit!"; Cic. *Cluent.* 93 "quid ergo est causae quod nunc nostra defensio audiatur tanto silentio, tum Iunio defendendi sui potestas erepta sit?"; Cic. *Leg. agr.* 2.71 "aut dicat quos agros empturus sit; ostendat et quid et quibus daturus sit.", 2.79 "aut, si hoc ab se dictum negat et satis facere omnibus vobis cogitat, proferat; in iugera dena discribat, a Suburana usque ad Arniensem nomina vestra proponat."; Cic. *Mur.* 14 "nihil igitur in vitam L. Murenae dici potest, nihil, inquam, omnino, iudices. sic a me consul designatus defenditur ut eius nulla fraus, nulla avaritia, nulla perfidia, nulla crudelitas, nullum petulans dictum in vita proferatur. bene habet; iacta sunt fundamenta defensionis. nondum enim nostris laudibus, quibus utar postea, sed prope inimicorum confessione virum bonum atque integrum hominem defendimus"; Cic. *Phil.* 2.61 "quam miserum est id negare non posse, quod sit turpissimum confiteri!"

[416] Attic Orators: e.g. Lys. *or.* 14.16; Dem. *or.* 19.212, 21.41, 36.28; Cicero: Cic. *Div. in Caec.* 31 "tu, Caecili, quid facies? utrum hoc tantum crimen praetermittes an obicies? si obicies, idne alteri crimini dabis quod eodem tempore in eadem provincia tu ipse fecisti? [...] sin praetermittes, qualis erit tua ista accusatio [...]?"; Cic. *Verr.* 2.2.167 "neque tu hoc dicere

fession.[417] A quite curious exploitation of the point is found in *Pro Plancio*:
"facile patior id te agere multis verbis quod ad iudicium non pertineat, et id
te accusantem tam diu dicere quod ego defensor sine periculo possim con-

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audebis, nec si cupias licebit", 2.5.22 "omnia tibi ista concedam et remittam; provideo
enim quid sit defensurus Hortensius; fatebitur apud istum neque senectutem patris neque
adulescentiam fili neque lacrimas utriusque plus valuisse quam utilitatem salutemque
provinciae; dicet rem publicam administrari sine metu ac severitate non posse; quaeret
quam ob rem fasces praetoribus praeferantur, cur secures datae, cur carcer aedificatus,
cur tot supplicia sint in improbos more maiorum constituta. quae cum omnia graviter
severeque dixerit, quaeram cur hunc eundem Apollonium Verres idem repente nulla re
nova adlata, nulla defensione, sine causa de carcere emitti iusserit; tantumque in hoc
crimine suspicionis esse adfirmabo ut iam ipsis iudicibus sine mea argumentatione coniec-
turam facere permittam quod hoc genus praedandi, quam improbum, quam indignum,
quamque ad magnitudinem quaestus immensum infinitumque esse videatur.", 2.5.33 "di
faciant ut rei militaris, ut belli mentionem facere audeas!"; Cic. *Leg. agr.* 2.40 "utrum oratio
ad eius rei disputationem deerit, an, cum idem et disseret et iudicabit, impelli non poterit
ut falsum iudicet?"; Cic. *Rab. Post.* 8 "quod si item a Gabinio seiunctam ostendero, certe
quod dicas nihil habebis"; Cic. *Phil.* 2.111 "respondebisne ad haec aut omnino hiscere au-
debis?"

[417] Attic Orators: e.g. Dem. *or.* 18.28, 18.191, 18.198; Aischin. *Ctes.* 163; Cic. *S. Rosc.* 53 "tametsi
te dicere atque enumerare causas omnis oportebat, et id erat certi accusatoris officium qui
tanti sceleris argueret explicare omnia vitia ac peccata fili quibus incensus parens potuerit
animum inducere ut naturam ipsam vinceret, ut amorem illum penitus insitum eiceret ex
animo, ut denique patrem esse sese obliviseretur"; Cic. *Verr.* 2.1.20 "ut tertius dies [of the
trial] sic hominem prosterneret ut morbo simulato non quid responderet, sed quem ad
modum non responderet, deliberaret.", 2.2.92 "erat eius modi causa ut ille ne sine adver-
sario quidem apud inimicum iudicem reperire posset quid diceret;", 2.2.101 "cum haec ad
istum adferrentur, pertimuit aliquando et commotus est; vertit stilum in tabulis suis, quo
facto causam omnem evertit suam; nihil enim sibi reliqui fecit quod defendi aliqua ratione
posset.", 2.2.191 "laudantur oratores veteres, Crassi illi et Antonii, quod crimina diluere
dilucide, quod copiose reorum causas defendere solerent: nimirum illi non ingenio solum
bis patronis, sed fortuna etiam praestiterunt. nemo enim tum ita peccabat ut defensioni
locum non relinqueret; nemo ita vivebat ut nulla eius vitae pars summae turpitudinis esset
expers; nemo ita in manifesto peccato tenebatur ut, cum impudens fuisset in facto, tum
impudentior videretur si negaret.", 2.3.62 "homo quid ageret, taceret responderet, quid
faceret denique illa aetate et auctoritate praeditus nesciebat.", 2.3.131 "cum planum fieret,
decumis contra instituta leges consuetudinemque omnium venditis, in aratorum bonis
fortunisque diripiendis decumanos dictitasse tuas esse partis, tuam rem, tuam praedam,
idque te tacuisse et, cum dissimulare non posses, potuisse tamen perpeti et perferre, quod
magnitudo lucri obscuraret periculi magnitudinem plusque aliquanto apud te pecuniae
cupiditas quam iudici metus posset.", 2.3.133 "cum vero in foro celeberrimo tanta fre-
quentia hoc verbo ac simulatione Apronio, re vera tibi obiectum esset, tu umquam tan-
tam plagam tacitus accipere potuisses nisi hoc ita statuisses, in re tam manifesta quicquid
dixisses te deterius esse facturum?", 2.5.73 "at quem ad modum ipse se induit priore ac-
tione! qui tot dies tacuisset, repente in M. Anni, hominis splendidissimi, testimonio—cum
is civem Romanum dixisset, archipiratam negasset securi esse percussum—exsiluit con-
scientia sceleris et furore ex maleficiis concepto excitatus"; Cic. *Catil.* 2.13 "cum ille homo
audacissimus conscientia convictus primo reticuisset, patefeci cetera"; Cic. *Sull.* 40 "ex-
clusus hac criminatione Torquatus rursus in me inruit", 85 "dico hoc quod initio dixi,
nullius indicio, nullius nuntio, nullius suspicione, nullius litteris de P. Sulla rem ullam ad
me esse delatam"; Cic. *Flacc.* 19 "itaque perscrutamini penitus naturam rationemque crim-
inum; iam nihil praeter spem, nihil praeter terrorem ac minas reperietis.", 48 "sed cum se
homo volubilis quadam praecipiti celeritate dicendi in illa oratione iactaret, repente tes-
timoniis Fufiorum nominibusque recitatis homo audacissimus pertimuit, loquacissimus
obmutuit."; Cic. *p. red. in sen.* 32 (on Caesar) "quem ego inimicum mihi fuisse non dico,

fiteri",[418] i.e. the prosecutor has spoken off-topic for a substantial time, and this, with the time limit,[419] has the effect that he has said nothing, or very little, about the actual charge—an omission which Cicero now exploits. In a passage in *Verr.* 2, Cicero explicitly uses only the point which his adversary has actually admitted,[420] implying that there is much more material that he could use if he wanted.[421] It must be kept in mind, however, that this claim (of the opponent's omission) is not necessarily true: the statement "your silence is a confession that . . . " remains unchallenged, at least for the moment, since in most speaking situations the opponent has no right to reply on the spot. It is thus "the orator's task—and at the same time a challenge to his manipulative abilities—to make the opponent's silence appear hermeneutically unambiguous and to force onto it his own interpretation, which will be in tune with his chain of argument."[422]

It was thus often a better strategy to obscure rather than omit adverse points in a speech, and various techniques to this effect were discussed in theory.[423] However, these techniques, like all techniques taught in rhetorical schools and handbooks, were known to the audience, a fact which in

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tacuisse, cum diceretur esse inimicus, scio"; Cic. *Har.* 1 "itaque hominem furentem exsultantemque continui simul ac periculum iudici intendi: duobus inceptis verbis omnem impetum gladiatoris ferociamque compressi."; Cic. *Phil.* 2.22 "quod igitur, cum re agebatur, nemo in me dixit, id tot annis post tu es inventus qui diceres?" (cf. introduction in Fuhrmann (1970, vol. 7 p. 137): "Eine Teilhaberschaft an der Tötung des Clodius habe man ihm nicht einmal zur Zeit des Milo-Prozesses vorgeworfen – in seiner eigenen Rede für Milo, 47, liest es sich anders." / Cic. *Mil.* 47 "deinde—non enim video cur non meum quoque agam negotium—scitis, iudices, fuisse qui in hac rogatione suadenda dicerent Milonis manu caedem esse factam, consilio vero maioris alicuius. me videlicet latronem ac sicarium abiecti homines et perditi describebant."); a particularly ironical variant: Cic. *Leg. agr.* 2.13 "legem hominis contionemque exspectabam; lex initio nulla proponitur, contionem in pridie Idus advocari iubet. summa cum exspectatione concurritur. explicat orationem sane longam et verbis valde bonis. unum erat quod mihi vitiosum videbatur, quod tanta ex frequentia inveniri nemo potuit qui intellegere posset quid diceret. hoc ille utrum insidiarum causa fecerit, an hoc genere eloquentiae delectetur nescio. tametsi, qui acutiores in contione steterant, de lege agraria nescio quid voluisse eum dicere suspicabantur."

[418] Cic. *Planc.* 63.

[419] Cf. p. 59: although we cannot say anything definite about time limits in *Pro Plancio* (since we have no particular evidence about official time limits in trials *de ambitu*, and the trial in 54 BC is not affected by the *lex Pompeia* of 52 BC), it is likely that the speaking time for each side was limited in some way, if only by the court day which was concluded at sunset.

[420] Cic. *Verr.* 2.2.152 "utar eo quod datur".

[421] This can actually be classified as a "*praeteritio* of the rest", cf. p. 20.

[422] Vogt-Spira (2004, p. 52).

[423] Cf. below p. 104.

turn had to be taken into account by the orator. He can therefore use the promise *not* to omit adverse points as a kind of *captatio benevolentiae*: Cicero e.g. at the very beginning of his speech *Pro Cluentio* assures that he will speak "ut omnes intellegant nihil me nec subterfugere voluisse reticendo nec obscurare dicendo"[424]—although this is somewhat ironic here, as Cicero has opened his speech by claiming that the prosecution has tried to divert the attention from the legally relevant points, and then promises to follow the same twisted structure, "so that everybody can see that I won't avoid or obscure anything".[425]

Another tactic is visible in *Leg. agr. 3.4*, where Cicero must deal with a unfavourable point in Rullus' law: he argues that he has avoided before to speak about this point, not because he found it difficult but because he did not want to bring up unpleasant memories or cause untimely disturbance,[426] i.e. he uses his own former silence on the point as evidence for his unwillingness to exploit the point at the expense of his audience's feelings, and can thus still speak about it without appearing too arrogant.

2.8.2 Theory

We find the point treated quite differently in the rhetorical treatises, a difference which may be seen as connected to their respective character.

Aristotle, in the first and second book of his *Ars rhetorica*, lays out an extensive list of topics for the orator to draw from, and the reader receives no prominent warning against using just whatever he can fit into his speech, not even an observation that some of the topics *can* be adverse to the case,[427] only a very occasional remark about what is apparently all too obvious to Aris-

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[424] Cic. *Cluent.* 1

[425] See also the section on "omission of lies" from p. 111.

[426] Cic. *Leg. agr.* 3.4 "caput est legis XL de quo ego consulto, Quirites, neque apud vos ante feci mentionem, ne aut refricare obductam iam rei publicae cicatricem viderer aut aliquid alienissimo tempore novae dissensionis commovere, neque vero nunc ideo disputabo quod hunc statum rei publicae non magno opere defendendum putem, praesertim qui oti et concordiae patronum me in hunc annum populo Romano professus sim, sed ut doceam Rullum posthac in eis saltem tacere rebus in quibus de se et de suis factis taceri velit."

[427] For example, it might be dangerous, depending on one's case, to discuss in court how the prospect of revenge makes people happy (Aristot. *Rhet.* 1370b30–32) or how someone with many friends and a large fortune has the best chances to get away with a crime unpunished (1372a11-14).

totle: that the orator has to make a choice to suit his particular situation.[428] Aristotle's focus on rhetoric, which he has defined as "δύναμις περὶ ἕκαστον τοῦ θεωρῆσαι τὸ ἐνδεχόμενον πιθανόν",[429] lies more on the possible spectrum of τὸ πιθανόν than on the process of θεωρῆσαι in the sense of judging, which would mean assessing potential arguments for their value as πιθανόν and accepting or rejecting them accordingly.

In the *Rhetorica ad Alexandrum* the omission of adverse points is not considered in general, either, but it is mentioned within some practical aspects: the discussion about use of genealogy includes advice to omit inferior ancestors and make up a plausible reason why they are still men of merit;[430] in the section on the προοίμιον of a defence speech a point is made which could well be generalised: that the orator should pass over charges which cannot be denied or defended, and concentrate on those he can attack with a reasonable chance of success.[431]

A similar picture can be seen in the *Auctor*'s treatment of the opponent: anticipation of the opponent's arguments is mentioned variously,[432] as is their refutation;[433] predicting the opponent's silence on some unfavourable point, however, is only used within an example for a different figure,[434] and using omissions made earlier by the opponent is only touched on in passing and not actually recommended,[435] except for the exceptional situation when an

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[428] E.g. Aristot. *Rhet.* 1399b13–14 "ληπτέον δ' ὁπότερον ἂν ᾖ χρήσιμον".

[429] Aristot. *Rhet.* 1355b25–26.

[430] *Rhet. Alex.* 1440b29–1441a14.

[431] *Rhet. Alex.* 1443b23–27 "ἐὰν δὲ ἀπολογώμεθα, τὸ μὲν προοίμιον ὁμοιοτρόπως τῷ κατηγοροῦντι συστήσομεν. τῶν δὲ κατηγορουμένων ἃ μὲν εἰδέναι τοὺς ἀκούοντας ἐποίησε, παραλείψομεν, ἃ δὲ δοξάζειν, ταῦτα προθέμενοι μετὰ τὸ προοίμιον διαλύσομεν".

[432] *Rhet. Alex.* 1428a8 "προκαταλήψεις", 1433a36–40 "ἐν μὲν οὖν τοῖς προτέροις λόγοις οὕτω δεῖ τὰ ἐπίδοξα λέγεσθαι ὑπὸ τῶν ἐναντίων προκαταλαμβάνοντα διαλύειν καὶ ἀσθενῆ ποιεῖν· καὶ γὰρ κἂν πάνυ ἰσχυρὰ ᾖ τὰ προκατειλημμένα, οὐχ ὁμοίως φαίνεται μεγάλα τοῖς ἤδη προακηκόοσιν., 1439b3–5 "αὕτη δέ ἐστι, δι' ἧς τὰς ἐνδεχομένας ἀντιλογίας ῥηθῆναι τοῖς ὑπὸ σοῦ εἰρημένοις προκαταλαμβάνων διασύρεις.", 1442b4–6 "τὸ μέν [στοιχεῖον], οἷς ἂν νομίζῃς τοὺς κριτὰς ἐπιπλήξειν, προκαταλάμβανε αὐτοὺς καὶ ἐπίπληττε".

[433] *Rhet. Alex.* 1443a6–8 "μετὰ δὲ τὴν βεβαίωσιν τὰ πρὸς τοὺς ἀντιδίκους τάττοντες προκαταληψόμεθα αὐτῶν τὰ ἐπίδοξα λέγεσθαι."

[434] *Rhet. Alex.* 1434a10–17 "ἐξ ἐπερωτήσεως δὲ τόνδε τὸν τρόπον· ἡδέως δ' ἂν αὐτῶν πυθοίμην, διὰ τί τὰς συντάξεις ἡμῖν οὐκ ἀποδιδόασιν; οὐ γὰρ ὡς ἀποροῦσιν εἰπεῖν ἂν τολμήσαιεν, οἳ τοσαῦτα χρήματα καθ' ἕκαστον ἐνιαυτὸν ἐκ τῆς χώρας ἐπιδεικνύονται λαμβάνοντες, οὐδ' αὖ φήσουσιν εἰς τὴν τῆς πόλεως διοίκησιν πολλὰ δαπανᾶν· παντελῶς γὰρ ἐλάχιστα τῶν νησιωτῶν ἀναλίσκοντες φαίνονται. ἐκ μὲν οὖν ἐπερωτήσεως οὕτω παλιλλογήσομεν."

[435] *Rhet. Alex.* 1440a15–17 "κράτιστος μὲν οὖν ὁ τρόπος τῆς ἀποτροπῆς οὗτός ἐστιν· ἐὰν δὲ μὴ ἐνδέχηται τοῦτο ποιεῖν, ἐκ τοῦ παραλελειμμένου τόπου ἀπότρεπε λέγων".

accusation is made in a political debate but not at the same time brought to trial.[436]

Cicero, on the other hand, is aware of the problems of adverse topics; he puts it plainly already in *De inventione*: "omnia torquenda sunt ad commodum suae causae, *contraria, quae praeteriri poterunt, praetereundo*, quae dicenda erunt, leviter attingendo, sua diligenter et enodate narrando",[437] and later quite clearly explains how between the alternatives of admitting, denying and concealing a fact, "taciturnitas imitatur confessionem".[438] A slightly more precise version of the first passage comes later in *De oratore*, "qui locus est talis, ut plus habeat adiumenti quam incommodi, hunc iudico esse dicendum; ubi plus mali quam boni reperio, id totum abiudico atque eicio".[439] The same book contains a long and rather philosophical discussion[440] by Antonius about the point that the orator should at all costs avoid harming his client, rather than strive to serve him (and this implicitly includes avoiding adverse arguments), but also very practical advice on the point at hand:

> mea autem ratio haec esse in dicendo solet, ut, boni quod habeam,
>
> id amplectar, exornem, exaggerem, ibi commorer, ibi habitem, ibi
>
> haeream; a malo autem vitioque causae ita recedam, non ut me
>
> id fugere appareat, sed ut totum bono illo ornando et augendo
>
> dissimulatum obruatur;[441]

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[436] *Rhet. Alex.* 1437a18–21 (in a passage on assembly speeches) "ἐὰν δὲ οἱ ἐγκαλέσαντες μὴ ἐπεξίωσιν, αὐτὸ τοῦτο χρὴ σημεῖον ποιεῖσθαι, διότι τὴν διαβολὴν ψευδῶς ἡμῶν κατήνεγκαν· οὐ γὰρ εἰκὸς εἶναι δόξει τοὺς ἀληθῶς ἐγκαλοῦντας μὴ βούλεσθαι κρίσιν λαβεῖν."

[437] Cic. *Inv.* 1.30.

[438] Cic. *Inv.* 1.54 (the passage explains how the adversary can be forced to concede a point; when the adversary has made some concession and is then confronted with a similar point, he is left with these three options:) "extremum autem aut taceatur oportet aut concedatur aut negetur. si negabitur, aut ostendenda similitudo est earum rerum, quae ante concessae sunt, aut alia utendum inductione. si concedetur, concludenda est argumentatio. si tacebitur, elicienda responsio est aut, quoniam *taciturnitas imitatur confessionem*, pro eo, ac si concessum sit, concludere oportebit argumentationem." Cf. the "Rechtsgrundsatz Qui tacet consentire videtur" (Klecker (2004, p. 105), referring to Otto (1890, p. 339, no. 1734)).

[439] Cic. *De orat.* 2.102.

[440] Cic. *De orat.* 2.296–306.

[441] Cic. *De orat.* 2.292. Similarly about reacting to adverse points brought up by the opponent: Cic. *De orat.* 2.294 "unum, ut molesto aut difficili argumento aut loco non numquam omnino nihil respondeam", where *non numquam* implies a minority of cases where this is good advice.

and throughout his rhetorical works, Cicero offers some more ideas: the orator can shift the weights within his speech using more or less detail, and therefore divert the audience's attention from an unpleasant fact without omitting it;[442] conversely, he can draw special attention to less dangerous aspects;[443] or he can just obscure the adverse facts without skipping them completely.[444] Another possibility is to claim ignorance, like Cicero did in *Pro S. Roscio Amerino* on the legal background of the case.[445] Of course this option is not available in every situation.[446]

Similar advice is found in Quintilian's *Institutio*, though, as usual, with more detail than Cicero provides, and more balance: Seel[447] is right that "[s]orgfältig erörtert er mehrfach die Frage, wie sich der Rechtswalter gegenüber Argumenten verhalten solle, die seinem Beweiszweck abträglich sind. Das Problem ist mit ungemeiner Sorgfalt durchreflektiert", but the following claim that "sich die Hauptdirektive ergibt, ungünstige Fakten ja nicht zu verschweigen" needs some qualifying. The problem is covered in *Inst.* 4.1–2; in 4.1 the first advice is quite general: "ut autem haec [favorabilia] invenire et augere, ita quod laedit aut omnino repellere aut certe minuere ex causa est."[448] The second part of "exclude altogether or at least reduce" is then

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[442] Cic. *De orat.* 2.330 "ac si quando erit narrandum, nec illa, quae suspicionem et crimen efficient contraque nos erunt, acriter persequemur et, quicquid potuerit, detrahemus". This strategy is also employed outside of *narrationes*, e.g. in *Phil.* 11.17–18: here Cicero wants to argue against an extraordinary command for P. Servilius Vatia Isauricus using historical examples, and he cannot completely omit the case of Pompeius' command against the pirates, which he himself supported. Consequently, he spends much time on the *exempla* of the two *Scipiones* and passes briefly over the much more recent case of Pompeius, and he "conveniently forgets" (Ker, 1926, p. 477 n. 5) his own role there.

[443] Cic. *Inv.* 1.24 "si causae turpitudo contrahit offensionem, aut pro eo homine, in quo offenditur, alium hominem, qui diligitur, interponi oportet; aut pro re, in qua offenditur, aliam rem, quae probatur; aut pro re hominem aut pro homine rem, ut ab eo, quod odit, ad id, quod diligit, auditoris animus traducatur".

[444] Cic. *Orat.* 49 "[orator] aut occultabit quae dilui non poterunt atque omnino opprimet, si licebit, aut abducet animos aut aliud adferet, quod oppositum probabilius sit quam illud quod obstabit". These are not stated as rules here, but taken for granted as the orator's duties.

[445] In particular Cic. *S. Rosc.* 125 "ista ipsa lege quae de proscriptione est, sive Valeria est sive Cornelia—non enim novi nec scio—".

This is closely related to pretended memory failure, see section 4.3.3 from p. 202.

[446] Cf. Cic. *S. Rosc.* 2 "si qui istorum dixisset, quos videtis adesse, in quibus summa auctoritas est atque amplitudo, si verbum de re publica fecisset, id, quod in hac causa fieri necesse est, multo plura dixisse, quam dixisset, putaretur."

[447] Seel (1977, p. 85).

[448] Quint. *Inst.* 4.1.27. Similarly general in the section on oaths: Quint. *Inst.* 5.6.6 "nam si dicere contraria turpe advocato videretur, certe turpius habendum facere quod noceat."

elaborated further into the suggestion already made by Cicero: divert the audience's attention from the adverse parts[449] and draw it to less dangerous topics.[450]

In *Inst.* 4.2 Quintilian then shows a more dialectic vein and balances his advice with a warning of the extreme:

> "sed quatenus etiam forte quadam pervenimus ad difficilius narrationum genus, iam de iis loquamur in quibus res contra nos erit: quo loco nonnulli praetereundam narrationem putaverunt. et sane nihil est facilius nisi prorsus totam causam omnino non agere. sed si aliqua iusta ratione huiusmodi susceperis litem, cuius artis est malam esse causam silentio confiteri? nisi forte tam hebes futurus est iudex ut secundum id pronuntiet quod sciet narrare te noluisse."[451]

This seems to be what Seel saw as the "Hauptdirektive", but the main point returns later: "neque infitias eo in narratione ut aliqua neganda, aliqua adicienda, aliqua mutanda, sic aliqua etiam tacenda: sed tacenda quae tacere oportebit et liberum erit. quod fit nonnumquam brevitatis quoque gratia".[452]

Quintilian takes up some of the practical advice from Cicero, and he goes even further, as in contrast to Cicero he does factor in whether the opponent has been silent on the point, or will be silent about it later. Quintilian admits that sometimes the adverse aspect just cannot be avoided, for which an example is given in book 5:

> atqui quaedam sunt, quae neque negari neque defendi neque transferri possunt. 'adulterii rea est, quae cum anno vidua fuisset, enixa est': lis non erit. quare illud stultissime praecipitur, quod defendi non possit, silentio dissimulandum, si quidem est id, de quo iudex pronuntiaturus est[453]

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[449] Quint. *Inst.* 4.1.38 "inminuenda quaedam et elevanda et quasi contemnenda esse consentio ad remittendam intentionem iudicis quam adversario praestat", cf. Cic. *De orat.* 2.330.

[450] Quint. *Inst.* 4.1.44 "illud in universum praeceptum sit, ut ab iis quae laedunt ad ea quae prosunt refugiamus: si causa laborabimus, persona subveniat, si persona, causa; si nihil quod nos adiuvet erit, quaeramus quid adversarium laedat", cf. Cic. *Inv.* 1.24.

[451] Quint. *Inst.* 4.2.66.

[452] Quint. *Inst.* 4.2.67.

[453] Quint. *Inst.* 5.13.9.

and in the following paragraph he explains his preference for somehow including rather than omitting an adverse side point of a case which the *adversarius* has mentioned.[454] In the same chapter, more tactical advice follows for the preparation of a speech: the orator ought to consider possible counter-arguments (i.e. adverse points for his case) beforehand, but not offer them to his opponent in the actual trial, as some overzealous orators do.[455] Moreover, in the next book Quintilian emphasises that the orator must not only consider in preparation but also observe in court which strategy or arguments actually work in his favour and which do not, and adjust his speech accordingly.[456] This point is not made by the earlier extant rhetorical works, and may be a consequence of Quintilian's experience with declamation in school where in his view the students often become accustomed to an unrealistically convenient speaking situation.[457] Furthermore, Quintilian is the first writer of rhetorical theory, as far as we know, who actually advises the orator to take advantage of the opponent's silence on difficult points.[458]

Overall Quintilian wants the orator to rely on silence about uncomfortable facts more than Cicero, but always with consideration of the requirements of the case at hand. In practical advice he goes clearly beyond his predecessors.

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[454] Quint. *Inst.* 5.13.10 "at si extra causam sit adductum et tantum coniunctum, malim quidem dicere, nihil id ad quaestionem nec esse in iis morandum et minus esse quam adversarius dicat. tamen huic velut simulationi oblivionis ignoscam; debet enim bonus advocatus pro rei salute brevem neglegentiae reprensionem non pertimescere."

[455] Quint. *Inst.* 5.13.44–50; cf. Quint. *Inst.* 12.8.13 (on proper examination of the evidence) "denique linum ruptum aut turbatam ceram aut sine agnitore signa frequenter invenies: quae nisi domi excusseris, in foro inopinata decipient, plusque nocebunt destituta quam non promissa nocuissent."

[456] Quint. *Inst.* 6.4.19 "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." Cf. Quint. *Inst.* 12.10.56 "ideoque instandum iis quae placere intellexeris, resiliendum ab iis quae non recipientur."

[457] Quint. *Inst.* 12.6.5.

[458] Quint. *Inst.* 4.2.92 "est tamen quibusdam scholasticis controversiis, in quibus ponitur aliquem non respondere quod interrogatur, libertas omnia enumerandi quae responderi potuissent.", 6.1.4 "illa vero iucundissima, si contingat aliquo ex adversario ducere argumentum, ut si dicas: 'reliquit hanc partem causae', aut 'invidia premere maluit', aut 'ad preces confugit merito, cum sciret haec et haec'."

2.8.3 Special form: the omitted alternative

A special kind of tactical omission of adverse points can lie in misuse of the method of elimination. This is normally a common and sound method of reasoning: the orator lists a number of possibilities (mostly two or three) and proceeds to prove wrong all but one of these, which must therefore be true. However, if from the beginning the enumeration of possibilities is not complete, i.e. if one or more possibilities are left out (with or without intent), the conclusion and the whole argument is flawed. Cicero mentions this as a chance to break into the opponent's case (in *De inventione*, book 1, in the section devoted to the *reprehensio*):

> enumeratio vitiosa intellegitur, si aut praeteritum quiddam dicimus, quod velimus concedere, aut infirmum aliquid adnumeratum, quod aut contra dici possit aut causa non sit quare non honeste possimus concedere.[459]

What Cicero does not mention is that exactly this, listing several possibilities (but not the true one) and then excluding all but the one he wants his audience to believe, is a favourite device in his own speeches.[460] I shall discuss just two instances, first an almost schematical example in *Pro Cluentio*:

> unum quidem certe nemo erit tam inimicus Cluentio qui mihi non concedat, si constet corruptum illud esse iudicium, aut ab Habito aut ab Oppianico esse corruptum: si doceo non ab Habito, vinco ab Oppianico; si ostendo ab Oppianico, purgo Habitum.[461]

The suggestive modesty of the "nemo erit tam inimicus Cluentio" obscures the fact that there are indeed more possibilities than the two Cicero puts

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[459] Cic. *Inv.* 1.84, parallel to *Rhet. Her.* 2.33 "item vitiosa expositio est, cum omnes res ostendemus nos collegisse et aliquam rem idoneam praeterimus".

[460] Observed by Classen (1982, p. 168): "Besonders falsche Alternativen erlauben ihm, unbequeme Probleme auszuschalten oder keineswegs notwendige Konsequenzen als unvermeidlich hinzustellen"; Craig (1993) concentrates on another (but similar) rhetorical figure, the "dilemma" in which each of two alternatives is shown to be equally damning to the opponent (or similar), but also notes that "A dilemma may serve to make opposing arguments disappear; it may dismiss valid assumptions, including valid assumptions about character, *simply through excluding them from its apparently exhaustive structure*. [footnote: [. . .] This use of dilemma is one species of a general Ciceronian tactic of posing alternatives that seem exhaustive, but fail to cover viable possibilities.]" (Craig (1993, p. 172), my emphasis)

[461] Cic. *Cluent.* 64.

forward: the bribery could have been unsuccessful, and the jury could have been bribed by both parties.

A similar structure underlies a lengthy argument in *Pro Caelio*:

> quo quidem in crimine primum illud requiro, dixeritne Clodiae, quam ad rem aurum sumeret, an non dixerit. si non dixit, cur dedit? si dixit, eodem se conscientiae scelere devinxit. ... vidit hoc Balbus; celatam esse Clodiam dixit, atque ita Caelium ad illam attulisse, se ad ornatum ludorum aurum quaerere. si tam familiaris erat Clodiae, quam tu esse vis, cum de libidine eius tam multa dicis, dixit profecto, quo vellet aurum; si tam familiaris non erat, non dedit. ita, si verum tibi Caelius dixit, o immoderata mulier, sciens tu aurum ad facinus dedisti; si non est ausus dicere, non dedisti![462]

Twice in two paragraphs Cicero presents two alternatives which are equally damning to Clodia (and the prosecution's case) and which imply a logical *tertium non datur*: either he did tell her or he did not. The simplicity of the argument blanks out the third alternative (that Caelius did tell Clodia something, but not the truth) which Cicero himself has even mentioned. Apparently Cicero could claim in this trial, just as in the defence for Cluentius, "se tenebras offudisse iudicibus".[463]

Both these speeches, along with the *Pro Roscio Amerino* and the *Pro Milone*, are discussed in much detail in Seager (2011), and many more from the *Phil.* and other speeches are listed by Classen (1982).[464] Remarkably, this appears to be a device which was not much used by the Attic Orators,[465] but rather developed in later times, perhaps even by Cicero himself. It thus seems more than likely that Cicero was aware of this tactical device and deliberately employed it in practice. This raises not only the question asked by Seager, "why Cicero is partial to a device so artificial, so crudely mechanical and so transparently dishonest, a device that repeatedly led him into implausibility, ab-

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[462] Cic. *Cael.* 52–53.

[463] Quint. *Inst.* 2.17.21.

[464] See the list in Classen (1982, p. 168, n. 4), to which I would like to add: Cic. *Q. Rosc.* 13, Cic. *Sull.* 36–38, Cic. *Deiot.* 15; Cic. *Phil.* 2.31, 3.21, 4.2, 4.8, 5.2, 9.14, 10.17 (ironically), 11.20, 11.36, 13.49.

[465] Two rare examples are Dem. *or.* 19.106–107 and 22.62.

surdity and the suppression or falsification of widely known facts",[466] but also why Cicero did not include the figure in his rhetorical writings. The first question is answered easily enough with Cicero's success.[467] Concerning the second, this device was certainly not among the lists of figures which Cicero would adopt (and adapt) from his predecessors in rhetorical theory;[468] he would have had to present it as a new, even innovative tool. The deceptive, thus dishonest and morally questionable nature of the device may have dissuaded him from doing so, especially in *De oratore* with its philosophical aspects: there the *partitio* with the method of elimination is also treated,[469] but without the possibility of mistakes or abuse.

The same applies to Quintilian, despite his more practical approach and greater lenience for deception; twice he discusses the principle of enumeration and elimination, once in the section on methods of proof,[470] once under *divisio*,[471] but only in the first of these passages does he mention the possibility of omitting an item from the list, and even then he considers it only as a dangerous mistake to be avoided, not as an intentional manipulation.[472]

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[466] Seager (2011, p. 107).

[467] "It was certainly in the main effective" (Seager, 2011, p. 108).

[468] Aristotle mentions the figure of (and argumentation from) enumeration, but no aspect of omission: Aristot. *Rhet.* 1398a30–32 ἄλλος ἐκ διαιρέσεως, οἷον εἰ πάντες τριῶν ἕνεκεν ἀδικοῦσιν (ἢ τοῦδε γὰρ ἕνεκα ἢ τοῦδε ἢ τοῦδε), καὶ διὰ μὲν τὰ δύο ἀδύνατον, διὰ δὲ τὸ τρίτον οὐδ' αὐτοί φασιν.

[469] Cic. *De orat.* 2.165.

[470] Quint. *Inst.* 5.10.64–70.

[471] Quint. *Inst.* 7.1.31–37.

[472] Quint. *Inst.* 5.10.67 "periculosum et cum cura intuendum genus, quia, si in proponendo unum quodlibet omiserimus, cum risu quoque tota res solvitur."

2.9 Avoidance of lies

The omission, or rather avoidance,[473] of lies in itself is not always to the orator's advantage: even Quintilian has to admit that a *bonus* orator can be obliged to deceive for the sake of his case[474] while trying to appear truthful all the same. Still the explicit avoidance of lies, untruth and the like is a possibility for the orator of achieving his audience's goodwill; but it is a risky exercise, and consequently *praeteritiones* of this kind are not very frequent either in the Attic Orators' or in Cicero's speeches, and the orator generally does not actually promise not to lie: he either declares that he will not invent, *fingere*, anything,[475] or states that he will pass over certain facts for which he has no proof,[476] or he makes the positive promise to speak true[477] or to produce evidence.[478] The last point had in Athens obviously become a sort of formula to introduce evidence or a witness: "to prove that I speak true,

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[473] The English term "omission" is defined in the OED as (among other definitions) "The action of omitting, leaving out, or not including a person or thing" (Oxford English Dictionary, online version http://www.oed.com 2016 s.v. omission); however, if for some person or thing there never was a reason or intention to include it, the act of not including it would not normally be termed "omission"; usually one can only omit what is already there, at least in a preliminary concept. I shall therefore reserve the term "omission" e.g. for possible arguments that present themselves, and for adverse points in a case which have already been mentioned by someone else (covered in the previous sections), and from this section rather use "avoidance" for elements which were never present in the speech, or the speaker's mind, in the first place.

[474] Quint. *Inst.* 12.1.11–12 "bonus quidem et dicet saepius vera atque honesta. [12] sed etiam si quando aliquo ductus officio (quod accidere, ut mox docebimus, potest) falso haec adfirmare conabitur, maiore cum fide necesse est audiatur"; Quint. *Inst.* 12.8.5 "nam qui iudicare quid dicendum, quid dissimulandum, quid declinandum mutandum fingendum etiam sit potest cur non sit orator, quando, quod difficilius est, oratorem facit?"

[475] Attic Orators: e.g. Dem. *or.* 19.154, 29.10; Cicero: Cic. *Q. Rosc.* 34 "id, quod probare non potest, fingere conatur"; Cic. *Verr.* 2.3.164 "non agam tecum accusatorie, nihil fingam, nihil cuiquam probari volo me dicente quod non ante mihimet ipsi probatum sit"; Cic. *Manil.* 10 "sed de Lucullo dicam alio loco, et ita dicam, Quirites, ut neque vera laus ei detracta oratione mea neque falsa adficta esse videatur"; Cic. *Har.* 40 "haruspicum verba sunt haec omnia: nihil addo de meo"; Cic. *Scaur.* 7 "ac ne existimes, Triari, quod adferam, in dicendo me fingere ipsum et non a reo causam cognoscere, explicabo tibi . . . ", 16 "argumentum vero, quod quidem est proprium rei—neque enim ullum aliud argumentum vere vocari potest—rerum vox est, naturae vestigium, veritatis nota; id qualecumque est, maneat immutabile necesse est; non enim fingitur ab oratore, sed sumitur."

[476] Cic. *Prov. cons.* 6 "nec haec idcirco omitto, quod non gravissima sint, sed quia nunc sine teste dico"; Cic. *Phil.* 10.7 "ac de hac quidem divina atque immortali laude Bruti silebo, quae gratissima memoria omnium civium inclusa nondum publica auctoritate testata est."

[477] Cic. *Leg. agr.* 2.10 "nam vere dicam, Quirites".

[478] Attic Orators: e.g. Dem. *or.* 20.88; Cicero: Cic. *Mur.* 20 "atque haec quamquam praesente L. Lucullo loquor, tamen ne ab ipso propter periculum nostrum concessam videamur habere licentiam fingendi, publicis litteris testata sunt omnia".

read the evidence" etc. (spoken to the clerk),[479] which would not appear in Roman courts where the speeches were separated from the examination of the evidence.

In theory the *Rhetorica ad Alexandrum* offers detailed and practical advice on how to deal with unproven and/or improbable points, including the presentation as εἰδώς (which corresponds to *non fingere*), the *alio loco praeteritio*,[480] and the promise to provide evidence later.[481] The question whether or not the orator is (morally) allowed to lie (or even should do so) is not treated.

Cicero does not treat the question of lying in his rhetorical treatises (only in *De orat.* 2.30, Antonius mentions casually that orators sometimes happen to lie in court, but the point is not developed; the orator's moral integrity is treated 3.55,[482] but without explicit mention of lying).[483] Quintilian makes some concessions here which are quite remarkable at first sight, considering the high moral standards of his treatise; he regards truth not as a moral value in itself but as a useful means to an end, and where *verum* and *honestum* collide, Quintilian opts for the latter. Consequently, he not only allows

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[479] Examples from the Attic Orators: Lys. *or.* 3.20, 13.66, 13.71, 13.72, 13.81, 17.8, 19.23, 19.27, 20.10, 23.8, 23.11, 23.14, 23.15, 31.14, 31.23; Dem. *or.* 18.37, 18.115, 18.135, 18.137, 19.146, 19.161, 19.170, 19.176, 19.213, 21.82, 21.93, 21.107, 21.121, 21.167, 21.174; 23.159, 23.174, 31.4, 32.19, 33.8, 33.12, 33.13, 33.15, 34.15, 34.37, 35.19, 35.22, 36.10, 36.13, 36.16, 36.22, 36.35; Aischin. *Tim.* 100, 104, 115, *leg.* 19, 46, 54, 73, 85, 107, 134, 143, 155, 170, *Ctes.* 15, 30, 47, 68, 70, 75, 93, 101, 105, 124, 187.

[480] See p. 76.

[481] *Rhet. Alex.* 1438b3–10 "ὅσα δ' ἂν λίαν ἄπιστα συμβαίνῃ, δεῖ παραλείπειν. ἐὰν δὲ ἀναγκαῖον ᾖ λέγειν, εἰδότα δεῖ φαίνεσθαι καὶ ἐπιπλέξαντα αὐτὰ τῷ τῆς παραλείψεως σχήματι ὑπερβάλλεσθαι καὶ προϊόντος τοῦ λόγου ἐπιδείξειν ἀληθῆ ὑπισχνεῖσθαι προφασισάμενον, ὅτι τὰ προειρημένα πρῶτον βούλει ἀποδεῖξαι ἀληθῆ ὄντα ἢ δίκαια ἤ τι τῶν τοιούτων. καὶ τοῦτον μὲν τὸν τρόπον τὰς ἀπιστίας ἰασόμεθα." Another passage rather points towards complete omission, if possible: *Rhet. Alex.* 1429a15–16 "ἂν δὲ μὴ δυνατὸν ᾖ τοῦτο δεῖξαι, καταφευκτέον ἐπὶ τὰς ἀτυχίας ἢ τὰς ἁμαρτίας κτλ.".

[482] Cf. Leeman et al. (1981, p. 200–201), Fantham (2004, p. 247–248).

[483] In the second book of *De Officiis*, Cicero discusses the moral duties of an orator (Cic. *Off.* 2.49–51) and, after making clear that an orator must undertake only honorable cases (which may include defending a guilty client, if he is in general a person of integrity) allows for the advocate to knowingly maintain what is only *verisimile*, but not strictly true. In the third book (Cic. *Off.* 3.50–57), in a more general discussion (not only under oratorical aspects) of truth and deception, he takes a slightly different position and relates the Stoic position held by Diogenes that omission/avoidance (*tacere*) of a fact is not the same as deceitful concealment (*celare*), which would support the point that omission of adverse points in a speech is not morally bad (and is thus preferable to lying); however, Cicero himself is here partial to the position attributed to Antipater, that any kind of deception to the speaker's advantage should be regarded as *turpe*.

for rhetoric to focus on the probable rather than on the true[484] and advises
to avoid untrue statements in particular if they are implausible[485] (though
not in general[486]), but concedes explicitly that the orator is allowed to lie in
court if it serves his case (under the tacit assumption that the case itself is
morally sound), as he has inexperienced judges to persuade.[487] His advice
to *avoid* lying is restricted to practical aspects, not brought forward as a moral
demand.[488]

2.10 Avoidance of indecent language and inappropriate topics

A topic related to insults/invective is the use (or avoidance) of indecent,
obscene, or rude language and topics. This includes words which are them-
selves obscene (but used to describe otherwise rather neutral things); things
(facts, events, features etc.) which are unfit to describe in themselves, no mat-
ter in what kind of language; and the topos of things so repulsive that any
appropriate description would necessarily employ indecent language. These
three aspects are close enough in rhetoric to be treated together here.

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[484] Quint. *Inst.* 2.17.39 "quid quod rhetorice non utique propositum habet semper vera di-
cendi, sed semper veri similia? scit autem esse veri similia quae dicit."

[485] Quint. *Inst.* 3.8.48 "multum refert etiam quae sit persona suadentis, quia, ante acta vita si
inlustris fuit aut clarius genus aut aetas aut fortuna adfert expectationem, providendum
est ne quae dicuntur ab eo qui dicit dissentiant. at his contraria summissiorem quendam
modum postulant. nam quae in aliis libertas est, in aliis licentia vocatur, et quibusdam
sufficit auctoritas, quosdam ratio ipsa aegre tuetur."

[486] E.g. Quint. *Inst.* 2.17.19 "ego rhetoricen nonnumquam dicere falsa pro veris confitebor,
sed non ideo in falsa quoque esse opinione concedam, quia longe diversum est ipsi quid
videri et ut alii videatur efficere.", 2.17.20 "item orator, cum falso utitur pro vero, scit esse
falsum eoque se pro vero uti: non ergo falsam habet ipse opinionem, sed fallit alium."

[487] Quint. *Inst.* 2.17.26–27 "uti etiam vitiis rhetoricen, quod ars nulla faciat, criminantur, quia
et falsum dicat et adfectus moveat. [27] quorum neutrum est turpe, cum ex bona ratione
proficiscitur, ideoque nec vitium; nam et mendacium dicere etiam sapienti aliquando
concessum est, et adfectus, si aliter ad aequitatem perduci iudex non poterit, necessario
movebit orator: imperiti enim iudicant et qui frequenter in hoc ipsum fallendi sint, ne
errent." (similarly Quint. *Inst.* 2.17.36 on the priority of *communis utilitas* over truth, and
Quint. *Inst.* 3.8.1–3 on dealing in a similar way with an inexperienced audience in delib-
erative speeches); Quint. *Inst.* 12.1.36 "verum et illud, quod prima propositione durum
videtur, potest adferre ratio, ut vir bonus in defensione causae velit auferre aliquando iu-
dici veritatem. quod si quis a me proponi mirabitur (quamquam non est haec mea proprie
sententia, sed eorum quos gravissimos sapientiae magistros aetas vetus credidit), sic iu-
dicet, pleraque esse quae non tam factis quam causis eorum vel honesta fiant vel turpia."

[488] On moral aspects of ancient rhetoric in general cf. Wisse (2013).

In rhetorical theory, we can observe a different approach to the topic between the "textbooks" and the more "philosophical" writings. The *Rhetorica ad Alexandrum* advises directly against σκώπτειν, opposed to narrating the opponent's life and deeds, and emphasises the practical effects of πείθειν and λυπεῖν.[489] The *Rhetorica ad Herennium* does not cover the topic at all; only a passage against overstrong expressions comes close[490] which warns against appearing *adrogans* and arousing *odium*—factors which might have a negative effect on the orator's success.

Cicero advises to avoid *turpitudo* and *obscenitas* in *De oratore* (mentioned in the most risky areas of jokes[491] and figurative expressions[492]), even more so in the *Orator* where he twice warns against involuntarily using improper language,[493] a feature which is closely related to the orator's habits (of speaking and in general) and thus to (the presentation of) his character. The treatment of the issue by Cicero follows that of joke and ridicule: offending the opponent is to be avoided, not out of moral grounds but for utilitarian reasons.[494]

Quintilian even more explicitly rejects low language and topics due to moral reasons, referring to *dignitas*, *pudor* and *verecundia* in several passages;[495] only once does he include that decent words and facts are also *po-*

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[489] *Rhet. Alex.* 1441b16–20 "δεῖ δὲ μὴ σκώπτειν, ὃν ἂν κακολογῶμεν, ἀλλὰ διεξιέναι τὸν βίον αὐτοῦ· μᾶλλον γὰρ οἱ λόγοι τῶν σκωμμάτων καὶ τοὺς ἀκούοντας πείθουσι καὶ τοὺς κακολογουμένους λυποῦσι. τὰ μὲν γὰρ σκώμματα στοχάζεται τῆς ἰδέας ἢ τῆς οὐσίας· οἱ δὲ λόγοι τῶν ἠθῶν καὶ τῶν τρόπων εἰσὶν οἷον εἰκόνες.". The next sentence belongs in this context, too (*Rhet. Alex.* 1441b20–23 "φυλάττου δὲ καὶ τὰς αἰσχρὰς πράξεις μὴ αἰσχροῖς ὀνόμασι λέγειν, ἵνα μὴ διαβάλῃς τὸ ἦθος, ἀλλὰ τὰ τοιαῦτα αἰνιγματωδῶς ἑρμηνεύειν καὶ ἑτέρων πραγμάτων ὀνόμασι χρώμενος δηλοῦν τὸ πρᾶγμα."), and must be meant as a practical instruction, even though διαβάλλειν is not denoted as either harmful or indecent.

[490] *Rhet. Her.* 4.50 "deminutio est, quom aliquid inesse in nobis aut in iis, quos defendimus, aut natura aut fortuna aut industria dicemus egregium, quod, ne qua significetur adrogans ostentatio, deminuitur et adtenuatur oratione [. . .]. nam eiusmodi res et invidiam contrahunt in vita et odium in oratione, si inconsiderate tractes."

[491] Cic. *De orat.* 2.242 "praestet [orator] ingenuitatem et ruborem suum verborum turpitudine et rerum obscenitate vitanda."

[492] Cic. *De orat.* 3.163–164 "et quoniam haec vel summa laus est in verbis transferendis, ut sensum feriat id, quod translatum sit, fugienda est omnis turpitudo earum rerum, ad quas eorum animos, qui audient, trahet similitudo. [164] nolo dici morte Africani 'castratam' esse rem publicam, nolo 'stercus curiae' dici Glauciam; quamvis sit simile, tamen est in utroque deformis cogitatio similitudinis".

[493] Cic. *Orat.* 125 "omnis pars orationis esse debet laudabilis, sic ut verbum nullum nisi aut grave aut elegans excidat"; 134 "ut verbum ex ore nullum nisi aut elegans aut grave exeat".

[494] Cf. Leeman et al. (1981, vol. 3, p. 206–210).

[495] General statements: Quint. *Inst.* 2.13.12 "quid? non in oratione operienda sunt quaedam, sive ostendi non debent sive exprimi pro dignitate non possunt?"; Quint. *Inst.* 8.2.2 "nam

tiora.[496] He also discusses the difference between base words and base facts: there are very few words which are in themselves too obscene to be used in oratory,[497] but also repulsive things, if not clad in the most simple and bare words, can offend the audience. In this case even words appropriate to the matter can be inappropriate in the speech, and if the orator cannot think of a decent expression, he ought to keep silent.[498] After all, both words and content of the speech must not be obscene.[499]

In oratorical practice it seems to have been often expedient or at least not harmful for an orator to employ base language and insults.[500]

But the orators also make use of the explicit avoidance of base language.[501] The *praeteritio* that promises to refrain from bad or inappropriate language, either by describing something unpleasant in decent words (which are therefore not completely adequate), or by cutting out the description, since it cannot allegedly be given without using indecent language, is related to the "*praeteritio* of name"[502] insofar as it does not contain the irony that most types of *praeteritio* share to a degree: here the level of language which it promises to avoid is actually not used.

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et obscena vitabimus et sordida et humilia. sunt autem humilia infra dignitatem rerum aut ordinis".

[496] Quint. *Inst.* 8.3.17 "et honesta quidem turpibus potiora semper nec sordidis umquam in oratione erudita locus."

[497] Quint. *Inst.* 10.1.9 "omnibus enim fere verbis, praeter pauca quae sunt parum verecunda, in oratione locus est."

[498] Quint. *Inst.* 8.3.38–39 "sed ne inornata sunt quidem [i.e. verba singula], 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."

[499] Quint. *Inst.* 6.3.29 "obscenitas vero non a verbis tantum abesse debet, sed etiam a significatione."

[500] "[I]t is abundantly evident that Athenian orators made frequent and quite creative use of character assassination (*diabole, loidoria*), both in forensic cases and in the Assembly" (Worman, 2004, p. 1). For Cicero I would like to quote just a selection from the attacks against Clodius in *De domo sua* (where the speech was given before a tribunal of priests, i.e. a highly respected body, and the case was won by Cicero): 2 *amens, perditus, labes rei publicae*, 3 *demens, vesanus, furiosus*, 13 *armiger Catilinae, stipator tui corporis, signifer seditionis, concitator tabernariorum, damnatus iniuriarum, percussor, lapidator, fori depopulator, obsessor curiae*, 26 *importuna pestis, patricida, fratricida, sororicida*, 48 *omnium non bipedum solum sed etiam quadrupedum impurissimus*, 49 *scortum populare*, 99 *furia atque pestis*, 115 *intolerabilis audacia cum proiecta quadam et effrenata cupiditate.*

[501] For the Attic Orators cf. Carey (1994) and Carey (1999).

[502] See p. 81.

Most *praeteritiones* of this type in the Attic Orators' and Cicero's speeches are made with some reference, explicit or implicit, to *pudor*;[503] sometimes they refer more specifically to *dignitas*, either in general[504] or, more frequently, to the *dignitas* of the location, of the audience or of some other person,[505] in a special case to the gods.[506] Also the figure of *anti-praeteritio* occurs here (more frequent in the Attic Orators), as an excuse and an expression of the monstrosity of the fact.[507]

Special cases of "inappropriate topics" are self-praise (see below) and jokes.[508] Jokes and mockery were a common device in oratory: the derisory passages in *Pro Caelio* and the teasing in *Pro Murena* are perhaps the best-known examples. There must have been many speeches in which the orator decidedly avoided joking; however, we do not find any case of *explicit* refraining from joking.

Treatment of the use of jokes in ancient rhetorical writings generally results in the advice to be careful—not a total ban, but jokes must only be used when and where appropriate (which is rarer than the orator might want or

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[503] Attic Orators: e.g. Lys. *or.* 8.4; Dem. *or.* 18.3, 18.103, 18.129, 18.264, 18.318, 21.79, 22.12; Aischin. *Tim.* 41, 55, 157, *Ctes.* 162, 174; Cicero: Cic. *Quinct.* 70 "tametsi nolo eam rem commemorando renovare cuius omnino rei memoriam omnem tolli funditus ac deleri arbitror oportere; unum illud dico [...]"; Cic. *Verr.* 1.14 "in stupris vero et flagitiis, nefarias eius libidines commemorare pudore deterreor", 2.1.148 "ineptum est de tam perspicua eius impudentia pluribus verbis disputare", 2.2.180 "multa enim quae scio a te esse commissa, quod aut nimium turpia aut parum credibilia sunt, praetermittam" (where obscenity conincides with irrelevance), 2.4.89 "illud vero quid sit iam non queo dicere, quo nomine appellem nescio, quod in C. Marcelli statua"; Cic. *Flacc.* 34 "quas ego non solum propter longitudinem sed etiam propter turpissimam obscenitatem verborum praetereundas puto" (where obscenity coincides with length); Cic. *Phil.* 2.47 "sed iam stupra et flagitia omittamus: sunt quaedam, quae honeste non possum dicere", 8.7 "de proximo bello civili non libet dicere; ignoro causam, detestor exitum".

[504] Cic. *Verr.* 2.5.170 "verbo satis digno tam nefaria res appellari nullo modo potest."

[505] Attic Orators: e.g. Dem. *or.* 2.19, 8.51; Aischin. *Tim.* 45, *Ctes.* 182; Cic. *Cluent.* 66 "profecto nihil a me dicetur quod non dignum hoc conventu et silentio, dignum vestris studiis atque auribus esse videatur"; Cic. *Pis.* 71 "ex quibus multa a multis et lecta et audita recitarem, ni vererer ne hoc ipsum genus orationis quo nunc utor ab huius loci more abhorreret"; Cic. *Phil.* 2.16 "qui apud talis viros tam impudenter loquare!", 5.15 "atque ego de notis iudicibus dixi; quos minus nostis, nolui nominare; saltatores, citharistas, totum denique comissationis Antonianae chorum in tertiam decuriam iudicum scitote esse coniectum."

[506] Cic. *Planc.* 83 "deridebor, si mentionem tensarum fecero, cum tu id praedixeris; sine tensis autem quid potero dicere?"

[507] Attic Orators: e.g. Lys. *or.* 13.43–44; Dem. *or.* 9.1, 24.104; Aischin. *Tim.* 37–38, 52, 70, 112; Cicero: Cic. *Verr.* 2.1.86 "illud, quod neque taceri ullo modo neque dici pro dignitate potest, cognoscite", 2.1.121 "quae ego non commemorarem—neque enim perfacite dicta neque porro hac severitate digna sunt—, nisi vos illud vellem recordari, istius nequitiam et iniquitatem tum in ore vulgi atque in communibus proverbiis esse versatam."

[508] Cf. (Wisse, 2013, p. 182–183) on the risks of joking for an orator.

think). We find the point considered only by Cicero and Quintilian; Cicero vigorously warns against using whatever joke comes to mind[509] and especially against jokes about criminals and about vulnerable people;[510] imitation should be used with great care, their extreme forms (which probably include explicit visual comical imitation, i.e. by gestures) should be left to actors.[511] Quintilian, who devotes an entire chapter to the topic of jokes, also makes a point against hurting someone with a joke,[512] but somewhat shifts the emphasis towards respecting the dignity of the case[513] and being especially careful with persons of high standing[514] (clearly a feature of the Empire and its development of the *crimen maiestatis*); furthermore he rejects jokes about oneself[515] and recommends to be careful with ironical remarks, as they may turn against the orator.[516]

Whether the orator needs to actually be a *vir bonus* or just to appear so for the benefit of his case and client has been amply discussed in ancient rhetoric, especially by Cicero and Quintilian—a different question is whether he should actually talk about himself, his achievements etc.[517] Aristotle,

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[509] Cic. *De orat.* 2.221 "quod est hominibus facetis et dicacibus difficillimum, habere hominum rationem et temporum et ea, quae occurrunt, cum salsissime dici possunt, tenere"; cf. also 2.229; 2.244 "hoc, opinor, primum, ne, quotienscumque potuerit dictum dici, necesse habeamus dicere".

[510] Cic. *De orat.* 2.237–239 "quatenus autem sint ridicula tractanda oratori, perquam diligenter videndum est, quod in quarto loco quaerendi posueramus. nam nec insignis improbitas et scelere iuncta nec rursus miseria insignis agitata ridetur: facinerosos [enim] maiore quadam vi quam ridiculi vulnerari volunt; miseros inludi nolunt, nisi se forte iactant; parcendum autem maxime est caritati hominum, ne temere in eos dicas, qui diliguntur. [238] haec igitur adhibenda est primum in iocando moderatio; [. . .] [239] est etiam deformitatis et corporis vitiorum satis bella materies ad iocandum; sed quaerimus idem, quod in ceteris rebus maxime quaerendum est, quatenus; in quo non modo illud praecipitur, ne quid insulse, sed etiam, quid perridicule possis, vitandum est oratori utrumque, ne aut scurrilis iocus sit aut mimicus."

[511] Cic. *De orat.* 2.242 "atqui ita est totum hoc ipso genere ridiculum, ut cautissime tractandum sit; mimorum est enim et ethologorum, si nimia est imitatio, sicut obscenitas. orator surripiat oportet imitationem, ut is, qui audiet cogitet plura quam videat".

[512] Quint. *Inst.* 6.3.28 "laedere numquam velimus, longeque absit illud propositum, potius amicum quam dictum perdendi."

[513] Quint. *Inst.* 6.3.31 "nec accusatorem autem atroci in causa nec patronum in miserabili iocantem feret quisquam."

[514] Quint. *Inst.* 6.3.33 "sed quidam ita sunt receptae auctoritatis ac notae verecundiae ut nocitura sit in eos dicendi petulantia".

[515] Quint. *Inst.* 6.3.82 "in se dicere non fere est nisi scurrarum et in oratore utique minime probabile".

[516] Quint. *Inst.* 9.2.95 "utilis aliquando etiam dissimulatio est [. . .] ut protinus etiam praeceptum sit eius modi figuris utendum temere non esse".

[517] On the special point of hiding the art of rhetoric, see section 2.11.

who argues that the orator's own character is an important means of persuasion, does not make clear whether it may be used explicitly;[518] however, in a different passage, he names self-praise within the list of things that cause shame.[519] Cicero does not give any advice on the point in his rhetorical writings,[520] but it is remarkable in *De oratore* how anxious Cicero is to let his protagonists avoid any semblance of self-praise; since they are represented as model-orators (in some way), this is an indirect proof that Cicero regarded avoidance of self-praise as characteristic of a good orator. Quintilian explicitly states his preference for indirect self-presentation over direct self-praise,[521] although he concedes that the orator speaking about himself need not even count as off-topic.[522] In particular he advises, in several passages, against the orator showing off his oratorical artistry or appearing over-confident.[523]

Among the extant speeches there are of course some in which the orator's praising himself was the point, more or less—for Cicero, e.g. *Divinatio in Caecilium*, the speeches *Post reditum*, *De domo sua*, and parts of the *Philippicae*. But in many occasions, especially forensic speeches, the orator could make use of a *praeteritio*.[524] Alternatively, the orator does speak about himself but

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[518] Aristot. *Rhet.* 1356a4–13 διὰ μὲν οὖν τοῦ ἤθους, ὅταν οὕτω λεχθῇ ὁ λόγος ὥστε ἀξιόπιστον ποιῆσαι τὸν λέγοντα· τοῖς γὰρ ἐπιεικέσι πιστεύομεν μᾶλλον καὶ θᾶττον, περὶ πάντων μὲν ἁπλῶς, ἐν οἷς δὲ τὸ ἀκριβὲς μὴ ἔστιν ἀλλὰ τὸ ἀμφιδοξεῖν, καὶ παντελῶς. δεῖ δὲ καὶ τοῦτο συμβαίνειν διὰ τοῦ λόγου, ἀλλὰ μὴ διὰ τοῦ προδεδοξάσθαι ποιόν τινα εἶναι τὸν λέγοντα· οὐ γάρ, ὥσπερ ἔνιοι τῶν τεχνολογούντων, οὐ τίθεμεν ἐν τῇ τέχνῃ καὶ τὴν ἐπιείκειαν τοῦ λέγοντος, ὡς οὐδὲν συμβαλλομένην πρὸς τὸ πιθανόν, ἀλλὰ σχεδὸν ὡς εἰπεῖν κυριωτάτην ἔχει πίστιν τὸ ἦθος..

[519] Aristot. *Rhet.* 1384a4–6 καὶ τὸ περὶ αὑτοῦ πάντα λέγειν καὶ ἐπαγγέλλεσθαι, καὶ τὸ τἀλλότρια αὑτοῦ φάσκειν· ἀλαζονείας γάρ..

[520] Only in *De officiis*: Cic. *Off.* 1.137 "deforme etiam est de se ipsum praedicare, falsa praesertim, et cum inrisione audientium imitari militem gloriosum."

[521] Quint. *Inst.* 4.1.7 "quamquam enim [orator] pauciora de se ipso dicit et parcius, plurimum tamen ad omnia momenti est in hoc positum, si vir bonus creditur."

[522] Quint. *Inst.* 4.1.12 "negat haec prohoemia esse Cornelius Celsus quia sint extra litem: sed ego cum auctoritate summorum oratorum magis ducor, tum pertinere ad causam puto quidquid ad dicentem pertinet, cum sit naturale ut iudices iis quos libentius audiunt etiam facilius credant."

[523] Quint. *Inst.* 4.1.55 "odit enim iudex fere litigantis securitatem, cumque ius suum intellegat tacitus reverentiam postulat"; Quint. *Inst.* 11.1.15 "in primis igitur omnis sui vitiosa iactatio est, eloquentiae tamen in oratore praecipue, adfertque audientibus non fastidium modo sed plerumque etiam odium"; Quint. *Inst.* 11.1.27 "adrogantes et illi qui se iudicasse de causa nec aliter adfuturos fuisse proponunt. nam et inviti iudices audiunt praesumentem partes suas".

[524] Attic Orators: e.g. Dem. *or.* 5.4, 8.70, 13.13, 18.268, 19.167; Cicero: Cic. *Flacc.* 87 "sed omittamus querelas, ne nostrum consilium in praetermittendis provinciis laudare videamur.",

feels obliged to introduce it with an excuse (which results in the figure of *anti-praeteritio*, cf. p. 87)—Cicero apparently prefers this to the *praeteritio* in this case, as he justifies his speaking about himself more often than refraining from it. An instructive example is found in *De domo sua*:

> aliud exortum est: obicitur mihi meus ille discessus: cui ego cri-
> mini respondere sine mea maxima laude non possum. [...] di-
> cendum igitur est id, quod non dicerem nisi coactus[525]

Cicero claims, without further explanation, that in order to handle the matter at hand, he is not only obliged to speak about himself (which was obviously the case, as his own house was the subject of the hearing) but to do so in highly laudatory terms. That he actually goes on to depict his exile as a sacrifice for the Roman people in exaggerated terms, and eventually wins his case, shows that this strategy was, at least in this case, effective—possibly more effective than any *praeteritio* could have been.[526]

Neither *praeteritio* nor *anti-praeteritio* are mentioned as possibilities to deal with self-praise by Quintilian, nor any other writer of rhetorical theory.

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103 "nihil dicam enim de me"; Cic. *Sest.* 14 "sed agam moderate et huius potius tempori serviam quam dolori meo", 65 "non disputo cuius modi civis . . . "; Cic. *Planc.* 74 "praetermitto, ne aut proferre videar ad tempus"; Cic. *Lig.* 18 "sed non loquor de nobis, de illis loquor qui occiderunt"; Cic. *Phil.* 12.21 "ut non obstarem rei publicae, ne quid adrogantius videar dicere".

[525] Cic. *Dom.* 95–96.

[526] Further examples for the "anti-*praeteritio* of self-praise": Attic Orators: e.g. Dem. *or.* 18.4, 18.256; Cicero: Cic. *Verr.* 2.1.10 "metuo ne quid adrogantius apud talis viros videar dicere"; Cic. *Leg. agr.* 2.2 "de me autem ipso vereor ne adrogantis sit apud vos dicere, ingrati tacere"; Cic. *Sull.* 2 "quo quidem genere non uterer orationis, iudices, hoc tempore, si mea solum interesset; multis enim locis mihi et data facultas est et saepe dabitur de mea laude dicendi", 80 "haec auctoritas—saepe enim est de ea dicendum, quamquam a me timide modiceque dicetur"; Cic. *Har.* 16 "quae quidem ego si aut per me aut ab aliis haberem, non praedicarem apud vos, ne nimis gloriari viderer; sed cum sint mihi data a vobis, cum ea attemptentur eius lingua cuius ante manu eversa vos mihi et liberis meis manibus vestris reddidistis, non ego de meis sed de vestris factis loquor, nec vereor ne haec mea vestrorum beneficiorum praedicatio non grata potius quam adrogans videatur"; Cic. *Sest.* 31 "ac si in exponendis vulneribus illis de me ipso plura dicere videbor, ignoscitote"; Cic. *Prov. cons.* 40 "sed non alienum esse arbitror, quo minus saepe aut interpeller a non ullis aut tacitorum existimatione reprehendar, explicare breviter quae mihi sit ratio et causa cum Caesare"; Cic. *Planc.* 64 "non vereor ne mihi aliquid, iudices, videar adrogare, si de quaestura mea dixero"; Cic. *Phil.* 2.10 "alterum peto a vobis, ut me pro me dicentem benigne, alterum ipse efficiam, ut, contra illum cum dicam, attente audiatis", 14.13 "'tu igitur ipse de te?' dixerit quispiam. equidem invitus, sed iniuriae dolor facit me praeter consuetudinem gloriosum."

2.11 *artem arte celare*

While the use of downright lies does not offer much room for discussion, this is different for the grey area between truth and lie—hidden facts, misleading turns, distractions. Thus from the moment when rhetoric is brought in connection with deception (which happens especially in the conflict of rhetoric with philosophy[527]), a recurring element of the rhetorical discussion is the claim that the art of rhetoric must be concealed: that it must be used, but not visibly so. This develops along two lines: 1., positively, writers of rhetorical theory and practical orators refer to *res ipsa* which will defend itself (a point which underlines the strength of the argumentation, even if falsely so); 2., negatively, it is claimed that the art of rhetoric, when used, must not be visible, either (aesthetically) in order to remain artful, or (practically) in order that the audience does not suspect they are to be deceived. Both lines lead (taken in their extreme) to the omission of rhetoric from oratory, at least on the surface.

2.11.1 *res ipsa*

There has been a long discussion between the idealistic position, most famously represented by the elder Cato's saying "rem tene, verba sequentur",[528] and the realistic view that *res ipsa* is not always sufficient (an opinion any writer of rhetorical theory must necessarily hold, to justify their existence). Both views are brought together as far as possible in Cicero's *De oratore*, in the passage about pathos in the *actio* (albeit with a certain "dry irony"[529] on Crassus' side, who is speaking here):

> ac sine dubio in omni re vincit imitationem veritas, sed *ea si satis*
> *in actione efficeret ipsa per sese, arte profecto non egeremus*; verum
> quia animi permotio, quae maxime aut declaranda aut imitanda
> est actione, perturbata saepe ita est, ut obscuretur ac paene obru-

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[527] Cf. Wardy (2009), Halliwell (1994), Cooper (1985).

[528] Quoted by Iul. Vict. *Rhet.* 1.

Cf. Aristotle's related claim that the truth is always easier to defend (Aristot. *Rhet.* 1355a37–38 (regarding real things) "ἀεὶ τἀληθῆ καὶ τὰ βελτίω τῇ φύσει εὐσυλλογιστότερα καὶ πιθανώτερα ὡς ἁπλῶς εἰπεῖν").

[529] Leeman et al. (1981, vol. 5, p. 353).

atur, discutienda sunt ea, quae obscurant, et ea, quae sunt emi-

nentia et prompta, sumenda.[530]

The topic is thus connected to the question whether the *orator bonus* is al-
lowed to lie and deceive for the benefit of a good cause (cf. p. 111 on avoid-
ance of lies), a question which is answered positively by Quintilian.[531]

The reasoning which leads to Quintilian's statement "imperiti enim iudi-
cant et qui frequenter in hoc ipsum fallendi sint, ne errent"[532] underlies the
entire discussion, and indeed the entire history of oratory: if everybody were
able to recognise what is true and right from the facts alone, and ready to act
accordingly, oratory itself would be superfluous. Thus any speech, by its
existence, insinuates that this is not the case for the respective audience. It
is from this, rather academic, reasoning that Cicero builds a certain type of
captatio benevolentiae: he refers in his speech to *res ipsa* which speaks suffi-
ciently for itself, thus flattering his audience as he implies that they actually
do not need him or his speech.[533] The resulting contradiction must be sim-
ply accepted, which makes the figure somewhat risky, and consequently it
is not used often by Cicero, and it is remarkable in which of his speeches he
does so:[534] *In Verrem* 2, *Pro Cluentio* and *Pro Milone* are all speeches from very
complex cases, involving many facts and arguments—only here it can be im-
plied that *res ipsa* still needs an orderly presentation to defend itself. Besides,
In Verrem 2 and *Pro Cluentio* are quite confident speeches, from trials where
Cicero achieved a triumphant victory; and while the speech *Pro Milone* in

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[530] Cic. *De orat.* 3.215.

[531] Quint. *Inst.* 2.17.26–27 "uti etiam vitiis rhetoricen, quod ars nulla faciat, criminantur, quia
et falsum dicat et adfectus moveat. [27] quorum neutrum est turpe, cum ex bona ratione
proficiscitur, ideoque nec vitium; nam et mendacium dicere etiam sapienti aliquando
concessum est, et adfectus, si aliter ad aequitatem perduci iudex non poterit, necessario
movebit orator: imperiti enim iudicant et qui frequenter in hoc ipsum fallendi sint, ne
errent"; Quint. *Inst.* 2.17.36 "non semper autem ei, etiamsi frequentissime, tuenda veritas
erit, sed aliquando exigit communis utilitas ut etiam falsa defendat."

[532] Quint. *Inst.* 2.17.27, see the previous note.

[533] Other than the "topos of incapability" (cf. p. 214) or the "topos of the inexpressible" (cf. p.
214), this figure appears to be very rare in the Attic Orators (an example is Dem. *or.* 27.2).

[534] Cic. *Verr.* 2.2.104 "at quem ad modum corrupisti? nonne ita ut omnibus nobis tacentibus
ipsae tuae te tabulae condemnare possent?", 2.2.157 "res declarabit", 2.5.159 "opinor, unus
modus atque una ratio est; rem in medio ponam; quae tantum habet ipsa gravitatis ut
neque mea, quae nulla est, neque cuiusquam ad inflammandos vestros animos eloquentia
requiratur"; Cic. *Cluent.* 167 "multa sunt quae dici possunt, sed non committam ut videar
non dicendo voluisse dicere; res enim iam se ipsa defendit"; Cic. *Mil.* 53 "res loquitur ipsa,
iudices, quae semper valet plurimum", 66 "ut eo tacente res ipsa loqueretur".

the version as delivered was a disastrous failure, the speech as we have it is written in the safe knowledge that nothing can be lost anymore.[535] Thus, although the sample is too small to draw a strong conclusion, we observe no instance of the figure in speeches from either much simpler cases or from more risky situations (like more precarious trials, or the *Philippicae*).

Even less frequent, used just once by Cicero in a speech, is the corresponding *anti-praeteritio*, the confession that *res ipsa* (which in this case is his and his client's intention) is not sufficiently clear by itself, and Cicero immediately combines it with the promise to use his speech not for deception but for revealing the *res ipsa*.[536]

2.11.2 Concealing the art of rhetoric while using it

Advice towards *artem arte celare*, concealing the art of rhetoric while (and by) using it, has been a constant topic in rhetorical theory. Ever since Plato's attacks against the sophists' "τὸν ἥττω λόγον κρείττω ποιεῖν",[537] rhetoric had to defend itself against the accusation of malicious, profit-oriented deception. The point gained an even higher significance in Rome, where rhetoric (as opposed to practical oratory) was associated with Greece, i.e. with sophistry and effeminacy.[538] With this suspicion always present, and with the orator's intent not only to be honest but also to appear so before his audience, the orator is required, so to speak, to exclude himself, his identity as a trained orator, his education and skills, from his speech.[539]

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[535] Besides, a certain taunt against the judges in the original trial lies in the implication in the extant version of *Pro Milone* that they would have come to the right conclusion if only they had listened to *res ipsa*.

[536] Cic. *Caecin.* 53 "quae res igitur valuit? voluntas, quae si tacitis nobis intellegi posset, verbis omnino non uteremur; quia non potest, verba reperta sunt, non quae impedirent sed quae indicarent voluntatem".

[537] Plat. *Apol.* 19b4–5; cf. Protagoras *frg.* A21 (Diels-Kranz) (= Aristot. *Rhet.* 1402a24–28).

[538] "What must be emphasized is that oratory in itself was not among the things suspected as Greek: speaking in public was an integral part of Roman politics, and at least from the first half of the second century BC it was expected of an ambitious Roman aristocrat that he should regularly speak in trials. It was rhetoric, the theory of speaking and its teaching, that was suspicious and Greek, along with philosophy and other 'theoretical' pursuits. Being an orator was unproblematic and even highly prized, and (alleged) incompetence could be damaging; what was dangerous was being too clever." (Wisse, 2013, p. 184)

[539] Cf. Andersen (2001, p. 12) "the charge of δεινότης may be an effective weapon against an opponent, not only in court, but also in the assembly and in public affairs in general. Thus, it would seem that a speaker should not be too good."

Within the extant rhetorical treatises, the point is first made explicitly in Aristotle's *Ars rhetorica*: "διὸ δεῖ λανθάνειν ποιοῦντας, καὶ μὴ δοκεῖν λέγειν πεπλασμένως ἀλλὰ πεφυκότως (τοῦτο γὰρ πιθανόν, ἐκεῖνο δὲ τοὐναντίον)".[540] Aristotle is also the first to notice that too prominent a rhythm is rather a distraction than a support for the speech and should be avoided.[541] The *Rhetorica ad Alexandrum* does not cover the point.[542] The *Rhetorica ad Herennium* mentions it several times[543] and emphasises that the speech must not appear to be prepared beforehand, a point for which the *enumeratio* is particularly dangerous: we see a connection to the common mnemotechnics[544] which mainly enable the orator to reproduce the structure of his speech, i.e. all main sections in their proper order. If this technique is too obvious, according to the *Rhetorica ad Herennium*, it reduces the audience's *fides* and arouses *suspicio*.

Cicero's general advice on the point mentions two effects of obvious rhetorical artistry which the orator must avoid: he must not appear involved in (Greek) philosophy and therefore remote from "real life", and he must not make his hearers feel stupid in comparison with himself.[545] In a later passage, Cicero develops these two points into a slight difference between senate speeches and speeches to the people, as D. Mack[546] has elaborated: in the *contio* it is most important not to appear too artificial, and not under Greek

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[540] Aristot. *Rhet.* 1404b18–19, cf. Porter (2009, 98); in an earlier passage Aristotle expresses his objection to sophistic argumentation, *Rhet.* 1355b15–21; similarly *Rhet.* 1400b34–1402a27 with more details on φαινόμενα ἐνθυμήματα. Cf. Hesk (2009, p. 154) "The evidence of other forensic speeches suggests that over-cleverness and sophistry went down badly with juries and provided opponents with an opportunity for democratically charged character assassination."

[541] Aristot. *Rhet.* 1408b20–23 τὸ δὲ σχῆμα τῆς λέξεως δεῖ μήτε ἔμμετρον εἶναι μήτε ἄρρυθμον· τὸ μὲν γὰρ ἀπίθανον (πεπλάσθαι γὰρ δοκεῖ), καὶ ἅμα καὶ ἐξίστησι· προσέχειν γὰρ ποιεῖ τῷ ὁμοίῳ, πότε πάλιν ἥξει.

[542] Except for the advice against using a script or notes, cf. p. 201.

[543] *Rhet. Her.* 1.11 "in exordienda causa servandum est, [...] ut non adparata videatur oratio esse"; *Rhet. Her.* 1.17 "[enumerationem] plus quam trium partium numero constare non oportet: nam et periculosum est, ne quando plus minusve dicamus; et suspicionem adfert auditori meditationis et artificii: quae res fidem abrogat orationi"; *Rhet. Her.* 2.47 "item curandum est, ne aut ab exordio aut narratione repetatur orationis enumeratio. ficta enim et dedita opera conparata oratio videbitur esse artificii significandi, ingenii venditandi, memoriae ostendendae causa. quapropter initium enumerationis sumendum est a divisione."

[544] See p. 194.

[545] Cic. *De orat.* 1.221 "neque vult ita sapiens inter stultos videri, ut ei, qui audiant, aut illum ineptum et Graeculum putent, aut, etiam si valde probent ingenium, oratoris sapientiam admirentur, se esse stultos moleste ferant".

[546] Mack (1937, p. 14).

influence,[547] in the senate the orator must not appear too clever (implied: cleverer than his fellow-senators).[548]

A general warning against showing one's rhetorical education is also visible in Cicero's depiction of Antonius and Crassus in *De oratore*, who both aspire to appear without theoretical instruction throughout the dialogue.[549]

More special advice given by Cicero concerns the orator appearing unprepared and thus nervous particularly at the beginning of his speech;[550] he also takes up the point from the *Rhetorica ad Herennium* on *enumeratio*, that the orator ought not to show the (prepared) structure of his speech, but render the speech by stylistic means as one continuous flow[551] and on the topic of prose rhythm he states that the rhythm of the speech must be subordinate to its words and thoughts, so that the audience is aware only of the latter, and unconsciously influenced by the former,[552] whereby again the orator's artistry and effort is hidden[553] (while in another context he emphasises that a rhythm of which the audience is not aware is not equivalent to the absence of rhythm[554]). The advice that jokes must not appear too contrived[555] follows the same line of thought.

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[547] Cic. *De orat.* 2.153 "semper ego existimavi iucundiorem et probabiliorem huic populo oratorem fore, qui primum quam minimam artifici alicuius, deinde nullam Graecarum rerum significationem daret".

[548] Cic. *De orat.* 2.333 "vitanda etiam ingeni ostentationis suspicio".

[549] E.g. Cic. *De orat.* 2.4 "sed fuit hoc in utroque eorum, ut Crassus non tam existimari vellet non didicisse, quam illa despicere et nostrorum hominum in omni genere prudentiam Graecis anteferre; Antonius autem probabiliorem hoc populo orationem fore censebat suam, si omnino didicisse numquam putaretur; atque ita se uterque graviorem fore, si alter contemnere, alter ne nosse quidem Graecos videretur", Cic. *De orat.* 3.77 (Crassus speaking) "in quo genere nos quidem versamur tantum quantum possumus, quantum ingenio, quantum *mediocri doctrina*, quantum usu valemus". Cf. Cic. *Brut.* 139 (on Antonius) "imparatus semper aggredi ad dicendum videbatur".

[550] E.g. Cic. *De orat.* 1.119; on (pretended) nervousness see section 4.4.

[551] Cic. *De orat.* 2.177 "interpuncta argumentorum plerumque occulas, ne quis ea numerare possit, ut re distinguantur, verbis confusa esse videantur." Cf. Leeman et al. (1981, vol. 3, p. 117 ad loc.).

[552] Cic. *Orat.* 197 "nam qui audiunt haec duo animadvertunt et iucunda sibi censent, verba dico et sententias, eaque dum animis attentis admirantes excipiunt, fugit eos et praetervolat numerus; qui tamen si abesset, illa ipsa delectarent minus".

[553] Cic. *Orat.* 197 "sic minime animadvertetur delectationis aucupium et quadrandae orationis industria".

[554] Cic. *Brut.* 33 "ante [Isocratem] enim verborum quasi structura et quaedam ad numerum conclusio nulla erat aut, si quando erat, non apparebat eam dedita opera esse quaesitam—quae forsitan laus sit, verum tamen natura magis tum casuque, non umquam aut ratione aliqua aut ulla observatione fiebat".

[555] Cic. *De orat.* 2.256 "est enim cavendum, ne arcessitum dictum putetur".

Quintilian, in line with his predecessors, recommends in various passages to hide the art of rhetoric,[556] especially in forensic speeches;[557] in his definition of *urbanitas* he even talks of *tacita eruditio*, the art of hiding any kind of education while using it.[558]

Quintilian's more special advice on *artem celare* emphasises the area of prose rhythm, where the point occurs several times.[559] He also takes up the advice against overeager use of jokes[560] and against a too artful *dispositio*[561] from the earlier writers of rhetorical theory, and adds a warning against dra-

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[556] Quint. *Inst.* 4.1.56–57 "nec minus diligenter ne suspecti simus ulla parte vitandum est, propter quod minime ostentari debet in principiis cura, quia videtur ars omnis dicentis contra iudicem adhiberi. [57] sed ipsum istud evitare summae artis"; Quint. *Inst.* 4.1.59–60 "magis conciliatis animis et iam calentibus haec libertas feretur, maximeque cum in locos fuerimus ingressi, quorum naturalis ubertas licentiam verbi notari circumfuso nitore non patitur. [60] nec argumentis autem nec locis nec narrationi similis esse in prohoemio debet oratio, neque tamen deducta semper atque circumlita, sed saepe simplici atque inlaboratae similis nec verbis vultuque nimia promittens; dissimulata enim et, ut Graeci dicunt, anepiphantos actio melius saepe subrepit. sed haec prout formari animum iudicum expediet"; Quint. *Inst.* 4.2.58 "arte occulta"; Quint. *Inst.* 4.2.127 "at hoc pati non possumus, et perire artem putamus nisi appareat, cum desinat ars esse si appareat"; Quint. *Inst.* 5.14.32 "non inspiret? non augeat? non mille figuris variet ac verset? ut ea nasci, et ipsa provenire natura, non manu facta, et arte suspecta, magistrum fateri ubique videantur. quis umquam sic vicit orator?"

[557] Quint. *Inst.* 2.10.11 "artem, quae latere plerumque in iudiciis debet".

[558] Quint. *Inst.* 6.3.17 "nam et urbanitas dicitur, qua quidem significari video sermonem praeferentem in verbis et sono et usu proprium quendam gustum urbis et sumptam ex conversatione doctorum tacitam eruditionem, denique cui contraria sit rusticitas".

[559] Quint. *Inst.* 4.2.117 "compositio dissimulata quidem, sed tamen quam iucundissima"; Quint. *Inst.* 9.4.21 "simplicitas, quae non nullis sed aliis utitur numeris, dissimulatque eos et tantum communit occultius"; Quint. *Inst.* 9.4.60 "orationis compositio, nisi varia est, et offendit similitudine et in adfectatione deprenditur"; Quint. *Inst.* 9.4.144 (on verse-like sentences) "ideoque interim quaedam quasi solvenda de industria sunt, et quidem illa maximi laboris, ne laborata videantur"; Quint. *Inst.* 9.4.147 "ratio in adiectione detractione mutatione: usus pro natura rerum quas dicimus: cura ita magna ut sentiendi atque eloquendi prior sit: dissimulatio curae praecipua, ut numeri sponte fluxisse, non arcessiti et coacti esse videantur."

[560] Quint. *Inst.* 6.3.26 "idem autem de vultu gestuque ridiculo dictum sit: in quibus est quidem sua gratia, sed maior cum captare risum non videntur; nihil enim est iis quae †dicenti† salsa dicuntur insulsius"; Quint. *Inst.* 6.3.30 "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 minuet auctoritatem."

[561] Quint. *Inst.* 8.3.2 "dispositio modicae doctrinae credi potest: si quae sunt artes altiores, plerumque occultantur ut artes sint".

matic gestures[562] and a related, rather special point: that the orator should not let a witness show that he is eager to get the opponent into trouble.[563]

Where Quintilian justifies his advice for *ars celata*, he uses the argument of *suspicio*[564] known especially from the *Rhetorica ad Herennium*, that the audience might fear that they are deceived instead of being told the truth; therefore the most important quality of the orator is to appear unprepared and as if speaking without particular effort, as Quintilian says several times;[565] this may be connected to his instruction on pretended memory failure.[566]

A new point brought into the discussion by Quintilian (which therefore was probably more problematic in the oratorical practice of his times) is the advice not to appear over-confident by using too much ornamentation;[567] in this case his point of argumentation is that the audience is annoyed not by the figurative artistry itself, but because an orator who has time and nerve to bother too much about *ornatus* obviously does not care about the case itself. As a rhetorical education had become a standard for Roman citizens in the Empire, most listeners in court and in the senate would be used to a highly stylised speaking manner and not even notice a certain degree of *ornatus* as they would have in the Republic, as Quintilian himself relates.[568] The same

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[562] Quint. *Inst.* 1.11.3 "ne gestus quidem omnis ac motus a comoedis petendus est. quamquam enim utrumque eorum ad quendam modum praestare debet orator, plurimum tamen aberit a scaenico, nec vultu nec manu nec excursionibus nimius. nam *si qua in his ars est dicentium, ea prima est ne ars esse videatur.*"

[563] Quint. *Inst.* 5.7.16 "nam si habet testem cupidum laedendi, cavere debet hoc ipsum, ne cupiditas eius appareat, nec statim de eo quod in iudicium venit rogare, sed aliquo circumitu ad id pervenire, ut illi quod maxime dicere voluit videatur expressum".

[564] Quint. *Inst.* 5.13.51 "est et illud vitium nimium solliciti et circa omnia momenta luctantis; suspectam enim facit iudici causam, et frequenter, quae statim dicta omnem dubitationem sustulissent, dilata ipsis praeparationibus fidem perdunt, quia patronus et aliis crediderit opus fuisse." Cf. Quint. *Inst.* 9.3.102 "ubicumque ars ostentatur, veritas abesse videatur".

[565] Quint. *Inst.* 4.1.54 "hoc ipso quod non compositum domi sed ibi atque ex re natum et facilitate famam ingenii auget et facie simplicis sumptique ex proximo sermonis fidem quoque adquirit"; Quint. *Inst.* 4.2.57 "optimae vero praeparationes erunt quae latuerint"; Quint. *Inst.* 11.3.56 "quod adfectant quoque, tamquam inventionis copia urgeantur maiorque vis eloquentiae ingruat quam quae emitti faucibus possit."

[566] Quint. *Inst.* 4.5.4, see p. 202.

[567] Quint. *Inst.* 11.1.48 "hoc adhuc adiciendum, aliquas etiam quae sunt egregiae dicendi virtutes quo minus deceant effici condicione causarum", with examples in 49–56.

[568] Quint. *Inst.* 4.1.9 "inde illa veterum circa occultandam eloquentiam simulatio, multum ab hac nostrorum temporum iactatione diversa"; Quint. *Inst.* 4.2.122 "quod cum sit factum iis quoque temporibus quibus omnis ad utilitatem potius quam ostentationem componebatur oratio et erant adhuc severiora iudicia, quanto nunc faciendum magis, cum in ipsa capitis aut fortunarum pericula inrupit voluptas?"; Quint. *Inst.* 4.3.2 "quod quidem natum ab ostentatione declamatoria iam in forum venit, postquam agere causas

development led to some extreme variants of oratorical style, including an ostentatiously "natural" style, which prompts Quintilian to emphasise that the orator ought to *appear* artless, not *be*[569] (a point made by Cicero only in the area of prose rhythm).

Even worse than appearing too confident, of course, is open boasting about one's abilities.[570]

The point of *artem arte celare*, while important both for theory and for practice, is apparently so self-referential that it does not lend itself to a *praeteritio*-like figure; at least it is not used in this manner in the Attic Orators'[571] or Cicero's speeches—other than the "topos of incapability" (cf. p. 214). It was well known that Cicero, just like any of his "colleagues" (or even more, as a *homo novus*), relied on a thorough rhetorical education, and while he could use certain stereotypical figures of pretended incapability and failure, he could obviously not make a point out of explicitly and deliberately *not* using the art of speech in a speech—other than e.g. Socrates in Plato's *Apologia*,[572] who could plausibly claim that he neither was a trained orator, nor ever wanted to be one.

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non ad utilitatem litigatorum sed ad patronorum iactationem repertum est, ne, si pressae illi qualis saepius desideratur narrationis gracilitati coniuncta argumentorum pugnacitas fuerit, dilatis diutius dicendi voluptatibus oratio refrigescat"; Quint. *Inst.* 12.9.5–6 "veteribus quidem etiam dissimulare eloquentiam fuit moris, idque M. Antonius praecipit, quo plus dicentibus fidei minusque suspectae advocatorum insidiae forent. sed illa dissimulari quae tum erat potuit: nondum enim tantum dicendi lumen accesserat ut etiam per obstantia erumperet. quare artes quidem et consilia lateant et quidquid si deprenditur perit. hactenus eloquentia secretum habet. [6] verborum quidem dilectus, gravitas sententiarum, figurarum elegantia aut non sunt aut apparent: sed vel propter hoc ipsum ostentanda non sunt, quod apparent, ac, si unum sit ex duobus eligendum, causa potius laudetur quam patronus."

[569] Quint. *Inst.* 2.17.5–6 "quidam naturalem esse rhetoricen volunt et tamen adiuvari exercitatione non diffitentur, ut in libris Ciceronis de Oratore dicit Antonius observationem quandam esse, non artem. [6] quod non ideo ut pro vero accipiamus est positum, sed ut Antoni persona servetur, qui dissimulator artis fuit"; Quint. *Inst.* 2.12.1 "ne hoc quidem negaverim, sequi plerumque hanc opinionem, ut fortius dicere videantur indocti, primum vitio male iudicantium, qui maiorem habere vim credunt ea quae non habent artem, ut effringere quam aperire, rumpere quam solvere, trahere quam ducere putant robustius."

[570] Quint. *Inst.* 11.1.15 "in primis igitur omnis sui vitiosa iactatio est, eloquentiae tamen in oratore praecipue, adfertque audientibus non fastidium modo sed plerumque etiam odium." Cf. p. 117 on avoidance of self-praise.

[571] Schulz (2014, p. 88): "[bei Demosthenes] kann die Behauptung, der Gegner übe seine Stimme und bereite sie auf den Auftritt vor, in den Vorwurf münden, er lege bei seinen echten Reden den Schwerpunkt auf die Stimme und nicht auf den Inhalt des Gesagten", referring to Dem. *or.* 18.308 and 19.336.

[572] Plat. *Apol.* 17b–c.

2.12 Conclusion

Overall the ancient orators and writers of rhetorical theory tend to agree that anything can or should be included in a speech unless there is some explicit argument against it; the issue of selectivity in the employment of arguments is often present in the background, but *brevitas* as a general value of an entire speech is unknown (*brevitas* is regarded as generally desirable only in the *narratio*).

Valid arguments for omission of topics or arguments are in particular the following: that a point is plainly adverse to the orator's purpose; that an argument is weak; and that a point is obvious or known to the audience. Superfluous points, in contrast, and points not belonging directly to the case, were not regarded as strong candidates for omission.

A striking difference between practice and theory can be observed regarding the various possibilities and advantages of *explicitly* omitting or avoiding (and even explicitly not omitting) something. Given the possibility of classifying *praeteritiones* as shown above, it would be no surprise to find a classification of the phenomenon at least in Quintilian, who treats e.g. gestures or enthymemes etc. in a systematic and detailed way.[573] Furthermore, it is unlikely that he should omit the *praeteritio* because he considers it disreputable, since *praeteritio* can hardly be morally worse than lying, which he treats openly.[574]

It has thus become evident that, other than the point of omission or avoidance in itself, the figure of *praeteritio* was much more used in practice than rhetorical theory was aware of.

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[573] Enthymeme, epicheireme, syllogism: Quint. *Inst.* 5.14.1–26; gestures: Quint. *Inst.* 11.3.65–149.

[574] Quint. *Inst.* 4.2.89–93.

3 Limits of performance: pauses in and interruptions of a speech

3.1 Introduction

A *pause*, which will in this context be defined as any period of silence interrupting the continuous flow of the orator's speech, can take various lengths and forms and can occur for a number of reasons. The phenomena grouped under this heading can be roughly divided into three groups (which will also determine the sections of this chapter): 1. shorter pauses (mostly fractions of a second) for breathing and for structuring the flow of words, which are closely related to prose rhythm (section 3.2); 2. longer pauses, placed deliberately in reaction to, or interaction with, something or someone outside the speech, e.g. when dialogues with the audience or the opponent, real or imagined, occur, or when an interval is made for court proceedings of a rather technical nature (a law being read out etc.) (section 3.3); 3. longer pauses forced upon the orator by interruptions, positive or negative, by the audience[1] (section 3.4).[2] While all these types of pauses need to be considered by the orator, only the longer pauses would be perceived as pauses in the speech by the audience.

We face a methodological problem here: the extant speeches, in their present form, give no indication for most of the pauses made by the orator in the *actio*. Structural pauses were indeed marked in the text in antiquity (see below p. 134); however, this ancient punctuation was lost in the transmission

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[1] These groupings are, naturally, somewhat artificial and just one possible way of organising the material. Overlaps and grey areas are inevitable, and it has proved useful to treat *interruptions by a single person* in section 3.3 along with other dialogical settings, even though it does not meet the criterion of a pause placed deliberately by the orator.

[2] Pauses arising from some failure or incapacity of the orator, e.g. voice failure, memory failure, or nervousness, are treated in chapter 4.

process (with very few exceptions).[3] On the other hand, we have sufficient theoretical statements and advice about structural pauses and punctuation in the ancient grammarians to at least attempt a reconstruction for the speeches.

Whether strategic pauses or interruptions left any trace in the written versions of speeches depended greatly, not only on the actual situation, but on whether and how the speech was written down before delivery and edited afterwards. To appear in the manuscript before delivery, the event in question would need to be anticipated in some way, and in the case of publication from some kind of transcript or from memory, it is likely that most unwelcome interruptions (or indications thereof) would be deleted in the editing process. I would assume, therefore, that actual (unwelcome) interruptions were in fact more frequent than can be directly deduced from the written speeches which we have.

My thesis, however, focuses on the rhetorical use of pauses and interruptions, on the techniques and principles employed rather than on the actual historical events. I shall therefore use the speeches not as accurate accounts of actually delivered speeches (what we can never assume them to be) but as authentic examples of (in this case) Roman Republican oratory, and of what might have been said in a trial or assembly, regardless of whether it actually was. For this chapter, I shall therefore examine in most cases the orator's explicit pauses and reactions to interruptions etc., without consideration whether these, or indeed the interruption itself, actually happened or not. We only have to keep in mind that any sign of a negative interruption which can be left out without disturbing the argumentative and procedural plausibility would likely be deleted in the editing process. Thus many of the audience's utterances and the orator's reactions which occurred in the historical speech setting are lost for analysis. On the other hand, theoretical advice from the treatises can not only help with interpreting the pertinent passages, but also give a broader image of what might have happened in a speech setting.

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[3]   See Parkes (1992, p. 9–19), Müller (1964, p. 34–54).

3.2 Structural pauses

3.2.1 Pauses for breathing

Firstly (and obviously), pauses are necessary for breathing and cannot be avoided completely; therefore the orator must place them deliberately, in order not to run out of air at an inappropriate point. This observation is found in Greek and Roman rhetorical theory from Aristotle[4] onwards, as is the consequence that beyond this, pauses necessary for breathing can be used at the same time for structuring the speech.[5]

3.2.2 Prose rhythm

In fact, pauses can be said to make prose rhythm possible.[6] "Prose rhythm" is an area which has produced much scholarship in antiquity and in modern times. It covers two different (though connected) concepts:[7] 1. periodisation, i.e. the composition of longer sentences[8] from shorter units (κόμμα,

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[4] Aristot. *Rhet.* 1409b15 "ἔστιν δ᾽ ἐν κώλοις μὲν λέξις ἡ τετελειωμένη τε καὶ διῃρημένη καὶ εὐανάπνευστος"; Cicero makes the appropriate placement of pauses a crucial, if not the most crucial point for distinguishing a (true) orator from a non-trained speaker: *De orat.* 3.175 "neque est ex multis res una, quae magis oratorem ab imperito dicendi ignaroque distinguat, quam quod ille rudis incondite fundit quantum potest et id, quod dicit, spiritu, non arte determinat, orator autem sic inligat sententiam verbis, ut eam numero quodam complectatur et astricto et soluto"; Quintilian gives the same advice with more details: *Inst.* 11.3.53 "spiritus quoque nec crebro receptus concidat sententiam nec eo usque trahatur donec deficiat. nam et deformis est consumpti illius sonus et respiratio sub aqua diu pressi similis et receptus longior et non oportunus, ut qui fiat non ubi volumus sed ubi necesse est. quare longiorem dicturis perihodon colligendus est spiritus, ita tamen ut id neque diu neque cum sono faciamus, neque omnino ut manifestum sit: reliquis partibus optime inter iuncturas sermonis revocabitur."

[5] Cic. *De orat.* 3.173 "interspirationis enim, non defetigationis nostrae neque librariorum notis, sed verborum et sententiarum modo interpunctas clausulas in orationibus esse voluerunt".

[6] Cic. *De orat.* 3.186 "numerus autem in continuatione nullus est; distinctio et aequalium aut saepe variorum intervallorum percussio numerum conficit, quem in cadentibus guttis, quod intervallis distinguuntur, notare possumus, in amni praecipitante non possumus *etc.*"; cf. Cic. *Orat.* 206 and Hermogenes *Id.* p. 218 Rabe.

[7] Several books and articles on "prose rhythm" / "Prosarhythmus" define the topic as only one of these (in particular, the OCD articles "prose-rhythm, Greek" (Dover, 2003) and "prose-rhythm, Latin" (Powell, 2003) do not mention periodisation).

[8] I use this term for want of a better one; in ancient theory a περίοδος does not necessarily coincide with a grammatical sentence, cf. Müller (1964, p. 89): "gelegentlich wird aber Periodenende konstatiert, wo keineswegs Satzende ist", with examples from Dionysios of Halicarnassos.

κῶλον, περίοδος[9]), the length of these and their relationships, e.g. through parallelisms, anaphora, or homoioteleuta; 2. *clausulae*, i.e. the preference or avoidance of certain "rhythms" (sequences of long and short syllables) at the end of περίοδοι, κῶλα, κόμματα.

Both concepts deal with "units" of a text and with the boundaries between them. The most basic requirement, quoted already from Cicero, is to place breathing pauses not wherever the orator happens to run out of air, but with deliberation;[10] but beyond this, Cicero says, even if a speaker had unlimited breath, he would be well advised to make pauses nevertheless, to make the speech pleasant to listen to: "si cui sit infinitus spiritus datus, tamen eum perpetuare verba nolimus; id enim auribus nostris gratum est, quod hominum lateribus non tolerabile solum, sed etiam facile esse posset."[11]

Quintilian mentions that these structural pauses not only improve the audience's attention but also allow for audience reactions, especially applause;[12] accordingly a high frequency of pauses is more typical of oratory than other literary genres (particularly historiography[13]), and within oratory, according to Cicero, short phrases with many pauses are especially suitable

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[9] For the Latin technical terms cf. Quint. *Inst.* 9.4.22 "at illa conexa series tris habet formas: *incisa*, quae commata dicuntur, *membra*, quae kola, periodon quae est *vel ambitus vel circumductum vel continuatio vel conclusio*. in omni porro compositione tria sunt genera necessaria: *ordo, iunctura, numerus*."

[10] Quint. *Inst.* 11.3.53 "quare longiorem dicturis perihodon colligendus est spiritus, ita tamen ut id neque diu neque cum sono faciamus, neque omnino ut manifestum sit: reliquis partibus *optime inter iuncturas sermonis* revocabitur".

Another type of pause at an unsuitable point which the orator must avoid is caused by *hiatus*: Quint. *Inst.* 9.4.33 "tum vocalium concursus: quod cum accidit, hiat et intersistit et quasi laborat oratio." This corresponds to the earlier advice in the *Rhet. Alex.* to place a *hiatus* only where a pause occurs anyway (*Rhet. Alex.* 1435b17–19).

[11] Cic. *De orat.* 3.181–182; similarly Quint. *Inst.* 9.4.67 " itaque non modo membra atque incisa bene incipere atque cludi decet, sed etiam in iis quae non dubie contexta sunt nec respiratione utuntur sunt illi vel occulti gradus." Sometimes a pause is even needed for clarity where it is required neither by structure nor by the need to breathe, to make an ambiguous phrase clear: Quint. *Inst.* 7.9.9–11 *(explaining how the phrase "testamento quidam iussit poni statuam auream hastam tenentem" can be rendered clear)* "divisio respiratione et mora constat: 'statuam', deinde 'auream hastam', vel 'statuam auream', deinde 'hastam'".

[12] Quint. *Inst.* 9.4.61–62 "neque enim loqui possum nisi e syllabis brevibus ac longis, ex quibus pedes fiunt. magis tamen et desideratur in clausulis et apparet, primum quia sensus omnis *habet suum finem, poscitque naturale intervallum* quo a sequentis initio dividatur, deinde quod aures continuam vocem secutae, ductaeque velut prono decurrentis orationis flumine, tum *magis iudicant* cum ille impetus stetit et intuendi tempus dedit. [62] *non igitur durum sit neque abruptum quo animi velut respirant ac reficiuntur*. haec est sedes orationis, hoc auditor exspectat, hic laus omnis †declamat†."

[13] Quint. *Inst.* 9.4.18 "et historiae, quae currere debet ac ferri, minus convenissent insistentes clausulae et debita actionibus respiratio et cludendi inchoandique sententias ratio".

when arguing in court.[14]   Quintilian does not differentiate here, since his concept of oratory has a strong emphasis on forensic speeches anyway (in his methodical approach, if not in his own claim).

Yet with all the pauses necessary for and typical of oratorical texts, the frequency of pauses seems to have reached a level of excess in the Empire, when it became fashionable to catch the audience by verbal fireworks; this can be deduced from Quintilian's criticising both the tendency to use as many *sententiae* as possible[15] and to wait for applause after every sentence.[16]   In fact, with pauses long enough to allow for applause, we have already moved beyond purely structural pauses which have only the aesthetic value of rendering the speech clear and pleasant, and have arrived at *interactions with the audience* (see below from p. 140).

3.2.3 Prose rhythm: periodisation

Periodisation, i.e. the division of a speech into certain units, is rendered in the oral performance by pauses between these units.[17] The actual duration of pauses in the performance of any given text in antiquity cannot, of course, be recovered. And even the relative classification of pauses in a certain text, like in Primmer's "Pausenstufenvergleich", seems to me too dependent on indi-

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[14] Cic. *Orat.* 225 "incisim autem et membratim tractata oratio in veris causis plurimum valet, maximeque eis locis, cum aut arguas aut refellas".

The data in Frischer (1996, table p. 596) does not show any difference between forensic and political speeches. Of the speeches which Frischer has considered (about half of Cicero's extant speeches), the 17 forensic speeches have an average sentence length of 16.95 words, the 13 political speeches have 16.02; the difference is far from significant, and nowhere near as important as Cicero's development throughout his career and as the different oratorical styles (high, middle, and low), where Frischer has indeed shown significant discrepancies. Cicero's statement in the *Orator*, however, does not refer to entire forensic speeches but to parts of them, *argumentatio* and *refutatio*. A separate analysis of the parts of each forensic speech by Frischer's methods might lead to further evidence.

[15] Quint. *Inst.* 8.5.27 "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."

[16] Quint. *Inst.* 8.5.14 "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."

[17] Cf. Norden (1915, p. 64): the most eminent characteristic of Gorgias' style is his "*Zerhacktheit des Satzbaus*: es sind lauter ganz kleine κῶλα oder nur κόμματα, die den Vortragenden fortwährend zwingen, mit der Stimme anzuhalten. Da nun der Rhythmus durch Kola und Pausen entsteht, so steigert sich das rhythmische Gepräge mit der wachsenden Zahl dieser Kola und Pausen."

vidual interpretation to base extensive statistical work on it.[18] We do know, however, that "[d]uring the Classical Age, formally written Latin, in marked contrast with contemporary Greek, was [...] divided into sentences and clauses by special signs of punctuation";[19] although almost nothing of the original punctuation has survived in the texts,[20] we are quite well-informed about how punctuation was used, namely, quite differently from modern English (and even more from German) punctuation. Norden already notes that "[ü]berhaupt scheint im Altertum nicht bloß nach syntaktischen, sondern auch nach rhetorischen Prinzipien interpungiert zu sein".[21] This impression is confirmed in the brilliant dissertation by Müller, who draws in particular on grammatical treatises, and comes to the conclusion that punctuation was mainly used to support good reading, as the different types of *distinctiones* in punctuation (roughly, end of a complete thought, end of a sentence, and subdivision of a sentence) were correlated to different degrees of *caesurae* between the rhetorical elements (period, colon, comma) of a text.[22] Müller thus confirms what has been suspected by others:[23] that Latin punctuation was very closely connected to pauses in oral performance, and that both co-

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[18] Primmer attempts to show that certain *clausulae* are more frequent before certain types of pauses. For this purpose, he classifies the pauses which he identifies in the text according to their duration in the oral presentation, first into three (Primmer, 1968), later even six (Primmer, 1990) types of pauses. However, the decision to assign a certain caesura in the speech text to a certain length of pause in this system is not based on a documented methodology; as Primmer himself notes, "die Festlegung der verschiedenen Pausenstufen einer Rede läßt sich durch sonst nichts bewerkstelligen als durch ihre gewissenhafte philologische Interpretation" (Primmer, 1968, p. 111), which makes the method appear somewhat arbitrary.

[19] Wingo (1972, p. 132).

Cf. Aristot. *Rhet.* 1407b11–15. "ὅλως δὲ δεῖ εὐανάγνωστον εἶναι τὸ γεγραμμένον καὶ εὔφραστον· ἔστιν δὲ τὸ αὐτό· ὅπερ οἱ πολλοὶ σύνδεσμοι οὐκ ἔχουσιν, οὐδ' ἃ μὴ ῥᾴδιον διαστίξαι, ὥσπερ τὰ Ἡρακλείτου. τὰ γὰρ Ἡρακλείτου διαστίξαι ἔργον διὰ τὸ ἄδηλον εἶναι ποτέρῳ πρόσκειται, τῷ ὕστερον ἢ τῷ πρότερον", implying that correct punctuation and proper periodisation are almost identical.

[20] The scarce evidence is discussed in Müller (1964) and Wingo (1972). Parkes (1992, ch. 1 "Antiquity") gives a useful overview of the use of punctuation by teachers and readers (not authors) in antiquity. Cf. Turner (1973) and Turner (1987) on punctuation in Greek texts, with similar results.

[21] Norden (1915, p. 47, n. 1).

[22] Müller (1964), especially p. 69, 85, 91–92. On the use of proper breathing in reading exercises cf. Quint. *Inst.* 1.8.1.

[23] Fraenkel (1968, p. 20), for example, resorts to "natural units" ("dass ein Satz sich ganz natürlich in jene kleinere [...] Einheiten zerlegt"), which, he notes, are not necessarily syntactical and not necessarily rhythmical, but he does not reach a reliable definition.

incided with sense units, but not necessarily with syntactical structures.[24] I would like to refine "syntactical structures" further by adding "as $19^{th}/20^{th}$ century Latin grammar knows them", for Habinek has later brought "a concept from descriptivist linguistics, that of 'sentence constituent'"[25] into the discussion, and has shown that

> "[i]n ideal delivery of speech, pauses always come at constituent boundaries and most often at the boundaries of sentence constituents. This does not imply the converse, that every constituent boundary is marked by a pause, although it is probably the case that the percentage of boundaries that receive pauses is directly related to the speed of delivery".[26]

The ancient rhetoricians give some advice on the length of rhythmical units, and thus, we may conclude, on the frequency and (at least relative) length of pauses between these: Cicero in *De oratore* provides a list of rules for *Latine dicere* which includes that περίοδοι be not too long and not too short.[27] In the *Orator*, he gives the length of a full period as four *membra* in length of hexameters,[28] which is cited by Quintilian (though he gives four *senarii* instead of hexameters),[29] but Quintilian seems more concerned with a minimum than a maximum length of speech units, as he repeatedly insists on the problem of "jumping rhythm" caused by too many pauses.[30]

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[24] Müller even includes in his book a chapter "Zur Entstehung der modernen deutschen Interpunktion und Syntax und ihrem Gegensatz zur rhetorischen Interpunktion" to make the difference as clear as possible.

[25] Habinek (1986, p. 13): "A sentence constituent is 'a group of words that can be replaced by a single word without a change in function and without doing violence to the rest of the sentence.' [quoted from Clark and Clark (1977, 48)]"

[26] Habinek (1986, p. 13–14).

[27] Cic. *De orat.* 3.49 "Latine scilicet dicendo, verbis usitatis ac proprie demonstrantibus ea, quae significari ac declarari volemus, sine ambiguo verbo aut sermone, *non nimis longa continuatione verborum*, non valde productis eis, quae similitudinis causa ex aliis rebus transferuntur, *non discerptis sententiis*, non praeposteris temporibus, non confusis personis, non perturbato ordine."

[28] Cic. *Orat.* 222 "e quattuor igitur quasi hexametrorum instar versuum quod sit constat fere plena comprehensio."

[29] Quint. *Inst.* 9.4.125 "habet perihodos membra minime duo; medius numerus videtur quattuor, sed recipit frequenter et plura. modus eius a Cicerone aut quattuor senariis versibus aut ipsius spiritus modo terminatur."

[30] Quint. *Inst.* 9.4.42 "etiam monosyllaba, si plura sunt, male continuabuntur, quia necesse est compositio multis clausulis concisa subsultet.", again Quint. *Inst.* 9.4.66 "ne, quod nunc maxime vitium est, brevium contextu resultent ac sonum reddant paene puerilium crepitaculorum.", again Quint. *Inst.* 9.4.91 "et ponderis habent longae, celeritatis breves: quae si miscentur quibusdam longis, currunt, si continuantur, exsultant."

To sum up: in oral performance, any text has to be divided into units by pauses (and this is much more the case in actual oratory than in, e.g., historiography read out loud, cf. above p. 132). The units are determined mainly[31] by sense (although they coincide, on the grammatical side, with one or more "sentence constituents"); the pauses have to be of different lengths to group several units together, again following the sense.[32] In a "rhythmical" prose text, the units are, additionally, composed following certain rules (equal or rising length of κῶλα etc.).

Thus a text of "good prose" has to be composed with skillful periodisation (i.e. giving periods, cola and commata the right length),[33] but to bring this to effect in an oral performance, the orator also needs some skill in positioning the pauses and determining their ideal length. For purposes of practising, preparation,[34] and declamation, punctuation in the written text is employed.[35]

Cf. p. 133 on too many pauses calling for applause.

[31] Hutchinson (1995) has shown that emphasis can lead to a *caesura* which would not be justified by sense alone.

[32] Cf. Quintilian on the different length of pauses in general: Quint. *Inst.* 9.4.51 "ubi tempora [etiam animo] metiuntur et pedum et digitorum ictu, intervalla signant quibusdam notis, atque aestimant quot breves illud spatium habeat: inde tetrasemoe, pentasemoe, deinceps longiore sunt percussiones (nam semion tempus est unum)", and 11.3.35–39 in detail (with an analysis of the beginning of the Aeneid), with the conclusion "virtus autem distinguendi fortasse sit parva, sine qua tamen esse nulla alia in agendo potest". But he makes clear what he already said in *Inst.* 1.8.1: "demonstrari nisi in opere ipso non potest", i.e. there are indeed no strict rules to be memorised.

[33] Cf. Dionysios of Halicarnassos describing a speech by Demosthenes, in which the words themselves command how they want to be pronounced: Dion. Hal. Dem. 54 ἐνταῦθα ἀστεῖον ἦχον, ταῦτα ἐσπευσμένως εἰπέ, ταῦτ' ἀναβεβλημένως, δευρὶ δ' ἀπόλιπε τὸ συνεχές, ἐνταυθοῖ σύναψον τὰ ἑξῆς, τούτοις συνάλγησον, τούτων καταφρόνησον, ταῦτα ἐκδειματώθητι, ταῦτα διάσυρον, ταῦτα αὔξησον. (However, it is clear "dass Dionysios in seiner stilkritischen Schrift *Demosthenes* keine vollständige Vortragstheorie entwickeln wollte" (Schulz, 2014, p. 149).)

[34] Cf. Cic. *De orat.* 3.190 "'hanc igitur' Crassus inquit 'ad legem cum exercitatione tum stilo, qui et alia et hoc maxime ornat ac limat, formanda nobis oratio est [...]'".

[35] There remains the somewhat unsatisfactory situation that in many cases we cannot know if an ancient orator made a pause at a certain point in a speech; but at least we can be sure about many points where he most definitely did *not* make a pause: namely, within the "sentence constituents" referred to by Habinek, provided that they are not composed of smaller constituents. For example, a pause must not be made within a prepositional phrase which consists only of the preposition and a noun or pronoun; nor within a noun-phrase which consists only of a noun and an adjective with no other words in between; and most definitely not within a single word, where Schmid wants to put a pause (e.g. Schmid (1959, p. 145)).

3.2.4 Prose rhythm: *clausulae*

The other aspect of "prose rhythm", the *clausulae*, are connected with pauses, too; the communis opinio on the topic can be rendered as follows: at the end of certain units (commata, cola, periods) in a (rhythmically designed) prose text, some sequences of long and short syllables are more frequent than others. These ends of units are exactly where pauses should be made in delivery, so the general theory of *clausulae* could also be put as: before a pause, some sequences of long and short syllables are more frequent than others, or: before a pause, we expect a "clausula", i.e. one of a limited number of combinations of long and short syllables. It is beyond the focus of this thesis to report on the extensive statistical work that has been done in this area[36] and that has, beyond all methodological problems and different findings in details, proven in general what has never been contested: that some "rhythms" are indeed more frequent than others at the end of περίοδοι or κῶλα. I would like to point out instead that at least in oral performance, the listener cannot "expect" a certain *clausula* before a pause (i.e. before he has heard the pause); he can only expect the pause after a certain *clausula*, which leads to the question: is there a statistically significant *avoidance* of those "rhythms" which are generally regarded as strong "*clausulae*" in places where a pause does *not* follow?[37] An answer to this would require a complete metrical analysis of a substantial amount of text and a statistical evaluation of whether the points where, technically, a *clausula* (taken as a particular sequence of syllable lengths) is found, indeed coincide with the end of a comma, colon, or period; this, however, is in its entirety beyond the scope of this thesis. If, as I suspect would be the result, a *clausula* is itself no strong reason to "expect" a pause, it yields a significant consequence for the *actio* of a speech. It would follow that even where a *clausula* is positioned in the text at the end of some

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[36] E.g. by Zielinski (1904), de Groot (1921), Broadhead (1922), and Primmer (1968).

[37] This seems to be implied by statements of Aristotle and Cicero, who claim that a *caesura* should be announced or even enforced by a preceding *clausula* (Aristot. *Rhet.* 1409a19–21 "[δεῖ] καὶ δήλην εἶναι τὴν τελευτὴν μὴ διὰ τὸν γραφέα, μηδὲ διὰ τὴν παραγραφήν, ἀλλὰ διὰ τὸν ῥυθμόν"; Cic. *Orat.* 228 "oratio, quae non aut spiritu pronuntiantis aut interductu librari, sed numero coacta debet insistere"); in both of these passages, however, the rhythm is contrasted with punctuation (and in Cicero with the orator's breath, or lack thereof), and in my opinion the point is that a *caesura* must not be enforced by punctuation *against* rhythm, that any *caesura* must be preceded by a suitable rhythm, but not that any *clausula* automatically enforces a *caesura*.

unit of sense, it is the orator's task to pronounce it in the appropriate way to convey the underlying structure to the audience,[38] while in other situations the same "rhythm" must be pronounced without "announcing" a *caesura*.

This brings us back to Quintilian's warning against waiting for applause after every sentence: on the structural side it is the orator's task to align *clausulae*, pauses, and speech units, so that the longest type of structural pause comes at the end of a large argumentative unit of the speech and is preceded by a major *clausula*. Now if the orator intends to provoke applause, the most appropriate moment for this is immediately after he has concluded a major argument (and thus a speech unit). In the theory of prose rhythm, this point ideally coincides with the longest type of pause and with a *clausula* which is both aesthetically pleasing in itself and announces the unit closure and the following pause, so that this longest type of structural pause naturally blends into the longer, non-structural pause when the orator interrupts his speech for some audience interaction.

3.2.5 Stylistic pauses

Beyond general recommendations of pauses for "good oratory", the use of many pauses can be characteristic of a particular orator or oratorical style, though notices thereof are few: the *Rhetorica ad Herennium* states that a particularly passionate speaking style is characterised by either very few or many pauses;[39] Cicero mentions that a passage within a speech containing many pauses can be employed as a figure of style depicting anger.[40] Cicero also describes Crassus' style as using short *periodoi* and many *kola* (which must mean many pauses), though without a positive or negative evaluation,[41] and he explicitly praises Cn. Lentulus' use of *intervalla* (among other aspects).[42]

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[38] The exact execution—whether to achieve this by rising of falling voice, slowing down, emphasis on a particular syllable etc.—differs from case to case.

[39] Rhet. Her. 3.23 "contentio dividitur in continuationem et in distributionem."

[40] Cic. *De orat.* 3.217 "aliud enim vocis genus iracundia sibi sumat, acutum, incitatum, crebro incidens: 'ipsus hortatur me frater, ut meos malis miser / mandarem natos . . .' et ea, quae tu dudum, Antoni, protulisti 'segregare abs te ausu' s . . .' et 'ecquis hoc animadvortet? vincite . . .' et Atreus fere totus."

[41] Cic. *Brut.* 162.

[42] Cic. *Brut.* 234. "intervallis" is an example of very rare praise of the use of pauses as a characteristic of an orator (the only one in the *Brutus*), but this may be a case of concealing

Hermogenes mentions pauses in an example of clarity from Herodotus.[43] Quintilian mentions an undue speed of delivery, in which pauses cannot be made properly, as a bad style of delivery.[44]

But while there are (some) rules for positioning pauses in the appropriate places, their frequency is eventually a matter of taste (and not to be argued about): "flumen aliis verborum volubilitasque cordi est, qui ponunt in orationis celeritate eloquentiam; distincta alios et interpuncta intervalla, morae respirationesque delectant: quid potest esse tam diversum? tamen est in utroque aliquid excellens."[45]

3.2.6 Conclusion

To summarise: shorter, structural pauses are in ancient rhetorical theory routinely connected to prose rhythm (i.e. to periodisation or *clausulae* or both) and extensively discussed under this heading. Style and delivery are in a double relationship here: the text must be prepared (in writing or in *cogitatio*, cf. p. 199) with a "correct" or "good" length of units (περίοδοι, κῶλα) and with "correct" or "good" *clausulae* at the ends of these units, in order to enable a "good" distribution of pauses of different length in delivery. Yet even with a "good" written text, it is the orator's task to place pauses properly in delivery, in order to convey the structure of the text. As there was no way of recording delivery in antiquity, ancient rhetorical theorists, when discussing the topic of structural pauses, focused on the preparation of the text; here we see very detailed observations on the effects of prose rhythm on the audience in oratorical practice, as far as these effects can be related to the written text of the speech. Beyond this, observations on structural pauses in delivery tend to be general, concerning oratory in comparison to other genres, or the delivery style of particular orators. Training in the proper positioning of

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art: a good orator must make appropriate pauses, but the best pauses are those which are not noticed by the audience and consequently not mentioned by Cicero.

[43] Hermogenes *Id.* p. 230 Rabe "κατὰ βραχὺ αἱ ἔννοιαι διανεπαύοντο ἐφ᾽ ἑαυτῶν περιγραφόμεναι". Though historiography is is many ways treated as different from oratory, the connection between pauses and clarity is likely to be transferable.

[44] Quint. *Inst.* 11.3.52 "nec volubilitate nimia confundenda quae dicimus, qua et distinctio perit et adfectus". Cf. Lucianus *Rh. Pr.* 18: "πλὴν ἀλλ᾽ ἔπειγε καὶ σύνειρε καὶ μὴ σιώπα μόνον" (as a satirical advice).

[45] Cic. *Orat.* 53.

structural pauses was apparently conducted solely by imitation and exercise, and is not reflected in the theoretical writings.

3.3 Dialogues and related settings

3.3.1 Dialogue with the audience

Actual dialogue with the audience (or part of it) during a speech,[46] initiated by the orator, was a rare phenomenon, as far as we can tell.[47] It is difficult to control (and thus unattractive for most orators), it was forbidden in some situations, and probably it was also just unusual for anyone else to speak during a speech.[48] We have two examples from Demosthenes' speeches, where apparently, as far as we can tell from the transmitted text, a dialogue with the audience took place: the first instance comes from Demosthenes' Crown Speech,[49] where he asks a question (rather a rhetorical question, since nobody can have been uncertain about the answer) and continues "ἀκούεις ἃ λέγουσιν". This implies that Demosthenes, in the court situation, addressed his question to the jury or the bystanders, waited for the answer, and then turned to his adversary Aischines: "you hear what they say", employing the audience as a sort of witness and probably producing a neat show effect (while the actual argumentative value of the question, πότερον [...] δοκεῖ μισθωτὸς Αἰσχίνης ἢ ξένος εἶναι Ἀλεξάνδρου;, was rather marginal). In his pros-

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[46] Of course we have abundant examples of orators addressing the audience, and of rhetorical questions, but as long as no reply seems to have taken place, or to have been expected, this means no interruption to the speech, and is therefore not pertinent.

[47] There were, of course, procedural situations where the orator was in a dialogical situation from the beginning; for Athens we have examples from Lysias' speeches where a dialogue between the orator and a witness is incorporated completely in the speech text (Lys. *or.* 12.25, 22.5), and from the speech contexts this seems to have been not unusual, but with the Athenian custom of choosing witnesses supportive to one's case (Carey, 1994, p. 176), these "interrogations" were most likely planned beforehand just as any part of the speech. In Rome, the *altercatio* was dialogical by definition (the more so if the *altercatio* was as well used in the examination of witnesses, where Mommsen sees its main place (Mommsen, 1899, p. 431, n. 4); Greenidge (1901, p. 479) sees it as a fixed part of the trial after the presentation of the evidence, while Powell (2010, p. 27, n. 14) regards the term in Quintilian as referring rather loosely to "impromptu exchanges which might arise at any time after the set speeches were over") and thus required, in any case, an altogether different approach from a structured and (more or less) prepared "set speech".

[48] Cf. p. 63 on the figure of granting the floor to the opponent.

[49] Dem. *or.* 18.52.

ecution speech against Aristocrates,[50] Demosthenes lets the audience choose which of three possible topics they want to hear first. Whatever happened in the actual trial, the extant speech text suggests that there was a comprehensible answer from the audience ("the first one!"), as the orator "repeats" it and continues accordingly, so this must have been a plausible scenario (even if it was set up beforehand).

The only example in Cicero's speeches where an actual dialogue becomes visible is in *De lege agraria* 2, where a question-and-answer game is played out in the extant speech text.[51] Whether in the actual *contio* Cicero answered his own questions, or received the answers which are in the text now from the audience, cannot be determined today, but since the answers are short, simple, and repetitive, it seems quite possible that Cicero managed to provoke a functioning conversation with the crowd (though one might argue that if that was the case, he would probably have incorporated something indicating this in the written speech text).

In another situation (in *Verr.* 1) this was not the case, apparently:

> ego, iudices, iam vos consulo, quid mihi faciendum putetis. id enim consili mihi profecto taciti dabitis, quod egomet mihi necessario capiendum intellego.[52]

Cicero addresses the audience (the judges) and directly asks for advice. In the next sentence, he emphasises that the judges were *taciti*, implying that there had been no utilisable reaction from the audience. However, what kind of dialogue could have arisen here? The question asked by Cicero, if taken seriously, requires a rather complex answer, in any case more than a yes or no or some other one-word reply. Such a more complex answer, which would have been close to a discussion of procedural issues between the judges, was very unlikely (and even more so in a trial than in a *contio* like *Leg. agr. 2*), even if some of the judges had correctly guessed what the answer would

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[50] Dem. *or.* 23.18–19.

[51] Cic. *Leg. agr.* 2.22 "quis legem tulit? Rullus. quis maiorem partem populi suffragiis prohibuit? Rullus. quis comitiis praefuit, quis tribus quas voluit vocavit nullo custode sortitus, quis Xviros quos voluit creavit? idem Rullus. quem principem renuntiavit? Rullum. vix me hercule servis hoc eum suis, non ⟨modo⟩ vobis omnium gentium dominis probaturum arbitror." Cic. *ad Q. fr.* 2.3.2 reports a similar interaction of Clodius with the audience, or part of it, of a trial.

[52] Cic. *Verr.* 1.32.

be, i.e. Cicero's tactical move of drastically shortening his speech to speed up the trial.[53] The question is thus of a rather rhetorical kind, and Cicero could, in the expected silence, substitute himself what he needed for his argument, and at the same time flatter his audience by implying that they had themselves thought ahead just as cleverly (regardless of whether they had or not).

Advice on this matter can be found under the term *communicatio* in Quintilian,[54] who, however, does not treat actual dialogical situations but figures where the orator addresses the audience, asking or inviting them to contemplate some argument; these are more akin to rhetorical questions to which an answer is implied, but not actually given.[55] Quintilian does not differentiate here whether there is an articulate reaction from the audience.

3.3.2 Deliberate interruption by a single person

The orator can also be forced into a dialogical situation by someone else interrupting him (and interrupting in an articulate way, more than just disturbing the speech setting[56]). In Rome, such deliberate interruptions were legally prohibited in political assemblies, both in the *contio* and in senate meetings[57],

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[53] A move which, as J. Powell has recognised, was not as "brilliantly original" as it is sometimes thought to be (Powell, 2010, p. 32).

[54] Quint. *Inst.* 9.2.21 "[communicatio:] aut cum iudicibus quasi deliberamus, quod est frequentissimum: 'quid suadetis?' et 'vos interrogo' et 'quid tandem fieri oportuit?' ut Cato: 'cedo, si vos in eo loco essetis, quid aliud fecissetis?' et alibi: 'communem rem agi putatote ac vos huic rei praepositos esse'".

[55] Cf. Lausberg (1990, §§ 767–770) and Rowe (1997, p. 139–140) on the figures of ἐρώτησις / *interrogatio* and πύσμα / *quaesitum*; cf. Wooten (2013) on questions in imperial Greek rhetoric.

[56] On rather inarticulate interruptions (θόρυβος etc.) see p. 157.

[57] On the *contio*: "One particular feature of such assemblies was the protection of the tribune, when speaking, from interruption, treated by Cicero as an element of the sacrosanctity of the tribunate" (Lintott, 1999, p. 122), cf. Cic. *Sest.* 79 "itaque fretus sanctitate tribunatus, cum se non modo contra vim et ferrum sed etiam contra verba atque interfationem legibus sacratis esse armatum putaret, venit in templum Castoris"; Val. Max. 9.5.2 "parum enim habuit [M. Drusus tribunus pl.] L. Philippum consulem, quia interfari se contionantem ausus fuerat"; however, some articulate interference by the audience seems to have been possible, as far as it was not hostile: Plut. *TG* 21.4–5 "[Σκιπίων ὁ Ἀφρικανός] τῶν περὶ Γάιον καὶ Φούλβιον αὐτοῦ δι' ἐκκλησίας πυνθανομένων, τί φρονοίη περὶ τῆς Τιβερίου τελευτῆς, οὐκ ἀρεσκομένην τοῖς ὑπ' ἐκείνου πεπολιτευμένοις ἀπόκρισιν ἔδωκεν."

On the senate: "while he had the word, a speaker could talk on any matter he considered of public importance, but he *could not intervene in the discussion without being invited* to do so." (Raaflaub, 2004, p. 55, my emphasis) Still an *altercatio* in the senate was possible if the speaker decided to reply to an interruption, as Cicero did in the lively exchange with

and were probably quite unusual and disapproved of in court, except for the judge's right to admonish the speaker, e.g. to remind him of the time limit.[58]

Looking at the Attic Orators, we find a few instances in the long speeches by Demosthenes and Aischines where they report on earlier speaking situations where they were interrupted (by a single, identifiable person, in a more or less articulate manner); this behaviour is described, implicitly or explicitly, as an unseemly attack.[59] However, all these instances happened in political meetings (βουλή, ἐκκλησία, a private meeting of ambassadors with Philip of Macedonia, and the Amphictyonic Council); in Athenian courts, spontaneous comments or questions by the audience were apparently considered less inappropriate, as Demosthenes discusses this possibility quite casually: καὶ μὴν εἴ τις ἐκεῖν᾽ ὑπολαμβάνει, ποῦ δὲ γένοιτ᾽ ἂν ταῦτα; τί κωλύει κἀμὲ λέγειν, τίς δ᾽ ἂν ἀποκτείναι Χαρίδημον;[60]

In a few of Cicero's speeches, incidents of interruption are reported with great indignation (from the texts there is no clear line to be drawn between articulate interruptions and more general disturbance).[61] By accusing the disturber, Cicero puts himself into the position of the innocent victim (however minuscule the offence) and thus gains an implicit *captatio benevolentiae*.

Clodius which he relates in *Att.* 1.16.10: "surgit pulchellus puer, obicit mihi me ad Baias fuisse. falsum, sed tamen 'quid? hoc simile est,' inquam, 'quasi in operto dicas fuisse?' 'quid,' inquit, 'homini Arpinati cum aquis calidis?' 'narra,' inquam, 'patrono tuo, qui Arpinatis aquas concupivit' (nosti enim Marianas). 'quousque,' inquit, 'hunc regem feremus ?' 'regem appellas,' inquam, 'cum Rex tui mentionem nullam fecerit?'; ille autem Regis hereditatem spe devorarat. 'domum,' inquit, 'emisti.' 'putes,' inquam, 'dicere: iudices emisti.' 'iuranti,' inquit, 'tibi non crediderunt.' 'mihi vero,' inquam, 'XXV iudices crediderunt, XXXI, quoniam nummos ante acceperunt, tibi nihil crediderunt.' magnis clamoribus adflictus conticuit et concidit."

[58] Cf. p. 59 on enforcement of time limits. At least in Quintilian's time a judge could apparently interrupt and rebuke an orator for quite arbitrary reasons: Quint. *Inst.* 4.5.10 "festinat enim iudex ad id quod potentissimum est, et velut obligatum promisso patronum, si est patientior, tacitus appellat: si vel occupatus vel in aliqua potestate vel etiam sic moribus compositus, cum convicio efflagitat."; Tac. *Dial.* 39.3 "ipsam quin immo curam et diligentis stili anxietatem contrariam experimur, quia saepe interrogat iudex, quando incipias, et ex interrogatione eius incipiendum est." Cf. also p. 70 on the advice not to annoy the audience.

[59] Dem. *or.* 19.23, 19.45–46; Aischin. *leg.* 106, *Ctes.* 117.

[60] Dem. *or.* 23.58

[61] Cic. *Sest.* 78 "magistratus templo deicias, caedem maximam facias, forum purges?"; 85 "magistratus templis pellebantur, alii omnino aditu ac foro prohibebantur"; 135 "solet enim tribunos plebis appellare et vi iudicium disturbare, cum diffidit"; Cic. *Vatin.* 34 "num quis reus in tribunal sui quaesitoris escenderit eumque vi deturbarit, subsellia dissiparit, urnas deiecerit, eas denique omnis res in iudicio disturbando commiserit, quarum rerum causa iudicia sunt constituta?"

In the *Pro Ligario*, Cicero mentions his fear of an incident of this sort (although he probably does not seriously expect it to happen) and exploits it (beyond a general incitement of a disapproving mood against the disturber) in a more explicit *captatio benevolentiae*;[62] in the *De provinciis consularibus*, he uses it as a demonstration of boldness and thus as what might be called *captatio admirationis*.[63]

This is one of the rare cases where we find, at least in Quintilian, theoretical advice on the rhetorical use of the phenomenon under discussion[64] and even the recommendation to pretend that there was an interruption (in this case, by the orator's own client) if it seems convenient.[65]

The latter is something we also observe in Cicero's speeches, when he makes use of pretended or hypothetical interruptions by a hostile member of the audience.[66]

Closely related are fictitious dialogues with the opponent or the audience, which are found in several of Cicero's speeches.[67] As these need to be acted

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[62] Cic. *Lig.* 13 (to the prosecutor Tubero) "quodne nos [domi] petimus precibus ac lacrimis, strati ad pedes, non tam nostrae causae fidentes quam huius humanitati, id ne impetremus pugnabis et *in nostrum fletum irrumpes* et nos iacentis ad pedes supplicum voce prohibebis?"

[63] Cic. *Prov. cons.* 18 "qua de re dicam, Patres conscripti, quae sentio, atque illam interpellationem mei familiarissimi, qua paulo ante interrupta est oratio mea, non pertimescam."

[64] Quint. *Inst.* 6.4.11 "sunt enim quidam praeduri in hoc oris, ut obstrepant ingenti clamore et medios sermones intercipiant 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."

[65] Quint. *Inst.* 4.5.20 "quaedam interim nos et invitis litigatoribus simulandum est dicere, quod Cicero pro Cluentio facit circa iudiciariam legem: nonnumquam quasi interpellemur ab iis subsistere".

[66] Cic. *Cluent.* 63 "nam etsi a vobis sic audior ut numquam benignius neque attentius quemquam auditum putem, tamen vocat me alio iam dudum tacita vestra exspectatio, quae mihi obloqui videtur: 'quid ergo? negasne illud iudicium esse corruptum?' non nego, sed ab hoc corruptum non esse confirmo. 'a quo igitur est corruptum?' opinor, primum [...]" (maybe Cicero had hoped for real interruptions here); Cic. *Prov. cons.* 40 "sed non alienum esse arbitror, quo minus saepe aut interpeller a non ullis aut tacitorum existimatione reprehendar, explicare breviter quae mihi sit ratio et causa cum Caesare."

[67] E.g. Cic. *S. Rosc.* 58 "quid mihi ad defendendum dedisti, bone accusator? quid hisce autem ad suspicandum? 'ne exheredaretur, veritus est.' audio, sed qua de causa vereri debuerit, nemo dicit. 'habebat pater in animo.' planum fac. nihil est; non quicum deliberaverit, quem certiorem fecerit, unde istud vobis suspicari in mentem venerit. cum hoc modo accusas, Eruci, nonne hoc palam dicis: 'ego quid acceperim scio, quid dicam nescio; unum illud spectavi quod Chrysogonus aiebat neminem isti patronum futurum; de bonorum emptione deque ea societate neminem esse qui verbum facere auderet hoc tempore'? haec te opinio falsa in istam fraudem impulit; non me hercules verbum fecisses, si tibi

out to a certain degree in order to be understood as dialogues (especially as often only the direct speech passages are given, without speaker indications or "stage directions"), longer pauses must have been used. And even more so if the orator hoped for actual questions or answers from the audience, both in these passages and when he posed direct questions to the audience.[68] Even if he provided answers himself, it would be wise to give the audience time to think about the question on their own.

A similar situation arises when the orator puts a question to his opponent, implying or stating that the opponent has no answer.[69] Of course this ex-

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quemquam responsurum putasses."; Cic. *Quinct.* 79 "quo die? te ipsum, Naevi, volo audire; volo inauditum facinus ipsius qui id commisit voce convinci. dic, Naevi, diem. 'ante diem V Kalend. intercalaris.' bene ais. quam longe est hinc in saltum vestrum Gallicanum? Naevi, te rogo. 'MDCC milia passuum.' optime. de saltu deicitur Quinctius— quo die? possumus hoc quoque ex te audire? quid taces? dic, inquam, diem. pudet dicere; intellego; verum et sero et nequiquam pudet."; Cic. *Cluent.* 63 "nam etsi a vobis sic audior ut numquam benignius neque attentius quemquam auditum putem, tamen vocat me alio iam dudum tacita vestra exspectatio, quae mihi obloqui videtur: 'quid ergo? negasne illud iudicium esse corruptum?' non nego, sed ab hoc corruptum non esse confirmo. 'a quo igitur est corruptum?' opinor, primum [. . .]"; Cic. *Phil.* 2.41 "velim mihi dicas, nisi molestum est, L. Turselius qua facie fuerit, qua statura, quo municipio, qua tribu. 'nihil scio', inquies, 'nisi quae praedia habuerit.' is igitur fratrem exheredans te faciebat heredem?"

Fictitious dialogue is classified as a figure of thought by Rowe (1997, p. 140), somewhat strangely under the term αἰτιολογία; more correctly as *subiectio* by Lausberg (1990, §§ 771–775).

Similar to this are passages where quotations from the prosecution speech or another source are included in the speech and answered on the spot, e.g. Cic. *Sest.* 84 "'homines,' inquit, 'emisti, coegisti, parasti.' quid uti faceret? senatum obsideret?" and all of Cic. *Phil.* 13, which is a detailed answer to Antonius' letter.

[68] E.g. Cic. *Quinct.* 54 "quaero abs te, C. Aquili, L. Lucili, P. Quinctili, M. Marcelle: vadimonium mihi non obiit quidam socius et adfinis meus quicum mihi necessitudo vetus, controversia de re pecuniaria recens intercedit; postulone a praetore ut eius bona mihi possidere liceat, an, cum Romae domus eius, uxor, liberi sint, domum potius denuntiem? quid est quod hac tandem de re vobis possit videri? profecto, si recte vestram bonitatem atque prudentiam cognovi, non multum me fallit, si consulamini, quid sitis responsuri: primum exspectare, deinde, si latitare ac diutius ludificare videatur, amicos convenire, quaerere quis procurator sit, domum denuntiare. dici vix potest quam multa sint quae respondeatis ante fieri oportere quam ad hanc rationem extremam necessario devenire.".

[69] Cic. *Quinct.* 79 "quid taces? dic, inquam, diem. pudet dicere; intellego; verum et sero et nequiquam pudet."; Cic. *S. Rosc.* 38 "in hoc tanto, tam atroci, tam singulari maleficio [. . .], quibus tandem tu, C. Eruci, argumentis accusatorem censes uti oportere? nonne et audaciam eius, qui in crimen vocetur, singularem ostendere et mores feros immanemque naturam et vitam vitiis flagitiisque omnibus deditam, et denique omnia ad perniciem profligata atque perdita? quorum tu nihil in Sex. Roscium ne obiciendi quidem causa contulisti"; Cic. *Q. Rosc.* 44 "si iam tibi deliberatum est quibus abroges fidem iuris iurandi, responde. Manilio et Luscio negas esse credendum? dic, aude; est tuae contumaciae, adrogantiae vitaeque universae vox. quid exspectas?"; Cic. *Verr.* 2.2.191 "tu ipse, Verres, quid sedes, quid moraris? nam aut exhibeas nobis Verrucium necesse est aut te Verrucium esse fateare."; Cic. *Sull.* 44 (to Torquatus) "⟨cur⟩ cum videres aliter fieri, tacuisti, passus es, non mecum aut ⟨ut⟩ cum familiarissimo questus es aut, quoniam tam facile inveheris in amicos, iracundius et vehementius etulasti?"; Cic. *Flacc.* 6 "hunc igitur virum, Laeli,

ploits the fact that in most speaking settings the opponent was not allowed to reply immediately, and since everybody was aware of this, the argument drawn from the opponent's silence is not very strong in itself, but in the live performance it may well have some dramatic effect all the same if the question or request was followed by a noticeable silence.

This tactic itself is treated as a standard by the writers of rhetorical theory: driving the opponent into a corner from where he cannot give any answer (or if he tries, the orator can react with indignation), i.e. the tactic of using the opponent's silence, even though he may not be actually allowed to reply.[70] Aristotle has a comprehensive paragraph on ἐρώτησις (interrogation) and its tactics.[71] Cicero in *De inventione* describes a similar tactic of pressuring the opponent into a sort of confession (here without directly exploiting the opponent's silence, although this possibility results indirectly from the

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quibus tandem rebus oppugnas? fuit P. Servilio imperatore in Cilicia tribunus militum; ea res siletur. fuit M. Pisoni quaestor in Hispania; vox de quaestura missa nulla est. bellum Cretense ex magna parte gessit atque una cum summo imperatore sustinuit; muta est huius temporis accusatio. praeturae iuris dictio, res varia et multiplex ad suspiciones et simultates, non attingitur."; Cic. *Planc.* 48 "quid taces, quid dissimulas, quid tergiversaris?"; Cic. *Deiot.* 20 "quid igitur causae excogitari potest cur te lautum voluerit, cenatum noluerit occidere?"; Cic. *Phil.* 2.5 "at beneficio sum tuo usus. quo? [...] sed quo beneficio?"; Cic. *Phil.* 2.111 "ecquid reperies ex tam longa oratione mea, cui te respondere posse confidas?"

Cf. also the examples given p. 99 n. 415–417 for Cicero's exploiting his opponent's lack of arguments.

[70] Worman (2009) shows that, as early as in the *Iliad*, a major aim of oratory is to silence the opponent: Worman (2009, p. 33–34) "the didactic use of invective and threat anticipates quite precisely the ways in which orators in the classical period align themselves [34] with their audiences by means of insulting example—that is, by working to exclude their opponents an enemies from the realm of citizens fit to speak in assembly."

[71] Aristot. *Rhet.* 1418b40–1419a18 περὶ δὲ ἐρωτήσεως, εὔκαιρόν ἐστι ποιεῖσθαι μάλιστα μὲν ὅταν τὸ ἕτερον εἰρηκὼς ᾖ, ὥστε ἑνὸς προσερωτηθέντος συμβαίνει τὸ ἄτοπον [...]. δεύτερον δὲ ὅταν τὸ μὲν φανερὸν ᾖ, τὸ δὲ ἐρωτήσαντι δῆλον ᾖ ὅτι δώσει [...]. ἔτι ὅταν μέλλῃ ἢ ἐναντία λέγοντα δείξειν ἢ παράδοξον. τέταρτον δὲ ὅταν μὴ ἐνῇ ἀλλ' ἢ σοφιστικῶς ἀποκρινάμενον λῦσαι [...]. ἄλλως δὲ μὴ ἐγχείρει. ἐὰν γὰρ ἐνστῇ, κεκρατῆσθαι δόξεις· οὐ γὰρ οἷόν τε πολλὰ ἐρωτᾶν, διὰ τὴν ἀσθένειαν τοῦ ἀκροατοῦ·

described procedure),[72] and Quintilian refers to it as a well-known method;[73] for the *altercatio*, where an answer is indeed possible, he recommends striking back with the same figure (i.e. answering the opponent's unanswerable question with a similar question).[74] The *subiectio* discussed in the *Rhetorica ad Herennium* and Quintilian[75] comes closest to a dialogue, but it is not quite a dialogue acted out, rather a rhetorical question to which the answer is then provided (but still from the orator's point of view).

Yet we do not have any information on the specific use of pauses in this context: neither as indication of pauses in the text of speeches, nor as advice on these from rhetorical theory. For the *subiectio*, Quintilian even states (though without much emphasis) that the orator does not wait for an actual answer. How these dialogical passages were acted out in practice, and how their performance may have differed between times and genres, must remain mostly speculative; as far as this was part of an orator's education, it was apparently taught only in practical training.

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[72] Cic. *Inv.* 2.125–126: "quem locum multis modis variare oportebit, [. . .] tum ipsum adversarium quasi in testis loco producendo, hoc est interrogando, utrum scriptumne neget esse eo modo, an ab se contra factum esse aut contra contendi neget; utrum negare ausus sit, se dicere desiturum. si neutrum neget et contra tamen dicat: nihil esse quo hominem inpudentiorem quisquam se visurum arbitretur."

In the *Orator*, Cicero describes the situation of the "opponent silenced" as a sign of success, without, however, addressing the particular circumstances of each instance (i.e. court vs. senate, set speech vs. *altercatio*): Cic. *Orat.* 129 "nobis pro familiari reo summus orator non respondit Hortensius; a nobis homo audacissimus Catilina in senatu accusatus obmutuit; nobis privata in causa magna et gravi cum coepisset Curio pater respondere, subito adsedit, cum sibi venenis ereptam memoriam diceret".

[73] Quint. *Inst.* 9.2.20 "a quo schemate non procul abest illa quae dicitur communicatio, cum aut ipsos adversarios consulimus, ut Domitius Afer pro Cloatilla: 'nescit trepida quid liceat feminae, quid coniugem deceat: forte vos in illa solitudine obvios casus miserae mulieri optulit: tu, frater, vos, paterni amici, quod consilium datis?'"

[74] Quint. *Inst.* 6.4.20 "quid enim, cum respondere non possis, agendum est nisi ut aliud invenias cui adversarius respondere non possit?"

[75] *Rhet. Her.* 4.33 "subiectio est, cum interrogamus adversarios aut quaerimus ipsi, quid ab illis aut quid contra nos dici possit, deinde subicimus id, quod oportet dici aut non oportet aut nobis adiumento futurum sit aut illis obfuturum sit e contrario"; Quint. *Inst.* 9.2.15 "cui diversum est, cum alium rogaveris, non exspectare responsum, sed statim subicere: 'domus tibi deerat? at habebas. pecunia superabat? at egebas'. quod schema quidam 'per suggestionem' vocant."

3.3.3 *prosopopoeia*

Much more frequent is the figure of προσωποποιία / *prosopopoeia* / *sermocinatio* / *conformatio*,[76] where the orator introduces some other person, or personified object, as speaking, and where he steps back with his own *persona*, falls silent and grants the floor to his fictitious counterpart.[77]

The figure is rare in the Attic Orators;[78] Cicero uses it in his speeches several times,[79] although not very frequently, and whenever he does, it is an

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[76] *sermocinatio* / προσωποποιία is classified as a figure of thought by Rowe (1997, p. 144); cf. Lausberg (1990) on *sermocinatio* (§§ 820–825) and *fictio personae* (§§ 826–829).

[77] Alexander Arweiler has examined on a much broader scale how power is constructed in literature by the use of certain authorities, especially by "borrowing their voice", i.e. writing in first person (Arweiler, 2001, esp. p. 57–65). *prosopopoeia* in oratory might be considered a subgenre of this technique.

[78] At least a similar effect is gained by Demosthenes' quoting another orator (Dem. *or.* 7.21–23); a *prosopopoeia* of "the truth" is found in Aischin. *Ctes.* 155. V. Bers (Bers, 1997) has examined the use of *oratio recta* in Attic Oratory; this is not actually relevant to my topic, as a short quote does not mean "granting the floor"; besides, "[c]learly the emphasis in rhetorical manuals was on imaginary, not real, discourse." Bers (1997, p. 130)

[79] Cic. *S. Rosc.* 32 "etenim quis tam dissoluto animo est, qui, haec cum videat, tacere ac neglegere possit? 'patrem meum, cum proscriptus non esset, iugulastis, occisum in proscriptorum numerum rettulistis, me domo mea per vim expulistis, patrimonium meum possidetis. quid voltis amplius? etiamne ad subsellia cum ferro atque telis venistis, ut hic aut iuguletis aut condemnetis?'" (the client is imagined speaking, with no explicit sign in the text); Cic. *Verr.* 2.5.136–138 "ipse pater si iudicaret, per deos immortalis, quid facere posset? cum tibi haec diceret, 'tu in provincia populi Romani …'" (Verres' father then speaks for three paragraphs); Cic. *Catil.* 1.18–19 "quae [i.e. patria] tecum, Catilina, sic agit et *quodam modo tacita loquitur*: 'nullum iam aliquot annis facinus exstitit nisi per te, nullum flagitium sine te; tibi uni multorum civium neces, tibi vexatio direptioque sociorum inpunita fuit ac libera; tu non solum ad neglegendas leges et quaestiones, verum etiam ad evertendas perfringendasque valuisti. superiora illa, quamquam ferenda non fuerunt, tamen, ut potui, tuli; nunc vero me totam esse in metu propter unum te, quicquid increpuerit, Catilinam timeri, nullum videri contra me consilium iniri posse, quod a tuo scelere abhorreat, non est ferendum. quam ob rem discede atque hunc mihi timorem eripe; si est verus, ne opprimar, sin falsus, ut tandem aliquando timere desinam.' [19] haec si tecum, ita ut dixi, *patria loquatur*, nonne impetrare debeat, etiamsi vim adhibere non possit?"; Cic. *Cael.* 33–34 "exsistat igitur ex hac ipsa familia aliquis ac potissimum Caecus ille; mini mum enim dolorem capiet, qui istam non videbit. [34] qui profecto, si exstiterit, sic aget ac sic loquetur: 'mulier, quid tibi cum Caelio …'", 36 "sin autem urbanius me agere mavis, sic agam tecum; removebo illum senem durum ac paene agrestem; ex his igitur tuis sumam aliquem ac potissimum minimum fratrem [...]. eum putato tecum loqui: 'quid tumultuaris, soror? …'"; Quint. *Inst.* 4.1.69 "idem Cicero pro Scauro ambitus reo, quae causa est in commentariis (nam bis eundem defendit), prosopopoeia loquentis pro reo utitur" (on Cicero's lost second speech for Scaurus, cf. Crawford (1984, p. 198–201)); Cic. *Phil.* 13.6 "quid sapientia? cautioribus utitur consiliis, in posterum providet, est omni ratione tectior. quid igitur censet? parendum est enim atque id optimum iudicandum, quod sit sapientissime constitutum. si hoc praecipit, ne quid vita existimem antiquius, ne decernam capitis periculo, fugiam omne discrimen, quaeram ex ea: 'etiamne, si erit, cum id fecero, serviendum?' si annuerit, ne ego Sapientiam istam, quamvis sit erudita, non audiam. sin responderit: 'tuere ita vitam corpusque [servato], ita fortunas, ita rem familiarem, ut haec libertate posteriora ducas itaque his uti velis, si libera re publica possis, nec pro his liber-

essential and carefully designed passage within the speech, and each example is unique in its combination of who is speaking and how the *prosopopoeia* is framed: we find persons speaking (the client in *Pro S. Roscio Amerino*, the opponent's father in *In Verrem* 2, a supporter of the client in the lost speech *Pro Scauro de ambitu*, and two relatives of the opponent in *Pro Caelio*) and abstract objects (*Patria* in *In Catilinam* 1, *Sapientia* in *Philippica* 13); the fictitious speaker is introduced either not at all (*S. Rosc.*) or in a straightforward manner (*Verr.*) or with a lengthy deliberation (*Cael.*); he can be directly set up as speaking (*Catil.*) or introduced with a *potentialis* (*Phil.*).

All of these carefully designed variants correspond with the values which the theorists of rhetoric have found in this figure. Two important purposes for which the figure is used are mentioned already in the *Rhet. Her.*: *variatio* and *affectus* (here limited to *commiseratio*), along with a number of examples.[80] The point of *variatio* is also taken up in Cicero's *De inventione*.[81] Later in *De oratore* the figure is only mentioned briefly in a list, but with a reference to *amplificatio*.[82]

Quintilian also treats all these aspects, and adds some more. He mentions *prosopopoeia* in five different books of his *Institutio*: he cites *affectus*[83] and *vari-*

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tatem, sed pro libertate haec proicias tamquam pignora iniuriae': tum Sapientiae vocem audire videar eique ut deo pareum."

[80] *Rhet. Her.* 4.66 "conformatio est, cum aliqua, quae non adest, persona confingitur quasi adsit, aut cum res muta aut informis fit eloquens, et forma ei et oratio adtribuitur ad dignitatem adcommodata, aut actio quaedam, hoc pacto: 'quodsi nunc haec urbs invictissima vocem mittat, non hoc pacto loquatur: "ego illa plurimis tropeis ornata, triumphis ditata certissimis, clarissimis locupletata victoriis, nunc vestris seditionibus, o cives, vexor; quam dolis malitiosa Kartago, viribus probata Numantia, disciplinis erudita Corinthus labefactare non potuit, eam patimini nunc ab homunculis deterrumis proteri atque conculcari?"' item: 'quodsi nunc Lucius ille Brutus revivescat et hic ante pedes vestros adsit, is non hac utatur oratione: "ego reges eieci, vos tyrannos introducitis; ego libertatem, quae non erat, peperi, vos partam servare non vultis; ego capitis mei periculo patriam liberavi, vos liberi sine periculo esse non curatis?"' haec conformatio licet in plures res, in mutas atque inanimas transferatur. proficit plurimum in amplificationis partibus et conmiseratione."

[81] Cic. *Inv.* 1.99 "ita per brevem conparationem auditoris memoria et de confirmatione et de reprehensione redintegrabitur. atque haec aliis actionis quoque modis variare oportebit. nam tum ex tua persona enumerare possis, ut, quid et quo quidque loco dixeris, admoneas; tum vero personam aut rem aliquam inducere et enumerationem ei totam attribuere."

[82] Cic. *De orat.* 3.205 "personarum ficta inductio vel gravissimum lumen augendi" (in a *percursio* of rhetorical figures), quoted in Quint. *Inst.* 9.1.31.

[83] Quint. *Inst.* 6.1.25–26 "his praecipue locis utiles sunt prosopopoeiae, id est fictae alienarum personarum orationes. †quale litigatore dicit patronum† nudae tantum res movent: at cum ipsos loqui fingimus, ex personis quoque trahitur adfectus. [6.1.26] non enim au-

atio[84] as aims of this figure, recommends it as a valuable exercise,[85] remarks on the best position for it in a speech,[86] and in book 9 of the *Institutio*, he gives a thorough treatment of the criteria for a good *prosopopoeia* (it must be plausible, i.e. suited in style and content to the fictitious speaker), its purpose (again, *variatio* and *affectus*), and possible variations (different persons speaking, indicative vs. subjunctive, and direct vs. reported speech).[87]

A side point on the use of silence can be made here: Cicero even uses a figure which we might call *anti-prosopopoeia*, when he introduces abstract

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dire iudex videtur aliena mala deflentis, sed sensum ac vocem auribus accipere misero-rum, 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 persona valet."

[84] Quint. *Inst.* 11.1.41 "denique non modo quot in causa totidem in prosopopoeia sunt varietates, sed hoc etiam plures, quod in his puerorum, feminarum, populorum, mutarum etiam rerum adsimulamus adfectus, quibus omnibus debetur suus decor."

[85] Quint. *Inst.* 3.8.49–50 "ideoque longe mihi difficillimae videntur prosopopoeiae, in quibus ad relicum suasoriae laborem accedit etiam personae difficultas: namque idem illud aliter Caesar, aliter Cicero, aliter Cato suadere debebit. utilissima vero haec exercitatio, vel quod duplicis est operis vel quod poetis quoque aut historiarum futuris scriptoribus plurimum confert: verum et oratoribus necessaria. [50] nam sunt multae a Graecis Latinisque compositae orationes quibus alii uterentur, ad quorum condicionem vitamque aptanda quae dicebantur fuerunt."

[86] Quint. *Inst.* 4.1.28 "in epilogo vero liceat totos effundere adfectus, et fictam orationem induere personis et defunctos excitare et pignora reorum producere: quae minus in exordiis sunt usitata."

[87] Quint. *Inst.* 9.2.29–32 "illa adhuc audaciora et maiorum, ut Cicero existimat, laterum, fictiones personarum, quae προσωποποιίαι dicuntur: mire namque *cum variant orationem tum excitant*. [30] his et adversariorum cogitationes velut secum loquentium protrahimus (qui tamen ita demum a fide non abhorrent si ea locutos finxerimus quae cogitasse eos non sit absurdum), et nostros cum aliis sermones et aliorum inter se credibiliter introducimus, et suadendo, obiurgando, querendo, laudando, miserando personas idoneas damus. [31] quin deducere deos in hoc genere dicendi et inferos excitare concessum est. urbes etiam populique vocem accipiunt. ac sunt quidam qui has demum prosopopoiias dicant in quibus et corpora et verba fingimus: sermones hominum adsimulatos dicere dialogous malunt, quod Latinorum quidam dixerunt sermocinationem. [32] ego iam recepto more utrumque eodem modo appellavi: nam certe sermo fingi non potest ut non personae sermo fingatur. sed in iis quae natura non permittit hoc modo mollior fit figura: 'etenim si mecum patria mea, quae mihi vita mea multo est carior, si cuncta Italia, si omnis res publica sic loquatur: Marce Tulli, quid agis'? illud audacius genus: 'quae tecum, Catilina, sic agit et quodam modo tacita loquitur: nullum iam aliquot annis facinus extitit nisi per te'."

objects not as speaking (instead of himself) but, on the contrary, as silent.[88] This feature is not mentioned in rhetorical theory.

3.3.4 Pauses for procedural reasons

A kind of technical pause occurs when the orator interrupts his speech for court proceedings, i.e. for evidence or a law being read out. This is quite frequent in Greek forensic speeches,[89] but less so in Roman oratory, as in Roman courts the examination of the evidence was conducted separately from the set speeches of prosecution and defence.[90] Speeches could contain re-readings of evidence already given (this occurred in *actiones secundae* given after the evidence[91]) or readings of written evidence taken from witnesses who would not appear in person.[92] Pauses for procedural reasons are recognisable in six of Cicero's extant speeches,[93] but as these pauses are entirely

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[88] Cic. *Q. Rosc.* 17 "dabit enim nobis iam tacite vita acta in alterutram partem firmum et grave testimonium"; Cic. *Sull.* 82 "atque ut de eorum constantia atque animo in rem publicam dicam quorum tacita gravitas et fides de uno quoque loquitur neque cuiusquam ornamenta orationis desiderat"; Cic. *Mil.* 11 "silent enim leges inter arma"; Cic. *Verr.* 2.5.176 "de omnibus nobis, si qui tantulum de recta regione deflexerit, non illa tacita existimatio quam antea contemnere solebatis, sed vehemens ac liberum populi Romani iudicium consequetur."

[89] Cf. the examples p. 112, n. 479, where the orator explicitly refers to a witness or piece of evidence "to prove that I speak true"; there are many more instances where the reference is made without the claim of truth. A rather curious point is made by Lysias, who uses the duration of the witness' statements to get some rest (Lys. *or.* 12.61); something different occurs in one of Demosthenes' speeches, where he carries on instead of making a "procedural pause", because the clerk is unable to find the proper statute (temporarily, it is indeed read out a few paragraphs later (Dem. *or.* 21.108).

[90] Mommsen (1899, p. 426–427), Greenidge (1901, p. 477).

[91] Greenidge (1901, p. 478).

[92] Greenidge (1901, p. 488).

[93] Cic. *Tull.* 24 "audite, quaeso, in eas res quas commemoro hominum honestorum testimonium. haec quae mei testes dicunt *etc.*"; Cic. *Font.* 18 "quas si antea non legistis, nunc ex nobis quid de eis rebus Fonteius ad legatos suos scripserit, quid ad eum illi rescripserint, cognoscite. L. M. AD C. ANNIVM LEG., AD C. FONTEIVM LEG., L. ⟨A.⟩ AB C. ANNIO LEG., AB C. FONTEIO LEG."; Cic. *Cluent.* 168 "quem propter animi dolorem pertenuis suspicio potuisset ex illo loco testem in A. Cluentium constituere, is hunc suo testimonio sublevat; quod recita."; Cic. *Leg. agr.* 2.48 "eam tu mihi ex ordine recita de legis scripto populi Romani auctionem; quam me hercule ego praeconi huic ipsi luctuosam et acerbam praedicationem futuram puto.—(AUCTIO)—"; Cic. *Flacc.* 20 "quam vero facile falsas rationes inferre et in tabulas quodcumque commodum est referre soleant, ex Cn. Pompei litteris ad Hypsaeum et Hypsaei ad Pompeium missis, quaeso, cognoscite.—LITTERAE POMPEI ET HYPSAEI.—", 27 "licuisse ut intellegas, cognosce quid me consule senatus decreverit, cum quidem nihil a superioribus continuorum annorum decretis discesserit.—SENATVS CONSVLTVM.—", 78 "num aliter censuit senatus? 'in absentem.' decrevit, cum ibidem esses, cum prodire nolles; non est hoc in absentem, sed in latentem reum.—SENATVS CONSVLTVM ET DECRETVM Flacci.—"; "recita.—LITTERAE Q. CICERONIS.—"; Cic. *Cael.*

planned and controlled by the orator and have no particular oratorical relevance as pauses, rhetorical theory does not treat the issue.

3.3.5 Conclusion

Dialogical settings, real or fictitious, are rare both in the Attic Orators and in Cicero's oratory, and Cicero does not cover the point in his theoretical works. All the more remarkable is Quintilian's advice on exploiting interruptions by single persons and on simulating these. The figure of *prosopopoeia*, where the orator creates the appearance of someone else speaking in his place, had a set place in oratorical practice and rhetorical theory and is duly treated also by Quintilian.

3.4 Interruption by the audience

Within the dialogical setting which I have considered so far, events of *interruption* have been articulate and made by a single person, aimed at engaging the orator in some kind of conversation. A different type altogether are interruptions by the audience, or part of the audience (and by this I mean not only the addressees of the speech but anyone who is listening, for whatever reason): here a dialogical situation is in most cases not aimed at, nor does it actually arise. Instead, the action of the audience has the sole (or at least main) intention of interrupting the orator, of hindering him from continuing his speech, from being understood, or from speaking at all. Beyond this, I shall include in this section a broad spectrum of audience reactions, although not every (audible) audience reaction is necessarily an interruption of the speaker, as he may still be able to carry on and be understood. Even if the orator is effectively hindered in his speech, the interruption can be provoked by himself (in which case he will assume that the outcry will die away in a reasonable time), or unprovoked and unexpected, but still welcomed as a positive signal. Interruptions of all these kinds are possible whenever the orator has an audience, even if it only consists of a single person—and since an orator without an audience is no orator at all, interruptions are an integral

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55 "ipsius iurati religionem auctoritatemque percipite atque omnia diligenter testimonii verba cognoscite. recita.—L. Luccei testimonivm.—"

part of the business of oratory. At the same time, interruptions are limiting to the orator, and are outside his immediate control. However, I shall show that ancient orators also knew how to turn the topic into a challenge as well as a tool that could be used to their advantage.

3.4.1 Methodological remarks

Records of actual speech interruptions in antiquity are scarce, of course. Yet we find some indications in the extant speeches, the clearest of which consist of the orator actually mentioning the interruption: e.g. "clamor iste",[94] "vestra admurmuratio".[95] We find examples of both positive and negative interruptions, and any conclusion about the one or the other being more frequent must remain somewhat speculative, as it would seem probable that negative interruptions were less likely to be included in the published speech, even though they may have been just as frequent, or more, in reality.[96]

A more implicit signal of a pause due to interruption is to be seen when the orator asks for attention,[97] implying that this is necessary (although whether it was, and whether an actual pause occurred in the delivery, is impossible to tell). The most remarkable example in Cicero's speeches is the beginning of *Pro Cluentio* (Cic. *Cluent.* 1–8), where the orator asks for attention several times. This paints an image of a particularly noisy and agitated audience and again raises the question how these passages came to be included in the written speech: did Cicero anticipate a difficult audience, and if so, how?[98] Or if, as is quite likely, we have a version of the speech written up from memory in the aftermath and edited to some degree in content and style,[99] what does it reveal about the actual speech situation? Indeed, we cannot know

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[94] Cic. *Rab. perd.* 18 "nihil me clamor iste commovet sed consolatur, cum indicat esse quosdam civis imperitos sed non multos".

[95] Cic. *Manil.* 37 "vestra admurmuratio facit, Quirites, ut agnoscere videamini qui haec fecerint".

[96] The case of Cicero's *Pro Milone* comes to mind as a somewhat extreme example; it is to be expected that there are many lesser ones which are unknown to us.

[97] Cf. p. 163 on the audience's attentive silence.

[98] The question is particularly relevant as the *prooemium* was a part of the speech which Cicero usually prepared in detail beforehand (Quint. *Inst.* 10.7.30). However, even if he did so in the case of *Pro Cluentio*, this written version of the *prooemium* is not necessarily identical with that in the extant speech.

[99] This is Kirby's opinion regarding this speech (Kirby, 1990, p. 162–170).

anything with certainty and in any detail about the audience's behaviour at the trial, nor even about anything Cicero did or did not say. But, as Kirby observes, this

> does not concern us here, for we are incapable of practising rhetorical criticism *except on the text we have*. If we can have any faith that our received text bears close resemblance to the speech as originally delivered, then our inquiry can extend also to the effect of the speech in its original historical milieu.[100]

Whether or not the text of the speech as we have it is historically "correct", it is at any rate authentic for the oratorical practice of its time, so that we may at least ask what Cicero intended by addressing his audience in the way described above, but also what he intended to achieve in his readers by including these passages in the published version of the speech.[101] The impression given by the extant text is an audience which is noisy at the beginning, but unusually quiet halfway through the speech.[102] This contrast serves a rhetorical purpose. The image of an excited audience at the beginning underlines implicitly Cicero's claim that the case (with all its history) has caused much gossip in the Roman public (*Cluent.* 4). This image is maintained throughout the first third of the speech[103] but changes, quite suddenly, in *Cluent.* 63, with exuberant praise of the judges' attention. It is even more surprising as it is not *presented* as a change—on the contrary, Cicero implies that the audience has been highly attentive all along. The earlier tension, while the orator had to work rather *against* the audience and their noise, suddenly relaxes and the orator is now completely *with* his audience, having even apparently forgotten (or forgiven) his earlier difficulties with them. With hindsight it is remarkable that this suggestive flattering is placed immediately before a

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[100] Kirby (1990, p. 163), italics by Kirby.

[101] Cf. Fuhrmann (1990, p. 61) (on Cic. *Verr.* 2) "Der in die imaginäre Gegenwart der Verhandlung geführte Leser sollte glauben, er werde darüber belehrt, mit welchen Mitteln Cicero auf die Richter eingewirkt hatte – er sollte darüber vergessen, daß der Appell ihm galt, daß er also der wahre Adressat der Einwirkung war."

[102] E.g. Cic. *Cluent.* 93 "quod nunc nostra defensio audiatur tanto silentio". Although the argument here is made about the entire speech, in contrast to Junius' defence in 74 BC, whom *defendendi sui potestas erepta sit*, this stands in contrast to the pleas for attention in the first paragraphs; however, in order for the argument to work in the actual speech situation, the orator needs only a sufficiently silent audience in the very moment when the argument is made. This is therefore what is implied by the written text.

[103] E.g. Cic. *Cluent.* 29 "sentio [...] vos [...] vehementer esse commotos".

crucial, but in fact very weak, argument of the speech.[104] As a rhetorical strategy it may be seen as Cicero's attempt to gain the jury's sympathy and prevent them from examining his argument too critically; as a literary strategy, directed at his reader, it is a demonstration of Cicero's oratorical excellence, as the reader (who is able to reread the passage and thus more likely to consider it with critical distance) sees through the strategy which enabled Cicero to deceive the jury.[105] Indeed, whether or not the reader reads the passage critically or not, or whether he is deceived and convinced like the primary addressee or whether he marvels at Cicero's power of deception, Cicero succeeds.

In the following considerations I shall mostly take the extant speeches as plausible (though not necessarily exact) representations of what was said on the respective occasions, not as literary products aimed at readers as a secondary audience.

3.4.2 Background

As has already become apparent, a general ambiguity dominates this topic: every orator wants, and needs, to move his audience, but if the audience gets too excited and noisy, the orator will have difficulties in getting his message across. The same is true, to a degree, for individuals: it may well be a sign of the orator's success if his opponent loses his composure, but this can also develop into a serious obstacle.

Both in Athens and Rome, a large audience and the resulting noise and disquiet is generally associated with interest in the orator and his case, rather

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[104] Cic. *Cluent.* 64 "unum quidem certe nemo erit tam inimicus Cluentio qui mihi non concedat, si constet corruptum illud esse iudicium, aut ab Habito aut ab Oppianico esse corruptum: si doceo non ab Habito, vinco ab Oppianico; si ostendo ab Oppianico, purgo Habitum." Cf. p. 108. On the weakness of the argument e.g. Fuhrmann (1997, p. 60), Burnand (2004, p. 284).

The flattery is continued two paragraphs later (66 "vos quaeso—ut adhuc me attente audistis—item quae reliqua sunt audiatis") and taken up again later in the speech (89 "hic ego magis ut consuetudinem servem, quam quod vos non vestra hoc sponte faciatis, petam a vobis ut me, dum de his singulis disputo iudiciis, attente audiatis"); similarly 156 "attenditis et auditis silentio sicut facere debetis".

[105] As Cicero himself claimed: Quint. *Inst.* 2.17.21 "se tenebras offudisse iudicibus in causa Cluenti gloriatus est".

than considered a disturbance.[106] Vice versa, a small and quiet audience is irritating to the orator, even if there are external reasons.[107]

In the *Pro Sestio*, however, a philosophical standpoint is employed, according to which visible and audible audience interest is generally a sign of favour, but the ideal (*gravis*) orator does not need it.[108]

In this section, I shall discuss interruptions of a speech by the audience, which can be either negative (uproar, protest) or positive (applause etc.). Related to these phenomena, but as their counterparts, are situations of audience silence: positive (attentive, benevolent) silence as opposed to protesting, negative (hostile) silence as opposed to applause. During a speech, the audience normally has nothing to say, yet they are expected (more so in Athens than in Rome) to express their opinion constantly, which must cause some interruption to the speaker. On the other hand, this expectation means that silence is not necessarily positive, i.e. attentive (though it can be, more likely in Rome than in Athens). A special situation is the fictitious or actual dialogue, where the audience is given a real chance to speak during the orator's speech; this has been covered in section 3.3.1, see above p. 140.

From the ancient texts we are provided with far more evidence on these topics than on interruptions by a single person, which have been dealt with briefly in section 3.3.2.

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[106] Bers (1985) includes in his discussion of θόρυβος "the voicing of positive as well as negative sentiments" (p. 1) and cites examples for positive and negative audience utterances in Athenian courts. Cf. Carey (1994, p. 177) "We know from a number of sources that Athenian juries were highly demonstrative. They were inclined to shout their approval and disapproval of what they were hearing." This behaviour was expected and accepted by everyone, including the speakers; consequently it made not much sense for them to ask for silence. Even when asking for attention (see p. 166) they probably did not mean the sort of focused attention which a modern orator would call for, rather emotional involvement.

For Rome cf. e.g. Cic. *S. Rosc.* 11 "quanta multitudo hominum convenerit ad hoc iudicium, vides", from which Cicero infers a "cupiditas, ut acria ac severa iudicia fiant"; Cic. *Sest.* 36 "neque huic vestro tanto studio audiendi nec vero huic tantae multitudini, quanta mea memoria numquam ullo in iudicio fuit, deero".

[107] Cic. *Mil.* 1 "haec novi iudici nova forma terret oculos: [...] non enim corona consessus vester cinctus est, ut solebat; non usitata frequentia stipati sumus".

[108] Cic. *Sest.* 115 "sit hoc sane leve, quod non ita est, quoniam optimo cuique impertitur; sed, si est leve, homini gravi leve est, ei vero qui pendet rebus levissimis, qui rumore et, ut ipsi loquuntur, favore populi tenetur et ducitur, plausum immortalitatem, sibilum mortem videri necesse est."

3.4.3 Theoretical advice

The best theoretical advice on (negative) interruptions in general is found in the *Rhetorica ad Alexandrum*, which contains an entire chapter[109] dealing, under the keyword of προκατάληψις, with means of both preventing and reacting to interruptions by the audience and (to a lesser extent) by the opponent. Put briefly, the author suggests directly addressing the interrupters and reproving their behaviour by referring to common rules of decency and to written and unwritten laws for court and assemblies. This quite extensive and systematic advice on the problem is not taken up by the later rhetorical works considered here; in particular Cicero's rhetorical treatises do not treat the topic in general. The phenomenon is present there (as will be seen below p. 167), but there are no practical considerations—other than in Quintilian, so that it is tempting to assume a major difference in the attitude towards audience reactions between the Republic and the Empire. A noisy audience is generally considered somewhat more negative by Quintilian[110] than by Cicero. When Quintilian gives direct advice on dealing with interruptions, he takes an evasive line and suggests that the speaker take refuge in a prepared *digressio* until the uproar has died away.[111] Even when considering that this advice is placed in a section not on interruptions but on *digressio*, there is still a remarkable difference from the position in the *Rhetorica ad Alexandrum* which insists on directly attacking the interrupters, not evading them. Both orator and audience apparently tended more towards an attitude of dignified reserve in the Empire than in earlier, more "democratic" eras.

3.4.4 Practice: negative interruptions

Interruptions of a negative type, i.e. directed against the orator's person, case, purpose, etc., are usually termed θόρυβος / *clamor*, although both terms

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[109] *Rhet. Alex.* 1432b19–1433a29.

[110] Quint. *Inst.* 4.2.37 "quae quidem virtus [narratio aperta ac dilucida] neglegitur a plurimis, qui ad clamorem dispositae vel etiam forte circumfusae multitudinis compositi non ferunt illud intentionis silentium, nec sibi diserti videntur nisi omnia tumultu et vociferatione concusserint".

[111] Quint. *Inst.* 4.3.16 "innumerabilia sunt haec, quorum alia sic praeparata adferimus, quaedam ex occasione vel necessitate ducimus si quid nobis agentibus novi accidit, interpellatio, interventus alicuius, tumultus."

can carry negative as well as positive connotations, depending on the context.[112]

In Athens, especially the ἐκκλησία must have been incredibly noisy, and expected to be so by everyone. In the Attic Orators we find various references to the audience shouting and hindering an orator from speaking, and most of these references imply that this behaviour was not considered unusual or indecent (even though unwelcome to the orator concerned).[113] Only Aeschines, in an early passage of his speech in the Crown Trial, declares that the normal behaviour in the ἐκκλησία *should* be so that any orator is able to speak uninterrupted, but in the current socio-political climate is not—however, at a later point in the same speech, Aeschines tells how Demosthenes was in an ἐκκλησία meeting shouted down for a particular answer he gave, and seems to approve of this reaction of the crowd.[114] The earlier passage thus seems not to represent a common opinion, not even Aeschines' general opinion, but an argument used at this specific point in this speech.

Quintilian, too, conveys this general impression in his anecdote about Demosthenes' shouting exercises,[115] and modern research confirms that "both direct and indirect evidence suggest that informal banter between the speakers themselves, interruptions of the speakers by the *demos*, and vocal debate between sections of the demos aligned behind opposing politicians were wholly typical and actually integral features of Assembly debate, and, by

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[112] Liddell et al. (1940) s.v. θορυβέω "2. shout in token of approbation *or* the contrary: a. cheer, applaud [...] b. *more freq.* raise clamour". E.g. Dem. *or.* 8.30 "εὐθέως φατὲ καὶ θορυβεῖθ' ὡς ὀρθῶς λέγει". On *clamor* see the examples from p. 168.

[113] Lys. *or.* 12.73; Dem. *or.* 2.29, 8.3, 8.23, 8.77, 18.143, 19.35

[114] Aischin. *Ctes.* 2–4 ἐβουλόμην μὲν οὖν, ὦ ἄνδρες Ἀθηναῖοι, καὶ τὴν βουλὴν τοὺς πεντακοσίους καὶ τὰς ἐκκλησίας ὑπὸ τῶν ἐφεστηκότων ὀρθῶς διοικεῖσθαι, καὶ τοὺς νόμους οὓς ἐνομοθέτησεν ὁ Σόλων περὶ τῆς τῶν ῥητόρων εὐκοσμίας ἰσχύειν, ἵνα ἐξῇν πρῶτον μὲν τῷ πρεσβυτάτῳ τῶν πολιτῶν, ὥσπερ οἱ νόμοι προστάττουσι, σωφρόνως ἐπὶ τὸ βῆμα παρελθόντι ἄνευ θορύβου καὶ ταραχῆς ἐξ ἐμπειρίας τὰ βέλτιστα τῇ πόλει συμβουλεύειν, δεύτερον δ' ἤδη καὶ τῶν ἄλλων πολιτῶν τὸν βουλόμενον καθ' ἡλικίαν χωρὶς καὶ ἐν μέρει περὶ ἑκάστου γνώμην ἀποφαίνεσθαι· οὕτω γὰρ ἄν μοι δοκεῖ ἥ τε πόλις ἄριστα διοικεῖσθαι, αἵ τε κρίσεις ἐλάχισται γίγνεσθαι. ἐπειδὴ δὲ πάντα τὰ πρότερον ὡμολογημένα καλῶς ἔχειν νυνὶ καταλέλυται [...]. τῆς δὲ τῶν ῥητόρων ἀκοσμίας οὐκέτι κρατεῖν δύνανται οὔθ' οἱ πρυτάνεις οὔθ' οἱ πρόεδροι οὔθ' ἡ προεδρεύουσα φυλή, τὸ δέκατον μέρος τῆς πόλεως., 224 καὶ περὶ τούτων ἐν ἅπασιν Ἀθηναίοις ἐξελεγχθεὶς ὑπ' ἐμοῦ καὶ κληθεὶς ξενοκτόνος, οὐ τὸ ἀσέβημα ἠρνήσω, ἀλλ' ἀπεκρίνω ἐφ' ᾧ ἀνεβόησεν ὁ δῆμος καὶ ὅσοι ξένοι περιέστασαν τὴν ἐκκλησίαν·

[115] Quint. *Inst.* 10.3.30 "propter quae idem ille tantus amator secreti Demosthenes in litore, in quo se maximo cum sono fluctus inlideret, meditans consuescebat *contionum fremitus* non expavescere."

extension, of Athenian democracy."[116] Consequently, "[a]s a vocal response, the uproar defines the [Athenian] audience as a group of potential speakers rather than of pure listeners. This may be the reason why Greek orators do not aim for silent admiration, as Roman orators do."[117]

In Athenian courts, (attentive) audience silence was not the norm, either, but it was more expectable than in the ἐκκλησία. Victor Bers has shown that both in actual forensic speeches and in their parodies in Old Comedy, "[s]peakers ask, in varying combinations, for attention, a friendly hearing, justice—and silence. Since these entreaties are clichés associated with one another, any one of them might well suggest another."[118] Reports in the Attic Orators about an orator being shouted down in court (in a real or hypothetical setting) imply that this was not out of the ordinary, but shone a very bad light on the respective speaker (more so than in the noisy assembly setting).[119] Moreover, the function of the "μὴ θορυβεῖτε" request as a topos (a type of *captatio benevolentiae*) is visible from its appearance not only in "real" speeches,[120] but also in Plato's idealised *Apologia*[121] and the standardised *prooemia* by Demosthenes.[122]

But another finding from evidence in Athenian forensic oratory is that "[t]he manipulation of *thorubos* was an element in rhetorical strategy",[123] used in positive and negative connotations: Bers identifies three forms of inciting θόρυβος in Athenian courts,[124] but also states that "[s]peakers never, to my knowledge, urge the jurymen to shout down their opponents in a blunderbuss expression of unequivocal outrage. [...] Suggestions of *tho-*

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[116] Tacon (2001, p. 177).

[117] Montiglio (2000, p. 292); cf. Wohl (2009, p. 165–166) "Cleon's ideal of a manly and resistant audience [in Thucydides] had its practical counterpart in the *thorubos*, the loud uproar with which audiences often responded to speeches in the Assembly or law courts. This raucous heckling, as Robert Wallace notes, was itself a form of *parrhesia*. It was a vocal demonstration that even when he was only listening, the Athenian was still exercising the rhetorical freedom of a good citizen."

[118] Bers (1985, p. 7).

[119] Dem. *or.* 45.6; Aischin. *Tim.* 34, 164, *leg.* 4, 153

[120] E.g. Dem. *or.* 5.15 "καί μοι μὴ θορυβήσῃ μηδεὶς πρὶν ἀκοῦσαι", 13.3 "καί μοι μὴ θορυβήσητ᾽ ἐφ᾽ ᾧ μέλλω λέγειν, ἀλλ᾽ ἀκούσαντες κρίνατε".

[121] Plat. *Apol.* 17d, 20e, 21a, 27b, 30c.

[122] E.g. Dem. *pr.* 4.1, 10.1, 21.4, 26.1 (regardless of their authenticity).

[123] Bers (1985, p. 8).

[124] Bers (1985, p. 9–10).

rubos attach rather to specific points", i.e. the audience is asked e.g. not to allow the opponent to speak off-topic, or to force him to present a certain law.[125] Shouting and noise from the audience (both judges and bystanders) was thus a common element of Athenian courts, but not as omnipresent as in the ἐκκλησία.

In the Roman Republic, trials were usually held on or in vicinity of the *Forum* and had to deal with the general surrounding noise, from where interruptions could occur without any intention on the interrupter's side. General noise was so normal that silence in the *Forum* was worth mentioning,[126] and both Cicero and Quintilian count the *Forum* noise as part of the usual business of oratory.[127]

Beyond this, there were trials where the audience was excited from the outset, because of the crime, the persons involved, the political implications etc., and vividly participated in the ongoing action,[128] especially in *altercationes*[129] which were more prone to action and reaction anyway than a single speech. Sensationalism and craving for scandals certainly played a role, as did the outrage which was induced by interested parties rather than reflecting genuine feeling (notoriously, Clodius' gangs in the Milo trials, in 56 BC[130] and after Clodius' death in 52 BC[131] tried, quite successfully, to instigate the

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[125] Bers (1985, p. 10–12), cf. Dem. *or.* 24.193.

[126] Asconius *ad Pro Milone* 41 "tantum silentium toto foro fuit quantum esse in aliquo foro posset".

[127] Cic. *De orat.* 1.157 "educenda deinde dictio est ex hac domestica exercitatione et umbratili *medium in agmen, in pulverem, in clamorem, in castra atque in aciem forensem*"; Quint. *Inst.* 12.5.6 (on Trachalus) "certe cum in basilica Iulia diceret primo tribunali, *quattuor autem iudicia, ut moris est, cogerentur atque omnia clamoribus fremerent*, et auditum eum et intellectum et, quod agentibus ceteris contumeliosissimum fuit, laudatum quoque ex quattuor tribunalibus memini."

[128] Cic. *Cluent.* 108 (about an earlier trial) "neque enim ipse dici patiebatur nec per multitudinem concitatam consistere cuiquam in dicendo licebat".

[129] E.g. Cic. *Brut.* 164 (on Crassus' speech against Cn. Domitius) "nulla est enim altercatio clamoribus umquam habita maioribus".

[130] Cic. *ad Q. fr.* 2.3.2 "dixit Pompeius sive voluit; nam, ut surrexit, operae Clodianae clamorem sustulerunt, idque ei perpetua oratione contigit non modo ut acclamatione sed ut convicio et maledictis impediretur. qui ut peroravit (nam in eo sane fortis fuit; non est deterritus; *dixit omnia atque interdum etiam silentio, cum auctoritate †peregerat†*) sed ut peroravit, surrexit Clodius. ei tantus clamor a nostris (placuerat enim referre gratiam) ut neque mente nec lingua neque ore consisteret."

[131] Asconius *ad Pro Milone* 41–42 "Cicero cum inciperet dicere, exceptus est acclamatione Clodianorum, qui se continere ne metu quidem circumstantium militum potuerunt. itaque non ea qua solitus erat constantia dixit."

people). In any case, the audience aims (or at least seems to) at a recognisable goal, chiefly a particular result of the trial.

While an actual hostile interruption by the audience mostly meant a problem for the orator that had to be countered,[132] reports about such *clamores* could be exploited in the argumentation. Cicero uses the point in the Verres trial, where he underlines the importance of his argument by the emotional reaction of the audience at earlier occasions.[133] In the *Pro Milone*, Cicero relates the excitement at a *contio* on the day before and anticipates the *clamor* which is to be expected from it, thus admonishing the judges not to let *genus illud hominum* influence their decision (at the same time launching a character attack on his opponents).[134] In the *Pro Rabirio perduellionis reo*, Cicero was confronted with a *clamor* which was clearly audible but not loud enough to prevent him from being understood, and he directly drew from there an argument in his own favour.[135]

For the situation of political speeches in Rome, the difference between senate and *contio* speeches must be kept in mind, which also accounts for a contrast to Athenian circumstances: important political speeches in Athens were usually given in the ἐκκλησία, which was about as noisy and excited as a Ro-

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[132] The most famous case is probably (if Asconius is to be believed) Cicero's ultimate failure in his defence of Milo, when he was more or less shouted down by Clodius' gangs, despite the presence of Pompey's troops in the *Forum* (Asconius *ad Pro Milone* 41–42; a different view, probably derived from Cicero's extant speech [which may or may not represent how the actual mood of orator and audience at the trial had been], in Plut. *Cic.* 35.4 and Cassius Dio 40.54.2). Cf. p. 208 on the strategies in the surviving speech.

[133] Cic. *Verr.* 2.2.47 (at a meeting of the Syracusian senate) "verum etiam ipsi illi auctores iniuriae et ex aliqua particula socii praedae ac rapinarum clamare coeperunt sibi ut haberet hereditatem. tantus in curia clamor factus est ut populus concurreret."; 2.2.127 (at an election in Sicily) "fit clamor maximus, cum id universis indignum ac nefarium videretur"; 2.3.80 (at a witness account in the same trial) "itaque cum Philinus Herbitensis, homo disertus et prudens et domi nobilis, de calamitate aratorum et de fuga et de reliquorum paucitate publice diceret, animadvertistis, iudices, gemitum populi Romani, cuius frequentia huic causae numquam defuit". In the last case, Cicero refers to the earlier reaction of the *corona* to impress the jury.

[134] Cic. *Mil.* 3 "hesterna etiam contione incitati sunt, ut vobis voce praeirent quid iudicaretis. quorum clamor si qui forte fuerit, admonere vos debebit, ut eum civem retineatis, qui semper genus illud hominum clamoresque maximos prae vestra salute neglexit."

[135] Cic. *Rab. perd.* 18 "nihil me clamor iste commovet sed consolatur, cum indicat esse quosdam civis imperitos sed non multos". The remark stands as an unrelated insertion in the middle of the argumentation and is clearly not part of the prepared speech but of the edition after the trial. Since the trial was held before an assembly of the people, and the actual speech as well as its difficult circumstances were thus widely known, the published version (published by Cicero among his "consular speeches") is likely to represent it quite closely.

man *contio*. The majority of Cicero's political speeches, however, were set in the senate, which was probably much easier as far as unspecific noise was concerned, having its assemblies in the *Curia* or in temples, without a *corona* of bystanders inside the building. Furthermore, the rules of procedure generally ensured that once a senator had been given the floor, he could not be interrupted,[136] and by and large a dignified silence must be assumed to have been the rule, at least compared to the *Forum*. Of course, these regulations were broken, and the senators rose in collective indignation against a speaker in exceptional situations, as reported in the cases of Piso[137] and, probably the best-known example, Catiline.[138] In the *De provinciis consularibus*, Cicero mentions an interruption—and immediately draws an argument from it to justify his position:

> at ego idem nunc in provinciis decernendis, qui illas omnes res
> egi silentio, interpellor, cum in superioribus causis hominis orna-
> menta valuerint, in hac me nihil aliud nisi ratio belli, nisi summa
> utilitas rei publicae, moveat.[139]

Cicero compares earlier political speeches, where he has spoken unhindered in Caesar's favour, to the current speech, where he is interrupted while speaking rather for the *res publica* than for any single person—this is the picture he draws in the published version of the speech.[140] To the reader this conveys the impression that Cicero met with resistance exactly when he argued for a particularly honourable cause, for the state, and that this was exactly the situation when he would absolutely not back down. This impression again functions regardless whether the interruption had taken place in the actual speech or not.

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[136] Mommsen (1871, vol. 3, p. 939).

[137] Cic. *Pis.* 29 "an tum eratis consules cum, quacumque de re verbum facere coeperatis aut referre ad senatum, cunctus ordo reclamabat ostendebatque nihil esse vos acturos, nisi prius de me rettulissetis?"

[138] Plut. *Cic.* 16.3 "ἐνταῦθα καὶ τοῦ Κατιλίνα μετὰ τῶν ἄλλων ἐλθόντος ὡς ἀπολογησομένου, συγκαθίσαι μὲν οὐδεὶς ὑπέμεινε τῶν συγκλητικῶν, ἀλλὰ πάντες ἀπὸ τοῦ βάθρου μετῆλθον. ἀρξάμενος δὲ λέγειν ἐθορυβεῖτο, καὶ τέλος ἀναστὰς ὁ Κικέρων προσέταξεν αὐτῷ τῆς πόλεως ἀπαλλάττεσθαι".

[139] Cic. *Prov. cons.* 29.

[140] According to Fuhrmann (1970, vol. 6, p. 59), the published version was a political pamphlet, based on the actual speech in the senate.

The Roman *contio* must be imagined at least as noisy as the Athenian ἐκκλησία in general; in contrast, however, while everybody could attend, not everybody was allowed to speak at a *contio*, but only those invited by the magistrate who had called the *contio*. Besides, it was not (as the ἐκκλησία was) a general meeting of all citizens,[141] and there is a tendency that those who attended a particular *contio* would usually rather agree with the speakers, and not tend to hostile interruptions:

> The nature and purpose of *contiones* meant that certainly by the late republic they were useful to a politician only if he could command a supportive audience. [...] the internal logic of the institution was to develop into a stage-managed political demonstration.[142]

However, "[e]s kam auch vor, dass jemand gezwungen wurde, öffentlich zu einer konkreten Frage Stellung zu nehmen", in a *contio* called by an opposing party,[143] in which case a less favourable audience must be assumed—a scenario which for lack of sufficient evidence defies closer examination.

Whenever the issue of hostile interruptions by the audience is broached directly in the Attic Orators' or Cicero's speeches, the focus is on its counterpart, the topic of *attentive silence*. Just as loud audience reactions can be either positive or negative, so can audience silence, which means that the orator can easily utilise it as he sees fit. In the majority of cases where audience silence is mentioned, it is connected with an attentive and favourable audience, which is agreed throughout ancient rhetoric to be a major condition for the orator's success.[144]

References to audience silence in speeches can be sorted into three categories: occasions of (current or earlier) silence mentioned in the speech; thanks for silence; and asking for silence.

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[141] Officially it was, but not actually: Mouritsen (2001, p. 13) "*Contiones* were highly formalised occasions, on which the speakers by definition always addressed the entire Roman people, no matter how small the actual crowd may have been." Similarly Morstein-Marx (2004, p. 128); cf. Tan (2008, p. 172–175).

[142] Mouritsen (2001, p. 50).

[143] Pina Polo (1996, p. 49–50).

[144] It is among the most commonly agreed purposes of the *prooemium*, which are *auditorem benivolum attentum docilem facere* (cited e.g. Cic. *De orat.* 2.80; Quint. *Inst.* 4.1.5). On the other hand, causing an inattentive (not necessarily very noisy) audience is a sure sign of a bad orator (Cic. *Brut.* 200).

Occasions of *audience silence mentioned in speeches*[145] can be divided into *addresses to the audience* of the current speech who are being silent, and *statements of audience silence* (which are either reports about audience silence during other speeches, i.e. possibly with a different orator, different audience, or both; or the orator refers to one part of the current audience being silent while addressing another part, mostly addressing his opponent). The figure is virtually unknown in the Attic Orators, so examples can only be drawn from Cicero here. In the case of *statements of audience silence*, rather neutral interpretations of this silence as a sign of attention[146] are quite likely to be realistic; more frequent in Cicero's speeches, however, are presentations of audience silence as agreement or approval,[147] the most notorious of which is probably the *cum tacent, clamant* in the first Catilinarian, and it is more than likely that at least some of these are not realistic descriptions but rather convenient interpretations, or *veri similia, quae causam probabilem reddant*.[148] This is underlined by the fact that Cicero counts attentive silence either as a

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[145] Again, we face the problem that we cannot know how far the speech text as we have it corresponds to the speech as delivered, so statements about *actual* audience reactions at a certain occasion are mostly impossible. We can only regard the texts which we have as plausible examples of actual speeches, and examine how they *would* have related to the actual audience (re)action *if* delivered in this way.

[146] Cic. *Verr.* 2.2.74 "erat hominum conventus maximus, summum silentium, summa exspectatio quonam esset eius cupiditas eruptura"; Cic. *Cael.* 29 "sed tu [Balbus] mihi videbare ex communi infamia iuventutis aliquam invidiam Caelio velle conflare; itaque omne illud silentium, quod est orationi tributum tuae, fuit ob eam causam, quod uno reo proposito de multorum vitiis cogitabamus."

[147] Cic. *Div. in Caec.* 23 "nunc tantum id dicam quod tacitus tu mihi adsentiare"; Cic. *Catil.* 1.20 "quid est, Catilina? ecquid attendis, ecquid animadvertis horum silentium? patiuntur, tacent. quid exspectas auctoritatem loquentium, quorum voluntatem tacitorum perspicis?", 1.21 "cum tacent, clamant"; Cic. *Sest.* 40 "me vero non illius oratio, sed eorum taciturnitas in quos illa oratio tam improba conferebatur; qui tum, quamquam ob alias causas tacebant, tamen hominibus omnia timentibus tacendo loqui, non infitiando confiteri videbantur.", 107–108 "[Lentulus] egit causam summa cum gravitate copiaque dicendi tanto silentio, tanta adprobatione omnium, nihil ut umquam videretur tam populare ad populi Romani auris accidisse. [...] quo silentio sunt auditi de me ceteri principes civitatis!"; Cic. *Planc.* 43 "quem iudicem ex illis aut tacitum testem haberes aut vero etiam excitares?"; Cic. *Phil.* 7.8 "magna spe ingredior in reliquam orationem, patres conscripti, quoniam periculosissimum locum silentio sum praetervectus."

[148] Cic. *Inv.* 1.9 "inventio est excogitatio rerum verarum aut veri similium, quae causam probabilem reddant".

weak form of applause,[149] or as stronger than loud applause,[150] depending on what best fits his case.

A unique use of the topic of attention is found in the *Pro Caelio* where Cicero remarks upon the attention which the jury had (allegedly) paid to his opponent, the prosecutor Herennius, and verbosely warns against the rhetorical tricks Herennius had (again, allegedly) employed[151]—that this argumentation did not destroy Cicero's case, even though his own speech was full of similar tricks, is just another indication that Cicero could expect to win this case from the beginning.[152]

The problem is less relevant when Cicero directly addresses the audience about its own silence (either thanking them for silence or asking for it), as a gross misinterpretation would be met with immediate protest, leading the silence itself ad absurdum.[153] A certain proportion of not incorrect but tendentious interpretations must be assumed nevertheless. This second category, appreciation of, or *offering thanks for attention* is a figure again not found in the Attic Orators, and more frequent in Cicero's speeches than pure mention (and interpretation) of positive audience silence. In some cases, it is probably genuine and is both a means of connecting with the audience and a *captatio benevolentiae*; in others it may instead be a confirmation of something which actually is not there but is wanted or expected, in hope for a self-fulfilling prophecy. Signs of the latter variant are most clearly discernible in the *Pro Sestio*, where Cicero, in the last paragraphs of the speech, is trying hard to keep his audience's dwindling attention, combining thanks for listening *tam attente* with a promise of brevity;[154] and in the unsubtle remark in *Pro Cluentio* where Cicero reminds the jury of their duty to listen silently (while

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[149] Cic. *Sest.* 55 "tacentibus dicam? immo vero etiam adprobantibus".

[150] Cic. *Deiot.* 34 "de plausu autem quid respondeam? qui nec desideratus umquam a te est et non numquam obstupefactis hominibus ipsa admiratione compressus est et fortasse eo praetermissus, quia nihil volgare te dignum videri potest."

[151] Cic. *Cael.* 25 "animadverti enim, iudices, audiri a vobis meum familiarem, L. Herennium, perattente *etc.*"

[152] See Gotoff (1986) for a fuller analysis of Cicero's dealing with Herennius' speech.

[153] Again, we cannot deduce anything about actual particular speaking occasions, but it must have been plausible to use such passages in a speech, and where this happened, it must have corresponded to actual audience silence.

[154] Cic. *Sest.* 136 "sed ut extremum habeat aliquid oratio mea, et ut ego ante dicendi finem faciam quam vos me tam attente audiendi, ... ". Cf. section 2.5.3 on the topic of "annoying the audience".

ostentatiously appreciating their doing so).[155] In the majority of cases, the validity of the statement is near to impossible to determine.[156]

Much more frequent again in Cicero's speeches, and used widely also in the Attic Orators, is the third category, the figure of *asking for attention* or for (attentive) silence.[157] Its most frequent form is the generic request for attention,[158] actual references to *silent* attention are found less often (and only in the Attic Orators, not in Cicero).[159] The figure is sometimes combined, especially by Cicero, with thanks or praise for the attention granted so far, building a *captatio benevolentiae*,[160] and sometimes it includes a promise of

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[155] Cic. *Cluent.* 156 "vos attenditis et auditis silentio sicut facere debetis".

[156] Cic. *Cluent.* 63 "nam etsi a vobis sic audior ut numquam benignius neque attentius quemquam auditum putem, tamen vocat me alio iam dudum tacita vestra exspectatio, quae mihi obloqui videtur: ...", 93 "quid ergo est causae quod nunc nostra defensio audiatur tanto silentio, tum Iunio defendendi sui potestas erepta sit?"; Cic. *Sest.* 31 "etsi me attentissimis animis summa cum benignitate auditis, iudices", 115 "facit enim, iudices, vester iste in me animorum oculorumque coniectus ut mihi iam licere putem remissiore uti genere dicendi"; Cic. *Planc.* 36 "neque huic vestro tanto studio audiendi nec vero huic tantae multitudini, quanta mea memoria numquam ullo in iudicio fuit, deero"; Cic. *Phil.* 1.38 "cepi fructum, patres conscripti, reversionis meae, quoniam et ea dixi, ut, quicumque casus consecutus esset, exstaret constantiae meae testimonium, et sum a vobis benigne ac diligenter auditus." For further interpretation of the passages from *Pro Cluentio* see p. 153.

[157] It can be connected to, or overlapped with, the figure of προπαρασκευή or προκατασκευή "when the speaker prepares the audience to attend, in a special way, a course of argument that he is about to present" (Rowe, 1997, p. 146), which was established in late antique rhetoric (Hermogenes *Inv.* 3.2; Fortunatianus *Ars rhet.* 2.15; Rufinianus *De figuris* 32; cf. Lausberg (1990, § 854)).

[158] Attic Orators: e.g. Lys. *or.* 6.11, 10.19, 12.62, 19.11, 21.1, 30.9, 32.19; Dem. *or.* 18.5, 18.173, 20.74, 20.95, 21.7, 21.24, 21.184, 22.4, 22.38, 23.4, 23.125, 23.194, 24.19, 24.144, 32.3, 35.5; Aischin. *Tim.* 39, 116, 192, *leg.* 1, 22, *Ctes.* 64; Cicero: Cic. *Quinct.* 22 "obsecro, C. Aquili vosque qui adestis in consilio, ut diligenter attendatis, ut singulare genus fraudis et novam rationem insidiarum cognoscere possitis."; Cic. *S. Rosc.* 9 "quapropter [i.e. multiple impediments, circumstances, nervousness] vos oro atque obsecro, iudices, ut attente bonaque cum venia verba mea audiatis."; Cic. *Q. Rosc.* 37 "attende, quaeso, Piso"; Cic. *Verr.* 2.3.104 "attendite, iudices, diligenter", 2.3.196 "attendite et, vos quaeso, simul, iudices, aequitatem praetoris attendite.", 2.4.64 "nunc reliquum, iudices, attendite, de quo et vos audistis et populus Romanus non nunc primum audiet et in exteris nationibus usque ad ultimas terras pervagatum est."; Cic. *Leg. agr.* 1.12 "audite, audite vos qui amplissimo populi senatusque iudicio exercitus habuistis et bella gessistis"; Cic. *Sull.* 33 "adeste omnes animis, Quirites, quorum ego frequentia magno opere laetor; erigite mentis aurisque vestras et me de invidiosis rebus, ut ille putat, dicentem attendite!"; Cic. *Phil.* 2.10 "alterum peto a vobis, ut me pro me dicentem benigne, alterum ipse efficiam, ut, contra illum cum dicam, attente audiatis."

[159] E.g. Dem. *or.* 5.3, 5.15, 13.14; Aischin. *leg.* 24.

[160] Attic Orators: e.g. Aischin. *leg.* 102; Cicero: Cic. *Verr.* 2.3.10 "superiore omni oratione perattentos vestros animos habuimus: id fuit nobis gratum admodum. sed multo erit gratius si reliqua voletis attendere, propterea quod ...", 2.4.102 "nunc eadem illa, quaeso, audite et diligenter, sicut adhuc fecistis, attendite."; Cic. *Phil.* 1.15 "deinde a vobis, patres conscripti, peto, ut, etiamsi sequi minus audebitis rationem atque auctoritatem meam, benigne me tamen, ut adhuc fecistis, audiatis.", 2.47 "quae peto ut, quamquam multo notiora vobis quam mihi sunt, tamen ut facitis, attente audiatis. debet enim talibus in

brevity,[161] or an excuse for the length of the speech.[162] The last is found in the speech *Pro Cluentio*, which shows a remarkable frequency of this specific feature (not quite as remarkable, maybe, when considering the extraordinary length of the speech). It has already been discussed above (see p. 153) how the references to the audience's behaviour are rhetorically employed with particular skill in this speech.

Advice on the issue of hostile interruptions and attentive silence is scarce before Quintilian. The *Rhetorica ad Alexandrum* has a paragraph on just and unjust demands an orator might make on the audience, and under the former classifies "δίκαιον μὲν οὖν ἐστι τό τε προσέχειν τοῖς λεγομένοις αἰτεῖσθαι καὶ τὸ μετ' εὐνοίας ἀκούειν",[163] but without further comment about when and how to use this. Cicero's *De oratore* knows silence as a sign of approval,[164] or at least of lenience,[165] and shows awareness of the ambiguous nature of the phenomenon, as both silence and *clamor* are named as expression of the same appreciation,[166] but Cicero nowhere in his *rhetorica* indicates how an orator should aim at such audience reactions, or deal with them.

This changes only with Quintilian; he mentions the figure of asking for attention twice, and as a means of, or combined with, structuring the speech.[167] This innovation in rhetorical theory seems to be connected to the

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rebus excitare animos non cognitio solum rerum, sed etiam recordatio", 7.9 "peto a vobis, patres conscripti, ut eadem benignitate, qua soletis, mea verba audiatis", 13.22 "velim, patres conscripti, ut adhuc fecistis, me attente audiatis".

[161] Lys. *or.* 16.9; Cic. *Verr.* 2.2.108 "tamen paulum etiam attendite", 2.3.163 "de quo dum certa et pauca et magna dicam breviter, attendite", 2.5.42 "haec dum breviter expono, quaeso, ut fecistis adhuc, diligenter attendite".

[162] Aischin. *leg.* 44; Cic. *Cluent.* 160 "atque ut existimetis necessario me de his rebus de quibus iam dixerim pluribus egisse verbis, attendite reliqua: profecto intellegetis ea quae paucis demonstrari potuerint brevissime esse defensa".

[163] *Rhet. Alex.* 1433b19–21.

[164] Cic. *De orat.* 3.33 "[me] verentem, ne, si paulo obsoletior fuerit oratio, non digna exspectatione et silentio fuisse videatur".

[165] Cic. *De orat.* 3.198 "verum ut in versu vulgus, si est peccatum, videt, sic, si quid in nostra oratione claudicat, sentit; sed poetae non ignoscit, nobis concedit: taciti tamen omnes non esse illud, quod diximus, aptum perfectumque cernunt".

[166] Cic. *De orat.* 3.53 "quem stupefacti dicentem intuentur? in quo exclamant?" A more detailed picture of the ideal behavior of an audience (in court) is given in the *Brutus*: Cic. *Brut.* 290 "cum surgat is qui dicturus sit, significetur a corona silentium, deinde crebrae assensiones, multae admirationes; risus cum velit, cum velit fletus; ut qui haec procul videat, etiam si quid agatur nesciat, at placere tamen et in scaena esse Roscium intellegat".

[167] Quint. *Inst.* 4.1.73–74 "nam iudices et in narratione nonnumquam et in argumentis ut attendant et ut faveant rogamus, quo Prodicus velut dormitantes eos excitari putabat, quale

change in the circumstances of oratory mentioned above (p. 157), as the orator in the Empire could typically rely much more on his audience being silent than Cicero could. Furthermore, it corresponds with the observation that in Athenian courts and assemblies, attentive silence of the audience was neither the "normal" state nor sought by the orators, so that the figures concerning it are not much used (except the rather general call for attention), nor discussed in theory.

Quintilian, however, dealing with audience silence as a usual setting, consequently warns his students, especially those not prone to great theatricality, to rely rather on the audience's silent deliberation than on show-pieces of emotion—while Cicero, in the long passage of *De oratore* dealing with emotions, always focuses on dramatic effects, with only slight restrictions.[168] Another indication of the changed circumstances is the fact that Quintilian considers the opposite of benevolent attention to be not only hostile *clamor* but, as an important problem, a distracted and uninterested audience.[169]

3.4.5 Practice: positive interruptions

As mentioned above, an audience shouting out may be a sign of approval as well as disapproval, in Athens[170] and in Rome.[171] Without context it is

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est: [74] 'tum C. Varenus, qui a familia Anchariana occisus est—hoc quaeso, iudices, diligenter attendite.' utique si multiplex causa est, sua quibusque partibus danda praefatio est, ut 'audite nunc reliqua' et 'transeo nunc illuc'."; Quint. *Inst.* 4.4.9 "'de his cognoscitis', ut sit haec commonitio iudicis, quo se ad quaestionem acrius intendat et velut quodam tactu excitatus finem esse, narrationis et initium probationis intellegat".

[168] Quint. *Inst.* 6.1.44 "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 cogitationibus* reliquisset."; Cic. *De orat.* 2.185–215.

[169] Quint. *Inst.* 8.2.23 "nam si neque pauciora quam oportet neque plura neque inordinata aut indistincta dixerimus, erunt dilucida et neglegenter quoque audientibus aperta: quod et ipsum in consilio est habendum, non semper tam esse acrem iudicis intentionem ut obscuritatem apud se ipse discutiat et tenebris orationis inferat quoddam intellegentiae suae lumen, sed multis eum frequenter cogitationibus avocari, nisi tam clara fuerint quae dicemus ut in animum eius oratio, ut sol in oculos, etiam si in eam non intendatur incurrat."

[170] Cf. Montiglio (2000, p. 151): "Although in Athens, unlike in Sparta and other parts of Greece, voting by cheers was not normal practice,[footnote: Cf. Brandis 1905: 2195. On this way of voting, cf. also Plutarch *Life of Lycurgus* 26.3–5 and Thucydides 1.87. The Homeric world, as we have seen, knows of a similar practice.] Athenian audiences spontaneously shout to pronounce their immediate judgment."

[171] E.g. Cic. *Verr.* 1.45 [about Pompeius] "factus est in eo strepitus, et grata contionis admurmuratio. [. . .] tum vero non strepitu, sed maximo clamore, suam populus Romanus significavit voluntatem."

often impossible to distinguish between positive and negative reactions.[172] A good orator renders his audience either attentive or excited, according to Cicero's *Brutus*,[173] and there are a few instances in Demosthenes' speeches where he reports about an earlier occasion where he gained applause, interpreting this as a success[174]—on the other hand, Demosthenes and Aeschines rebuke the audience for giving out applause too easily (the wish to speak unhindered may be another motive here), and Aeschines also turns it against his opponent, accusing Demosthenes of "fishing for applause".[175] References to applause as it happens are rare in the Attic Orators,[176] most probably as it was too common, in court as well as in the ἐκκλησία, to be mentioned explicitly. Aeschines relates how an attempt to restrain this custom failed completely: a speaker on the Areopagus was met first with applause, then with laughter and shouting, and when another reprimanded the audience for laughing in the presence of the βουλή, he was dismissed and driven off the platform.[177]

Similarly in Cicero's time, an orator would in general aim at audible approval rather than silence, for Cicero states that "magnum quoddam est onus atque munus suscipere atque profiteri se esse, omnibus silentibus, unum maximis de rebus magno in conventu hominum audiendum".[178] For most modern speakers it would be even more difficult to speak *omnibus loquentibus* or *clamantibus*, but for Cicero and his contemporaries it apparently was not. Applause was also expected for stylistic and rhythmic feats,[179] and in

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[172] Very clearly in Aischin. *leg.* 51, where θορυβεῖν is used in both ways, differentiated only by the further context: "θορυβησάντων δ' ἐπ' αὐτῷ τῶν μέν, ὡς δεινός τις εἴη καὶ σύντομος, τῶν δὲ πλειόνων, ὡς πονηρὸς καὶ φθονερός".

[173] Cic. *Brut.* 200 "erectos intuentis iudices [...] oratione quasi suspensos teneri aut [...] motu animi aliquo perturbatos esse".

[174] Dem. *or.* 6.26, 18.179, 19.195, 21.14.

[175] Dem. *or.* 8.30, 10.44; Aischin. *Tim.* 78, 174, *leg.* 130.

[176] E.g. (not even directly referring to applause) Lys. *or.* 16.8.

[177] Aischin. *Tim.* 81–85: ἔνθα δὴ καὶ παρέρχεται Πύρρανδρος ἐπιτιμήσων ὑμῖν, καὶ ἤρετο τὸν δῆμον, εἰ οὐκ αἰσχύνοιντο γελῶντες παρούσης τῆς βουλῆς τῆς ἐξ Ἀρείου πάγου. ὑμεῖς δ' ἐξεβάλλετε αὐτὸν ὑπολαμβάνοντες· 'ἴσμεν, ὦ Πύρρανδρε, ὅτι οὐ δεῖ γελᾶν τούτων ἐναντίον· ἀλλ' οὕτως ἰσχυρόν ἐστιν ἡ ἀλήθεια, ὥστε πάντων ἐπικρατεῖν τῶν ἀνθρωπίνων λογισμῶν.' (84)

[178] Cic. *De orat.* 1.116.

[179] Cic. *Orat.* 168 "contiones saepe exclamare vidi, cum apte verba cecidissent"; 214 "hoc dichoreo tantus clamor contionis excitatus est, ut admirabile esset"; Quint. *Inst.* 8.3.3 "an in causa C. Corneli Cicero consecutus esset docendo iudicem tantum et utiliter demum ac Latine perspicueque dicendo ut populus Romanus admirationem suam non adclamatione

the phenomenon of "hired *contiones*"[180], people were obviously paid with the expectation that they would not only attend but also applaud the orator.

That a very audible approval was the most common audience reaction is also reflected in the fact that Cicero mentions it quite rarely in his speeches, much less than attentive silence. Those two instances where Cicero relates how another speech was met with loud appreciation rather seem like wishful thinking. The first is found in the *Pro Balbo* (Cicero is speaking about Pompey's speech on the previous day):

> [hoc] non opinione tacita vestrorum animorum, sed perspicua admiratione declarari videbatur.[181]

It is well possible that there was actually some rather approving noise at Pompey's speech, which is interpreted by Cicero as a definite and obvious cheer, thus shaping the audience's (or even his own) memory of the event. The case is somewhat ambiguous, however, for Pompey was, at least in Cicero's opinion, a rather weak orator[182] but immensely popular and on some occasions quite a good public speaker,[183] so that loud approval of one of his speeches was perhaps not exactly a surprise, but worth mentioning (whether it had happened or not). The second instance is in the *De Milone* where Cicero speaks about speeches by himself in the senate:

> quotiens enim est illa causa a nobis acta in senatu! quibus adsensionibus universi ordinis, quam nec tacitis nec occultis![184]

In this case, loud reactions to senate speeches were rare anyway, so that an outstanding level of applause is not probable, and therefore all the more worth mentioning if it happened (which must have been the case here, to a degree, or else the passage would be implausible). On both occasions, Cicero must have felt particularly obliged to mention the applause, since under normal circumstances it would have contributed nothing to his argument at all.

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tantum sed etiam plausu confiteretur? sublimitas profecto et magnificentia et nitor et auctoritas expressit illum fragorem."

[180] Cic. *Sest.* 104 "conductas habent contiones".

[181] Cic. *Balb.* 2.

[182] Cf. Cic. *Brut.* 239, Cic. *Att.* 1.14.1.

[183] Cf. van der Blom (2011, p. 570).

[184] Cic. *Mil.* 12.

Furthermore, explicit satisfaction with an audience reaction occurs only in *contio* speeches,[185] not in court or senate speeches. As a rather benevolent audience could be usually assumed in *contiones*, the grateful mentioning of applause seems to have been a topos specifically of *contiones*. Possibly a *contio* audience expected to be flattered more than others, as attendance was more voluntary there (or maybe at least orators thought so).

In rhetorical theory, the topic of applause is not discussed in the Greek treatises.[186] In the Roman writers of rhetorical theory, the issue is indeed treated, and is dominated by a moral ambiguity: applause is a natural aim of any orator, but the ideal orator is not dependent on audience reactions. Cicero, who pays tribute to the former aspect in the *contio*, employs the latter point as an argument of character in a senate speech;[187] this is an attempt to give the matter a philosophical turn, employing the topos of the orator-sapiens who is unaffected by applause and other mundane benefits, and to protect it from the accusation of being a *popularis* policy.

In his rhetorical treatises, Cicero mentions *clamor* with a positive meaning in several passages,[188] more than with a negative meaning, but again does not give any detailed advice on reacting to or on provoking applause.

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[185] Cic. *Manil.* 37 "vestra admurmuratio facit, Quirites, ut agnoscere videamini qui haec fecerint; ego autem nomino neminem; qua re irasci mihi nemo poterit nisi qui ante de se voluerit confiteri."; Cic. *Leg. agr.* 2.49 "hic mihi parumper mentis vestras, Quirites, commovere videor, dum patefacio vobis *etc.*"; Cic. *Phil.* 4.2 "num vero multo sum erectior, quod vos quoque illum hostem esse tanto consensu tantoque clamore adprobavistis.", 4.3 "laudo, laudo vos, Quirites, quod gratissimis animis prosequimini nomen clarissimi adulescentis vel pueri potius . . . ", 4.5 "praeclare et loco, Quirites, reclamatione vestra factum pulcherrimum Martialium conprobavistis", 4.7 "sic arbitrabar, Quirites, vos iudicare, ut ostenditis.", 4.11 "reliquum est, Quirites, ut vos in ista sententia, quam prae vobis fertis, perseveretis", 6.18 "tantus vester iste consensus".

[186] In a passage of Aristotle it is clear that he uses θόρυβος with the meaning of "applause", but in a different context: Aristot. *Rhet.* 1356b23–25 πιθανοὶ μὲν οὖν οὐχ ἧττον οἱ λόγοι οἱ διὰ τῶν παραδειγμάτων, θορυβοῦνται δὲ μᾶλλον οἱ ἐνθυμηματικοί.

[187] Cic. *Phil.* 1.37 "equidem is sum, qui istos plausus, cum popularibus civibus tribuerentur, semper contempserim; idemque, cum a summis, mediis, infimis, cum denique ab universis hoc idem fit, cumque ii, qui ante sequi populi consensum solebant, fugiunt, non plausum illum, sed iudicium puto."

[188] Cic. *Orat.* 107 "quantis illa clamoribus adulescentuli diximus [de supplicio parricidarum], quae nequaquam satis defervisse post aliquanto sentire coepimus", 111 "clamores tamen tum movet et tum in dicendo plurimum efficit, cum gravitatis locis utitur", 236 "eloquens vero, qui non approbationes solum sed admirationes, clamores, plausus, si liceat, movere debet"; Cic. *De orat.* 1.152 "haec sunt, quae *clamores et admirationes* in bonis oratoribus efficiunt", 3.53 "quem stupefacti dicentem intuentur? in quo exclamant?"

Quintilian, however, differs from Cicero on this point as in the matters of noise and attentive silence. Throughout the *Institutio* he forcefully warns against fishing for applause, especially for every single part of the speech, i.e. even specific words and figures. Even school students ought to refrain from applause for fellow students,[189] according to Quintilian, who continues with a particular point on prose rhythm[190] and comes to the general opinion that applause should not be asked for[191] and should only be valued if given for an entire speech, rather than its parts.[192] Direct advice for reactions to applause is quite sparse in Quintilian, and mostly negative (i.e. what the orator ought not to do), but this is more than his predecessors provided (as far as we know); his general tendency is not to interact too much with the excited audience, but to wait for it to calm down.[193]

Disapproving, or even *hostile silence* is the counterpart to approving *clamor*, viz. applause. As loud approval was considered normal, a silent audience could mean that the orator had failed and should end his attempt, according to Cicero,[194] who also set hostile silence on the same level as hostile inter-

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[189] Quint. *Inst.* 2.2.9 "minime vero permittenda pueris, ut fit apud plerosque, adsurgendi exultandique in laudando licentia: quin etiam iuvenum modicum esse, cum audient, testimonium debet. ita fiet ut ex iudicio praeceptoris discipulus pendeat, atque id se dixisse recte quod ab eo probabitur credat."; Quint. *Inst.* 2.2.11–12 "vultum igitur praeceptoris intueri tam qui audiunt debent quam ipse qui dicit: ita enim probanda atque improbanda discernent; sic stilo facultas conprotinget, auditione iudicium. [12] at nunc proni atque succincti ad omnem clausulam non exsurgunt modo verum etiam excurrunt et cum indecora exultatione conclamant. id mutuum est et ibi declamationis fortuna. hinc tumor et vana de se persuasio usque adeo ut illo condiscipulorum tumultu inflati, si parum a praeceptore laudentur, ipsi de illo male sentiant."

[190] Quint. *Inst.* 8.5.14 "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." Here again we see an exaggeration in the Empire of a feature rated favourably in the Republic, cf. Cic. *Orat.* 214 "hoc dichoreo tantus clamor contionis excitatus est, ut admirabile esset".

[191] Quint. *Inst.* 10.2.27 "laus ipsa popularis utilitatis gratia adsumpta, quae tum est pulcherrima cum sequitur, non cum arcessitur".

[192] Quint. *Inst.* 12.9.4 "quae omnia non dum fiunt laudantur, sed cum facta sunt, unde etiam cupidissimis opinionis plus fructus venit. nam cum illa dicendi vitiosa iactatio inter plausores suos detonuit, resurgit verae virtutis fortior fama, nec iudices a quo sint moti dissimulant, et doctis creditur, nec est orationis vera laus nisi cum finita est."

[193] Quint. *Inst.* 11.3.126 "conveniet: iam et ambulatio quaedam propter inmodicas laudationum moras", cf. Cic. *Orat.* 59; Quint. *Inst.* 11.3.131 "unde moneor ut ne id quidem transeam, ineptissime fieri cum inter moras laudationum aut in aurem alicuius locuntur aut cum sodalibus iocantur aut nonnumquam ad librarios suos ita respiciunt ut sportulam dictare videantur."

[194] Cic. *Brut.* 192 "[populi aures] si inflatum non recipiunt—aut si auditor omnino tamquam equus non facit, agitandi finis faciendus est"; similarly (in inverse argumentation) Cic.

ruptions in the *De provinciis consularibus*.[195] In the oratorical reality it was apparently rare, or else the orators would have exploited it more often in their speeches (as they do with hostile interruptions and attentive silence), not only in an isolated passage in Lysias[196] and, for Cicero, in the famous, but singular incident with Catiline and in two other instances.[197] Usually any resentment in the audience would be voiced, rather than expressed by silence, as Cicero states in the *Divinatio in Caecilium*.[198]

3.4.6 Absent audience

A very radical (and the most negative) variant of audience silence occurs when the audience, or a significant part of it, is absent. Cicero describes his irritation when he has to give his defence speech for Deiotaros before Caesar alone, without the usual *corona*, so that he is deprived of the noise of the *Forum* (a point from which he develops a *captatio benevolentiae*).[199] Total absence of the audience leaves no room for oratory at all, of course,[200] and this can save the orator from the most embarrassing effect of his efforts at all, which occurs when he is abandoned by his audience while still speaking.

Brut. 88 "sic illam causam tanta vi tantaque gravitate dixisse Galbam ut nulla fere pars orationis silentio praeteriretur".

[195] Cic. *Prov. cons.* 40 "sed non alienum esse arbitror, quo minus *saepe aut interpeller a non ullis aut tacitorum existimatione reprehendar*, explicare breviter quae mihi sit ratio et causa cum Caesare."

[196] Lys. *or.* 12.75.

[197] Cic. *Catil.* 1.16 "venisti paulo ante in senatum. quis te ex hac tanta frequentia totque tuis amicis ac necessariis salutavit? si hoc post hominum memoriam contigit nemini, vocis expectas contumeliam, cum sis gravissimo iudicio taciturnitatis oppressus?"; Cic. *Planc.* 46 "quid apud hos dices qui abs te taciti requirunt cur sibi hoc oneris imposueris, cur se potissimum delegeris, cur denique se divinare malueris quam eos qui scirent iudicare?"; Cic. *Phil.* 1.14 "non modo voce nemo L. Pisoni consularis, sed ne vultu quidem assensus est."

[198] Cic. *Div. in Caec.* 21 "cur nolint, etiamsi taceant, satis dicunt; verum non tacent."

[199] Cic. *Deiot.* 5–6 "moveor etiam loci ipsius insolentia, quod tantam causam, quanta nulla umquam in disceptatione versata est, dico intra domesticos parietes, dico extra conventum et eam frequentiam, in qua oratorum studia niti solent: [. . .] hanc enim, C. Caesar, causam si in foro dicerem eodem audiente et disceptante te, quantam mihi alacritatem populi Romani concursus adferret! [. . .] sic, cum et deorum immortalium et populi Romani et senatus beneficia in regem Deiotarum recordarer, nullo modo mihi deesse posset oratio."

[200] Reports about such breakdowns of speaking occasions are: Cic. *Phil.* 1.6 "nihil per senatum, multa et magna per populum et absente populo et invito", 1.25–26 "POPULUSQUE IURE SCIVIT. qui populus? isne, qui exclusus est?", 5.1 "in senatum non vocabamur", 7.15 "armis aut opsedit aut exclusit senatum".

Cicero relates a few occasions of this event in the *Brutus*,[201] and judging from the way these incidents are told, there is nothing the orator can do about them. This kind of audience silence is the ultimate defeat of oratory.

3.4.7 Audience laughter

A special kind of audience reaction, neither positive nor negative by itself, is laughter. Arousing laughter against someone, i.e. ridiculing them, is a major aspect in the area of invective[202] and thus an aspect of oratory in general. Some research has been done on the use of humour and wit by ancient orators, and especially by Cicero, who was famous for his witticisms;[203] unfortunately there is not much to be said about actual audience laughter as it occurred, as it is rarely mentioned in the sources. Besides, while we do find hints in the extant speeches of the audience reacting to the orator's jokes as intended, the most interesting instance for our purpose, i.e. the audience laughter *interrupting* the orator in an unfavourable way, is rather unlikely to leave any trace in the published speeches. We have a few accounts of orator being laughed at: Aeschines reports the incident in the βουλή mentioned above, and how Demosthenes, on the embassy to Philip, was met with laughter;[204] Cicero relates in the *Pro Cluentio* how one of his opponents made a fool of himself in an earlier trial,[205] and in other contexts reports dialogue situations in which one orator defeated the other by winning the

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[201] Cic. *Brut.* 192 "quid tu, Brute, posses, si te ut Curionem quondam contio reliquisset? ego vero, inquit ille, ut me tibi indicem, in eis etiam causis, in quibus omnis res nobis cum iudicibus est, non cum populo, tamen si a corona relictus sim, non queam dicere"; 289 "at cum isti Attici dicunt, non modo a corona, quod est ipsum miserabile, sed etiam ab advocatis relinquuntur"; 305 "erat enim tribunus plebis tum C. Curio, quamquam is quidem silebat, ut erat semel a contione universa relictus".

[202] Cf. Koster (1980, p. 8–21), Spatharas (2006, p. 379–380).

[203] Halliwell (1991), Corbeill (1996), Schneider (2000), Spatharas (2006).

[204] Aischin. *leg.* 112.

[205] Cic. *Cluent.* 58–59 "itaque cum callidissime se dicere putaret [Caepasius pro Fabricio] et cum illa verba gravissima ex intimo artificio deprompsisset, 'respicite, iudices, hominum fortunas, respicite dubios variosque casus, respicite C. Fabrici senectutem'—cum hoc 'respicite' ornandae orationis causa saepe dixisset, respexit ipse: at C. Fabricius a subselliis demisso capite discesserat. [59] hic iudices ridere".

audience's laughter,[206] but there is nothing to be learned here about how an orator would react to this challenge.

Neither are the rhetorical treatises very helpful here. The use of jokes and humour is covered in several of them,[207] especially in the quite substantial sections of Cicero's *De oratore* and Quintilian's *Institutio* devoted specifically to jokes,[208] but the writers of rhetorical theory concentrate on the topic of arousing the audience's laughter for their purposes, and mostly do not treat strategies to deal with unwanted laughter. Cicero mentions that an orator is going to be laughed at if he does not use proper Latin,[209] but (obviously) does not offer any advice. The most explicit statement is made by Quintilian, who (in the context of the figure of exaggeration) declares that (audience) laughter is regarded as a sign of wit, if caused intentionally by the orator, but stupidity if otherwise.[210] Yet again, he does not give any further advice.

3.4.8 Conclusion

To sum up: approving *clamor* was the most normal reaction of a speech audience throughout antiquity, and was thus not much commented on. Its direct counterpart, hostile silence, was rare; disapproval was rather expressed through hostile *clamor*. On the other hand, approving and attentive silence

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[206] Cic. *Brut.* 260 "[C. Rusius] fuit accusator, inquit, vetus, quo accusante C. Hirtilium Sisenna defendens dixit quaedam eius putatilica esse crimina. tum C. Rusius: circumvenior, inquit, iudices, nisi subvenitis. Sisenna quid dicat nescio; metuo insidias; sputatilica, quid est hoc? sputa quid sit scio, tilica nescio. maximi risus"; Cic. *Att.* 1.16.10 (about an exchange with Clodius in the senate) "surgit pulchellus puer, obicit mihi me ad Baias fuisse. falsum, sed tamen 'quid? hoc simile est,' inquam, 'quasi in operto dicas fuisse?' 'quid,' inquit, 'homini Arpinati cum aquis calidis?' 'narra,' inquam, 'patrono tuo, qui Arpinatis aquas concupivit' (nosti enim Marianas).' quousque,' inquit, 'hunc regem feremus ?' 'regem appellas,' inquam, 'cum Rex tui mentionem nullam fecerit?'; ille autem Regis hereditatem spe devorarat. 'domum,' inquit, 'emisti.' 'putes,' inquam, 'dicere: iudices emisti.' 'iuranti,' inquit, 'tibi non crediderunt.' 'mihi vero,' inquam, 'XXV iudices crediderunt, XXXI, quoniam nummos ante acceperunt, tibi nihil crediderunt.' magnis clamoribus adflictus conticuit et concidit."

[207] Aristot. *Rhet.* 1419b3–5 "δεῖν ἔφη Γοργίας τὴν μὲν σπουδὴν διαφθείρειν τῶν ἐναντίων γέλωτι τὸν δὲ γέλωτα σπουδῇ, ὀρθῶς λέγων"; *Rhet. Alex.* 1419b15–27.

[208] Cic. *De orat.* 2.216–290; Quint. *Inst.* 6.3.

[209] Cic. *De orat.* 3.52 "nemo enim umquam est oratorem, quod Latine loqueretur, admiratus; *si est aliter, inrident* neque eum oratorem tantum modo, sed hominem non putant".

[210] Quint. *Inst.* 8.6.74 "monere satis est mentiri hyperbolen, nec ita ut mendacio facere 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."

was generally considered not quite as positive as loud applause, but was also a common aim of orators.

In rhetorical theory, the importance of all types of audience reactions for the orator is recognised, though not treated systematically. Specific advice on provoking audience reactions, or handling them, is scarce. The attitude towards *clamor*, silence, and asking for either of these changes markedly with Quintilian, for whom an atmosphere of loud approval was not as desirable as for earlier eras; in particular he resents orators who constantly seek applause, even for words and sentences.

In oratorical practice, it is especially the issue of attentive silence which provided on the one hand a wide spectrum of possible interpretation, which could be used as part of an argument, and various ways of asking for it on the other, thus building various shades of connection with the audience. Here, the oratorical reality, as shown in the Attic Orators and Cicero's speeches, again moves clearly beyond the possibilities recognised by rhetorical theory.

3.5 Conclusion

The phenomena which can lead to *pauses* in a speech are highly diverse, as is, consequently, their usage in ancient oratory and their treatment in ancient rhetoric. *Structural pauses* are inseparably connected to prose rhythm, a topic which is treated in ancient rhetorical theory to some extent; however, with relation to pauses in particular, most observations and advice would have been exchanged orally and by practical training, so that statements on this point by the ancient writers of rhetorical theory tend to be rather general.

Longer pauses, on the other hand, made by the orator to allow for *dialogical situations* or *interruptions*, can be observed to play a substantial role both in the extant speeches and the ancient rhetorical theory. Especially the interruption by a single person (real or simulated) and the figure of *prosopopoeia* are both used in oratorical practice and discussed in rhetorical theory, while audience reactions (positive and negative *clamor*, positive and negative silence) are much more exploited in practice than is recognised in the theoretical works.

4 Limits of the speaker: dealing with failure

4.1 Introduction

Various kinds of *failure* may cause unintentional silence and omissions on the orator's part: mainly voice failure and memory failure, to which may be added potential failures due to nervousness. In contrast to interruption from outside, the orator is limited here only by his own incapacity. The main tasks for the orator and the writer of rhetorical theory to consider here are:

⋄ how to prevent failure beforehand;

⋄ how to deal with failure when it arises; and

⋄ how to use failure rhetorically: by turning it around into an advantage, or by pretending to suffer from it.

For the first two of these tasks we cannot expect much evidence from oratorical practice, especially not from the extant (i.e. edited) speeches. Preventive measures like voice training or careful memorisation of the speech would not appear in the text anyway; any mishap during the actual speech, which might be included in a transcript, would likely be erased in the editing process.[1] Therefore the evidence that I will be drawing on is mostly consideration and advice given by the writers of rhetorical theory. The third task, however, offers valuable opportunities for comparison of theory and practice, as these feats are more likely to be included in the published speeches whenever they were used in practice.

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[1] Cf. on a broader scale Wisse (2013, p. 168): "Bad orators can have had little interest in recording and disseminating their efforts, and if they did, others had few incentives to preserve them."

This chapter is primarily structured by the types of failure, the most important of which are failure of voice (section 4.2) and of memory (section 4.3); a somewhat minor aspect is potential failure due to nervousness (section 4.4). The remaining two sections add further approaches the topic of oratorical failure: oratorical incompetence in general, including intellectual shortcoming, is considered under the heading "lack of talent" (section 4.5). Finally I shall discuss the "topos of incapability" and "topos of the inexpressible" (section 4.6) as the most genuinely rhetorical feature of failure in ancient oratory.

4.2 Voice failure

4.2.1 Introduction

A strong voice and generally strong health is necessary to be heard at all physically in an assembly of tens or even hundreds of listeners, and to stay fit throughout a lawsuit of a whole day with speeches of several hours each.[2] Therefore a generally or temporarily impaired voice or acute voice failure (which again can be either due to a generally weak voice, or a momentary problem) were, and are, problems worth considering for virtually any orator.[3]

4.2.2 Weak voice

From a medical point of view, muteness, congenital or acquired, and weak voices, were treated in antiquity by Galen and other medical writers and often connected to stupidity (in remarkable contrast to blindness, which was regarded as rather ambiguous and could be seen as a divine blessing[4]); in

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[2] Schulz (2014) discusses the role of the voice in ancient rhetoric in general, as it is treated in the theoretical treatises; she does not examine any speech texts in extenso, or consider devices of pretended voice failure etc.

[3] A strong voice appears as a kind of cliché of an orator in Aristophanes' *Knights*: "τὰ δ᾽ ἄλλα σοι πρόσεστι δημαγωγικά, / φωνὴ μιαρά, γέγονας κακῶς, ἀγοραῖος εἶ· / ἔχεις ἅπαντα πρὸς πολιτείαν ἃ δεῖ·" (Aristoph. *Equ.* 217–219); Cicero names it as nature's gift for an orator: Cic. *De orat.* 3.31 "Sulpicius autem fortissimo quodam animi impetu, *plenissima et maxima voce*, summa contentione corporis et dignitate motus, verborum quoque ea gravitate et copia est, ut unus ad dicendum instructissimus a natura esse videatur."

[4] Barasch (2001, p. 10) "The essential characteristic of the blind person's figure, as it appeared to the ancient mind, is his ambiguity. He is not perceived as either good or bad,

this context, "[g]enerally speaking defect and absence of voice are signs of weakness and impotence".[5] In rhetoric, however, a practical view prevailed: muteness was only relevant insofar as a total loss of voice would end an orator's career, and a weak voice was much more a practical problem than (in the audience's perception) connected to weakness of mind or character;[6] a weak voice or generally weak bodily constitution, even if it did not prevent the orator from speaking or talking at all, would make it difficult for him to be heard and understood in a larger audience,[7] and/or to deliver a speech of possibly several hours. (On the other hand, a loud voice was not only a technical necessity but also used in a particular situation as a sign of honesty, like in Cicero's *Pro Sulla*, where a low voice is associated with secrecy and dishonesty.[8])

The weak voice was thus regarded as an oratorical issue and treated in rhetorical writings. It could be an absolute impediment, making all education and exercise useless, as Cicero and Quintilian agree.[9] Cicero in the

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trustworthy or suspicious, unfortunate or blessed; he is all that at the same time. On the one hand, he is the unfortunate person deprived of sight, the most valuable of senses; on the other, he is often endowed with a mysterious, supernatural ability."

[5] Ciani (1987, p. 159); cf. e.g. Aristot. *Pol.* 1253a2-4.

[6] Demosthenes in his first appearances in the assembly was laughed at primarily due to his oratorical style, while his shortcomings in voice only made it even worse (Plut. *Dem.* 6.3). Isocrates and Cicero (see below p. 180) did not find it dishonourable to claim health problems as reasons for not giving speeches.

[7] Large audiences were normal even in small courts of justice, since normally in court the orator had to speak loud enough also for the crowd to hear him, and the opposite is announced expressly: Cic. *Flacc.* 66 "sic submissa voce agam tantum ut iudices audiant". According to Cicero, the orator even needs the crows to be actually eloquent: Cic. *De orat.* 2.338 "habet enim multitudo vim quandam talem, ut, quem ad modum tibicen sine tibiis canere, sic orator sine multitudine audiente eloquens esse non possit."

[8] Cic. *Sull.* 30 "qui cum suppressa voce de scelere P. Lentuli, de audacia coniuratorum omnium dixisset, tantum modo ut vos qui ea probatis exaudire possetis, de supplicio, de carcere magna et queribunda voce dicebat.", 33 "maxima voce ut omnes exaudire possint dico semperque dicam.", 34 "atque ut idem omnes exaudiant clarissima voce dicam"; cf. Cic. *Mil.* 67 (to Pompey) "te enim iam appello, et ea voce ut me exaudire possis". On the other hand, a loud voice is used explicitly as a sign of honesty, e.g. Cic. *Verr.* 2.3.217 "etenim hoc dico, et magna voce dico"; Cic. *Caecin.* 92 (in a trial on ejection from property) "itaque is qui se restituisse dixit magna voce saepe confiteri solet se vi deiecisse, verum illud addit: [. . .]"; Cic. *Cluent.* 134 "[P. Africanus] cum esset censor et in equitum censu C. Licinius Sacerdos prodisset, clara voce ut omnis contio audire posset dixit se scire illum verbis conceptis peierasse"; Cic. *Lig.* 6 "vide quanta lux liberalitatis et sapientiae tuae mihi apud te dicenti oboriatur: quantum potero voce contendam ut hoc populus Romanus exaudiat"; Cic. *Dom.* 96 "dico igitur, et quam possum maxima voce dico".

A low voice is thus linked to suppression or omission of adverse arguments, see p. 97.

[9] Cic. *De orat.* 1.115 "sunt quidam aut ita lingua haesitantes aut ita voce absoni aut ita vultu motuque corporis vasti atque agrestes, ut, etiam si ingeniis atque arte valeant, tamen

Brutus names weakness of body or voice as a reason (though not the only one) for M. Piso's giving up his oratorical career[10] and later mentions the larger audience in criminal courts (*subsellia*) requiring a strong voice.[11]

Of course a weak voice could be a welcome reason for interrupting, ending, or not even starting an oratorical career in order to hide other reasons (or to avoid a discussion about the motives). For instance, Isocrates tells in his "autobiography" that he did not become an orator due to lack of a strong voice and of self-confidence[12]—we will never know which of the two motives was stronger,[13] but if physical problems had indeed made public speaking impossible to Isocrates, why would he have mentioned a lack of self-assurance? Cicero's case for the interruption in his career in 79–78 B.C. is even more doubtful: he himself rather insists on his health being the reason for his journey to Greece[14] while Plutarch suspects fear of Sulla as the real cause.[15] Naturally these manoeuvres, regardless whether the health reasons were real or not, found no echo of advice in rhetorical writings, as these were concerned with orators who actually wanted to be orators.

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in oratorum numerum venire non possint"; Quint. *Inst.* 1.pr.27 "sunt et alia ingenita cuique adiumenta, vox, latus patiens laboris, valetudo, constantia, decor, quae si modica optigerunt, possunt ratione ampliari, sed nonnumquam ita desunt ut bona etiam ingenii studiique corrumpant"; Quint. *Inst.* 11.3.12–13 "nam certe bene pronuntiare non poterit [...] si inemendabilia oris incommoda obstabunt [...] [13] sed ne vox quidem nisi libera vitiis actionem habere optimam potest. bona enim firmaque ut volumus uti licet [...] sed nos de eo nunc loquamur cui non frustra praecipitur."

[10] Cic. *Brut.* 236 "is [M. Piso] laborem forensem diutius non tulit, quod et corpore erat infirmo et hominum ineptias ac stultitas, quae devorandae nobis sunt, non ferebat iracundiusque respuebat sive morose, ut putabatur, sive ingenuo liberoque fastidio".

[11] Cic. *Brut.* 289 "qua re si anguste et exiliter dicere est Atticorum, sint sane Attici; sed in comitium veniant, ad stantem iudicem dicant: subsellia grandiorem et pleniorem voce desiderant" (cf. Douglas (1966), Marchese (2011) *ad locum*); cf. Cic. *Brut.* 317 "acrem enim oratorem, et incensum et agentem et canorum concursus hominum forique strepitus desiderat".

[12] Isocr. *Or.* 12.10 "οὕτω γὰρ ἐνδεὴς ἀμφοτέρων ἐγενόμην τῶν μεγίστην δύναμιν ἐχόντων παρ' ἡμῖν, φωνῆς ἱκανῆς καὶ τόλμης, ὡς οὐκ οἶδ' εἴ τις ἄλλος τῶν πολιτῶν"; similarly *Or.* 5.81 and *Epist.* 8.7.

[13] A source like Plut. *Vit. dec.* 4 is probably based on Isocrates himself and thus no independent confirmation.

[14] Cic. *Brut.* 314 "cum censerem remissione et moderatione vocis et commutato genere dicendi me et periculum vitare posse et temperatius dicere, ut consuetudinem dicendi mutarem, ea causa mihi in Asiam proficiscendi fuit".

[15] Plut. *Cic.* 3.2 "εἶθ' ὁρῶν εἰς στάσιν, ἐκ δὲ τῆς στάσεως εἰς ἄκρατον ἐμπίπτοντα τὰ πράγματα μοναρχίαν, ἐπὶ τὸν σχολαστὴν καὶ θεωρητικὸν ἀνελθὼν βίον Ἕλλησί τε συνῆν φιλολόγοις καὶ προσεῖχε τοῖς μαθήμασιν, ἄχρι οὗ Σύλλας ἐκράτησε καὶ κατάστασίν τινα λαμβάνειν ἔδοξεν ἡ πόλις."

Besides, most of the treatises are not concerned at all with physical-medical conditions on the person of a potential orator; only Cic. *De orat.* and Quintilian consider the topic at all. Cicero "fordert aber von dem Redner nicht nur eine besondere geistige, sondern auch körperliche Eignung":[16] "quid de illis dicam, quae certe cum ipso homine nascuntur, linguae solutio, vocis sonus, latera, vires, conformatio quaedam et figura totius oris et corporis?";[17] similarly, Quintilian takes "vox, latus patiens laboris, valetudo"[18] as either innately given or not, but neither of them goes into any detail about how to decide if someone's constitution is sufficient for an oratorical career (despite Cicero's own, at least alleged, problems on this point).

The same two treatises, Cicero's *De oratore* and Quintilian's *Institutio*, are the only ones to propose remedies against a weak voice and means of strengthening the voice, albeit in very general terms: Cicero acknowledges both the value of training for the voice (in a list with breath, body, and tongue)[19] and the general importance of the voice for the orator, but sees it outside the scope of his treatise and thus only gives the unspecific advice of "crebra mutatio",[20] i.e. variation of exercises;[21] he does not differentiate between "normal" exercises for an untrained, but otherwise healthy voice, and special treatments for a damaged or naturally weak voice. When he does mention particular exercises, it is in a completely different context, in the anecdotes about Demosthenes (who e.g. trained his respiration by declaiming overlong sentences in a single breath, or spoke with pebbles in his mouth,

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[16] Barwick (1963, p. 8).

[17] Cic. *De orat.* 1.114; similarly *De orat.* 2.85 "qua re ego tibi oratorem sic iam instituam, si potuero, ut quid efficere possit ante perspiciam: [. . .] temptabo quid deceat, quid voce, quid viribus, quid spiritu, quid lingua efficere possit."

[18] Quint. *Inst.* 1.pr.27, see above n. 9.

[19] Cic. *De orat.* 1.156 "iam vocis et spiritus et totius corporis et ipsius linguae motus et exercitationes non tam artis indigent quam laboris".

[20] Cic. *De orat.* 3.224 "de quo illud iam nihil ad hoc praecipiendi genus, quem ad modum voci serviatur: equidem tamen magno opere censeo serviendum; sed illud videtur ab huius nostri sermonis officio non abhorrere, quod, ut dixi paulo ante, plurimis in rebus quod maxime est utile, id nescio quo pacto etiam decet maxime. nam ad vocem obtinendam nihil est utilius quam crebra mutatio; nihil perniciosius quam effusa sine intermissione contentio." Cf. Cic. *Off.* 1.133.

[21] The point is repeated in *Orat.* 59: "ac vocis quidem bonitas optanda est; non est enim in nobis, sed tractatio atque usus in nobis. ergo ille princeps variabit et mutabit: omnis sonorum tum intendens tum remittens persequetur gradus."

or while going up a steep hill),[22] and there as well Cicero does not recommend the exercises themselves, but draws the general conclusion "hisce [. . .] cohortationibus [. . .] ad studium et ad laborem incitandos iuvenis".

Quintilian wishes the voice to be cared for from a very young age[23] and later takes up and develops the advice of *variatio* in exercises, combining it with the practice of rote-learning.[24] Yet again we find no advice regarding how to treat an impaired voice, although we would expect that Quintilian, as a teacher of rhetoric for decades, had been confronted with the issue. We are just given some more details for "normal" students, e.g. to be very careful with the voice in puberty.[25]

We can only speculate to what degree a public career was possible with a generally weak voice. The lowest ranks of the *cursus honorum*, Quaestor and Aedile, were almost purely administrative jobs and would not necessarily require oratorical abilities, neither in the office itself nor in the election campaign which could be conducted without public speeches. Beyond these levels it would have probably become difficult: the office of tribune was closely connected to the *contio*, and the praetorship contained military tasks, thus it is hard to imagine someone being elected to either of these who was unable to make himself understood in a crowd. Other posts, outside the strict *cursus* (like *tresviri* and *decemviri*, censorship, or various priesthoods), were probably attainable without particular concern.

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[22] Cic. *De orat.* 1.260–261 "imiteturque illum, cui sine dubio summa vis dicendi conceditur, Atheniensem Demosthenem, in quo tantum studium fuisse tantusque labor dicitur, ut primum impedimenta naturae diligentia industriaque superaret, cumque ita balbus esset, ut eius ipsius artis, cui studeret, primam litteram non posset dicere, perfecit meditando, ut nemo planius esse locutus putaretur; [261] deinde cum spiritus eius esset angustior, tantum continenda anima in dicendo est adsecutus, ut una continuatione verborum, id quod eius scripta declarant, binae ei contentiones vocis et remissiones continerentur; qui etiam, ut memoriae proditum est, coniectis in os calculis, summa voce versus multos uno spiritu pronuntiare consuescebat; neque is consistens in loco, sed inambulans atque ascensu ingrediens arduo", cf. Plut. *Dem.* 11.1–2.

[23] Quint. *Inst.* 1.10.27 "age, non habebit in primis curam vocis orator? quid tam musices proprium? sed ne haec quidem praesumenda pars est" (in the section about music in education).

[24] Quint. *Inst.* 11.3.25–26 "ediscere autem quo exercearis erit optimum (nam ex tempore dicentis avocat a cura vocis ille qui ex rebus ipsis concipitur adfectus), et ediscere quam maxime varia, quae et clamorem et disputationem et sermonem et flexus habeant, ut simul in omnia paremur. [26] hoc satis est."

[25] Quint. *Inst.* 11.3.28 "illud non sine causa est ab omnibus praeceptum, ut parcatur maxime voci in illo a pueritia in adulescentiam transitu, quia naturaliter impeditur".

4.2.3 Acute voice failure

But a generally weak voice is only one side of the problem. Waking up on the morning of a trial with a sore throat, or having to interrupt a speech because of acute voice failure were problems that could (and can) happen to the best orator of all—what, then, is he to do about it?

The *Rhetorica ad Herennium* spends a paragraph on the issue;[26] the *Auctor* does not deal with the moment when a pause has already occurred (this is covered nowhere in the rhetorical writings), but gives detailed advice regarding how the orator should use his voice in the different parts of his speech—e.g. subdued voice at the beginning, variation between louder and lower passages in the middle part, long periods without breathing pauses only in the *peroratio*—in order to keep it strong and steady.

Further search for advice on the topic leads us again to the more "philosophical" treatises, Cicero's *De oratore* and Quintilian's *Institutio*. Cicero quite ostentatiously does not talk about voice failure; he mentions the issue of a hoarse voice, but expressly not as a problem of orators but of actors,[27] and in an anecdote presents a *patronus malus* who has yelled his voice to pieces during the trial;[28] although it is not clear if it is the loss of voice that makes this advocate a *malus patronus*, Cicero seemingly does not accept that even a good orator is sometimes powerless against his own physis.

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[26] *Rhet. Her.* 3.21 "firmam ergo maxime poterimus in dicendo vocem conservare, si quam maxime sedata et depressa voce principia dicemus. nam laeditur arteria, si, antequam voce leni permulsa est, acri clamore completur. et intervallis longioribus uti convenit: recreatur enim spiritu vox et arteriae reticendo adquiescunt. et in continuo clamore remittere et ad sermonem transire oportet: commutationes enim faciunt, ut nullo genere vocis effuso in omni voce integri simus. et acutas vocis exclamationes vitare debemus: ictus enim fit et vulnus arteriae acuta atque attenuata nimis adclamatione, et qui splendor est vocis, consumitur uno clamore universus. et uno spiritu continenter multa dicere in extrema convenit oratione: fauces enim calefiunt et arteriae conplentur et vox, quae tractata varie est, reducitur in quendam sonum aequabilem atque constantem."

[27] Cic. *De orat.* 1.259 "itaque nos raucos saepe attentissime audiri video; tenet enim res ipsa atque causa; at Aesopum, si paulum inrauserit, explodi".

This relates to the concept of *artem arte celare*, see p. 120.

[28] Cic. *De orat.* 2.282 "huic similis est etiam admonitio in consilio dando familiaris, ut cum patrono malo, cum vocem in dicendo obtudisset, suadebat Granius, ut mulsum frigidum biberet, simul ac domum redisset, 'perdam' inquit 'vocem, si id fecero': 'melius est' inquit 'quam reum.'"

Quintilian, more lenient, notes that with a generally weak voice it can be necessary to interrupt the speech, but does not consider any remedies.[29]

4.2.4 Pretending voice failure

So far I have considered the problem how to handle unintended and unexpected voice failure which actually happens to the orator—but beyond this the orator can utilise failure of voice for his rhetorical purposes by pretending it.

One variety of "pretended voice failure" is the *praeteritio* by the topos "vox me deficit", used e.g. by Cicero in the *Verrines*.[30] Another species is the topos in which the orator claims to be overwhelmed by emotion, and thus prevented either from speaking about a particular topic or from carrying on speaking altogether; the best-known example is probably the *peroratio* of Cicero's *Pro Milone*,[31] but by no means the only instance: the figure was a topos already in Athenian courts,[32] and we know of several speeches by Cicero where the motif produced an impressive closing of the speech,[33] in other cases it was used for a "standard" *praeteritio*[34] or a "*praeteritio* of the rest".[35] Yet another argumentative step is to be seen, again in the *Verrines*, when the orator (i.e. Cicero) expresses the possibility of his voice failing him, and his

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[29] Quint. *Inst.* 11.3.13 "ala vel inbecilla et inhibet multa, ut insurgere exclamare, et aliqua cogit, ut intermittere et deflectere et rasas fauces ac latus fatigatum deformi cantico reficere."

[30] Combined with the topos of time limits: Cic. *Verr.* 2.2.52 "nam me dies vox latera deficiant, si hoc nunc vociferari velim, quam miserum indignumque sit istius nomine apud eos diem festum esse"; combined with a *climax*: Cic. *Verr.* 2.4.67 "quae vox, quae latera, quae vires huius unius criminis querimoniam possunt sustinere?"

[31] Cic. *Mil.* 105 "sed finis sit: neque enim prae lacrimis iam loqui possum, et hic se lacrimis defendi vetat"; similarly Cic. *Rab. Post.* 48 "me dolor debilitat intercluditque vocem" (again in the *peroratio*).

[32] Rosenbloom (2009, p. 195); it is referred to as a well-known *topos* even by Apuleius (Apul. *Met.* 10.7).

[33] Cic. *Sest.* 144 "sed me repente, iudices, de fortissimorum et clarissimorum civium dignitate et gloria dicentem et plura etiam dicere parantem horum aspectus in ipso cursu orationis repressit"; Cic. *Planc.* 104 "plura ne dicam tuae me etiam lacrimae impediunt vestraeque, iudices, non solum meae".

[34] Cic. *Dom.* 97 "quas idcirco praetereo quod ne nunc quidem sine fletu commemorare possum".

[35] Cic. *Sull.* 92 "sed iam impedior egomet, iudices, dolore animi ne de huius miseria plura dicam"; Cic. *Cael.* 60 "sed revertor ad crimen; etenim haec facta illius clarissimi ac fortissimi viri mentio et vocem meam fletu debilitavit et mentem dolore impedivit" (cf. p. 20).

hope that it will not do so, in order to emphasise the enormous mass of material he is able (or obliged) to deal with.[36] While this feature contains a certain irony (especially since it is used at a point in the speech when Cicero has already been speaking for hours), the *Pro Milone* contains a much more serious non-failure of voice: Milo has refused to stage the usual scenes[37] of misery with ragged clothes, grimaces of despair, tears and, as a consequence, voice failure (a behaviour recommended e.g. by *Rhet. Her.*[38]), so Cicero needs to justify his client's steady voice:

> "nolite, si in nostro omnium fletu nullam lacrimam aspexistis Milonis, si voltum semper eundem, si vocem, si orationem stabilem ac non mutatam videtis, hoc minus ei parcere: haud scio an multo etiam sit adiuvandus magis. Etenim si in gladiatoriis pugnis et in infimi generis hominum condicione atque fortuna timidos et supplices et ut vivere liceat obsecrantis etiam odisse solemus, fortis et animosos et se acriter ipsos morti offerentis servari cupimus, eorumque nos magis miseret qui nostram misericordiam non requirunt quam qui illam efflagitant, quanto hoc magis in fortissimis civibus facere debemus!" [39]

Cicero not only justifies Milo's steadfast appearance, he uses this reversed topos of voice failure as his starting point for a peroration which is still emotional enough, closing with his own voice failing:

> "sed finis sit: neque enim prae lacrimis iam loqui possum, et hic se lacrimis defendi vetat."[40]

None of this is extensively treated in any of the rhetorical treatises, neither the narrower technical handbooks nor the broader, "philosophical" works

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[36] Cic. *Verr.* 2.5.72 "quorum ego de acerbissima morte crudelissimoque cruciatu dicam cum eum locum tractare coepero, et ita dicam ut, si me in ea querimonia quam sum habiturus de istius crudelitate et de civium Romanorum indignissima morte non modo vires verum etiam vita deficiat, id mihi praeclarum et iucundum putem."

[37] Common already in Athens: cf. Dem. *or.* 21.99, 186; Aischin. *leg.* 179.

[38] *Rhet. Her.* 2.50 "misericordia commovebitur auditoribus, [. . .] si supplicabimus et nos sub eorum, quorum misericordiam captabimus, potestatem subiciemus: si, quid nostris parentibus, liberis, ceteris necessariis casurum sit propter nostras calamitates, aperiemus, et simul ostendemus illorum nos sollicitudine et miseria, non nostris incommodis dolere"; likewise described and justified in Cic. *De orat.* 2.190, Quint. *Inst.* 2.15.7–9, 6.1.30, 6.1.33; criticised in Cic. *De orat.* 1.228 by the philosopher Rutilius Rufus.

[39] Cic. *Mil.* 92. Cf. the similar argumentation in Plat. *Apol.* 34d–35a.

[40] Cic. *Mil.* 105, cf. above n. 31.

by Aristotle, Cicero and Quintilian. The only instance where the point is mentioned at all appears in Quintilian, with a quote from the mentioned peroration of the *Pro Milone*,[41] but under the topic of tone and sound of the voice, and without any reference to further rhetorical use of this topic of failure.

Nor is another way of pretended voice failure treated in rhetorical theory: the case where the orator refuses to speak at all, excusing himself with a sore throat. It is related by Plutarch[42] how Demosthenes used this strategy in the Harpalus affair in order not to be forced to justify his actions (however without success). This tactic, too, is not considered in rhetorical theory.

4.2.5 The opponent's voice failure

Voice failure is also used as a *topos* of weakness against the opponent. Demosthenes argues in the *Crown Speech* that his opponents, especially Aeschines, owe a great part of their success to their strong and loud voice, not to a strong and worthy case;[43] and that their loud voices are overcome by his, Demosthenes', telling the truth, presenting their following voice failure as a sign of a bad conscience.[44] In Cicero's speeches, voice failure appears always in a list with other bodily reactions indicating shock or fear: sudden paleness, trembling, frightened expression of the face, numbness.[45] The op-

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[41] Quint. *Inst.* 11.3.173 "illa quoque mire facit in peroratione velut deficientis dolore et fatigatione confessio, ut pro eodem Milone: 'sed finis sit, neque enim prae lacrimis iam loqui possum': quae similem verbis habere debent etiam pronuntiationem."

[42] Plut. *Dem.* 25.4 "καὶ μεθ᾽ ἡμέραν εὖ καὶ καλῶς ἐρίοις καὶ ταινίαις κατὰ τοῦ τραχήλου καθελιξάμενος εἰς τὴν ἐκκλησίαν προῆλθε, καὶ κελευόντων ἀνίστασθαι καὶ λέγειν, διένευεν ὡς ἀποκεκομμένης αὐτῷ τῆς φωνῆς."

[43] Dem. *or.* 19.337–340; cf. 19.216, 19.238, and Schulz (2014, p. 88) "[bei Demosthenes] kann der Stimmeinsatz als maßlos, d.h. in der Regel als zu laut, zu hoch oder zu variierend, gekennzeichnet werden. Der Redner erscheint dann als jemand, der die Grenzen des Schicklichen verletzt."

[44] Dem. *or.* 19.206–210, esp. 208 "τοῦτο παραιρεῖται τὴν θρασύτητα τὴν τούτων, τοῦτ᾽ ἀποστρέφει τὴν γλῶτταν, ἐμφράττει τὸ στόμα, ἄγχει, σιωπᾶν ποιεῖ.".

[45] Cic. *Verr.* 2.2.189 "illum in iure metu conscientiaque peccati mutum atque exanimatum ac vix vivum"; Cic. *Catil.* 3.13 "ac mihi quidem, Quirites, cum illa certissima visa sunt argumenta atque indicia sceleris, tabellae, signa, manus, denique unius cuiusque confessio, tum multo certiora illa, color, oculi, voltus, taciturnitas"; Cic. *Har.* 2 "sed vaecors repente sine suo vultu, sine colore, sine voce constitit"; Cic. *Pis.* 99 "abiectum, contemptum, despectum a ceteris, a te ipso desperatum et relictum, circumspectantem omnia, quicquid increpuisset pertimescentem, diffidentem tuis rebus, sine voce, sine libertate, sine auctoritate, sine ulla specie consulari, horrentem, trementem, adulantem omnis videre te volui".

ponent's silence is here, together with the other symptoms, again regularly interpreted as a silent confession.

4.3 Memory failure

Memory failure in the course of a speech has been a dreaded scenario for orators of all times, mostly in the form of "blackout",[46] or "turbari memoria vel continuandi verba facultate destitui"[47] which produces an unwanted and embarrassing pause;[48] but memory failure can also mean the unnoticed omission of a part of the speech.[49] This second situation is not as frighteningly embarrassing and has thus received less attention: it is not mentioned as a problem deserving treatment in ancient rhetorical theory.[50] But even if not explicitly mentioned, both risks are covered whenever rhetorical theory deals with the fourth *officium oratoris*, μνήμη / *memoria*. The major issues discussed are the means of preventing memory failure: memory training, mnemotechnics, and training to speak extempore. Less space is devoted to advice on how to deal with memory failure once it has happened. The rhetorical use of memory failure (which takes the form of a pretended or ironically presented failure) is considered, but not covered in all its manifestations which can be observed in oratorical practice.

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[46] The most prominent instance of a blackout actually happening in antiquity is probably Demosthenes' complete failure on the embassy before Philip, reported by Aeschines (Aischin. *leg.* 34–35.

[47] Quint. *Inst.* 4.1.61.

[48] Described by Quintilian: *Inst.* 11.2.46 "interruptus actionis impetus et resistens ac salebrosa oratio", 11.2.48 "haesitatio [. . .] aut etiam silentium".

[49] Much more common is the reverse connection between silence and memory/forgetting: that silence about someone or something leads to forgetfulness. See e.g. Cic. *De orat.* 2.7–8; Cic. *Verr.* 2.5.138; Cic. *Marc.* 9; Cic. *Phil.* 9.10, 13.39, 14.33; also Liv. 28.29.4 and Tac. *Hist.* 4.9.

[50] It is, however, covered in Cicero's devastating description of the orator and politician Curio. According to this, Curio was, despite his fine style, largely unsuccessful as an orator due to his inadequate memory, as he often lost track of his speech or confused his facts (Cic. *Brut.* 216–220). Whether or not this description is correct, it shows that inadequate memory could be used as a point of criticism. Cf. Tatum (1991) and briefly Wisse (2013, p. 186–187).

4.3.1 Prevention

The two main methods of preparing against memory failure, as presented in rhetorical theory, are improving one's memory by general training, and special mnemotechnics usable for any particular speech.

Memory training and memory skills in general had a different, and in some respect much higher, value in antiquity[51] than nowadays, not least because data storage technologies were far less developed.[52] The invention of writing had been a first step away from the memory feats in the age of Oral Poetry, but also in the classical ages, "[a]ncient schools put great emphasis on training the memory, and there are numerous examples of Greeks and Romans with a remarkable verbal memory for poetry, prose, names, and lists of all kinds."[53] Cicero himself put special pride in his ability to remember faces and names.[54]

In the specifically rhetorical education from Cicero's time onward, the students were expected to learn speeches by heart, both older speeches by famous orators and their own exercise speeches. Learning a speech by heart, word by word, is in some way a necessary consequence of the second *officium oratoris*, the *elocutio*, if taken most strictly: the specific wording of any argument, developed in preparation, would be lost in the *actio* if not remembered word by word[55] (as reading from a script was unusual, see below p. 200). However, in practice the exact reproduction of the prepared text was apparently not considered crucial, and not every deviation would be considered a substantial damage to the speech as a whole. Cicero mentions in

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[51] Cf. Cic. *De orat.* 1.18 "quid dicam de thesauro rerum omnium, memoria? quae nisi custos inventis cogitatisque rebus et verbis adhibeatur, intellegimus omnia, etiam si praeclarissima fuerint in oratore, peritura."

[52] Small (2007, p. 195–196). The largest decline in the role of rote learning is probably to be seen in schools and universities. In political oratory, manuscripts are widespread in modern times (though not ubiquitous). Actors and opera singers have at all times been required to know their parts by heart in all details, and for most soloist musicians it is not an obligation but a matter of honour, quite as it was for ancient orators.

[53] Kennedy (1994, p. 168).

[54] Plut. *Cic.* 7.1–2.

[55] Explicitly stated only by Quintilian: *Inst.* 11.2.45 "nam si memoria suffragatur, tempus non defuit, nulla me velim syllaba effugiat (alioqui etiam scribere sit supervacuum)"; the same thought occurs in Quint. *Inst.* 3.3.10 where the *officia oratoris* are discussed in a general and abstract way.

the *Orator* that inconsiderate word choice has an adverse effect,[56] but the more general opinion seems to be what we find in *De oratore*: "sed verborum memoria, quae minus est nobis necessaria, maiore imaginum varietate distinguitur; [...] rerum memoria propria est oratoris".[57] Another, more ambivalent statement in the same work, deals with figures of words and figures of thought: "sed inter conformationem verborum et sententiarum hoc interest, quod verborum tollitur, si verba mutaris, sententiarum permanet, quibuscumque verbis uti velis".[58] This promotes word-by-word memorisation to a certain degree, but emphasises the importance for exact reproduction of special rhetorical figures, not necessarily of the entire speech.

Memorisation seems to have been most relevant within rhetorical education as a means of memory training, an exercise to improve the student's general memory capacity. This is stated as a common part of an orator's training in Cicero's *De oratore*:

> exercenda est etiam memoria ediscendis ad verbum quam plurimis et nostris scriptis et alienis; atque in ea exercitatione non sane mihi displicet adhibere, si consueris, etiam istam locorum simulacrorumque rationem, quae in arte traditur.[59]

In the last clause, a connection to the mnemotechnics proper is already implied; besides, memorisation served another purpose, as students were to memorise not arbitrary texts, but works of high quality. Thus the students would actually be able to use parts of these texts in their own speeches: in particular, outstanding speeches of earlier orators, as mentioned by Cicero in the *Orator*,[60] and poetry, as Aeschines relates in the Crown Trial.[61] Quintilian

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[56] Cic. *Orat.* 150 "quamvis enim suaves gravesque sententiae tamen, si incondite positis verbis efferuntur, offendent auris, quarum est iudicium superbissimum".

[57] Cic. *De orat.* 2.359.

[58] Cic. *De orat.* 3.200.

[59] Cic. *De orat.* 1.157.

[60] Cic. *Brut.* 127 "exstat eius peroratio, qui epilogus dicitur; qui tanto in honore pueris nobis erat ut eum etiam edisceremus"; cf. Plato's *Phaedrus*, where Phaedrus is about to memorise a speech by Lysias.

[61] Aischin. *Ctes.* 135 "διὰ τοῦτο γὰρ οἴμαι ἡμᾶς παῖδας ὄντας τὰς τῶν ποιητῶν γνώμας ἐκμανθάνειν, ἵν᾽ ἄνδρες ὄντες αὐταῖς χρώμεθα."

stresses the importance of memory in early education[62] and puts even more emphasis on memorisation as a means of general memory training:

> si quis tamen unam maximamque a me artem memoriae quaerat, exercitatio est et labor: multa ediscere, multa cogitare, et si fieri potest cotidie, potentissimum est: nihil aeque vel augetur cura vel neglegentia intercidit.[63]

Quintilian's advice on the choice of texts, however, is different from Cicero's, as he recommends the use of "poetica prius, tum oratorum, novissime etiam solutiora numeris et magis ab usu dicendi remota, qualia sunt iuris consultorum"[64] as a sequence of increasing difficulty, but within these categories he does not distinguish between texts of different quality.

A major point for both Cicero and Quintilian is the orator's memory and knowledge of his own current and past cases,[65] as the orator could use these (and other orator's speeches[66]) as a supply of arguments tested in practice.[67] A slightly different version of this advice is given already by Aristotle: that the orator must be able to quote from cases similar to the current one, which are known to the jury.[68]

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[62] Quint. *Inst.* 1.1.36 "nam et maxime necessaria est oratori, sicut suo loco dicam, memoria; et ea praecipue firmatur atque alitur exercitatione et in his de quibus nunc loquimur aetatibus, quae nihildum ipsae generare ex se queunt, prope sola est quae iuvari cura docentium possit."

[63] Quint. *Inst.* 11.2.40; cf. Quint. *Inst.* 1.11.14.

   Besides, memorisation is recommended as voice training: Quint. *Inst.* 11.3.25, see above p. 182.

[64] Quint. *Inst.* 11.2.41.

[65] Cic. *De orat.* 2.355 "itaque soli qui memoria vigent, sciunt quid et quatenus et quo modo dicturi sint, quid responderint, quid supersit: eidemque multa ex aliis causis aliquando a se acta, multa ab aliis audita meminerunt"; Quint. *Inst.* 11.2.2 "sed non firme tantum continere verum etiam cito percipere multa acturos oportet, nec quae scripseris modo iterata lectione complecti, sed in cogitatis quoque rerum ac verborum contextum sequi, et quae sint ab adversa parte dicta meminisse, nec utique eo quo dicta sunt ordine refutare sed oportunis locis ponere."

[66] Cic. *De orat.* 1.257 "nam et subitae ad propositas causas exercitationes et accuratae ac meditatae commentationes ac stilus ille tuus, quem tu vere dixisti perfectorem dicendi esse ac magistrum, multi sudoris est; et illa orationis suae cum scriptis alienis comparatio et de alieno scripto subita vel laudandi vel vituperandi vel comprobandi vel refellendi causa disputatio non mediocris contentionis est vel ad memoriam vel ad imitandum." Similarly Quint. *Inst.* 2.7 on memorisation in early education.

[67] This relates to the "stock of phrases and/or arguments" on which see p. 192.

[68] Aristot. *Rhet.* 1377a5–6 δεῖ δὲ ἔχειν ἐπαναφέρειν ἐπὶ τοιαῦτα γεγενημένα παραδείγματα ἃ ἴσασιν οἱ κρίνοντες.

For an orator in practice, i.e. in court or political assembly, it was very rare to memorise a speech completely beforehand;[69] Cicero names Hortensius[70] as very exceptional in so far as he reproduced all his speeches (so it is implied) with the very same words with which he had prepared them; but Cicero clearly considers this as something Hortensius would just do, without much effort, because of his exceptionally good memory,[71] and thus something any orator with the same capacity would do in the same way. Therefore an exact reproduction in the *actio* of the text prepared in the step of *elocutio* was generally considered an ideal, but one which was not worth every effort in practice, and for most orators (if not all) it would have taken too much time in most situations to memorise a speech, possibly of several hours, in every detail. Quintilian confirms this and mentions another risk:

> ex hac ingeniorum diversitate nata dubitatio est, ad verbum sit ediscendum dicturis, an vim modo rerum atque ordinem complecti satis sit: de quo sine dubio non potest in universum pronuntiari. nam si memoria suffragatur, tempus non defuit, nulla me velim syllaba effugiat: [...] si vero aut memoria natura durior erit aut non suffragabitur tempus, etiam inutile erit ad omnia se verba alligare, cum oblivio unius eorum cuiuslibet aut deformem haesitationem aut etiam silentium indicat, tutiusque multo comprehensis animo rebus ipsis libertatem sibi eloquendi relinquere[72]

Besides, the orator needs to remember all the details of his case in a flexible way especially when he is attacked in the *altercatio*, the direct dispute between the parties of a trial[73] (this leads to the value of extempore speaking, see below p. 196).

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[69] However, this feature is often claimed in modern research literature, e.g. Yates (1966, p. 18) "a technique by which the orator could improve his memory, which would enable him to deliver long speeches from memory with unfailing accuracy".

[70] Cic. *Brut.* 301 (on Hortensius) "memoria tanta quantam in nullo cognovisse me arbitror, ut quae secum commentatus esset, ea sine scripto verbis eisdem redderet quibus cogitavisset". It is not implausible that Cicero had considerable insight into Hortensius' methods, as they collaborated in at least eight cases from 63 B.C. (Dyck, 2008, p. 155).

[71] Cf. Sen. *Contr.* 1.19.

[72] Quint. *Inst.* 11.2.44–48.

[73] Quint. *Inst.* 6.4.8.

We may therefore assume that the real solution in most cases was a combination of 1. memorising the general outline of the speech and the major lines of thought, and 2. rote-learning some passages, at particularly important or critical points in the argumentation, and some particularly beautiful or impressive *figurae* or *sententiae* found in the process of *elocutio*; most of the speech, however, would be clad in words extempore on the spot.[74] This is what Quintilian states as the usual procedure for orators who have a full agenda, and thus a limited amount of time to spend on each case: "plerumque autem multa agentibus accidit ut maxime necessaria et utique initia scribant, cetera, quae domo adferunt, cogitatione complectantur, subitis ex tempore occurrant".[75]

For this an orator could prepare to some degree, if he acquired a stock of useful phrases by rote-learning poetry and sample speeches,[76] but a certain talent was indispensible, the lack of which would lead to just the same dreaded pauses as a complete "blackout", even if easier to overcome. Plutarch reports about Alcibiades that he suffered from exactly this lack of talent:

> εἰ δὲ Θεοφράστῳ πιστεύομεν, ἀνδρὶ φιληκόῳ καὶ ἱστορικῷ παρ᾽ ὁντινοῦν τῶν φιλοσόφων, εὑρεῖν μὲν ἦν τὰ δέοντα καὶ νοῆσαι πάντων ἱκανώτατος ὁ Ἀλκιβιάδης, ζητῶν δὲ μὴ μόνον ἃ δεῖ λέγειν, ἀλλὰ καὶ ὡς δεῖ τοῖς ὀνόμασι καὶ τοῖς ῥήμασιν, οὐκ εὐπορῶν δέ, πολλάκις ἐσφάλλετο καὶ μεταξὺ λέγων ἀπεσιώπα καὶ διέλειπε λέξεως διαφυγούσης, αὐτὸν ἀναλαμβάνων καὶ διασκοπούμενος.[77]

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[74] This is most likely to be behind Cicero's praise for the value of memory for the orator, where he states that memory allows "omnis fixas esse in animo sententias, omnem descriptum verborum apparatum" (Cic. *De orat.* 2.355); *verborum apparatus* is the style and ornamentation of the speech, and *descriptum* can mean a fixed *elocutio* for a particular speech, but also a well-sorted toolbox of stylistic elements.

[75] Quint. *Inst.* 10.7.30. He adds the advice to *not* produce a written *elocutio* for passages the orator does not intend to memorise word-by-word, as this will hinder the memory during delivery (*Inst.* 10.7.32–33).

[76] Cf. above p. 190. Another source can be seen in the *sententiae* on which a major part of primary education was based and which have survived in "gnomologies", described e.g. by Morgan (1998, ch. 4); however, we have no precise information how far these collections where actually memorised.

[77] Plut. *Alc.* 10.3.

Apparently Alcibiades' (mostly military) career did not suffer much from this deficit; a decidedly oratorical career, however, is hard to imagine under these circumstances.

Consequently, Cicero recommends building one's style by imitation[78] and reading poetry,[79] but he also gives a piece of advice not found in other writers' rhetorical treatises: to assemble a pool not only of words and phrases but of arguments, and

> hoc instrumentum causarum et generum universorum in forum
>
> deferre debemus neque, ut quaeque res delata ad nos erit, tum
>
> denique scrutari locos, ex quibus argumenta eruamus.[80]

This practice took a turn to exaggeration in the Empire, most likely due to a more widespread systematic oratorical education, and for this reason the balance of form and content appreciated by Cicero[81] is (in this aspect) not quite shared by Quintilian: he explicitly warns against a practice exercised by some orators of his time, who wrote and memorised argumentations about common issues in order to insert them into any court speech. Quintilian heavily criticises this practice, as this 1. makes the orator less flexible, 2. makes a poor impression if noticed by the audience, 3. nice wordplay is always less important than the matter at hand.[82] The first argument, flexibility, is most important to Quintilian, who is not at all partial against having a reservoir of topics, thoughts, and lines of argumentation, together

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[78] Cic. *De orat.* 2.96 "hanc igitur similitudinem qui imitatione adsequi volet, cum exercitationibus crebris atque magnis tum scribendo maxime persequatur" (after a list of great Greek orators suitable for imitation).

[79] Cic. *De orat.* 3.39 "sed omnis loquendi elegantia, quamquam expolitur scientia litterarum, tamen augetur legendis oratoribus et poetis; sunt enim illi veteres, qui ornare nondum poterant ea, quae dicebant, omnes prope praeclare locuti; quorum sermone adsuefacti qui erunt, ne cupientes quidem poterunt loqui nisi Latine. neque tamen erit utendum verbis eis, quibus iam consuetudo nostra non utitur, nisi quando ornandi causa parce, quod ostendam; sed usitatis ita poterit uti, lectissimis ut utatur, is, qui in veteribus erit scriptis studiose et multum volutatus."

[80] Cic. *De orat.* 2.146. The approach which combines stylistic and argumentative elements is also visible in Cicero's description of his *tirocinium fori*: "ego autem a patre ita eram deductus ad Scaevolam sumpta virili toga, ut, quoad possem et liceret, a senis latere numquam discederem; itaque *multa ab eo prudenter disputata, multa etiam breviter et commode dicta memoriae mandabam* fierique studebam eius prudentia doctior" (Cic. *Lael.* 1).

[81] Cf. Cic. *De orat.* 3.19 "nam cum omnis ex re atque verbis constet oratio, neque verba sedem habere possunt, si rem subtraxeris, neque res lumen, si verba semoveris."; Cic. *De orat.* 3.24 "tantum significabo brevi neque verborum ornatum inveniri posse non partis expressisque sententiis, neque esse ullam sententiam inlustrem sine luce verborum."

[82] Quint. *Inst.* 2.4.27–32. Cf. Webb (2001, p. 290).

with words and phrases—he only insists that the orator must never adhere to any single of them, but always be ready to choose according to what is most appropriate to the situation.[83] In education, Quintilian recommends the established approach of reading and imitation;[84] a minor new point is the mention of historical *exempla* as part of the rhetorical stockpile.[85]

"The whole system [of mnemotechnics] was doubtless used much more in schools or in public address by a young man making one of his first appearances than by practiced orators".[86] Blum shows that mnemotechnics were (in 1st c. BC/AD Rome) part of the usual school curriculum, and thus theoretically widely known, but not much in use in speaking situations outside education.[87] Likewise, word-by-word memorisation played an important role only in an orator's education, and it is even doubtful that memorisation of complete speeches was common practice in all or most schools. The same emphasis on training purposes, against actual usability, is made already in the *Rhetorica ad Herennium*:

> nunc, ne forte verborum memoriam aut nimis difficilem aut
> parum utilem arbitrere, rerum ipsarum memoria contentus sis,
> quod et utilior sit et plus habeat facultatis, admonendus es, quare
> verborum memoriam non inprobemus. nam putamus oportere
> eos, qui velint res faciliores sine labore et molestia facere, in re-
> bus difficilioribus esse ante exercitatos.[88]

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[83] Quint. *Inst.* 8.pr.28–29 "miser enim et, ut sic dicam, pauper orator est qui nullum verbum aequo animo perdere potest. sed ne perdet quidem qui rationem loquendi primum cognoverit, tum lectione multa et idonea copiosam sibi verborum supellectilem compararit, huic adhibuerit artem conlocandi, deinde haec omnia exercitatione plurima roborarit, ut semper in promptu sint et ante oculos: [29] namque ei qui id fecerit sic res cum suis nominibus occurrent. sed opus est studio praecedente et adquisita facultate 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 laboravit".

[84] Quint. *Inst.* 10.1.19 "repetamus autem et tractemus et, ut cibos mansos ac prope liquefactos demittimus quo facilius digerantur, ita lectio non cruda sed multa iteratione mollita et velut confecta memoriae imitationique tradatur."

[85] Quint. *Inst.* 10.1.34 "est et alius ex historiis usus, et is quidem maximus sed non ad praesentem pertinens locum, *ex cognitione rerum exemplorumque, quibus in primis instructus esse debet orator*".

[86] Kennedy (1994, p. 124).

[87] Blum (1969, p. 132–134).

[88] *Rhet. Her.* 3.39.

The other main method of preventing memory failure in advance were memory systems, or mnemotechnics. Ancient mnemotechnics have fascinated people at all times, but extant useful sources are scarce. Part of the evidence consists in anecdotes about extraordinary memory feats, like the stories about Hippias of Elis, Simonides, Hortensius, or Cineas;[89] of these only Simonides is of any importance to the orator, if at all, as he is considered the inventor of the "*ars memoriae*".[90] The other part of the evidence are actual descriptions of the existing mnemotechnics; but most of those descriptions which were available in antiquity were contained in the rhetorical "manuals" of lesser quality which are lost to us.[91] Only three extant texts deal with practical mnemotechnics in a rhetorical-oratorical context: the *Rhetorica ad Herennium*, Cicero's *De oratore* and Quintilian's *Institutio*. All three texts suffer from the fact that mnemotechnics were very common, well known and much practised at their time in the usual course of education, so they assume their reader to be more or less familiar with the topic. The *Auctor ad Herennium* treats the point in some detail, some of which, however, is quite obscure.[92] Cicero passes by the topic as quickly as possible "ne in re nota et pervulgata multus et insolens sim".[93]

Quintilian gives the best available account,[94] less detailed than the *Rhetorica ad Herennium*, but clearer and more consistent, yet far from any full description of the art as it was taught, even less as it was practised. The system described by Quintilian is as efficient as it is effective: on the basis of a series of *loca* which the orator knows anyway, without any effort (like the rooms of his own house), the major points of the speech are, in their proper order, connected to the *loca*, using visual associations (*imagines*) as the easiest and strongest type of link.[95]

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[89] Overview in Post (1932, p. 106–107).

[90] Cic. *De orat.* 2.351 "gratiamque habeo Simonidi illi Cio, quem primum ferunt artem memoriae protulisse"; Quint. *Inst.* 11.2.11 "artem autem memoriae primus ostendisse dicitur Simonides".

[91] Yates (1966, p. 21).

[92] *Rhet. Her.* 3.28–40.

[93] Cic. *De orat.* 2.358.

[94] Quint. *Inst.* 11.2.18–21.

[95] Cic. *De orat.* 2.357 "acerrimum autem ex omnibus nostris sensibus esse sensum videndi; qua re facillime animo teneri posse ea, quae perciperentur auribus aut cogitatione, si etiam commendatione oculorum animis traderentur".

A major advantage of this approach is the ability of the user (orator) to access any marked point of the speech independently from the overall order,[96] which makes it the best possible provision for a blackout: if the orator loses his line of thought, he can get back on track at a later point in his speech, thereby losing a certain section, but not more than one of his major points—provided that he has carefully chosen his *termini*, "stepping stones" (and that he has not more than a single "blackout", of course).

Carefully choosing one's major points and the associated images has been recognised in antiquity as a crucial part of the technique,[97] and even more important than *which* points of the speech to choose can be the question *how many* points, and thus *imagines*, constitute the optimal provision for a good performance. Beside the obvious error of picking too few "stepping stones" to cover the entire speech, warnings are expressed as well against breaking a speech up into too many parts[98] and especially against the practice of using *imagines* for every single word of a speech (which was apparently taught by some teachers of rhetoric[99]), as recalling these would take up too much time during the speech and thus lead to the very same unwanted pauses the orator was intent to avoid.[100]

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[96] *Rhet. Her.* 3.30 "item putamus oportere ex ordine hos locos habere, ne quando perturbatione ordinis inpediamur, quo setius, quoto quoquo loco libebit, vel ab superiore vel ab inferiore parte imagines sequi et ea, quae mandata locis erunt, edere possimus: nam ut, si in ordine stantes notos quomplures viderimus, nihil nostra intersit, utrum ab summo an ab imo an ab medio nomina eorum dicere incipiamus, item in locis ex ordine conlocatis eveniet, ut in quamlibebit partem quoque loco lubebit imaginibus commoniti dicere possimus id, quod locis mandaverimus"; Quint. *Inst.* 11.2.28 "dandi sunt certi quidam termini, ut contextum verborum, qui est difficillimus, continua et crebra meditatio, partis deinceps ipsas repetitus ordo coniungat. non est inutile iis quae difficilius haereant aliquas adponere notas, quarum recordatio commoneat et quasi excitet memoriam".

[97] Quintilian connects it to the *partitio* of a speech: Quint. *Inst.* 4.5.3 "alioqui quae tam manifesta et lucida est ratio quam rectae partitionis? sequitur enim naturam ducem adeo ut memoriae id maximum sit auxilium, via dicendi non decedere."

[98] Quint. *Inst.* 11.2.27 "si longior complectenda memoria fuerit oratio, proderit per partes ediscere (laborat enim maxime onere); sed hae partes non sint perexiguae, alioqui rursus multae erunt et eam distringent atque concident"; cf. Quint. *Inst.* 4.5.24–25 "vitanda utique maxime concisa nimium et velut articulosa partitio. [25] nam et auctoritati plurimum detrahunt minuta illa nec iam membra sed frusta".

[99] *Rhet. Her.* 3.38 "scio plerosque Graecos, qui de memoria sripserunt, fecisse, ut multorum verborum imagines conscriberent, uti, qui ediscere vellent, paratas haberent, ne quid in quaerendo consumerent operae. quorum rationem aliquot de causis inprobamus: primum, quod in verborum innumerabili multitudine ridiculumst mille verborum imagines conparare. quantulum enim poterunt haec valere, cum ex infinita verborum copia modo aliud modo aliud nos verbum meminisse oportebit? *etc.*"

[100] Quint. *Inst.* 11.2.25–26 "habeamus enim sane, ut qui notis scribunt, certas imagines omnium et loca scilicet infinita, per quae verba quot sunt in quinque contra Verrem secundae

A third way of preventing memory failure is to cultivate an ability to speak extempore; however, this is hardly treated at all in rhetorical theory. Cicero's advice to memorise model speeches (see above p. 189) can be seen as a method of building a repertoire of topics and phrases, and he connects practice and exercise to speed of delivery in general terms which may include extempore speaking,[101] but does not explicitly make the point. Where he mentions good extempore speakers, he attributes this more to talent than to training.[102]

Quintilian, in contrast, not only states that if a speech cannot be memorised word-by-word (i.e. in most, if not all, "real" speaking situations), a talent for extempore speaking is indispensable,[103] but devotes an entire section of his *Institutio* to the topic of extempore speaking (this is the last section, which comes both as a "last not least" and as a quintessence, of book 10, which covers all aspects of imitation and exercise).[104] In particular, Quintilian discusses the problem of unintentional pauses due to memory failure, and presents extempore speaking as an antidote.[105] In another context, in the

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actionis libris explicentur, [ne] meminerimus etiam omnium quasi depositorum: nonne impediri quoque dicendi cursum necesse est duplici memoriae cura? [26] nam quo modo poterunt copulata fluere si propter singula verba ad singulas formas respiciendum erit?" Cf. Cic. *De orat.* 2.359 "sed verborum memoria, quae minus est nobis necessaria, maiore imaginum varietate distinguitur; multa enim sunt verba, quae quasi articuli conectunt membra orationis, quae formari similitudine nulla possunt; eorum fingendae sunt nobis imagines, quibus semper utamur; rerum memoria propria est oratoris".

[101] Cic. *De orat.* 1.90 "et quod consuetudo exercitatioque intellegendi prudentiam acueret atque *eloquendi celeritatem* incitaret".

[102] Cic. *De orat.* 2.316 "in quo [i.e. principio orationis] admirari soleo non equidem istos, qui nullam huic rei operam dederunt, sed hominem in primis disertum atque eruditum, *Philippum, qui ita solet surgere ad dicendum, ut quod primum verbum habiturus sit, nesciat*" (Cicero does not state whether he attributes this ability to talent or to exercise, but it seems that Philippus does not need any *opera* for this feat, whereas most orators do); Cic. *De orat.* 3.129 "isque [i.e. Gorgias] princeps ex omnibus ausus est in conventu poscere qua de re quisque vellet audire". Cf. Plutarch's account of Alcibiades (above p. 192) and of Demosthenes and Demades (Plut. *Dem.* 8.5, 9.4, 10.1).

[103] Quint. *Inst.* 11.2.49 "nam et invitus perdit quisque id quod elegerat verbum, nec facile reponit aliud dum id quod scripserat quaerit. sed ne hoc quidem infirmae memoriae remedium est nisi in iis qui sibi facultatem aliquam dicendi ex tempore paraverunt."

Cf. p. 107: Quintilian on how to adjust a speech according to audience reactions while speaking.

[104] Quint. *Inst.* 10.7 (33 paragraphs), with a lengthy reasoning in Quint. *Inst.* 10.7.1–4 why the orator must be able to speak extempore.

[105] Quint. *Inst.* 10.7.10 "longe enim praecedat oportet intentio ac prae se res agat, quantumque dicendo consumitur, tantum ex ultimo prorogetur, ut, donec perveniamus ad finem, non minus prospectu procedamus quam gradu, *si non intersistentes offensantesque brevia illa atque concisa singultantium modo eiecturi sumus*."

section on use of evidence, Quintilian concludes that the orator must, by experience and exercise in all types of evidence, be able to handle these flexibly without thinking—which is more or less equal to the capacity of speaking extempore about an unknown case.[106] This is the same value of flexibility which occurs as well in other areas of the *Institutio*: in Quintilian's warning that the orator, if he wants to refer in his speech to a gesture or condition of his client, must be prepared to omit the reference if the gesture is not there when needed,[107] and in his advice to gain flexibility by knowledge in other disciplines (in particular, jurisdiction).[108]

This is in fact one of the rare topics where Quintilian goes a step further and notes the value of *appearing* unprepared without being so, of *pretending* to speak extempore:[109] he describes how an *exordium* which refers to the opponent's (preceding) speech (and which thus is really and obviously given extempore) makes also the rest of the speech seem unprepared, and how this gains both the audience's confidence in the orator's abilities and their belief that they are not going to be deceived by some clever rhetorical manoeuvre which would need to be prepared beforehand.[110]

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[106] Quint. *Inst.* 5.10.125 "sed hoc exercitatione multa consequendum, ut, quem ad modum illorum artificum [i.e. citharae], etiam si alio spectant, manus tamen ipsa consuetudine ad gravis, acutos, mediosque horum sonos fertur, sic oratoris cogitationem nihil moretur haec varietas argumentorum et copia, sed quasi offerat se et occurrat, et, ut litterae syllabaeque scribentium cogitationem non exigunt, sic orationem sponte quadam sequantur."

[107] Quint. *Inst.* 6.1.42 "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 horum is de quo dicitur faciat." A special situation may arise in declamations: Quint. *Inst.* 6.1.43 "ex scholis haec vitia, in quibus omnia libere fingimus et inpune, quia pro facto est quidquid voluimus; non admittit hoc idem veritas, egregieque Cassius dicenti adulescentulo: 'quid me torvo vultu intueris, Severe?' 'non mehercule' inquit 'faciebam, sed sic scripsisti: ecce!' et quam potuit truculentissime eum aspexit."

[108] Quint. *Inst.* 12.3.2 "nam quodam modo mandata perferet, et ea quae sibi a iudice credi postulaturus est aliena fide dicet, et ipse litigantium auxiliator egebit auxilio. quod ut fieri nonnumquam minore incommodo possit cum domi praecepta et composita et sicut cetera quae in causa sunt in discendo cognita ad iudicem perfert: quid fiet in iis quaestionibus quae subito inter ipsas actiones nasci solent? non deformiter respectet et inter subsellia minores advocatos interroget?"

[109] Batstone (2009, p. 219–221) has shown, for example, how Cicero in *Catil.* 1 made use of apparent improvisation.

[110] Quint. *Inst.* 4.1.54 "hoc ipso quod non compositum domi sed ibi atque ex re natum et facilitate famam ingenii auget et facie simplicis sumptique ex proximo sermonis fidem quoque adquirit".

However, Quintilian does not give any practical advice for improving the ability of extempore speaking, nor of simulating it (beyond the very general advice of much exercise). Indeed, he is quite hesitant to allow exercises in this area in school, and emphasises the precedence of detailed written exercises.[111]

Cogitatio[112] is a method alternative to both written preparation and extempore speaking which occurs only in Quintilian. Here the orator performs *inventio*, *dispositio* and *elocutio* only mentally, without writing a full text and even without taking notes. This technique has the advantages that it is less time-consuming and can be performed anywhere and any time (at least more so than writing, or dictating), and that it renders the orator much more flexible than a written text (as said before, a point much appreciated by Quintilian); its drawback is the enormous amount of experience it requires, which is time-consuming on a large scale.

4.3.2 Acute memory failure

What, then, is the orator to do once the "blackout" has occurred? In the ancient rhetorical writings we find some advice, here and there, on what *not* to do in case of acute memory failure; actual advice on how to deal with the problem is scarce and can only be deduced indirectly. Advice on how *not* to react includes: don't slow down;[113] don't harrumph, blow your nose, or walk around;[114] don't look at your script or ask a prompter; and don't promise early in the speech to say something which you then forget to men-

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[111] Quint. *Inst.* 2.4.15–17 "sed ut eo revertar unde sum egressus: narrationes stilo componi quanta maxima possit adhibita diligentia volo. [...] ita cum iam formam rectae atque emendatae orationis accipient, extemporalis garrulitas nec expectata cogitatio et vix surgendi mora circulatoriae vere iactationis est. [...] [17] ille demum in id quod quaerimus aut ei proximum poterit evadere qui ante discet recte dicere quam cito." Cf. *Inst.* 10.3.2 "scribendum ergo quam diligentissime et quam plurimum. [...] nam sine hac quidem constantia ipsa illa ex tempore dicendi facultas inanem modo loquacitatem dabit et verba in labris nascentia."

[112] Quint. *Inst.* 10.6, from which the following is paraphrased.

[113] Quint. *Inst.* 11.3.52 "vitium nimiae tarditatis: nam et difficultatem inveniendi fatetur". *difficultas inveniendi* actually means difficulties to find appropriate words on the spot, but the same problem would arise with difficulties to remember the next point.

[114] Quint. *Inst.* 11.3.121 (in the section on gestures) "his accedunt vitia non naturae sed trepidationis: cum ore concurrente rixari; si memoria fefellerit aut cogitatio non suffragetur, quasi faucibus aliquid obstiterit insonare; in adversum tergere nares, obambulare sermone inperfecto, resistere subito et laudem silentio poscere."

tion[115] (the last point is not necessarily a problem of acute memory failure, rather located somewhere between preparation and the actual speaking situation). A more positive piece of advice is the instruction always to think ahead while speaking, to have in mind both the current and the next topic in the line. We find it in two places: in Cicero's *Orator*[116] it is actually aimed at avoiding bad rhythm, but obviously also suitable to avoid inappropriately long pauses (which are, in some way, very bad rhythm, see above p. 131); in Quintilian's *Institutio*[117] it is given specially for extempore speaking, and without mention of memory failure or pauses, but clearly with the aim of avoiding these.

The use of a script, or notes, or a prompter during a speech deserves some more attention. In the *communis opinio*, both ancient and modern, the ancient orator always speaks without any written support;[118] yet this was not as strict a rule as is sometimes claimed. In general, writing a speech down in preparation was not only normal practice but considered an essential step: when Antony had Cicero slain, he wanted to get, besides his head, "καὶ τὰς χεῖρας [...] αἷς τοὺς Φιλιππικοὺς ἔγραψεν"[119] as a symbol of his oratorical deeds. Yet it is likely that the most common case in an orator's daily practice was what is related about Demosthenes, "that his speeches were neither completely written out nor altogether unwritten".[120]

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[115] Quint. *Inst.* 4.5.2 "rursus quidam periculosum id [partitione uti] oratori arbitrantur duabus ex causis: quod nonnumquam et excidere soleant quae promisimus et si qua in partiendo praeterimus occurrere: quod quidem nemini accidet nisi qui plane vel nullo fuerit ingenio vel ad agendum nihil cogitati praemeditatique detulerit." Cf. *Rhet. Her.* 2.43 "item vitiosum est non omnis res confirmare, quas pollicitus sis in expositione", here without reference to memory issues.

[116] Cic. *Orat.* 150 "nam ut in legendo oculus sic animus in dicendo prospiciet quid sequatur, ne extremorum verborum cum insequentibus primis concursus aut hiulcas voces efficiat aut asperas".

[117] Quint. *Inst.* 11.2.3 "quin extemporalis oratio non alio [ac memoria] mihi videtur mentis vigore constare. nam dum alia dicimus, quae dicturi sumus intuenda sunt: ita cum semper cogitatio ultra eat, id quod est longius quaerit, quidquid autem repperit quodam modo apud memoriam deponit, quod illa quasi media quaedam manus acceptum ab inventione tradit elocutioni".

[118] This opinion has found its way in many modern publications, e.g. Merklin's edition of *De oratore*: "Die Unentbehrlichkeit der Mnemotechnik ergibt sich aus der selbstverständlichen Anforderung an den antiken Redner, frei zu sprechen". (Merklin, 2001, p. 14)

[119] Plut. *Cic.* 48.4 "τὴν δὲ κεφαλὴν ἀπέκοψαν αὐτοῦ καὶ τὰς χεῖρας, Ἀντωνίου κελεύσαντος, αἷς τοὺς Φιλιππικοὺς ἔγραψεν."

[120] Plut. *Dem.* 8.4 "[Δημοσθένης] οὔτε γράψας οὔτ᾽ ἄγραφα κομιδῇ λέγειν ὡμολόγει".

   In Athens, reading a speech out or using notes was not forbidden; it was regarded by some as bad practice (especially if they could use the point against their adversaries in court).[121]   In Rome, the use of a script or a prompter was mostly considered bad practice. However, Quintilian is the first to say so explicitly,[122] and this issue was apparently handled more liberally in the Republic, as Cicero himself read his speech *Post Reditum in Senatu* from a script,[123] and where he mentions another orator using a script[124] it is not to reproach him but to exclude the possibility of a mistake. But even though it may be a question of text transmission, we may notice that both these examples are from senate speeches, while the only example of Cicero's deriding his opponent for using a prompter comes from a court speech.[125] Oratorical genres may thus make a greater difference here than historical eras: it seems plausible that script and prompter were especially condemned in court, which would also explain Quintilian's attitude as he not only writes in the Empire, but "judicial rhetoric is the overwhelming concern" for him.[126] However, Quintilian not only regards a script as improper but as practically dangerous, as it inhibits the flexibility he considers so important.[127]

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[121] *Rhet. Alex.* 1444a18–25 "ἐὰν δὲ διαβάλλωσιν ἡμᾶς, ὡς γεγραμμένους λόγους λέγομεν ἢ λέγειν μελετῶμεν ἢ ὡς ἐπὶ μισθῷ τινι συνηγοροῦμεν, χρὴ πρὸς τὰ τοιαῦτα ὁμόσε βαδίζοντας εἰρωνεύεσθαι καὶ περὶ μὲν τῆς γραφῆς λέγειν, μὴ κωλύειν τὸν νόμον ἢ αὐτὸν γεγραμμένα λέγειν ἢ ἐκεῖνον ἄγραφα· τὸν γὰρ νόμον οὐκ ἐᾶν τοιαῦτα πράττειν, λέγειν δὲ ὅπως ἄν τις βούληται συγχωρεῖν."

[122] Quint. *Inst.* 11.2.45 "ideoque et admoneri et ad libellum respicere vitiosum, quod libertatem neglegentiae facit"; Quint. *Inst.* 11.3.142 "quod [libellum] non utique captandum est: videtur enim fateri memoriae diffidentiam et ad multos gestus est impedimento"; cf. Quint. *Inst.* 11.3.132–133 (in the section on gestures) "[...] delicatum: sicut palam moneri excidentis aut legere: [133] namque in his omnibus et vis illa dicendi solvitur et frigescit adfectus et iudex parum sibi praestari reverentiae credit."

[123] Cic. *Planc.* 74 "oratio, quae propter rei magnitudinem dicta de scripto est".

[124] Cic. *Phil.* 10.5 "ita enim dixisti, et quidem de scripto (nam te inopia verbi lapsum putarem) *etc.*"

[125] Cic. *Div. in Caec.* 52 "video mihi non te, sed hunc librum esse responsurum, quem monitor tuus hic tenet".

[126] Kennedy (1994, p. 185).

[127] Quint. *Inst.* 12.9.16–17 "at cum protinus respondendum est, omnia parari non possunt, adeo ut paulo minus promptis etiam noceat scripsisse, si alia ex diverso quam opinati fuerint occurrerint. [17] inviti enim recedunt a praeparatis et tota actione respiciunt requiruntque num aliquid ex illis intervelli atque ex tempore dicendis inseri possit: quod si fiat non cohaeret, nec commissuris modo, ut in opere male iuncto, hiantibus sed ipsa coloris inaequalitate detegitur."

4.3.3 Pretending memory failure

Like in the issue of voice failure, orators are not only concerned with avoiding memory failure but can actually use it for rhetorical purposes by *pretending* it to happen; here we find rhetorical theory aware of at least some aspects, even if not systematically.

One figure is to feign memory failure in order not to appear too prepared, like Cicero's famous "I am absolutely ignorant of art history" passage in the *Verrines*,[128] cited *ad rem* by Quintilian[129] with the "paene excidit mihi" formula of *anti-praeteritio*[130] which is so common in Cicero's speeches that it is hardly taken as related to actual memory failure any more.

Two more devices are closely related: the figure "...or have I forgotten anything?"[131] is mentioned twice by Quintilian (once as a *captatio benevolentiae*, like *paene praeterii*,[132] once as a form of the recapitulation after the main part of the speech[133]). Secondly, Quintilian suggests the technique of leaving something out by pretended memory failure in order to present it in a more suitable spot[134] (connected to the figure of *alio loco*[135]). Another type found in Cicero's speeches is not covered by Quintilian, which is actually a variant of the "*praeteritio* of the rest": sometimes in the pure form of "there is more of this, but I have forgotten",[136] sometimes in connection with the topos of

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[128] Cic. *Verr.* 2.4.5 "is dicebatur esse Myronis, ut opinor, et certe.", "sed earum artificem— quem? quemnam? recte admones—Polyclitum esse dicebant."

[129] Quint. *Inst.* 4.5.4 "alia sunt magis propter quae partitione non semper sit utendum: primum quia pleraque gratiora sunt si inventa subito nec domo allata sed inter dicendum ex re ipsa nata videantur, unde illa non iniucunda schemata: 'paene excidit mihi' et 'fugerat me' et 'recte admones'; propositis enim probationibus omnis in relicum gratia novitatis praecerpitur."

[130] See above p. 87.

[131] It is used e.g. by Demosthenes, when he pretends to have lost track of the statutes he had planned to quote in his speech (Dem. *or.* 23.82).

[132] Quint. *Inst.* 9.2.60–61 "vel cum quaerere nos quid dicamus fingimus: 'quid relicum est?' et: 'num quid omisi?'"

[133] Quint. *Inst.* 6.1.3 "licet et dubitare num quid nos fugerit".

[134] Quint. *Inst.* 4.2.83 "nam et aliquando nobis excidisse simulamus cum quid utiliore loco reducimus".

[135] See p. 76.

[136] Cic. *Phil.* 13.11 "sunt alii plures fortasse, sed de mea memoria dilabuntur.", 13.28 "arbitror me aliquos praeterisse; de iis tamen, qui occurrebant, tacere non potui."; similarly Cic. *Phil.* 14.31 "quorum de honore utinam mihi plura in mentem venirent!" A similar figure is used by Aeschines: ἢ πολλοὺς ἑτέρους, ὧν ἑκὼν ἐπιλανθάνομαι; οὐ γὰρ ἐπεξελθεῖν αὐτῶν ἕκαστον κατ' ὄνομα πικρῶς βούλομαι, ἀλλὰ μᾶλλον τῶν τοιούτων ἀπορεῖν ἂν εὐξαίμην ἐν τῷ λόγῳ διὰ τὴν πρὸς τὴν πόλιν εὔνοιαν. (Aischin. *Tim.* 158–159)

the inexpressible.[137] What Quintilian does mention[138] is the ironical touch this figure can take, when the orator shows his wit by making some stupid remarks in obvious mockery.[139]

A more special type of pretended memory failure is the figure of self-correction,[140] which is used several times by the Attic Orators and Cicero in their speeches, usually in the form "non dico / dicam A, sed B".[141] Cicero has it once in a rather implicit form,[142] sometimes with the correction postponed in the form "B, ne dicam A",[143] and twice in a more elaborate form.[144]

Of course, the phenomenon of failure is present here only in a very abstract way—no one when using these figures would actually have the audience believe he has made a slip of memory. Instead, the figure is intended to draw attention to the point, as a certain effort is simulated to find the appropriate

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[137] Cic. *Verr.* 2.4.57 "nullo modo possum omnia istius facta aut memoria consequi aut oratione complecti".

[138] Quint. *Inst.* 6.3.23 "namque eadem quae si inprudentibus excidant stulta sunt, si simulamus venusta creduntur."

[139] E.g. Cic. *Q. Rosc.* 50 "quod cum est veritate falsum, tum ratione quoque est incredibile; obliviscor enim Roscium et Cluvium viros esse primarios; improbos temporis causa esse fingo."

[140] It is classified as a figure of thought (ἐπανόρθωσις) by Rowe (1997, p. 141), and as *correctio*, with more detail, in Lausberg (1990, §§ 784–786); most quotations in the latter are from late ancient sources.

[141] Attic Orators: e.g. Dem. *or.* 9.24, 10.43, 18.297, 19.72, 19.265, 23.153, 24.169, 30.21, 36.39; Aischin. *leg.* 5, 148, *Ctes.* 167; Cicero: Cic. *Catil.* 1.2 "consul videt; hic tamen vivit. vivit? immo vero etiam in senatum venit, fit publici consilii particeps, notat et designat oculis ad caedem unum quemque nostrum."; Cic. *Sull.* 72 "ecquod est huius factum aut commissum non dicam audacius, sed quod cuiquam paulo minus consideratum videretur?"; Cic. *Flacc.* 4 "quam ob rem nisi hoc loco, nisi apud vos, nisi per vos, iudices, non auctoritatem, quae amissa est, sed salutem nostram, quae spe exigua extremaque pendet, tenuerimus, nihil est praeterea quo confugere possimus"; Cic. *Marc.* 4 "quae non dicam exornare, sed enarrare"; Cic. *Deiot.* 2 "crudelem Castorem, ne dicam sceleratum et impium", 10 "neque enim ille odio tui progressus, sed errore communi lapsus est"; Cic. *Phil.* 2.19 "iam illud cuius est non dico audaciae (cupit enim se audacem), sed, quod minime vult, stultitiae, qua vincit omnis", 2.30 "sed stuporem hominis vel dicam pecudis attendite", 2.38 "tu certe numquam in hoc ordine vel potius numquam in hac urbe mansisses", 2.65 "tantus igitur te stupor oppressit vel, ut verius dicam, tantus furor, ut . . . ", 2.67 "quae Charybdis tam vorax? Charybdim dico, quae si fuit, animal unum fuit; Oceanus medius fidius vix videtur tot res tam dissipatas, tam distantibus in locis positas tam cito absorbere potuisse", 2.104 "o tecta ipsa misera, 'quam dispari domino' (quamquam quo modo iste dominus?)—sed tamen quam ab dispari tenebantur!", 2.105 "at vero te inquilino (non enim domino)", 13.18 "hoc archipirata (quid enim dicam tyranno?)"

[142] Cic. *Flacc.* 4.

[143] Cic. *Deiot.* 2, Cic. *Phil.* 2.105, 13.18.

[144] Cic. *Phil.* 2.67, 2.104.

term, for something which consequently must be crucial to the case (this is the underlying line of thought implied by the orator).

There is a peculiar accumulation of the figure in Cicero's late speeches, with half of the examples from Cicero in *Phil.* 2 alone. Furthermore, in the two examples found in Cicero's earlier speeches a more intense term is replaced by a weaker one, while almost all of the later examples have a climactic structure (in case of the postpositioned self-corrections—*B, ne dicam A*—the replacing term is weaker, so that the climax is preserved in the word order). Often an already strong term is replaced by an even more intense one, and this ostentatious struggle for the *appropriate* term implies that the orator is driven to the limits of language by the extremity of the facts; a further progression on this scale leads the orator beyond the limits of language, and thus to the "topos of the inexpressible".[145] Apparently, from the distribution of the figure in his speeches, Cicero believed he had a licence to explicitly use stronger terms only in the last stage of his career, long after his recognition as Rome's first orator.

In rhetorical theory the figure is described in the *Rhet. Her.*[146] with an elaborate motivation, but without consideration of a climactic or anticlimactic structure. Cicero only mentions it in a *percursio* of rhetorical figures;[147] Quintilian quotes this list without comment[148] and later mentions *correctio* very briefly, without even an example, in a list of figures of his own.[149] The figure

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[145] On this topos see p. 214; this is also related to the explicit omission of (over-)strong or indecent language, see p. 113.

[146] *Rhet. Her.* 4.36 "correctio est, quae tollit id, quod dictum est, et pro eo id, quod magis idoneum videtur, reponit, [*exempla*] commovetur hoc genere animus auditoris. res enim communi verbo elata * tantummodo dicta videtur; ea post ipsius oratoris correctionem magis idonea fit pronuntiatione. 'non igitur satius esset', dicet aliquis, 'ab initio, praesertim cum scribas, ad optimum et lectissimum verbum devenire?' est, cum non est satius, si commutatio verbi id erit demonstratura, eiusmodi rem esse, ut, cum eam communi verbo appellaris, levius dixisse videaris, cum ad electius verbum accedas, insigniorem rem facias. quodsi continuo venisses ad id verbum, nec rei nec verbi gratia animadversa esset." A variant is described a little later: *Rhet. Her.* 4.40 "dubitatio est, cum quaerere videatur orator, utrum de duobus potius aut quid de pluribus potissimum dicat, hoc modo: 'offuit eo tempore plurimum rei publicae consulum sive stultitiam sive malitiam dicere oportet sive utrumque.' item: 'tu istuc ausus es dicere, homo omnium mortalium—quonam te digno moribus tuis appellem nomine?'"

[147] Cic. *De orat.* 3.203 "tum correctio vel ante vel postquam dixeris vel cum aliquid a te ipso reicias".

[148] Quint. *Inst.* 9.1.30.

[149] Quint. *Inst.* 9.3.89 "item correctionis eadem ratio est: nam quod illic dubitat, hic emendat."

itself was apparently a very common item in the orator's toolbox, requiring no further elaboration.

4.3.4 Conclusion

As a summary: the importance of the memory for the orator, and the prevention of memory failure, are high on the agenda of rhetorical advice: general memory training, the "stock of phrases" technique, extempore speaking, the use of a script / notes / prompter, *cogitatio*, and especially mnemotechnics are covered with more or less detail (with a remarkable tendency to self-referentiality within rhetorical theory in the topic of mnemotechnics). Advice for remedies on the spot, when memory failure has already occured, is not given, which may express a *communis opinio* that a "blackout" is something that simply must not happen to an orator.

More remarkable are the possibilities of using (pretended) memory failure as found in Cicero's speeches: in this area, oratorical practice again goes beyond rhetorical theory, especially in the variants of *praeteritio* which are based on pretended memory failure. Rhetorical theory is apparently not interested in this issue; the figure of self-correction described in the *Rhetorica ad Herennium* is a singular example of theoretical awareness of the point, but it is not taken up later with the same emphasis: even Quintilian, who usually develops what he has found in the rhetorical tradition with great detail and system, does not pursue this point.

4.4 Potential failure due to nervousness

Another potential obstacle for an orator is his nervousness; insofar as it leads to actual silence, this can be ascribed to either voice failure or memory failure, covered above in sections 4.2–4.3; in this section, I am only concerned with nervousness (actual or pretended) as mentioned by the orator, but without manifest, visible or audible, faults in the speech. Thus, there is no actual failure, but a potential failure utilised rhetorically by the orator.

In the Attic Orators, the topic is used in two kinds of situation: first, at the beginning of funeral speeches for citizens who have fallen in war, in connec-

tion with the "topos of the inexpressible":[150] the orator describes his concerns whether he will be able to honour the deceased and their deeds in an appropriate way. Second, at the beginning of a speech which is the speaker's's first occasion of speaking in public (i.e. the actual speaker's, while the speech may be written by a logographer):[151] here the topic is used for a *captatio benevolentiae* for the speaker's inexperience. In both cases the topic of nervousness is used as a topos,[152] with no reference to the specific circumstances of the speech. It was, in the Attic Orators, apparently not used as an argument in itself.

In Cicero's speeches, on the contrary, the figure is used very rarely and only with very good reasons, and always resulting from a special case or political situation. In three instances, the *captatio benevolentiae* is the dominant aspect: firstly, the *Pro S. Roscio Amerino*[153] is entirely dominated by an atmosphere of high political pressure, under which legal rights are difficult to achieve; Cicero relates this situation to his own state of being nervous with a good reason despite having a good case. Secondly, the *Pro rege Deiotaro*[154] stands under political pressure of a quite different kind; Cicero still uses his nervousness for a *captatio benevolentiae*, but with a complex web of motives and references:[155] 1. the high position of the accused; 2. the low position of the accusers; 3. Caesar's *clementia* (addressed quite directly); and 4. the

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[150] Lys. *or.* 2.1; Hyp. *or.* 6.2. Remarkably, Pericles in his funeral speech (as described by Thucydides, Thuk. 2.35) also uses the "topos of the inexpressible", but does not claim to be nervous.

On the "topos of the inexpressible" see p. 214.

[151] Lys. *or.* 12.3, Lys. *or.* 19.1–3; Dem. *or.* 27.2, 34.1.

[152] This does not mean that it was always used in speeches of this kind. For public funeral speeches, we do not have enough specimens for a sustantiated judgement; for "first speeches", we have many examples where the topos was not used.

[153] Cic. *S. Rosc.* 9 "his de rebus tantis tamque atrocibus neque satis me commode dicere neque satis graviter conqueri neque satis libere vociferari posse intellego. nam commoditati ingenium, gravitati aetas, libertati tempora sunt impedimento. huc accedit summus timor, quem mihi natura pudorque meus attribuit, et vestra dignitas et vis adversariorum et Sex. Rosci pericula. quapropter vos oro atque obsecro, iudices, ut attente bonaque cum venia verba mea audiatis."

[154] Cic. *Deiot.* 1 "cum in omnibus causis gravioribus, C. Caesar, initio dicendi commoveri soleam vehementius, quam videtur vel usus vel aetas mea postulare, tum in hac causa ita me multa perturbant, ut, quantum mea fides studii mihi adferat ad salutem regis Deiotari defendendam, tantum facultatis timor detrahat. *etc.*"

[155] While some of these factors should really rather work in Cicero's favour, they still constitute unfamiliar circumstances and therefore contribute to the orator's uncertainty of how to deal with them.

physical situation in Caesar's house, which Cicero compares to the usual situation on the *Forum*, with reference to the Roman citizens where Caesar's responsibility towards the Roman people is implied. Cicero thus uses his own weakness to confirm Caesar's power and to derive from there a duty of justice and *clementia*. Thirdly, in the seventh *Philippica*[156] Cicero is (according to his own presentation at least) confronted not with an overall adverse climate but with a divided senate, and with a political situation outside the ordinary, where his argumentative foundation are not laws but personal connections, attitudes, feelings. He needs to turn the mood of at least some senators, in order to get a majority for his position; therefore he introduces with his confession of nervousness a long, climactic period, an elaborated "please listen!" that shows respect to the audience and anticipates their protest.

In another three passages Cicero mentions his nervousness within a tactical trick while the *captatio benevolentiae* is present only in the background: the *Divinatio in Caecilium* is a speech in preparation of the Verres trial, where Cicero argues why he, rather than Caecilius, should act as Verres' prosecutor. In this context, the nervousness is used as a sign of agitation and tension, in contrast to Caecilius, to make him appear disengaged and not committed, and thus a less suitable prosecutor.[157] In the *Pro Quinctio*,[158] the nervousness is part of a dramatic narration: Cicero tells how he was nervous and unsure earlier, but was then convinced by his client that the case (*res ipsa*) is absolutely safe; the implied consequence is that the same facts will have the same eye-opening effect on the audience now. In the *Pro Cluentio*, the topic is part of an unusually complex argumentation involving an earlier trial where Cluentius and Cicero were on different sides; Cicero claims that his nervous-

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[156] Cic. *Phil.* 7.8 "periculose dico; quem ad modum accepturi, patres conscripti, sitis, horreo, sed pro mea perpetua cupiditate vestrae dignitatis retinendae et augendae quaeso oroque vos, patres conscripti, ut primo, etsi erit vel acerbum auditu vel incredibile a M. Cicerone esse dictum, accipiatis sine offensione, quod dixero, neve id, priusquam, quale sit, explicaro, repudietis".

[157] Cic. *Div. in Caec.* 41 "ego qui, sicut omnes sciunt, in foro iudiciisque ita verser ut eiusdem aetatis aut nemo aut pauci pluris causas defenderint, et qui omne tempus quod mihi ab amicorum negotiis datur in his studiis laboribusque consumam, quo paratior ad usum forensem promptiorque esse possim, tamen ita mihi deos velim propitios ut, cum illius mihi temporis venit in mentem quo die citato reo mihi dicendum sit, non solum commoveor animo, sed etiam toto corpore perhorresco".

[158] Cic. *Quinct.* 77 "diffidebam me hercule, C. Aquili, satis animo certo et confirmato me posse in hac causa consistere. sic cogitabam, cum contra dicturus esset Hortensius et cum me esset attente auditurus Philippus, fore uti permultis in rebus timore prolaberer."

ness in the earlier trial was only logical "in eius modi causa",[159] i.e. in a case which was hopeless then, since Cluentius was right, consequently Cluentius is innocent now; Cicero implies that he knew eight years before that he was defending a bad case, but he cannot say so openly now.

In other cases Cicero might also have had a reason to mention his nervousness as a *captatio benevolentiae*, but does not do so as it is not fully justified by the circumstances. At least Plutarch claims that Cicero was in the trials against Murena and Milo troubled by anxiety and unsteadiness.[160] In the *Pro Murena*, there is no mention of nervousness at all, and the case is generally considered to have been quite a safe one for Cicero.

The *Pro Milone* is a more special case, and not only because of Plutarch's report. The trial itself was held under great public attention and under impression of the unrest caused by Clodius' gangs.[161] Cicero suggests at the beginning of his speech (as we have it) that a threatening atmosphere is produced by Pompey's troops[162] (although in fact it was Cicero's own colleagues on the defence team who had asked for the presence of the military[163]). It is possible that the transmitted version of Cicero's speech differs significantly from the one he gave in court,[164] so we do not know for sure what the situation and atmosphere really was, and whether and how Cicero created an argument from it and from his own (real or pretended) feelings at the time. The rhetorical strategy in the extant text does *not* draw on the

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[159] Cic. *Cluent.* 51.

[160] Plut. *Cic.* 35.3 "Λικιννίῳ δὲ Μουρήνα φεύγοντι δίκην ὑπὸ Κάτωνος βοηθῶν, καὶ φιλοτιμούμενος Ὁρτήσιον ὑπερβαλεῖν εὐημερήσαντα, μέρος οὐδὲν ἀνεπαύσατο τῆς νυκτός, ὡς ὑπὸ τοῦ σφόδρα φροντίσαι καὶ διαγρυπνῆσαι κακωθεὶς ἐνδεέστερος αὑτοῦ φανῆναι"; Plut. *Cic.* 35.4 "τότε δ' οὖν ἐπὶ τὴν τοῦ Μίλωνος δίκην ἐκ τοῦ φορείου προελθών, καὶ θεασάμενος τὸν Πομπήιον ἄνω καθεζόμενον ὥσπερ ἐν στρατοπέδῳ καὶ κύκλῳ τὰ ὅπλα περιλάμποντα τὴν ἀγοράν, συνεχύθη καὶ μόλις ἐνήρξατο τοῦ λόγου, κραδαινόμενος τὸ σῶμα καὶ τὴν φωνὴν ἐπεχόμενος.

[161] Asconius *ad Pro Milone* 40.

[162] E.g. Cic. *Mil.* 1 "haec novi iudici nova forma terret oculos"; 2 "non illa praesidia [...] non adferunt tamen [oratori] aliquid, ut [...] tamen ne non timere quidem sine aliquo timore possimus".

[163] Asconius *ad Pro Milone* 40; Cicero later mentions his gratefulness to Pompey in a letter (Cic. *Fam.* 3.10.10).

[164] This is stated in Cassius Dio 40.54.2–3; Quintilian apparently knew of a written version of the actual speech (*Inst.* 4.3.17 "ipsa oratiuncula qua usus est"). In modern research, the extant speech has been regarded as the speech Cicero had wanted to give (Stroh, 1992, p. 36), more or less the speech he gave (Settle, 1963, p. 280), a forensic display piece (May, 2001), a political statement, rather independent from the trial (Melchior, 2008, p. 285), or a consolation to Milo in his exile (Clark and Ruebel, 1985).

topos of nervousness to create a *captatio benevolentiae*.[165] Cicero speaks about the unusual atmosphere created by the soldiers in the *Forum*, which might induce *timor* (§§ 2, 4), but does not claim that anyone actually is or should be terrified; all he states is a hypothetical *timor* which might be justified by the circumstances, and not even for himself but for the judges (§ 4). In fact, it is very likely that if anyone was actually nervous at the trial, it was because of the situation that made the military necessary in the first place, i.e. Clodius' gangs roaming the city and responding to Cicero's speech with uproar.[166] And this is exactly the point of Cicero's strategy in the extant text: he reminds his audience that the soldiers, however threatening their sight might be in itself, are a promise of safety rather than danger.[167] Cicero's strategy is not a *captatio benevolentiae* for himself here; instead he establishes a connection with the audience based on their common perception of the circumstances, and builds a *captatio malevolentiae* against Clodius.

Regardless of the validity of Plutarch's claim here and on the *Pro Murena*, it seems that Cicero would only use the topos of nervousness when he was actually feeling rather confident; but it is at least equally plausible that he would omit the topic if it was not strongly motivated by the situation, and not use it as a pure excuse for a poor performance.

This is not contrary to Cicero's advice in *De oratore* always to approach a speech with caution and respect for the task and thus to cultivate a certain "stage fright" which includes both nervousness and increased alertness,[168] as this need not be related to explicit mention of nervousness. In the *Rhetorica ad Herennium*, a related point is mentioned, the situation when the orator has to say something he knows to be disagreeable to the audience; the *Auc-*

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[165] This only suggests itself if the text is read together with Plutarch's and Dio's accounts that Cicero was in fact extraordinarily nervous.

[166] Asconius *ad Pro Milone* 41–42 "Cicero cum inciperet dicere, exceptus est acclamatione Clodianorum, qui se continere ne metu quidem circumstantium militum potuerunt. Itaque non ea qua solitus erat constantia dixit."

[167] Cic. *Mil.* 3 "quam ob rem illa arma, centuriones, cohortes non periculum nobis, sed praesidium denuntiant".

[168] Cic. *De orat.* 1.119 "mihi etiam qui optime dicunt quique id facillime atque ornatissime facere possunt, tamen, nisi timide ad dicendum accedunt et in ordienda oratione perturbantur, paene impudentes videntur"; cf. Cic. *De orat.* 1.121 (Crassus' own example) "equidem et in vobis animum advertere soleo et in me ipso saepissime experior, ut et exalbescam in principiis dicendi et tota mente atque artubus omnibus contremiscam".

tor advises to rely expressly on the moral argument of the duty of truth.[169] Quintilian has more to say about the (real) problem of nervousness (especially if it arises from a natural shyness) than the earlier writers of rhetorical theory,[170] as it apparently became more of a problem in the educational system of the Empire, where students tended to remain in the secure environment of school declamations for too long.[171] Nevertheless Quintilian agrees with the traditional opinion that a certain nervousness is useful if it means not fear but respect for the task, and that if not actually there, it should be simulated.[172]

However, none of the writers of rhetorical theory treats nervousness, actual or feigned, as a potential source of argument.

4.5 Lack of talent

Lack of talent, of a natural skill in oratorical tasks, can of course lead to various kinds of oratorical failure. In the absolute case where an oratorical career is not even attempted (or attempted, but given up soon) due to lack of talent, it ceases to be an oratorical issue; yet it is a topic in the theoretical discourse, though not given much space. Its history in ancient rhetoric starts only with Cicero's *De oratore*: in the first book, Cicero quotes his teacher Apollonios

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[169] *Rhet. Her.* 4.49–50 "est autem quoddam genus in dicendo licentiae, quod astutiore ratione conparatur, cum aut ita obiurgamus eos, qui audiunt, quomodo ipsi se cupiunt obiurgari, aut *id, quod scimus facile omnes audituros, dicimus nos timere, quomodo accipiant, sed tamen veritate commoveri, ut nihilosetius dicamus.* [*exempla*] [50] ergo haec exornatio, cui licentiae nomen est, sicuti demonstravimus, duplici ratione tractabitur: acrimonia, quae si nimium fuerit aspera, mitigabitur laude; et *adsimulatione, de qua posterius diximus, quae non indiget mitigationis, propterea quod imitatur licentiam et sua sponte se ad animum auditoris adcommodat.*"

[170] Quint. *Inst.* 12.5.3 "sciat autem, si quis haec forte minus adhuc peritus distinguendi vim cuiusque verbi leget, non probitatem a me reprendi, sed verecundiam, quae est timor quidam reducens animum ab iis quae facienda sunt: *inde confusio et coepti paenitentia et subitum silentium.* quis porro dubitet vitiis adscribere adfectum propter quem facere honeste pudet?"

[171] Quint. *Inst.* 12.6.5 "ideoque nonnulli senes in schola facti stupent novitate cum in iudicia venerunt, et omnia suis exercitationibus similia desiderant. at illic et iudex tacet et adversarius obstrepit et nihil temere dictum perit, et si quid tibi ipse sumas probandum est, et laboratam congestamque dierum ac noctium studio actionem aqua deficit, et omisso magna semper flandi tumore in quibusdam causis loquendum est, quod illi diserti minime sciunt."

[172] Quint. *Inst.* 12.5.4 "neque ego rursus nolo eum qui sit dicturus et sollicitum surgere et colore mutari et periculum intellegere, quae si non acciderent, etiam simulanda erunt; sed intellectus hic sit operis, non metus, moveamurque, non concidamus."

Molon (of Alabanda) who would not admit a student whom he found not to have enough talent,[173] and while Apollonios was certainly not the first teacher to follow this principle, Cicero is the first writer of rhetoric to state it. He repeats the point in the second book, now on his own account.[174] In the *Brutus*, he applies the point to the historical context, when in a general statement about the early Republic he reports that many more men wanted to become orators than could, i.e. that wish and effort are not sufficient.[175] This is confirmed later when he mentions T. Manlius Torquatus, who could have become an orator but did not want to, as an exception to the rule.[176]

After Cicero the topic is taken up by Quintilian at the beginning of the *Institutio* and touched upon again in other passages, with some differences: Quintilian goes into much more detail about the necessary natural dispositions (*ingenium naturaque*) of a student of oratory, of which the student's behaviour is a favourable sign, and how a teacher should treat his students differently according to their character.[177] Yet he does not make quite as harsh a statement as Cicero, that some students are just hopeless: he gets closest in the clause "non dabit mihi spem bonae indolis, qui ..."[178] (which is somewhat watered down), and he concedes only very reluctantly that nature sometimes sets limits even to the best teacher, but emphasises the aim of making the best of any student.[179] He allows for absolute prerequisites

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[173] Cic. *De orat.* 1.126 "Alabandensem Apollonium, qui cum mercede doceret, tamen non patiebatur eos, quos iudicabat non posse oratores evadere, operam apud sese perdere, dimittebatque et ad quam quemque artem putabat esse aptum, ad eam impellere atque hortari solebat"; cf. 1.130.

[174] Cic. *De orat.* 2.85 "qua re ego tibi oratorem sic iam instituam, si potuero, ut quid efficere possit ante perspiciam; [...] sin plane abhorrebit et erit absurdus, ut se contineat aut ad aliud studium transferat, admonebo".

[175] Cic. *Brut.* 182 "volo enim sciri in tanta et tam vetere re publica maxumis praemiis eloquentiae propositis omnes cupisse dicere, non plurumos ausos esse, potuisse paucos"; cf. the same point in Cic. *Planc.* 62 "quotus enim quisque disertus, quotus quisque iuris peritus est, ut eos numeres qui volunt esse?"

[176] Cic. *Brut.* 245 "plus facultatis habuit ad dicendum quam voluntatis".

[177] Quint. *Inst.* 1.3.1–7.

[178] Quint. *Inst.* 1.3.2. Similarly vague are Quint. *Inst.* 1.pr.26 "illud tamen in primis testandum est, nihil praecepta atque artes valere nisi adiuvante natura. quapropter ei cui deerit ingenium non magis haec scripta sint quam de agrorum cultu sterilibus terris" and Quint. *Inst.* 7.10.14 "sed haec in oratione praestabit cui omnia adfuerint, natura doctrina studium."

[179] Quint. *Inst.* 10.2.20–21 "nam is [praeceptor] et adiuvare debet quae in quoque eorum invenit bona et quantum fieri potest adicere quae desunt et emendare quaedam et mutare. rector enim est alienorum ingeniorum atque formator; difficilius est naturam suam fingere. [21] sed ne ille quidem doctor, quamquam omnia quae recta sunt velit esse in suis auditoribus quam plenissima, in eo tamen cui naturam obstare viderit laborabit."

only in special areas: in regards to physical-medical conditions[180] and to memory,[181] i.e. in issues not directly connected to the task of persuasion nor to the moral claim of the *vir bonus*. Nor does Quintilian explicitly state the opposite position, that all students can be taught with benefit, at least to a certain, if modest, degree. This more optimistic attitude shines through in the recommendation to the newborn's father which opens the *Institutio* after the prooemium: "igitur nato filio pater spem de illo primum quam optimam capiat";[182] yet Quintilian, with his practical experience of decades as a teacher, apparently decided not to include the pure idealistic view in his *Institutio*.

The complementary position, that a mediocre talent need not, and should not, lead to general silence of an ambitious orator-candidate, is to be found explicitly in Cicero's *De oratore*[183] and again in the *Orator*[184] and takes up an entire section of Quintilian's *Institutio*,[185] and in some way it naturally underlies the entire literature of rhetorical theory, which is based on the as-

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[180] See above p. 180.

[181] Quint. *Inst.* 11.2.49 "sed ne hoc quidem infirmae memoriae remedium est nisi in iis qui sibi facultatem aliquam dicendi ex tempore paraverunt. quod si cui utrumque defuerit, huic omittere omnino totum actionum laborem, ac si quid in litteris valet ad scribendum potius suadebo convertere: sed haec rara infelicitas erit."

[182] Quint. *Inst.* 1.1.1.

[183] Cic. *De orat.* 1.132 "quae [forma apta et vox plena ac suavis] quibus a natura minora data sunt, tamen illud adsequi possunt, ut eis, quae habent, modice et scienter utantur et ut ne dedeceat" and 3.35 "etenim videmus ex eodem quasi ludo [summorum in suo cuiusque genere artificum et magistrorum] exisse discipulos dissimilis inter se ac tamen laudandos, cum *ad cuiusque naturam institutio doctoris accommodaretur*."; cf. on memory Cic. *De orat.* 2.357.

[184] Cic. *Orat.* 4 "quod si quem aut natura sua aut illa praestantis ingeni vis forte deficiet aut minus instructus erit magnarum artium disciplinis, teneat tamen eum cursum quem poterit; prima enim sequentem honestum est in secundis tertiisque consistere"; similarly on memory: Cic. *De orat.* 2.360 "qua re hac exercitatione non eruenda memoria est, si est nulla naturalis; sed certe, si latet, evocanda est" and Quint. *Inst.* 11.2.1 "memoriam quidam naturae modo esse munus existimaverunt, estque in ea non dubie plurimum, sed ipsa excolendo sicut alia omnia augetur".

[185] Quint. *Inst.* 2.8, in particular: [1] "virtus praeceptoris haberi solet, nec inmerito, diligenter in iis quos erudiendos susceperit notare discrimina indiligengeniorum, et quo quemque natura maxime ferat scire. nam est in hoc incredibilis quaedam varietas, nec pauciores animorum paene quam corporum formae."; [12] "inbecillis tamen ingeniis sane sic obsequendum sit ut tantum in id quo vocat natura ducantur; ita enim quod solum possunt melius efficient."; [13–14] "nam sunt haec duo uitanda prorsus: [14] unum, ne temptes quod effici non possit, alterum, ne ab eo quod quis optime facit in aliud cui minus est idoneus transferas."

sumption that any level of natural talent can be improved by proper instruction.[186]

The more specific question of how an oratorical career should be planned *depending* on the level of natural talent is not covered explicitly anywhere in theory. It is touched indirectly, however, in a passage in *De oratore*[187] which is concerned with the value of legal knowledge for the orator; here it is said, in passing, that no one should undertake a big case who fails in smaller ones. Although this statement does not actually relate to talent, the casual mentioning allows to regard as *communis opinio* that there are minor (easier) and major (more difficult) cases, and that any orator should stick to what he can handle. This corresponds to the advice to an orator with limited talent in the *Orator* "in secundis tertiisque consistere".[188]

The general line of thought which we find in the rhetorical writings, that some talent is necessary for becoming a (good) orator, but talent alone is not sufficient, is sometimes also used as an argument in actual speeches. The first part, that talent is necessary, can be seen in the opening sentence of Cicero's *Pro Balbo*, where he infers *ingenium* from *eloquentia*, in order to praise his co-orators.[189] The second part, that talent must be supported by education and training for the orator to achieve the highest level of competence, is used in *Pro Caelio* as an argument for Caelius' honourable lifestyle, or at least not

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[186] A curious exception is humour, which according to Cicero depends on talent alone (Cic. *De orat.* 2.216).

Much more space is given to the point whether talent alone is sufficient, i.e. whether theory and formal education is necessary to become a "good" orator. Indeed, much of *De orat.* 1 deals with this question, and while especially Crassus insists that talent is essential and that oratory is based on *dona naturae* (Cic. *De orat.* 1.113–115), it is conceded that some theory and exercise is indispensable if the aim is perfection, e.g. Cic. *De orat.* 1.14 (similarly Cic. *De orat.* 1.78–79); similar statements are made by Quintilian (*Inst.* 2.19 and 11.3.11).

[187] Cic. *De orat.* 1.174–175 "tu mihi cum in circulo decipiare adversari stipulatiuncula et cum obsignes tabellas clientis tui, quibus in tabellis id sit scriptum, quo ille capiatur, ego tibi ullam causam maiorem committendam putem? citius hercule is, qui duorum scalmorum naviculam in portu everterit, in Euxino ponto Argonautarum navem gubernarit. [175] quid? si ne parvae quidem causae sunt, sed saepe maximae, in quibus certatur de iure civili, quod tandem os est eius patroni, qui ad eas causas sine ulla scientia iuris audet accedere?"

[188] Cic. *Orat.* 4, cf. note 184.

[189] Cic. *Balb.* 1 "si ingenia [patronorum in iudiciis valent], ab eloquentissimis [viris L. Corneli causa defensa est]".

an altogether dishonourable lifestyle, as this would be incompatible with oratorical training.[190]

4.6 The "topos of incapability" and the "topos of the inexpressible"

Another, more strictly rhetorical use of the issue of lack of talent is the "topos of incapability"[191] which is decribed precisely in the *Rhetorica ad Herennium*: "[principium sumetur] ab eius persona, de quo loquemur, si laudabimus: vereri nos, ut illius facta verbis consequi possimus";[192] it is later taken up by Quintilian.[193] The figure is a typical *captatio benevolentiae*, since it asks for lenience from the audience for the orator's performance.[194] It has almost always an ironical touch and in that is connected to the *praeteritio*.[195]

Curiously, both the *Rhetorica ad Herennium* and Quintilian cover this figure in the specific context of the *principium*, and in case of the *Rhet. Her.*, more specifically the *principium* of an epideictic speech; yet we do find it in the Attic Orators' and Cicero's forensic speeches, and not only in defence speeches (which bear a certain connection to the *genus laudativum*) but also in Athenian

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[190] Cic. *Cael.* 45–46 "atque in eo non solum ingenium elucere eius videbatis, quod saepe, etiamsi industria non alitur, valet tamen ipsum suis viribus, sed inerat, nisi me propter benevolentiam forte fallebat, ratio et bonis artibus instituta et cura et vigiliis elaborata *etc.*"

[191] This topos has, of course, a long tradition in poetry, starting with Homer's notorious "Not even if I had ten tongues..." (Hom. *Il.* 2.489) and recurring e.g. in Catullus 14b, in the prooemia of Horace's *Ars poetica* and of Vergil's *Georgica*, in the *Eclogae* (Verg. *Ecl.* 6.1–12) and the *Aeneid* (Verg. *Aen.* 6.625) and in Apuleius (Apul. *Met.* 11.25). One of its most famous occurrences in the history of oratory (however fictitious) is the beginning of Pericles' funeral oration in Thuk. 2.35. Moreover, it is a species of the more general "topos of modesty" which pervades all literary genres and eras.

[192] *Rhet. Her.* 3.11.

[193] Quint. *Inst.* 4.1.8 "ita quaedam in his quoque commendatio tacita, si nos infirmos, inparatos, inpares agentium contra ingeniis dixerimus" (on the prooemium).

[194] It is also connected to the topic of *artem arte celare* (see p. 120), as it implies that the matter (case) at hand is by itself sufficient, and that a better orator could make a much stronger argument. (Cf. the similar line of thought by Wisse (2013, p. 170–171): "[the] rhetorical move of attacking the oratorical abilities of a speaker on the other side is perhaps not without its dangers. For instead of showing that the opposition's case is weak, does it not suggest that, with the right approach, a much stronger case for the opposition could be constructed?")

[195] Cf. Andersen (2001) on the *Bescheidenheitstopos* (or "topos of modesty") in general, and on the paradox created that the topos is only successful if accepted by the audience, but as a rhetorical device, i.e. seen through: "the disclaimer of art becomes a display of art" (Andersen, 2001, p. 6).

prosecution speeches as well as Cicero's speeches against Verres, and there
in a decidedly negative argumentation. Besides, the topos is not bound to
the *principium* of a speech, as the *Rhetorica ad Herennium* would have it: in
most cases it is used at the opening of the speech, but also in a *peroratio* by
Aeschines and in later parts of the *actio secunda* against Verres.[196]

Related to the "topos of incapability" is another rhetorical topos: the ulti-
mate rhetorical way of using the issue of failure, and also a special kind of
praeteritio (see p. 79), is the "topos of the inexpressible", the claim that some-
thing is just too big (too good, too bad, etc.) to be expressed in words, let
alone appropriately.[197] Indeed, the *Auctor ad Herennium*, in the passage cited
above, continues: "[principium sumetur] ab eius persona, de quo loquemur,
si laudabimus: vereri nos, ut illius facta verbis consequi possimus; omnes
illius virtutes praedicare oportere; *ipsa facta omnium laudatorum eloquentiam
anteire*".[198] In this last step, the point of reference of the figure is broadened
from the single orator's incapacity to the incapacity of every orator and thus
of oratory in general. The focus is thereby shifted from the orator's person
to the subject of the speech (although the topos of modesty is still present in
the background); its main function is consequently not a *captatio benevolentiae*
but an emphasis on the topic.

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[196] Attic Orators: e.g. Lys. *or.* 17.1; Dem. *or.* 22.1, 23.5, 29.1; Aischin. *Ctes.* 260; Cicero: Cic. *S.
Rosc.* 9 "his de rebus tantis tamque atrocibus neque satis me commode dicere neque satis
graviter conqueri neque satis libere vociferari posse intellego. nam commoditati inge-
nium, gravitati aetas, libertati tempora sunt impedimento"; Cic. *Verr.* 2.4.87 "non possum
disposite istum [Verrem] accusare, si cupiam: opus est non solum ingenio verum etiam ar-
tificio quodam singulari", 2.5.158 "nam quid ego de P. Gavio, Consano municipe, dicam,
iudices, aut qua vi vocis, qua gravitate verborum, quo dolore animi dicam? tametsi dolor
me non deficit; ut cetera mihi in dicendo digna re, digna dolore meo, suppetant magis
laborandum est"; Cic. *Manil.* 3 "dicendum est enim de Cn. Pompei singulari eximiaque
virtute; huius autem orationis difficilius est exitum quam principium invenire. ita mihi
non tam copia quam modus in dicendo quaerendus est"; Cic. *Marc.* 4 "nullius tantum
flumen est ingeni, nullius dicendi aut scribendi tanta vis, tanta copia, quae non dicam
exornare, sed enarrare, C. Caesar, res tuas gestas possit."

[197] The topic has a place of its own in funeral orations of fifth-century Greece, where, among
other topics, "the speaker should acknowledge that his words will be inadequate to the
occasion". (Kennedy, 1994, p. 22)

It is related to some aspects of allusion (see p. 81) and to the figure "dies iam me deficiat"
(discussed in the section on time limits, see p. 62).

[198] *Rhet. Her.* 3.11.

We find the topos in the Attic Orators' and Cicero's speeches both in the general form of "no words can suffice to express …",[199]sometimes with an emphasis on "to express appropriately",[200] and with a focus on the lack of an appropriate term for a particular quality or behaviour.[201] Special forms of this feature are: offering possible terms and dismissing them;[202] "auderet enim dicere", implying that something needs courage to say;[203] the orator's confession of not having enough tears (left) to express his grief;[204] the complete surrender on an issue and on the task of conveying it[205] (which is close to a total rhetorical failure); and the claim that something (which happens to be the subject of the speech) is too important to be said[206] (this is heavily ironical, of course, and plays with the assumed or actual appropriateness to say something).

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[199] Attic Orators: e.g. Lys. *or.* 2.2, 2.54, 12.1, 12.99; Dem. *or.* 3.16, 9.54, 10.64, 14.1, 18.129; Hyp. *or.* 6.2; Cicero: e.g. Cic. *Verr.* 2.4.1 "ego quo nomine appellem nescio"; Cic. *Manil.* 29 "iam vero virtuti Cn. Pompei quae potest oratio par inveniri? quid est quod quisquam aut illo dignum aut vobis novum aut cuiquam inauditum possit adferre?"; Cic. *Mil.* 78 "non potest dici satis, ne cogitari quidem, quantum in illo sceleris, quantum exiti fuerit."; Cic. *Har.* 2 "cuius ego de ecfrenato et praecipiti furore quid dicam? ⟨an⟩ potest gravioribus a me verbis vulnerari quam est statim in facto ipso a gravissimo viro, P. Servilio, confectus ac trucidatus? cuius si iam vim et gravitatem illam singularem ac paene divinam adsequi possem, tamen non dubito quin ea tela quae coniecerit inimicus quam ea quae conlega patris emisit leviora atque hebetiora esse videantur."

[200] Attic Orators: e.g. Lys. *or.* 2.1; Dem. *or.* 6.11, 19.65, 20.76; Cicero: Cic. *Phil.* 2.77 "o hominem nequam! quid enim aliud dicam? magis proprie nihil possum dicere."

[201] Attic Orators: e.g. Dem. *or.* 18.22, 27.64, 36.44; Cic. *Leg. agr.* 2.35 "verbum mihi deest, Quirites, cum ego hanc potestatem regiam appello"; Cic. *Har.* 5 "itaque eum numquam a me esse accusandum putavi, non plus quam stipitem illum qui quorum hominum esset nesciremus, nisi se Ligurem ipse esse diceret."; Cic. *Phil.* 2.67 "quae Charybdis tam vorax? Charybdim dico, quae si fuit, animal unum fuit; Oceanus medius fidius vix videtur tot res tam dissipatas, tam distantibus in locis positas tam cito absorbere potuisse."

[202] Dem. *or.* 19.66, 19.220; Cic. *Har.* 53 "quas ego alias optimatium discordias a dis immortalibus definiri putem? nam hoc quidem verbo neque P. Clodius neque quisquam de gregalibus eius aut de consiliariis designatur"; Cic. *Scaur.* 50 "quo te nunc modo appellem? ut hominem? at non es inter nos. ut mortuum? at vivis et viges"; Cic. *Lig.* 17 "scelus tu illud vocas, Tubero? cur? isto enim nomine illa adhuc causa caruit. alii errorem appellant, alii timorem; qui durius, spem, cupiditatem, odium, pertinaciam; qui gravissime, temeritatem; scelus praeter te adhuc nemo."

[203] Cic. *Mil.* 72.

[204] Cic. *Phil.* 2.64 "miserum me! consumptis enim lacrimis tamen infixus haeret animo dolor"; similarly Cic. *Phil.* 1.9 "atque ego celeriter Veliam devectus Brutum vidi, quanto meo dolore, non dico."

[205] Cic. *Prov. cons.* 41 "quam sapienter non disputo; multis enim non probabo".

[206] Cic. *Leg. agr.* 2.41 "hic ego consul populi Romani non modo nihil iudico sed ne quid sentiam quidem profero. magna enim mihi res non modo ad statuendum sed etiam ad dicendum videtur esse."

The figure is not as frequent as others in the Attic Orators' and Cicero's speeches, but still used several times. With exception of the *Rhetorica ad Herennium*, it is not treated in rhetorical theory; especially Quintilian, who mentions the "topos of incapability", does not consider the shift of focus towards the altogether inexpressible.[207]

4.7 Conclusion

Various forms of failure, potential and actual, are considered in rhetorical theory in varying depth: much attention is devoted to techniques of memory training, especially mnemotechnics; advice on voice training is less detailed and practical as one might expect, but the issue is present as a potential problem; nervousness is mentioned, though with not much practical advice; the subject of (lack of) talent *vs.* (lack of) education is discussed particularly widely by Cicero.

What is largely missing in the rhetorical theory, however, are the opportunities for the orator to turn an issue of failure into an advantage, to make rhetorical use of what is originally an obstacle: opportunities to pretend a failure for various purposes (a pretext for an omission [i.e. *praeteritio*], a *captatio benevolentiae*, to draw special attention to something, or as part of a larger argumentation). Where these are mentioned in theoretical writings, not all aspects are covered that are used in practice, not even by Quintilian who in other topics shows both a thorough knowledge of Cicero's speeches and a love for detail and system. This is particularly striking in a case like the "topos of incapability" which is attributed both by the *Rhetorica ad Herennium* and Quintilian to the *prooemium*, but used by the orators in all parts of a speech: both the *Auctor ad Herennium* and Quintilian should know better; instead it is conceivable that especially Quintilian mainly adopts what he finds in earlier theoretical writings (which are not extant), rather than reacting to actual oratorical practice.

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[207] In later oratory this topos took yet another turn: "Die Unsagbarkeit einer Sache [. . .] wird deshalb oft durch den Gedanken ausgedrückt, daß selbst C[icero] hier verstummen würde" (Becker, 1957, c. 90).

5 Conclusions: silence and omissions in theory and practice

In my observations regarding many single phenomena in the area of silence and omission, a common feature has become visible: the extant speeches by the Attic Orators and Cicero use many aspects of silence or omissions in strategic ways which are not covered in the rhetorical writings. This would not be very significant if only isolated points, specific to a particular speech and its historical circumstances, were concerned, as it lies in the very nature of rhetorical theory that it treats mostly recurring phenomena and structures, topics which can be in some way systematised and thus transferred to the composition and performance of new speeches. But something ubiquitous has become visible in the speeches which is not treated in theory: a recurring tendency to use silence and omission, especially *explicit* silence and omission, for rhetorical purposes. This usage is similar enough to other areas of rhetorical strategy which are indeed covered systematically by the ancient writers of rhetorical theory (in particular by Quintilian in the *Institutio*, the most exhaustive rhetorical work from the classical periods of both Athens and Rome) to render the lack of a systematic treatment significant. This observation shines new light on the relationship of oratorical practice and rhetorical theory in classical antiquity.

The ancient writers of rhetorical theory had, of course, opinions themselves about the relationship of their writings to the oratorical practice of their own or earlier times, and an assessment of each of their works must consider whether it is intended as *prescriptive*, i.e. mostly stating rules which an orator should follow in his practice, or *descriptive*, i.e. mostly presenting the phenomena of oratorical practice as they are employed in reality. In the former case, the main influence, as intended by the author, is directed from theory to practice, in the latter case from practice to theory. Although all

rhetorical treatises include both aspects, some distinct tendencies can be observed.

A brief overview shall therefore be given. The earliest extant rhetorical treatise, the *Rhetorica ad Alexandrum*, presents rhetorical theory as quite purely prescriptive, as a means for successful oratorical practice (rather than reflexion on the contemporaneous oratorical practice). Remarks to this effect are found in the prooemium[1] and at the end of the work.[2] In the last chapter, the author also describes his work as a source of ἀφορμαί, "starting points", for speeches as well as for private conversations.[3]

Aristotle is a somewhat special case as his Ῥητορική is not one of the rhetorical "manuals" common in his time (like the *Rhet. Alex.*) but concerned with a much broader scope towards logic and rational thinking; as Ueding puts it, Aristotle treats "Rhetorik als Theorie des Meinungswissens und der wahrscheinlichen Schlüsse, der glaubhaften Argumentation und des Überzeugens durch Gefühlsgründe (Psychagogie) [...] seine 'Ars Rhetorica' ist somit zugleich eine Wissenschaftstheorie der Rhetorik."[4] Consequently, it has been noted that Aristotle, too, is not particularly interested in the oratorical practice of his time; "[i]n fact, Aristotle rarely adduces examples from the Attic orators and seems much more interested in the language and style of dramatists and poets from Homer right down to his own time."[5]

In the *Rhetorica ad Herennium*, which is quite explicitly aimed at "rules for speaking well",[6] the author shows awareness of the limits of such rhetorical

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[1] *Rhet. Alex.* 1420a6–17 "ἐπέστειλάς μοι, ὅτι πολλάκις πολλοὺς πέπομφας πρὸς ἡμᾶς τοὺς διαλεξομένους ὑπὲρ τοῦ γραφῆναί σοι τὰς μεθόδους τῶν πολιτικῶν λόγων· [...] ὥσπερ [...] ἐσθῆτα σπουδάζεις τὴν εὐπρεπεστάτην τῶν λοιπῶν ἀνθρώπων ἔχειν, οὕτω δύναμιν λόγων λαβεῖν ἐστί σοι πειρατέον τὴν εὐδοξοτάτην. πολὺ γὰρ κάλλιόν ἐστι καὶ βασιλικώτερον τὴν ψυχὴν ἔχειν εὐγνωμονοῦσαν ἢ τὴν ἕξιν τοῦ σώματος ὁρᾶν εὐειματοῦσαν."

[2] *Rhet. Alex.* 1446a33–35 "καὶ τοῦτον μὲν τὸν τρόπον χρὴ τὰ κατὰ τὸν βίον αὐτοῦ παρασκευάζειν, ἐκ δὲ τῆς προτέρας συντάξεως περὶ τοὺς λόγους γυμνάζεσθαι."

[3] *Rhet. Alex.* 1445b24–30 "δεῖ δὲ καὶ λέγοντας καὶ γράφοντας ὅτι μάλιστα πειρᾶσθαι κατὰ τὰ προειρημένα τοὺς λόγους ἀποδιδόναι καὶ συνεθίζειν αὐτοὺς τούτοις ἅπασιν ἐξ ἑτοίμου χρῆσθαι. καὶ περὶ μὲν τοῦ λέγειν ἐντέχνως καὶ ἐν τοῖς ἰδίοις καὶ ἐν τοῖς κοινοῖς ἀγῶσι καὶ ἐν ταῖς πρὸς τοὺς ἄλλους ὁμιλίαις ἐντεῦθεν πλείστας καὶ τεχνικωτάτας ἀφορμὰς ἕξομεν".

[4] Ueding (1995, p. 30–31).

[5] Hesk (2009, p. 154).

[6] *Rhet. Her.* 1.1 (*prooemium*) "nos ea, quae videbantur ad rationem dicendi pertinere, sumpsimus".

rules, and of the broader "philosophical" purpose of rhetorical theory,[7] yet this does not actually go beyond the aim of becoming a good orator; it is just a call for thinking about the rules instead of blindly applying them.[8]

Cicero breaks out from this tradition of rhetorical theory with a completely new approach in *De Oratore*, where he defines insight (on a broader scale, directed towards philosophy or *humanitas*) as the most important aim.[9] He does not so much intend to provide rules for application in practice,[10] but rather aims at insight gained from practical experience. This empirical aspect gives his work something of a "descriptive turn" within ancient rhetoric, although one has to keep in mind that *De Oratore* is meant as a rejection of the traditional rhetorical "textbooks" (among which his *De inventione* counts) and as a categorically different project, overturning and surpassing these

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[7] E.g. *Rhet. Her.* 1.1 "eo studiosius hoc negotium suscepimus, quod te non sine causa velle cognoscere rhetoricam intellegebamus; non enim parum in se habet fructus copia dicendi et commoditas orationis, si recta intellegentia et definita moderatione animi gubernatur."; *Rhet. Her.* 2.50 "haec si, ut conquisite conscripsimus, ita tu diligenter et nobiscum et sine nobis considerabis, et nos industriae fructus ex tua conscientia capiemus, et tute nostram diligentiam laudabis, tua perceptione laetabere: tu scientior eris praeceptorum artificii, nos alacriores ad relicum persolvendum."

[8] *Rhet. Her.* 3.16 "genera dispositionum sunt duo: unum ab institutione artis profectum, alterum ad casum temporis adcommodatum. *etc.*"; *Rhet. Her.* 4.69 (end of work) "haec omnia adipiscemur, si rationes praeceptionis diligentia consequemur exercitationis."

[9] Stated explicitly by Cicero himself: Cic. *De orat.* 1.23 "repetamque non ab incunabilis nostrae veteris puerilisque doctrinae quendam ordinem praeceptorum, sed ea, quae quondam accepi in nostrorum hominum eloquentissimorum et omni dignitate principum disputatione esse versata; non quo illa contemnam, quae Graeci dicendi artifices et doctores reliquerunt, sed cum illa pateant in promptuque sint omnibus, neque ea interpretatione mea aut ornatius explicari aut planius exprimi possint, dabis hanc veniam, mi frater, ut opinor, ut eorum, quibus summa dicendi laus a nostris hominibus concessa est, auctoritatem Graecis anteponam." Seen later e.g. by Leeman (1963, p. 114) "[Cicero's] treatise [*De Oratore*] is canonized by post-Aristotelian philosophers and rhetoricians like Theophrastus and Hermagoras; it is the same system as that found in the *Rhetorica ad Herennium*. What is different is the general approach, the ambitious ideal of the orator and the abhorrence from the *nugae rhetorum*, the artificial technicalities as they were found in Hellenistic school-rhetoric."

[10] Indeed, he insists that rules must be derived from practice, not practice from the rules (Cic. *De orat.* 1.146 "verum ego hanc vim intellego esse in praeceptis omnibus, non ut ea secuti oratores eloquentiae laudem sint adepti, sed, quae sua sponte homines eloquentes facerent. ea quosdam observasse atque collegisse; sic esse non eloquentiam ex artificio, sed artificium ex eloquentia natum"; Cic. *De orat.* 2.232 "sed ego in his praeceptis hanc vim et hanc utilitatem esse arbitror, non ut ad reperiendum quod dicamus, arte ducamur sed ut ea, quae natura, quae studio, quae exercitatione consequimur, aut recta esse confidamus aut prava intellegamus, cum quo referenda sint didicerimus."), and reproaches teachers of rhetoric without practical experience (Cic. *De orat.* 2.76 "hoc mihi facere omnes isti, qui de arte dicendi praecipiunt, videntur; quod enim ipsi experti non sunt, id docent ceteros"; Cic. *De orat.* 2.81 (on the system of *partes orationes*) "ne haec quidem reprehendo; sunt enim concinne distributa, sed tamen, id quod necesse fuit hominibus expertibus veritatis, non perite").

all too technical works.[11] In this respect, Cicero coincides with Aristotle, however with a very different result.

Quintilian in his *Institutio* employs the prescriptive mode of the earlier "manuals", but with a much broader scope and aim, i.e. a thorough education beyond rhetorical technicalities.[12] Still, like Cicero in *De oratore*, he treats rhetorical theory neither as an end in itself nor as a set of rules but as a means to a higher end, i.e. the perfect orator (who for him is identical with, or rather a subcategory of, the *vir bonus*).[13] Quintilian repeatedly calls for a kind of oratory which, while adhering to the rules of rhetoric, does not cling to them too closely but considers the requirements of the specific case or situation and acts accordingly.[14] In the same vein, he heavily criticises writers

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[11] Kennedy (1972, p. 209–212, 225–227), Leeman et al. (1981, vol. 1, p. 25), Wisse (2002, *passim)*, Fantham (2004, p. 21), Mankin (2011, p. 9).

[12] Quint. *Inst.* 1.pr.5 "ego cum existimem nihil arti oratoriae alienum sine quo fieri non posse oratorem fatendum est, nec ad ullius rei summam nisi praecedentibus initiis perveniri, ad minora illa, sed quae si neglegas non sit maioribus locus, demittere me non recusabo, nec aliter quam si mihi tradatur educandus orator studia eius formare ab infantia incipiam."

[13] Quint. *Inst.* 1.pr.9 "oratorem autem instituimus illum perfectum, qui esse nisi vir bonus non potest, ideoque non dicendi modo eximiam in eo facultatem sed omnis animi virtutes exigimus."

[14] Quint. *Inst.* 3.1.20 "praecipuum vero lumen sicut eloquentiae, ita praeceptis quoque eius dedit unicum apud nos specimen orandi docendique oratorias artes M. Tullius"; 5.14.32 "non inspiret? non augeat? non mille figuris variet ac verset? ut ea nasci, et ipsa provenire natura, non manu facta, et arte suspecta, magistrum fateri ubique videantur. quis umquam sic vicit orator? nonne apud ipsum Demosthenen paucissima huius generis reperiuntur? quae adprensa Graeci magis (nam hoc solum peius nobis faciunt) in catenas ligant et inexplicabili serie conectunt et indubitata colligunt et probant confessa et se antiquis per hoc similes vocant, deinde interrogati numquam respondebunt, quem imitentur."; 9.4.117–118 "quaedam vero tradi arte non possunt. mutandus est casus si durius is quo coeperamus feratur: num in quem transeamus ex quo praecipi potest? figura laboranti compositioni variata saepe succurrit, quae cum orationis, tum etiam sententiae: num praescriptum eius rei unum est? occasionibus utendum et cum re praesenti deliberandum est. [118] iam vero spatia ipsa, quae in hac quidem parte plurimum valent, quod possunt nisi aurium habere iudicium? cur alia paucioribus verbis satis plena vel nimium, alia pluribus brevia et abscisa sint? cur in circumductionibus, etiam cum sensus finitus est, aliquid tamen loci vacare videatur?"; 10.1.15 (on vocabulary) "nam omnium quaecumque docemus hinc sunt exempla, potentiora etiam ipsis quae traduntur artibus (cum eo qui discit perductus est ut intellegere ea sine demonstrante et sequi iam suis viribus possit), quia quae doctor praecepit orator ostendit."

of rhetorical theory without practical experience[15] and consequently claims that he has himself derived his advice from practice.[16]

None of the writers of rhetorical theory explicitly aim at a complete descriptive work about the past or contemporaneous oratorical practice, but at least Quintilian's project can be understood in this way, despite its generally prescriptive approach. It is designed as an exhaustive instruction of more or less anything that is to be known about becoming a good orator (i.e. *vir bonus*), drawing heavily on Quintilian's own experience as orator and teacher of orators. This method implies a quite descriptive mode, and this can indeed be observed in passages of great detail and systematisation, e.g. on gestures,[17] or on enthymeme, epicheireme, syllogism etc.[18]

Seen in this light, it is significant that for several topics of silence and omissions, which have been shown to be no less systematisable areas, neither Quintilian nor any of his predecessors employ this descriptive mode.

In modern research on ancient oratory and rhetoric, the relationship between practice and theory has been continuously examined and discussed. However, in most cases where comparative analysis of the extant speeches and rhetorical writings is undertaken, most research concentrates on the question "how does practical oratory react to the rules and advice from rhetorical theory?", while the reverse direction, "how does theoretical systematisation react to observations in oratorical practice?", is far less considered. To cite a few (more or less) recent examples: Kennedy (1994) discusses how Cicero's early speeches follow the rhetorical rules rather closely, though

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[15] Quint. *Inst.* 5.13.59–60 "ideoque miror inter duos diversarum sectarum velut duces non mediocri contentione quaesitum, singulisne quaestionibus subiiciendi essent loci, ut Theodoro placet, an prius docendus iudex quam movendus, ut praecipit Apollodorus, tanquam perierit haec ratio media, et nihil cum ipsius causae utilitate sit deliberandum. haec praecipiunt, qui ipsi non dicunt in foro, ut artes a securis otiosisque compositae ipsa pugnae necessitate turbentur. [60] namque omnes fere, qui legem dicendi quasi quaedam mysteria tradiderunt, certis non inveniendorum modo argumentorum locis, sed concludendorum quoque nos praeceptis alligaverunt; de quibus brevissime praelocutus, quid ipse sentiam, id est quid clarissimos oratores fecisse videam, non tacebo.", cf. Cic. *De orat.* 2.5; Quint. *Inst.* 8.pr.3 "unde existimant accidisse ut qui diligentissimi artium scriptores extiterint ab eloquentia longissime fuerint".

[16] Quint. *Inst.* 8.pr.12 "credere modo qui discet velit, certa quaedam via est, et in qua multa o 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."

[17] Quint. *Inst.* 11.3.65–136.

[18] Quint. *Inst.* 5.14.1–26.

with adaptations (p. 129ff.), and the later speeches tend to move away from
the usual precepts (e.g. p. 134 on the Catilinarians); he does not consider how
theory may be derived from practice as we know it from the extant speeches
(cf. especially the chapters on Cicero's *De oratore*, p. 140–147, and Quintilian,
p. 177–186). Berry and Heath (1997) analyse oratory under the influence of
rhetorical theory,[19] but do not cover the converse relationship. Craig (2001)
and May (2001) likewise use Cicero's *rhetorica* for analysing his speeches.
Craig (2002) discusses scholarship from about 1970 on Cicero's *rhetorica* and
speeches; in the section on Cicero's *rhetorica*, no study on the speeches as
sources is mentioned, while the section on the speeches lists several books
and articles which connect Cicero's oratory to his rhetorical theory. Fantham
(2004) in her chapters "Style and Substance: Cicero's rethinking of *Elocu-
tio*" and "*Res Pervolgatae*: Words and their Manipulation in Standard Rhetor-
ical Theory" examines how Cicero's theoretical concepts are connected to
Greek sources, but does not include an analysis of Cicero's own speeches
in her argument. According to John Dugan's overview of "modern critical
approaches to Roman rhetoric" in the *Blackwell Companion to Roman Rhetoric*
(Dugan, 2007), recent research on Roman rhetoric has done much to aban-
don the idealised view of the rhetorical system(s) and instead treat rhetoric
"as a cultural construct, something that is embedded within its society".[20]
However, Dugan mentions no specific analysis of how ancient rhetoric re-
acts to (contemporaneous or past) oratorical practice. Craig (2007) in the
same volume analyses Cicero's speeches with repeated references to his *rhe-
torica*, while May (2007), in his account of Cicero's rhetorical writings, men-
tions that Cicero writes from experience and uses examples from his own
speeches, but does not himself take the speeches into account for his assess-
ment of the *rhetorica*, and Fernández López (2007), on Quintilian's *Institutio*,
mentions other rhetorical writings to which Quintilian refers and on which
he builds his own work, but does not discuss the relationship between the

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[19] (Berry and Heath, 1997, p. 393) "however widely its influence spread, rhetoric was devel-
oped in the first place to serve the purposes of oratory, and oratory always remained its
primary *raison d'être*. Rhetoric is thus of far greater importance for oratory than for any
other genre."

[20] Dugan (2007, p. 16).

Institutio and Cicero's, or Quintilian's own, oratorical practice. Hesk (2009) in the *Cambridge Companion to Ancient Rhetoric* claims that

> [t]he second aim of this chapter, then, is to elaborate upon that inevitable gap between an analytical theory based on neat, generalized typologies and the synthetic practice of composing and performing real speeches for particular debates, cases, and occasions[21]

and observes, like many before, that

> [a]lthough the analytic theory and synthetic practice of 'deliberative' oratory do overlap considerably in the fourth century, the practical material is not slavishly following the theory and the practical oratory, like the theory, has its own agendas.[22]

> Once again, we see that analysis and typology fail to encompass the specific strategies and circumstances of a single speech[23]

but does not attempt to determine systematic discrepancies in the relationship, or "avoidable gaps" in rhetorical theory.

It seems to me worthwhile to pursue this particular relationship between theory and practice further, since in my analysis I have found a significant number of phenomena of silence, omission etc. used in practice (speeches) but not—or not fully—covered in rhetorical theory: (omission of) the superfluous and the figure of *praeteritio*, with its most common forms (see p. 26), (omission of) the known and obvious (see p. 44), (avoidance of) speaking off-topic (see p. 52), time limits (see p. 66), *brevitas* (see p. 75), some more special forms of *praeteritio* (see p. 95), the "omitted alternative" (see p. 109), (avoidance of) indecent language (see p. 115), (avoidance of) self-praise (see p. 119); dialogue with the audience (see p. 142) and with the opponent (see p. 147); (pretended) voice failure (see p. 185), (pretended) memory failure (see p. 205), (pretended) nervousness (see p. 210), and the "topos of the inexpressible" (see p. 216).

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[21] Hesk (2009, p. 146–147).

[22] Hesk (2009, p. 149–150).

[23] Hesk (2009, p. 158). This discrepancy is most obvious for Aristotle: see Hesk (2009, p. 155–156).

In a few cases rhetorical theory does describe the techniques used in oratory, but not before Quintilian: the "*alio loco*" figure (see p. 78), and the figures of asking for (or otherwise aiming at) attention (see p. 167) and asking for (or otherwise aiming at) applause (see p. 171). The "topos of incapability" is described by writers of rhetorical theory, but unnecessarily restricted (see p. 214). Only in the "*praeteritio* of name", or allusion (see p. 83), and the figure of *prosopopoeia* (see p. 148) have I found an adequate treatment of the practical application in the theoretical works. Discrepancies like this have very rarely been observed in research literature; one instance is Kirby (1997).[24]

One further significant observation can be made for most of these cases: while the phenomenon of omission, silence, pause, interruption etc. itself is often actually covered in rhetorical theory (whether systematically or not), it is mostly regarded as some kind of problem that needs to be solved, compensated, or avoided; the oratorical practice, in contrast, often reaches beyond theory in one of two ways. On one hand, the omission etc. is often made *explicit*, forming some kind of *praeteritio*. This figure was in antiquity widely used in practice but quite underrated in theory, and it is not the only but the most prominent example of ancient oratory *making use of its limits*. Alternatively, the orator *pretends* that some kind of unwanted interruption, omission etc. has happened (or has almost happened, or is about to happen, etc.). The "problem" is thus again turned into an opportunity. Especially in the area of *failure*, the rhetorical writings provide some instruction (though not in any systematic way) for prevention and remedies, while on the practical side (where actual failures are, of course, rarely documented, while prevented failures are invisible anyway), we find a range of ways in which orators not only avoided or handled possible failures, but transformed the issue into a rhetorical device, employable to their advantage.

The difference between practice and theory is therefore not to be found in a general awareness of the phenomena of omission and silence, but rather

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[24] (Kirby, 1997, p. 18) "in Cicero's published orations we are able to discern aspects of his rhetorical strategies and tactics that (for whatever reason) he never discusses in the theoretical works"; Kirby goes on to analyse the *Pro Milone* to prove this point, but does not connect it directly to Cicero's *rhetorica*.

in the possibilities of employing them, as rhetorical "tools", for a specific purpose.[25]

The discrepancy between practice and theory which I have shown in the areas of omission and silence may be specific to these, or it may exist as well in other fields of ancient oratory and rhetoric; further research would be necessary to reach a decision here. In any case, I would like to suggest that this discrepancy can, at least partly, be explained by the historical development of rhetoric as a τέχνη and *ars*. From its very beginning, rhetoric was concerned with the question of whether it *is* a τέχνη, or *ars*, especially in its struggle against its constant competitor, philosophy.[26] This may have caused a development where rhetoric, from quite early on, was more occupied with its internal discussions (e.g. the competition between Plato and Isocrates, or later the Atticism/Asianism debate) and its defence against attacks from outside, than with the oratorical reality on which it was originally built.[27] Consequently, the previous rhetorical tradition would have served as the most important source for rhetorical theory.[28] Cicero and Quintilian

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[25] A further line of possible research opens up here: since we can assume that large parts of the audience of an orator were more or less familiar themselves with the teachings of rhetoric, they would recognise many of the typical techniques and figures employed by the orator. Taking into account the fact that many of the rhetorical devices related to silence were apparently not universally taught could shed more light on the mechanisms of persuading and influencing the audience in the extant speeches.

[26] As sketched by Cicero: *De orat.* 3.122 "atque etiam aut inridentes oratorem, ut ille in Gorgia Socrates, cavillantur aut aliquid de oratoris arte paucis praecipiunt libellis eosque rhetoricos inscribunt, quasi non illa sint propria rhetorum, quae ab eisdem de iustitia, de officio, de civitatibus instituendis et regendis, de omni vivendi denique etiam de naturae ratione dicuntur."

[27] As observed e.g. by Wisse (1989, p. 314).

[28] It is generally accepted that Cicero, in rhetorical writing, adapted his Greek models for a Roman audience: e.g. (Kirby, 1997, p. 13), Corbeill (2002, p. 38). On the other hand, it has been often observed that continuous developments can be found within the history of ancient oratorical practice, aside from the influence of rhetorical theory; especially the relationship between Demosthenes and Cicero has attracted attention from Plutarch on to modern research, e.g., Stroh (1982), Stroh (1983), Tempest (2007).

Dietrich Mack has suggested this explanation for another, related phenomenon: that although political speeches are so important a part of Cicero's oratorical oeuvre, he devotes very little space to the *genus deliberativum* in his *rhetorica*: Mack (1937, p. 15–16) "Wenn man bedenkt, eine wie entscheidende Rolle die politischen Reden vor Senat und Volk im Rom der republikanischen Zeit gespielt haben, wenn man ferner bedenkt, daß uns von Cicero 6 Parallelreden aus Senat und Contio überliefert sind, so muß man sich wundern, wie selten und kurz Cicero in seinen rhetorischen Schriften auf das Verhältnis dieser beiden Redetypen zueinander zu sprechen gekommen ist. Ein Grund dafür wird in der starken Abhängigkeit der ciceronischen von der griechischen Redetheorie zu suchen sein. Denn die Frage nach dem Verhältnis von Sr. zu Vr. ist ein spezifisch römisches Problem, das in der Theorie nur der Mann wirklich hätte lösen können, der eine außergewöhnliche im

seem to acknowledge this view.[29] This would add even more weight to J. Powell's observation that "[s]cholars may be tempted to use the prescriptions of rhetorical theorists as evidence for what Roman oratory was like, but it is not always easy to bridge the gap between theory and practice."[30]

More detailed work on the inner dependencies of the ancient rhetorical writings, and their relationship both to various cultural influences and to the previous and contemporaneous oratorical practice, would be needed to confirm or refute this explanation in general. With regard to the observations made on the oratorical use of *limits of speech*, however, we see in the theoretical discussion some *limits of rhetoric* as well.

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politischen Kampf vor Senat und Volk gewonnene Erfahrung in die Wagschale zu werfen vermochte. Cicero wäre dieser Mann gewesen. Aber nur in den Beispielen, die Cicero namentlich in de oratore, Brutus und Orator herbeizieht, kommt die römische Praxis voll zu ihrem Recht. Das entscheidende ist, daß nie aus diesen Beispielen theoretische Forderungen für Sr. und Vr. abstrahiert werden. *Gerade darin aber zeigt sich, wie eng Cicero in den theoretischen Schriften an seinen griechischen Vorlagen haftet. Und wenn in all diesen Schriften die Gerichtsrede eine ungleich größere Rolle als die beratende Beredsamkeit spielt, obwohl doch in Rom die politische bestimmt nicht hinter der gerichtlichen Rede an Bedeutung zurückgestanden hat, so ist auch das nur mit der starken Abhängigkeit Ciceros von den griechischen Rhetoren zu erklären.*"

[29] Heath (2009, p. 68) "That Cicero found it worth keeping up with such highly technical developments puts his critique of theory in proportion; he must have thought that getting the theory right had some value."; Quint. *Inst.* 3.1.22 "non tamen post tot ac tantos auctores pigebit meam quibusdam locis posuisse sententiam. neque enim me cuiusquam sectae velut quadam superstitione inbutus addixi, et electuris quae volent facienda copia fuit, sicut ipse plurium in unum confero inventa, ubicumque ingenio non erit locus curae testimonium meruisse contentus."

[30] Powell (2011, p. 385).

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