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CICERO'S *TOPICA*

*Edited with an Introduction
Translation, and Commentary by*
Tobias Reinhardt

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Marcus Tullius Cicero

Topica

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Für Eva, Anna und Arthur Reinhardt

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Preface

THE *Topica* is a marginal work, if the attention it has received in its own right from classical scholars is a criterion, or the space typically devoted to it in historical surveys of Latin literature. For a commentator this state of affairs has its obvious attractions: it poses the interesting task of showing that the work in question is actually central.

An argument for the centrality of the *Topica* would look like this: the treatise is the theoretical crystallization of one aspect of Cicero's personal understanding of rhetoric. The orator, he says time and again, should be capable of leaving behind him the peculiarities of a particular case, focusing in his speech on the fundamental problems underlying the question under discussion. Standard rhetorical teaching of Cicero's day provided no theoretical precepts suitable for this purpose, but the doctrine of τόποι which gives the work its name is just such a theory (Ch. 1). Further, the *Topica* occupies an important place in the history of argumentation: it reflects a Hellenistic development of the Aristotelian theory of τόποι and since most of Hellenistic prose-literature has not come down to us, studying the *Topica* and inquiring into its sources can elucidate the history of topical doctrine after Aristotle and the relationship between rhetoric and philosophy in the second and first century (Chs. 2 and 3). Finally, the *Topica* is dedicated to a jurist, C. Trebatius, and Cicero tries to adapt not only the theory of *loci*, but also other source-material of philosophical origin to the jurist's needs. As a result, the book may be read as the first attempt to analyse legal argument in terms of a theory of argumentation not specifically designed for dealing with legal arguments in the first place; this idea has appealed very much to modern lawyers with an interest in juridical logic and in the analysis of legal decision-making. There is more to this in terms of historical context. The first century BC is widely regarded as the time when legal science came into being, and it has been suspected that jurists borrowed elements of their methodology from philosophers and rhetoricians. Since Cicero deliberately applies various philosophical doctrines current in the first century to legal problems, the question arises in

what relationship the *Topica* stands to the development of legal science. Moreover, the *Topica* is not the only work in which Cicero reflects on juridical methodology, and it can be shown that the *Topica* ties up with ideas developed elsewhere (Ch. 4).

If one of the tasks a commentary is supposed to fulfil is to provide a reconstruction of the cultural and intellectual background an author presupposed at the time of writing, then the *Topica* is an extreme case. For the expertise in rhetorical theory and Republican private law, as well as an acquaintance with contemporary philosophical doctrines, which men of the ruling classes in Rome in 44 BC self-evidently had, is today, in modern academic institutions, the subject of three different areas of expertise (classical studies, ancient philosophy, and legal history).

Owing to this interdisciplinary nature of the book, a commentator attempting to pay equal attention to the various aspects of the *Topica* is in constant danger of producing an indigestible cocktail of obscure erudition. The notes on a given passage are likely to include philosophical, philological, and legal points. And what for the contemporary readership was a more or less coherent unity is inevitably fragmented in a commentary divided into lemmata (which comes on top of the fragmentation which is characteristic of the commentary mode anyway). I have therefore adopted a manner of presentation in which I combine a general note with a line-by-line commentary on a section forming a unity. Depending on the situation, the introductory note provides more general background information or is a close reading of the section under discussion.

Next, the references. In most cases it will be clear why I quote a certain text, but it may be useful to put some citations into context. There are passages in the *Topica*, e.g. §§26–34 on definition, where some of the doctrines discussed by Cicero are Aristotelian in origin. Then I shall try to signal this by quoting a pertinent text; as a rule, this does not imply that Cicero possessed a copy of, say, Aristotle's *Metaphysics* nor that he had studied it. The reason why I shall occasionally quote from texts which Cicero is very unlikely to have known is that there were philosophical traditions, bodies of knowledge which were handed down from one age to the next, from one school to the other, sometimes put to a certain use they originally were not set up for and thereby reshaped. And often one can assign a particular idea to such a tradition. Matters are slightly

different with legal texts. Since it is often hard to tell whether Cicero is straightforwardly drawing on a legal source, merely adapting material he found there, or positively manipulating it, I shall sometimes quote legal texts in order to settle such a question. Or I may quote them in order to show that, while we have no evidence that Cicero is using a legal source, we can infer from— mostly later—texts that he addressed a problem which later jurists found worth dealing with.

On a few occasions there will be a digression about the source-background of a particular passage. Nowhere should this be confused with *Quellenforschung* in the usual sense; for it is obvious that the *Topica* only take their start from a Greek source and, while preserving much of its original character and purpose, turn it into something completely new. Sometimes I shall compare Cicero with a later Greek rhetorical treatise, the so-called Anonymus Seguerianus, in most cases in order to show in detail what I have argued for in Ch. 3 of the introduction: that Cicero's source must have covered Aristotelian τόποι in a way very similar, in content and presentation, to that of the Anonymus. On other occasions I shall follow up a problem relating to Cicero's source, because other scholars have based conclusions about the *Topica* on such considerations; the Stoic portions, for instance, together with the Aristotelian τόποι have frequently been taken as pointing towards the Academic philosopher Antiochus of Ascalon. A question about Cicero's source may also arise where Cicero has been accused of muddling up his source-material, for instance in the case of the Stoic Indemonstrables in §§53–7. Sometimes I shall treat the *Topica* as a text from which we may infer something about the history of Hellenistic rhetoric and philosophy and of Roman law which seems worth being stated independently of my attempts to explain what Cicero is doing in the book.

The treatise is not a work usually found an undergraduate syllabus, and I am under no illusion that the present work is likely to change this. My intended readership is, therefore, advanced students and scholars in the various fields named above for which this text has relevance. Further, the *Topica* and the tradition(s) to which it belongs exercised considerable influence in the medieval era and the Renaissance (in particular on the thought of Lorenzo Valla and Rudolph Agricola), and I hope that students of these periods too may find something of interest in the present work.

I have had the privilege of being a member of three Oxford colleges, Corpus Christi, where I was a graduate student, Merton, where I spent a blissful year as a Junior Research Fellow in Ancient Philosophy, and Somerville, which has made me a Tutorial Fellow in Latin and Greek.

The book is dedicated to my wife Eva, who not only accompanied me to England but even took care of the bibliography, and to our wonderful children.

T.R.

Oxford
November 2002

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Contents

Editions of the *Topica*

MANUTIUS, P., *Rhetoricorum ad C. Herennium libri quattuor incerto auctore. Ciceronis de inventione libri duo. Topica ad Trebatium, Oratoriae partitiones* (Venice, 1559).

LAMBINUS, D., *M. Tullii Ciceronis Opera omnia quae exstant* (Paris, 1566).

SCHÜTZ, C. G., *M. Tullii Ciceronis Opera quae supersunt omnia ac deperditorum fragmenta*, iii (Leipzig, 1824).

KLOTZ, R., *M. Tullii Ciceronis Topica, Partitiones oratoriae, De optimo genere oratorum* (Leipzig, 1851).

FRIEDRICH, W., *M. Tulli Ciceronis Rhetorica*, ii (Leipzig, 1891).

WILKINS, A. S., *M. Tulli Ciceronis Rhetorica*, ii (Oxford, 1903).

HUBBELL, H. M., *M. Tullius Cicero: De inventione, De Optimo Genere Oratorum, Topica* (London and Cambridge, Mass., 1949).

BORNECQUE, H., *Cicéron: Divisions de l'art oratoire, Topiques*[2] (Paris, 1960).

DI MARIA, G., *Marci Tulli Ciceronis Topica* (Palermo, 1994).

RICCIO COLETTI, M. L., *M. Tulli Ciceronis Topica* (Chieti, 1994).

Abbreviations

CGL	G. Goetz and G. Loewe, *Corpus Glossariorum Latinorum*, 7 vols. (Leipzig and Berlin, 1888–1923)
Ernout–Meillet	A. Ernout and A. Meillet, *Dictionnaire étymologique de la langue latine*[4] (Paris, 1979)
Heumann–Seckel	H. G. Heumann and E. Seckel, *Heumanns Handlexikon zu den Quellen des römischen Rechts*[9] (Jena, 1907)
Hofmann–Szantyr	J. B. Hofmann and A. Szantyr, *Lateinische Syntax und Stilistik* (Munich, 1965)
Hülser	K.-H. Hülser, *Die Fragmente zur Dialektik der Stoiker*, 4 vols. (Stuttgart-Bad Cannstatt, 1987–8)
K.–St.	R. Kühner and C. Stegmann, *Ausführliche Grammatik der lateinischen Sprache, zweiter Teil: Satzlehre*[5], 2 vols. (Darmstadt, 1976)
OLD	*Oxford Latin Dictionary*
ODML	Oxford Dictionary of Medieval Latin from British Sources
Roscher	W. H. Roscher, *Ausführliches Lexikon der griechischen und römischen Mythologie* (Leipzig, 1884–1937)
Walde–Hofmann	A. Walde and J. B. Hofmann, *Lateinisches etymologisches Wörterbuch*[4], 3 vols. (Heidelberg, 1966)

All other works are quoted according to the author-date system. I have tried to make this book accessible by including a translation, by translating all quotations in the introduction, and by translating Greek quotations and those from the Digest in the commentary. The translation of the Digest passages is always that in Watson (1998), in all other cases the author of the translation is acknow-

ledged unless it is my own. References to ancient works will be made as in the *OLD* (with the exception of Cicero's *Academica*, where I refer to the two extant books as *Acad.* I and *Luc.*).

INTRODUCTION

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The *Topica* in Cicero's Oeuvre

THE *Topica* has often been studied in isolation from Cicero's other works. This has impaired not only the appreciation of the work itself but also the soundness of conjectures as to its source or sources. In this chapter, I seek to do two things, relying primarily on evidence from Cicero. In the first half, I shall explain which sort of argumentative theory the *Topica* contains; in the second half, I shall sketch the intellectual context in which this theory belongs.

THE NOTION OF 'THETICAL RHETORIC'

In the year 46, two years before he wrote the *Topica*, Cicero dedicated the *Orator* to M. Brutus. In this work he takes up the theme of the *de Oratore* of 55, the *orator perfectus*, and pays particular attention to the treatment of prose rhythm. Invention of arguments, their arrangement, and the proper delivery of a speech receive only brief treatments, and Cicero proposes to give a sketch of the *species et forma perfectae eloquentiae* rather than actual precepts (§43). The section on *inventio* (§§44–6) runs as follows:

Nam et invenire et iudicare quid dicas magna illa quidem sunt et tamquam animi instar in corpore, sed propria magis prudentiae quam eloquentiae: qua tamen in causa est vacua prudentia? Noverit igitur hic quidem orator, quem summum esse volumus, argumentorum et rationum locos.

   Nam quoniam, quicquid est quod in controversia aut in contentione versetur, in eo aut sitne aut quid sit aut quale sit quaeritur sitne, signis; quid sit, definitionibus; quale sit, recti pravique partibus; quibus ut uti possit orator, non ille vulgaris sed hic excellens, a propriis personis et temporibus semper, si potest, avocet controversiam; latius enim de genere quam de parte disceptare licet, ut quod in universo sit probatum id in parte sit probari necesse—haec igitur quaestio a propriis personis et temporibus ad universi generis rationem traducta appellatur θέσις.

In hac Aristoteles adulescentis non ad philosophorum morem tenuiter disserendi, sed ad copiam rhetorum in utramque partem, ut ornatius et uberius dici posset, exercuit; idemque locos—sic enim appellat—quasi argumentorum notas tradidit unde omnis in utramque partem traheretur oratio.

Faciet igitur hic noster—non enim declamatorem aliquem de ludo aut rabulam de foro, sed doctissimum et perfectissimum quaerimus—ut, quoniam loci certi traduntur, percurrat omnis, utatur aptis, generatim dicat.

For to discover and judge what to say is important, to be sure, and is to eloquence what the mind is to the body; but it is a matter of ordinary intelligence rather than of eloquence. For that matter is there any case in which intelligence is superfluous? Our perfect orator, then, should be acquainted with the topics of argument and reasoning.

For in all matters under controversy and debate the questions which are asked are: (1) Was it done? (2) What was done? (3) What was the nature of the act? The question 'Was it done?' is answered by evidence; the question 'What was done?' by definition; the question 'What was the nature of the act?' by the principles of right and wrong. To be able to use these the orator—not an ordinary one, but this outstanding orator—always removes the discussion, if he can, from particular times and persons, because the discussion can be made broader on the general level than about the individual. Such an inquiry, removed from particular times and persons to a discussion of a general issue, is called θέσις or 'thesis'.

Aristotle trained young men in this, not for the philosophical manner of subtle discussion, but for the fluent style of the rhetorician, so that they might be able to uphold either side of the question in copious and elegant language. He also taught the 'Places'—that was his name for them—a kind of sign or indication of the arguments from which a whole speech can be formed on either side of the question.

Therefore our orator—it is not a mere declaimer in school that we seek, or a ranter in the forum, but a scholarly and finished speaker—our orator, finding certain definite 'places' enumerated, will run rapidly over them all, select those which fit the subject, and then speak in general terms. [Trans. Hubbell, revised.]

This text is relevant for our purposes because it outlines very concisely Cicero's idea of how rhetorical invention should be conducted, and it does this with reference to standard methods rejected by Cicero. Contemporary readers will have found it extravagant in some respects or, if they were well acquainted with *de Orat.*, will have known already that Cicero's idea of rhetorical invention was different from the mainstream view.

The prominent role assigned to 'the locations of arguments and reasons' is the first surprise; standard theory, it is true, included heuristic devices that were termed *loci*, but their place in the system was a subordinate one and they were different from the Aristotelian τόποι Cicero has in mind, which were not in wide circulation in his day.

At the beginning of the second paragraph the contemporary will find what he has learnt in his rhetorical training as the theory of *status*, a method to determine what is at issue in a case requiring rhetorical argument. Every question to be decided in a lawsuit (*controversia*) or a political debate (*contentio*) may be classified under one of the three question-types *an sit*, *quid sit*, and *quale sit*, that is, it will either be a question of fact or about the categorization of acknowledged facts or about their evaluation. Guided by these questions (and further similar devices not spelt out by Cicero), the orator can think through his case, thereby determining the most promising argumentative strategy. Moreover, the contemporary reader would know that this method of invention was firmly associated with the name of the rhetorician Hermagoras of Temnos, who in the middle of the second century had compiled what was to become an influential codification of the theory of *status* (στάσεις).[1] In his handbook, Hermagoras defined the subject of rhetoric as the πολιτικὸν ζήτημα ('political question'), and among the πολιτικὰ ζητήματα he distinguished 'abstract, general questions' (θέσεις) and 'particular questions' (ὑποθέσεις) which included references to individuals involved in a case, particular places, times and the like. Likewise it was well known that standard rhetorical theory and training, despite claims to the contrary, provided almost exclusively for the treatment of 'particular questions'. In his youth, Cicero regarded this as a wise restriction which rhetoric imposed on itself, since he took abstract questions to belong with philosophy.[2] In his mature works, however, he complains about the neglect of the θέσις, which, he thought, resulted in a short-sighted way of considering problems and in a flat style of speaking.

[1] On Hermagoras see Matthes (1958) and the commentary on §§79–86.
[2] This emerges from his rejection of the Hermagorean division of questions (*Inv.* 1. 8).

However, with ordinary rhetoric focusing on the 'particular question', Cicero's audience will have recognized the deliberate unorthodoxy in his statement that the *excellens orator* will not use the *status* as everyone does, i.e. apply them to particular questions, but will rather try to strip the case of all its individual aspects and then apply the question-types to what he is left with, the case considered on an abstract level, in order to arrive at the θέσις.

The plan hinted at here is worked out in full in the third part of the *Topica* (§§79–100). There Cicero gives a division of the 'general question', with the three questions mentioned as crucial elements. And just as he proposes here that the argumentative strategies developed on the θέσις level may later be applied to the ὑπόθεσις as well, he introduces the division of θέσεις in the *Topica* by saying that it is meant to cater for both general and particular questions (§86; cf. *de Orat.* 3. 111). Yet it needs to be emphasized that Cicero retains the method of στάσις doctrine as such.

For the rhetorically educated Roman, it was in principle clear what was to be expected next. Once the case is broken down into one or more questions to be settled, the orator needs a method of finding arguments pertinent to each question. The standard methods, however, are supposed to provide for 'particular questions', i.e. are primarily applicable to them (see Ch. 2). So if one follows Cicero and tries to consider the case on an abstract level, the applicability of the standard methods will at least be impaired. What is needed, then, is a method of invention for tackling abstract questions. Aristotelian τόποι are such a method, indeed the only *method* of this type in ancient rhetoric (standard rhetoric provides merely a few general precepts). And to these Aristotelian τόποι the reader is referred at the end of the third paragraph of the *Or.* passage.

By outlining the relationship between the upgraded στάσις-theory and the Aristotelian τόποι in this way, Cicero has given us the rationale of the *Topica*, which, with its treatment of the *loci* and the discussion of the *quaestio infinita* (*propositum*; θέσις), forms a unity in the sense that it contains a method of treating a case (in the broad sense of the word) rhetorically on the level of the 'general question'.

However, in order to account for the overall outlook of the *Topica*, one needs to bear in mind the particular purpose for which the work was written. Cicero discusses the *loci* in the first

two parts of the book and illustrates them with legal examples in order to demonstrate their usefulness to the dedicatee, the jurist C. Trebatius (on this point see Ch. 4 and the commentary on §§1–5). In the last part, however, where the detailed division of the θέσις is given,[3] supplemented by exemplary θέσεις which rather cover themes of moral philosophy or epideictic oratory, no specifically legal examples are inserted. This has puzzled some interpreters. It is arguable that Cicero would envisage a jurist making good use of the θέσις division just as it stands, precisely because he thought that discussions of legal cases should be informed by a consideration of the wider issues raised by them (see again Ch. 4). Moreover, Cicero inserts philosophical material into the discussion of the *loci*, in most cases very apposite with respect to the *jurist's* needs and interests; this represents another move to adjust the rhetorical theory forming the basis of the work to its immediate purpose. That the natural order of θέσις and τόποι in the *Topica* is inverted is due to the fact that it was the latter in which Trebatius had shown an interest.

    Inventio of the type proposed in *Or.* 44–6 and in the *Topica* is only one element in a larger plan of Cicero to promote a type of rhetorical theory which is more sophisticated than the traditional one. Other elements include the theory of ἦθος and πάθος along the lines of Aristotle's *Rhet.* in the second book of *de Orat.*—as esoteric a piece of theory as the *loci* in Cicero's day—or the elaborate treatment of prose rhythm in *Or.*

THE ORIGINS OF 'THETICAL RHETORIC'

Of course the question arises what influences inspired Cicero to champion thetical rhetoric and where the idea comes from. What makes this question difficult to answer is primarily Cicero's own 'multiple accreditation' of it,[4] i.e. to Aristotle and 'the Peripatetics' on the one hand (as in *Or.* 44–6), and to the Academy (the so-called Fourth Academy of Philo of Larissa, not Antiochus' Fifth Academy) on the other.

    Here we may anticipate the conclusion of Chs. 3 and 4 (which is logically independent of the argument here): an analysis of the way in which Cicero's *loci* work and of some parallel texts shows that,

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[3] See introductory n. on §§79–86.   [4] Long (1995a), 57.

materially, Cicero's *loci* have their origin in a Peripatetic rhetorical tradition, i.e. a tradition that draws in the last instance on Aristotle's *Rhet*. The division of the *quaestio infinita*, however, which forms the third part of the *Topica*, is in *de Orat*. more or less explicitly assigned to Philo of Larissa (see my discussion below).

As things stand, one is left with two possibilities: either (*a*) Philo used the division of the θέσις alone, and it was Cicero who combined it with the topical doctrine he found elsewhere, for instance in Antiochus, or (*b*) Philo had already used the τόποι together with the θέσις, and Cicero has adopted the whole complex from him—in which case Philo himself would have made use of Peripatetic source-material. In what follows I shall argue for the second option.[5]

But first some background. The quarrel between the rhetoricians and the philosophers had been a feature of Greek culture since Plato's criticism of rhetoric in its established form. Around the middle of the second century this antagonism was revived. It is less easy than it might seem to name the reasons for this. The traditional view that the philosophers tried to maintain the educational role of philosophy against the increasing influence of rhetorical education is probably a misrepresentation.[6]

A concrete manifestation of the quarrel was the disagreement about the question whether rhetoric is an art, a τέχνη, and hence systematic and capable of being imparted by a teacher.[7] It was, for example, not difficult to cite examples of brilliant speakers who never had enjoyed formal rhetorical training. That one could employ the precepts of rhetoric to bad ends likewise cast doubt on its status as an art, since an 'art' was by definition something that served positive purposes. By the middle of the second half of the second century, the Academy had moved from a position entirely hostile to rhetoric to the view that an acceptable form of rhetoric was conceivable, but that the training the teachers of rhetoric offered was inappropriate and irresponsible, a knack

[5] However, I shall not go deeper into the question of how Philo's rhetorical teaching fitted into *his* philosophy; on this see Brittain (2001), 328–42, whose entire ch. 7 should be read alongside my Ch. 2, and Reinhardt (2000*a*).

[6] The classic treatment of this period of the quarrel, von Arnim (1898), 4–114, has now been superseded by Brittain (2001), 298–312.

[7] The main texts are Cic. *de Orat*. 1; Philod. *Rhet*. 2; Quint. *Inst. Or*. 2; S.E. *Adv. Math*. 2. See Brittain (2001), 299–302 for an analysis of the philosophers' main objections to rhetoric as practised by non-philosophers at the time.

without any educational value.[8] Clearly, from there it was only a slight step to the introduction of an alternative rhetoric in the philosophical curriculum.

The Hermagorean division of questions inevitably became the site of a clash between rhetoricians and philosophers who did not reject rhetoric entirely, but thought it should be practised properly. There had been a philosophical use of the term θέσις for centuries, in the sense of '(discussion of a) philosophical problem',[9] and Hermagoras' decision to distinguish between θέσεις and ὑποθέσεις and to assign both types of question to rhetoric was certainly intended to lay claim to a field at least partly occupied by philosophers. Posidonius is reported to have taken up the challenge, giving a lecture against Hermagoras' claim on the θέσις.[10] And even if there were no evidence to that effect, it would be clear why philosophers went into the teaching of thetical rhetoric: because 'real rhetoric' had in their view to pay attention to the fundamental problems underlying concrete questions, that is to thetical aspects—in which they were the experts. This was the way to go also because the rhetoricians, despite Hermagoras' self-confident declaration, in reality neglected the θέσις, as Cicero laments time and again in *de Orat.* The θέσις was merely assigned a place among the preliminary exercises, the προγυμνάσματα, which had to be undertaken by students of rhetoric before they practised arguing legal cases, and at a correspondingly primitive level of sophistication.

HOW AND WHY WAS CICERO ATTRACTED BY THETICAL RHETORIC?

In 88 bc Philo of Larissa came from Athens to Rome, where he gave lectures on philosophical topics and taught rhetoric.[11]

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[8] In *de Orat.* 1. 84, the Academic philosopher Charmadas vigorously attacks standard rhetoric in both its practical execution and its theoretical self-perception, but states at the same time 'neque posse quemquam facultatem adsequi dicendi, nisi qui philosophorum inventa didicisset' ('that no man could attain skill in speaking unless he had studied the discoveries of the philosophers': trans. Rackham). On Charmadas see Brittain (2001), 312–28.

[9] Thus D.L. 7. 189 mentions θέσεις λογικαί as the title of one of Chrysippus' books.

[10] Plut. *Pomp.* 42. 5 = fr. 43 Edelstein–Kidd.

[11] Cic. *Tusc.* 2. 9 (= fr. 9 Mette = test. xxxv Brittain): 'Itaque mihi semper Peripateticorum Academiaeque consuetudo de omnibus rebus in contrarias partis

Although one would expect Cicero to tell us more about him, it is
clear anyway that Philo had a formative influence on him; his own
philosophical stance remained for all his life the position Philo had
adopted as scholarch in Athens.[12] Cicero, who heard him as a
young man, does not tell us more about Philo's rhetorical teaching
in *Tusc.*, but in *Or.* 12 he says that he, as an orator, was the product
not of the workshops of the rhetoricians, but of the spacious walks
of the Academy.[13] With reference to the context of this passage, it
has been argued that Cicero is merely stressing the positive effects
which his philosophical education had on his oratory.[14] In a sense,
this is true, but the contrast of narrowness and space ties up neatly
with other statements that thetical rhetoric broadens the view of
the orator and that the ὑπόθεσις resembles a narrow and troubled
corner within the broad area rhetoric could potentially occupy.
And the θέσις is, after all, the gateway through which philosophical
education gets into rhetoric.

   This emerges in particular from the third book of *de Orat.*,
where the division of the θέσις occupies a prominent place in the
famous digression on the relationship between rhetoric and phil-
osophy in history. There Cicero argues that at an early stage both

disserendi non ob eam causam solum placuit, quod aliter non posset, quid in quaque
re veri simile esset, inveniri, sed etiam quod esset ea maxuma dicendi exercitatio.
Qua princeps usus est Aristoteles, deinde eum qui secuti sunt. Nostra autem
memoria Philo, quem nos frequenter audivimus, instituit alio tempore rhetorum
praecepta tradere, alio philosophorum: ad quam nos consuetudinem a familiaribus
nostris adducti in Tusculano, quod datum est temporis nobis, in eo consumpsimus'
('Thus I have always agreed with the Peripatetics and Academy in their custom of
arguing either side in all matters, not only because what approximates the truth in
each case could not otherwise be discovered, but also because it is the best exercise
for public speaking. Aristotle was the first to use this method, and then his follow-
ers. In my own life-time, however, Philo, whom I often heard, made it his practice
to teach rhetoric at one time, and philosophy at another. And since my friends have
coaxed me to adopt this practice, I spent the time in my house in Tusculum in this
way': trans. Brittain). The second text to represent direct evidence for Philo's
rhetorical teaching (*de Orat.* 3. 110, discussed below) refers to 91 BC. It is very
likely that Philo taught rhetoric not only in Rome but already in Athens.

   [12] Philo modified his epistemological position in the course of his life more than
once; cf. Brittain (2001), chs. 2 and 3, and his Introduction. Philo started off as an
'orthodox' Clitomachian sceptic but then moved towards a more relaxed scepticism,
which in turn was adopted by Cicero. In the 'Roman books' Philo pressed the
relaxation of his scepticism further to the point that critics could accuse him of
abandoning scepticism altogether.

   [13] 'Et fateor me oratorem, si modo sim aut etiam quicumque sim, non ex
rhetorum officinis sed ex Academiae spatiis exstitisse.'

   [14] Wisse (1989), 171–2.

professions were one, but that they were separated because of the influence of Socrates. Since the separation, rhetoric has continously declined—precisely because what gives life to rhetoric is its connection with philosophy—and finds itself now pressed into the narrow corner which is the (sc. forensic) ὑπόθεσις. Cicero adumbrates the way in which rhetoric and philosophy may be brought together again: the orators need to get the θέσις back from the philosophers. It is no exaggeration to say that his idea of the reunification of rhetoric and philosophy comes down to winning back the θέσις for rhetoric.

It is necessary to look more closely at the immediate context in which the θέσις division is placed. It is preceded by this text (*de Orat.* 3. 107):

Alii [sc. loci communes] vero ancipitis disputationes [sc. habent], in quibus de universo genere in utramque partem disseri copiose licet. Quae exercitatio nunc [at the dramatic date of *de Orat.*, 91 BC] propria duarum philosophiarum, de quibus ante dixi [3. 67: Academics and Peripatetics], putatur, apud antiquos [i.e. before rhetoric and philosophy were separated by Socrates] erat eorum, a quibus omnis de rebus forensibus dicendi ratio et copia petebatur; de virtute enim, de officio, de aequo et bono, de dignitate, utilitate, honore, ignominia, praemio, poena similibusque de rebus in utramque partem dicendi etiam nos et vim et artem habere debemus.

Whereas others on the contrary involve debates on either side, allowing copious arguments to be advanced both *pro* and *contra* in regard to the general question. The latter exercise is now considered the special province of the two schools of philosophy of which I spoke before, but in early days it was the function of the persons who used to be called on to furnish a complete line of argument and supply of matter for speeches on public affairs—the fact being that we orators are bound to possess the intelligence, capacity and skill to speak both *pro* and *contra* on the topics of virtue, duty, equity and good, moral worth and utility, honour and disgrace, reward and punishment, and like matters. [Trans. Rackham.]

Speaking on either side is introduced as an exercise common among Academics and Peripatetics; in it, one argues for and against a general question about thetical matters.[15] Presumably,

[15] That the speaking on either side is introduced in 3. 107 as one type of *locus communis*, i.e. of the commonplace, is to be explained by the fact that Cicero inserted the Academic and Peripatetic speaking *in utramque partem* at that place of the curriculum of the *Progymnasmata* where normally the training with the θέσις

the Academic dialectical method of *in utramque partem disserere*, ubiquitous in Cicero's philosophical writings, is not at issue here. Rather, the reference is to a rhetorical exercise in dialectical form.

This is suggested by the use of the notion *disputatio de universo genere* and the way in which it is picked up in the next paragraphs. *Universum genus* does not merely mean 'abstract problem', the typical domain of philosophers, but refers to the twofold Hermagorean distinction between general and particular questions. For the poor position which is allotted to rhetoric after its divorce from philosophy is illustrated by Cicero immediately after 3. 107 with reference to the distinction between θέσις and ὑπόθεσις, inasmuch as the philosophers are said to have stolen the θέσις from the rhetoricians (sc. rhetoricians as conceived in the retrospective of 3. 107). The philosophers now have the vast grounds of the θέσις at their disposal and are able to talk about everything 'thetically', while the orators have to confine themselves to the ὑπόθεσις. And because they, moreover, restrict the ὑπόθεσις to forensic matters, their realm is characterized as a 'narrow and troubled corner' and so contrasted with the ample field of the θέσις.

But not even there are they safe from the encroachments of the philosophers, as Philo has now intruded into this area too (*de Orat*. 3. 110):

Atque [hactenus loquantur] etiam hac <in> instituendo divisione utuntur, sed ita, non ut iure aut iudicio, vi denique recuperare amissam possessionem sed ut [ex iure civili] surculo defringendo usurpare videantur. nam illud alterum genus, quod est temporibus, locis, reis definitum, obtinent atque id ipsum lacinia. nunc enim apud Philonem, quem in Academia vigere audio, etiam harum causarum cognitio exercitatioque celebratur.

And they also employ the second division in establishing their system, but in such a manner as to appear not to be recovering a lost property by legal proceedings, in fact by force, but asserting their claim to it by the formality of breaking off a twig. For they retain their hold upon the former of the

stands, another form of preliminary training being κοινὸς τόπος. Theon begins his discussion of the θέσις with an account of why it is distinct from the κοινὸς τόπος (ii. 120. 16–17 Spengel), which suggests some overlapping of the two concepts (for 3. 105–7 as a whole cf. also Theon 106. 4–109. 18 περὶ τόπου and 109. 19–112. 17 περὶ ἐγκωμίου καὶ ψόγου). In the section leading up to the passage quoted, Cicero discusses two other types of the rhetorical exercise *locus communis*. It seems clear from what he says about these that *quae exercitatio* in 3. 107 must refer to the third type only.

two classes, the one limited by dates places and parties, and this itself they hold on to merely by the fringe. For at the present time the study and practice of these cases too is pursued in the school of Philo, who I am told is in high esteem in the Academy. [Trans. Rackham, revised.]

An interest in the 'particular question' is correctly termed an intrusion of a philosopher into the sphere of rhetoric, but *etiam* is important, as it makes plain that the treatment of the θέσις likewise and primarily was in Philo's repertoire (so also Brittain 2001, 297). After a short transition, observing that orators mention the θέσις only briefly and fail to discuss its nature and its subdivisions, Cicero in the person of Crassus offers a division unparalleled in rhetorical handbooks and owed, as he says, to *doctissimi homines* (3. 117).

   The context suggests a philosopher as source, for the Academics and Peripatetics had been introduced a moment ago as arguing the θέσις on either side. Philo was mentioned as teaching the arguing of the θέσις and, quite extraordinarily, that of the ὑπόθεσις. What is crucial now is that the division of θέσεις mirrors this uncommonly broad conception of rhetoric which actually makes provision for both types of question. Despite being a classification of the θέσις, the division is also meant to give an exhaustive list of all angles from which a particular case may be looked at. The introductory sentence runs as follows (*de Orat.* 3. 111):

Omnis igitur res eandem habet naturam ambigendi, de qua quaeri et disceptari potest, sive in infinitis consultationibus disceptatur sive in eis causis, quae in civitate et forensi disceptatione versantur.

Accordingly every matter that can be the subject of inquiry and discussion involves the same kind of issue, whether the discussion falls in the class of abstract deliberations or of things within the range of political and legal debate. [Trans. Rackham.]

It is likely, then, that in *de Orat.* Cicero is using material he had retained from the rhetorical teachings of Philo (so also Brittain 2001: 339–40), and that he is reproducing this material in the third part of the *Topica*.

   And to restate a point made above: that in the context of *de Orat.* 3 θέσεις are, quite contrary to the practice of the rhetorical schools, argued on both sides (rather than *either* attacked *or* defended) suggests that Philo turned the Academic dialectical practice of *in*

utramque partem dicere into a rhetorical exercise. This squares with other remarks of Cicero that arguing on either side is not only a method of finding what is *verisimile*, but also *maxuma dicendi exercitatio* (*Tusc*. 2. 9, immediately before the remark about Philo's rhetorical teaching). Given the subjects named in the text quoted from *de Orat*. 3. 107 above, it is conceivable that the Academic rhetorical training displayed a somewhat ambiguous character between philosophizing and rhetorical training.

It is easy to see why rhetoric, conceived of in this way, must have made a great impression on Cicero and why the argumentative theory underlying the *Topica*, however casual the work may look, seemed to him not trifling and obscure, but worthwhile and superior to ordinary methods of invention.

THE ROLE OF PHILO

At the end of the discussion of the θέσις (3. 119), the speaker Crassus says that the *loci* which had been introduced in book 2 are to be used for arguing all the types of questions there are. For the view that Philo himself combined the τόποι and the θέσις-division, there are the following arguments:[16]

(i) At the end of his *Partitiones Oratoriae*, a treatise on rhetorical theory dedicated to his son, which includes, among very conventional elements, the θέσις division and the *loci*, Cicero associates the *loci* explicitly with *nostra Academia*, a statement which is certainly at odds with the assumption that he found the *loci* in some Peripatetic treatise, and which would be highly misleading if he referred to Antiochus' Fifth Academy. Moreover, it would be the only text whatsoever attesting rhetorical interests in Antiochus.[17]

(ii) That the *loci* and the θέσις fit well together[18] is of course not in itself an argument for the view that it was Philo who combined both elements. Cicero tells us, however, in *Tusc*. 2. 9 that Philo

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[16] Brittain (2001) connects only the θέσις division with Philo, but assumes on the basis of *de Orat*. 1. 87 that Charmadas' rhetorical instruction included the study of psychology, and of argumentation and style; he writes (p. 327): ' ''Argumentation'' presumably requires both *invention* (e.g. via the *Topics* of Aristotle), and the study of logic (Stoic or Aristotelian), including sophisms.'

[17] See Barnes (1989), 81–3.

[18] See comm. on §§87–90.

taught actual 'precepts' of rhetoric. Given the technical use of *praecepta*,[19] this is likely to mean that his teachings must have included instruction about invention. This assumption may be backed up with another consideration: Philo's whole plan of teaching rhetoric goes with the idea of an alternative technical rhetoric, i.e. a rhetorical training which, though being better than the standard training in the sense indicated, is meant to be useful in the same enviroment as standard rhetoric. This accounts also for the fact that the θέσις division, in copying the method of στάσις doctrine, betrays a certain eagerness to beat standard rhetoric with its own weapons. And since standard rhetoric offers provision for finding arguments relevant to ὑποθέσεις, it would just be natural if Philo had offered a corresponding method for θέσεις. Now it is not an economical assumption that Cicero took over Philo's division of the θέσις, only to reject the precepts about invention Philo provided and to replace them by the topical doctrine. Moreover, this is unlikely also because in the rhetorical tradition only very rudimentary instructions on how to deal with θέσεις are offered.[20] It would be difficult to tell what sort of inventive precepts for arguing the θέσις Philo could have provided if not the *loci*.

Another point to consider is that, since τόποι have a history of being tools for arguing on either side of a question,[21] and Philo's rhetorical training apparently turned the Academic dialectical practice of *in utramque partem dicere* into a rhetorical exercise, the τόποι would be *the* theory to adopt for someone who wants to argue θέσεις on either side. But this argument cuts both ways, as it is applicable both to Philo and to Cicero.

But why, then, have we 'multiple accreditation' of thetical rhetoric, i.e. to Aristotle and 'the Peripatetics' on the one hand, and to the Academy on the other? A case can be made that Philo, inevitably in need of a justification for his teaching of rhetoric, made Aristotle the patron of his form of rhetorical training. This possibility has already been tentatively suggested by Long (1995*a*), 57–8:

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[19] See e.g. Cic. *Brut.* 46, 263; *Or.* 43; *de Orat.* 1. 15, 1. 84, 2. 64; Quint. *Inst. Or.* 2. 13. 1, 2. 17. 2.

[20] Cf. e.g. the section on the θέσις in Theon, *Prog.* ii. 120. 12–115. 10 Spengel.

[21] Ar. *Top.* *A*2, 101ᵃ35–6; *Θ*14, 163ᵃ37–163ᵇ15; Cic. *Or.* 46; Alex. Aphr. *in Top.* 27. 17–18; *Anon. Seg.* §183 (below, Ch. 4).

Unlike his Plato, however, Cicero's Aristotle cannot be substantiated by us with precision even in the field for which he claims the Stagirite's authority. I suspect that the reason for this is not simply the disequilibrium between our Aristotelian texts and those Cicero could have used, but a contemporary interpretation of Aristotle's dialectic and rhetoric that Cicero got from his successors, especially Philo. (Which is not to say that Philo dreamed it up independently from the rhetorical tradition.)...In Cicero's rhetorical contexts Aristotle seems to be a name for a tradition that stretches down to the Academic Philo.

If Philo actually used the τόποι, he would of course have had a concrete reason for acknowledging an indebtedness to Aristotle. And it is conceivable that Cicero in turn would have preferred to link his campaign for thetical rhetoric not so much with Philo but with the great name of Aristotle.

It is also remarkable that in Cicero *general* information about philosophers who give instruction on the kind of rhetoric in question here usually includes a reference to both the Peripatetics and the Academics (*Fin.* 4. 6; *Tusc.* 2. 9 *init.*), or even Aristotle alone (*Or.* 45–6), while *particular* information about such philosophers refers only to the Academics and specifically Philo (*Tusc.* 2. 9; *de Orat.* 3. 110).

One of the passages which might then support the view that Philo himself appealed to Aristotle's reputation for teaching philosophical rhetoric is the section immediately preceding the θέσις division in *de Orat.* (3. 109). There the speaker Crassus says that *now* (sc. in 91 BC, the dramatic date of the dialogue) the Academics *and the Peripatetics* (i) distinguish between general and particular questions and (ii) distinguish particular questions according to the three *genera causarum* (forensic, deliberative, and epideictic ὑποθέσεις). When he continues with the remark that Philo also teaches the 'particular question' extensively, intruding into the rhetoricians' very own realm, we are apparently intended to understand that both schools distinguished the two questions in the way indicated, but only the Academics actually did something about the particular question.[22] So in an argument which moves from general information of the sort which in principle could come from a syncretistic handbook account to something like an eyewitness's report of an

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[22] There is not a shred of evidence from elsewhere for a Peripatetic concern for the ὑπόθεσις in this time.

actual event, both schools are in the first instance set on a par, then the Peripatetics drop out.[23] It seems less awkward to assume that Philo himself sought to exploit the great name of Aristotle on behalf of his rhetorical project than to suspect Cicero himself of having included the Peripatetics here.

[23] Note that it is the move from general to particular information, not that from the topic of the general question to the topic of the particular question, which is illuminating for my argument.

A Short History of the *Τόπος*

THE *loci* in Cicero's *Topica* derive in the last instance from the *τόποι* Aristotle discusses in his *Top*. and *Rhet*. In order to describe Cicero's use of Aristotelian *loci* as accurately as possible and to find out something about the particular sort of Aristotelian *τόποι* he discusses, one needs to compare topical invention as proposed in the *Topica* to the way in which other writers use Aristotelian *τόποι*, and to non-Aristotelian methods of invention. There are some earlier studies of this sort, which, however, are incomplete in one crucial respect: they fail to take the post-Aristotelian *rhetorical* tradition of *τόποι* into account.[1]

I shall start this survey with invention of arguments as proposed in the so-called *Rhetorica ad Alexandrum*, even though this work is later than Aristotle's *Top*. and not much older, if at all, than *Rhet*.; for it is the earliest ancestor of a tradition of popular rhetorical handbooks which maintain a great deal of continuity throughout antiquity[2] and therefore continue to represent a point of reference for the tradition of Aristotelian methods of invention.

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[1] e.g. Stump (1978), Ebbesen (1993); van Ophuijsen (1994) is aware of the problem, but concentrates on information about *τόποι* rather than on analysis of the various versions of topical doctrine.

[2] This relative continuity of the rhetorical tradition, i.e. the tradition of extant rhetorical handbooks, has various causes. One of them is the context in which such handbooks were used; they were meant to serve practical purposes in rhetorical training rather than to constitute something like rhetorical *Theoriebildung*. Therefore technographic writers were inclined to change clearly defined portions rather than turn a whole area (e.g. 'proof') upside-down. A second reason ties up with the first: from *Rhet. ad Alex.* onwards, rhetorical handbooks followed a highly restricted method of exposition, which involved the breaking-down of a subject into several layers of subdivisions, the definition of key-terms, and the like; see Fuhrmann (1960). Clearly this way of organization in itself encouraged the introduction of changes in a piecemeal way.

THE PRE-ARISTOTELIAN PHASE

In *Rhet. ad Alex*. two types of heuristic devices are encountered. The first consists of general propositions like (1423ᵃ26–7):

The oracles prescribe to all men the performance of religious sacrifices as their fathers did,

which, being plausible in itself for a contemporary audience, may be used in suitable situations to argue that someone has satisfied or violated his religious duties. The second type consists of descriptions of types of proofs like the following, which provide a search-pattern for suitable arguments (1431ᵃ7 ff.):

A refutation (ἔλεγχος) is something that cannot be otherwise than as we say it is. It turns on some necessity in the nature of things, or something necessary as alleged by us, or on something impossible in the nature of things, or impossible as alleged by our opponents.[3]

Inasmuch as we are given an account of refutation which would cover all particular instances of this type of argument, there is an element of abstraction here. Yet apart from that, this is not an analytical explanation of what an ἔλεγχος is, just the naming of a feature of a (successful) refutation. Likewise, that an ἔλεγχος is always directed against a given claim seems too obvious to the author to be spelt out. He does not seem to view an ἔλεγχος as an argument in the first place, presumably because he lacks the concept of an argument. Accordingly, he is unable to describe the logical relationship—incompatibility—between an ἔλεγχος and the argument or thesis against which it is directed. The frame of reference in which this sort of heuristic device operates is the material content of arguments as opposed to, e.g., logical relations between propositions about states of affairs.

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[3] There is a textual problem in the second sentence. The text corresponding to the translation above seems to be the result of a correction in some manuscripts; before the correction, the text is likely to have shown a *lacuna*, the words corresponding to 'it turns on some necessity in the nature of things, or something necessary' being an addition by the corrector. I find the correction plausible enough to provide the basis for my remarks on *Rhet. ad Alex.*; yet the reader might care to verify the general validity of these remarks by applying them to the other types of proof discussed in *Rhet. ad Alex.*

ARISTOTLE'S *TOPICS*

In Aristotle's *Top*., originally written presumably around 360 when Aristotle was still a student in the Academy, we find the kind of τόποι from which Cicero's *loci* ultimately derive. The work is a handbook for the so-called γυμνασία, a dialectical exercise practised in the Academy which in crucial respects resembles the Socratic ἔλεγχος known from Plato's dialogues. In a γυμνασία, two persons, a 'questioner' and a 'respondent', engage in a discussion, the respondent holding a thesis, and the questioner trying to deduce the contradictory of this thesis from premises accepted by the respondent. The questioner relies on τόποι which indicate to him which premises are needed for his purpose. His argument as a whole, consisting of the premises granted by the answerer and the conclusion contradictory to the answerer's thesis, is called a 'dialectical deduction' (διαλεκτικὸς συλλογισμός).

To fulfil their function as 'machines for finding premises',[4] τόποι must have two essential qualities. They should provide premises from which a given conclusion actually follows, thus making the questioner's argument immune against objections concerning its validity; that is, the τόποι should satisfy certain logical requirements. And they should really be of practical use; finding or, more appropriately, formulating a premiss should be an easy and efficient process.

Logically, the τόποι are meant to work in such a way that they provide the questioner with a proposition *q* from which he can infer his intended conclusion *p*. If he has to argue for a proposition *p*, he will use a proposition *q* implying *p*, and if the answerer accepts *q*, he will have proved *p*. If he wants to refute *p*, he will need a proposition *q* implied by *p*, and by refuting *q* he will have refuted *p*. These arguments thus rely on inferences of the types *modus ponens* and *modus tollens*.

However, the frame of reference for dialectical τόποι is not an unanalysed proposition. Instead, Aristotle talks about propositions with a certain internal structure, namely propositions in which a logical predicate A is predicated of a logical subject B, and divides all propositions of the form 'B is A' into four groups (the 'types of predication': accident, genus, property, definition), depending on

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[4] Brunschwig (1967), p. xxxix: 'Le lieu est donc *une machine à faire des prémisses à partir d'une conclusion donnée*' [his emphasis].

the relationship between the logical predicate A and the logical subject B. If, for instance, A merely holds of B in an unqualified sense,[5] then A will be an accident; but if A is coextensive with B and indicates the essence of B, A will be B's definition. In *Top.*, all τόποι referring to one such 'type of predication' are grouped together, and the different groups are discussed in different books.

It is here that the *practical side of topical invention* comes into play. Since it is clear that all τόποι in a particular book refer to a certain class of propositions of the form 'B is A', to be refuted or proved, Aristotle will often describe with reference to this 'B is A' structure what the proposition to be 'found' with the help of a τόπος looks like. From another point of view, these descriptions of possible premisses may be read as precepts to examine a given thesis.

For instance, if a thesis of the form 'A is the genus of B' is to be refuted, Aristotle might formulate a τόπος as 'Check whether A holds of all the species of B' (for if A is the genus of B, A must be true of all species of B). If the dialectician, following this instruction, comes across one species of B, namely C, of which A is not true, he will formulate a premiss 'A does not hold of C' and will thus be able to refute the opponent's thesis.

Anticipating the further development of topical doctrine, it may be said that this aspect of an Aristotelian τόπος, i.e. its function to *refer* in some way or other to an argument for or against a given proposition, persists throughout, while the logical substructure, which is clearly defined in Aristotle's *Top.*, was later lost sight of.

As already has been partly indicated, we can distinguish two ways in which Aristotle may frame a τόπος in *Top.*: (i) the form 'check whether C is D' (sc. 'to prove that B is A'; henceforward 'precept'), (ii) the form 'If C is D, B will be A' (henceforward 'rule'). Aristotle offers no theoretical account of when a 'rule', which in a way provides the underlying structure of all τόποι, is valid; he merely implies that there must be no correct instantiation of 'C is D' for which the corresponding instantiation of 'B is A' is false.[6] Thus, if the questioner's intended conclusion is *p*:

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[5] An accident, so conceived, is a predicate for which it is a necessary and sufficient condition that it shall hold (ὑπάρχειν) of its subject in an unqualified sense: see Brunschwig (1986).

[6] See Reinhardt (2000*b*) 37–46 for a more detailed account of dialectical τόποι.

'beneficial' holds of 'good',

a suitable τόπος leading to a premiss would be 'If the contrary of A holds of the contrary of B, A holds of B'. Since 'harmful' is the contrary of 'beneficial', and 'bad' is the contrary of 'good', the premiss provided by this τόπος would be *q*:

'harmful' holds of 'bad'.

The τόπος involved could be phrased as a rule (as given) or as a precept ('Check whether the contrary of the predicate holds of the contrary of the subject').[7]

ARISTOTLE'S *RHETORIC*

Aristotle's *Rhet*. shows many points of contact with his *Top*. This is due to the fact that Aristotle saw a fundamental similarity between dialectic and rhetoric; for instance, both disciplines have, unlike individual sciences, no subject matter peculiar to them, and both disciplines, unlike scientific demonstration, are not intended to establish truths, but rather aim at making the best possible case for a certain claim.[8]

In *Rhet*., we encounter two types of heuristic devices, the so-called εἴδη and the κοινοὶ τόποι, the latter being related to the τόποι of the συμβεβηκός ('coincidental feature') in *Top. B*.[9] Both εἴδη and κοινοὶ τόποι are supposed to provide help in devising rhetorical deductions, ἐνθυμήματα.

The εἴδη may be described as the general propositions known from *Rhet. ad Alex*. seen through the eyes of the logician. They are taken to be the first premisses of rhetorical deductions. The εἴδη and their tradition are not our primary concern in this

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[7] It will be clear that many dialectical τόποι yield inferences from analogy, which may (like this one) be invalid as logical deductions.

[8] On Aristotle's view of the relationship of dialectic and rhetoric cf. Brunschwig (1996). In connecting rhetoric to philosophy and 'dialectic' in particular, Aristotle is clearly responding to Plato's criticism of standard rhetoric in the *Phaedrus*. This is worth mentioning here because it shows that the methods of rhetorical argument expounded in *Rhet*. are to be conceived of as the philosopher's reaction to non-philosophical rhetoric. And it has been shown in Ch. 1 that Cicero still views and advertises Aristotelian *loci* in this way; more material on how the later tradition conceived of Aristotelian rhetoric is to be found in Ch. 3.

[9] Συμβεβηκότα in *Top. B* are such predicates for which it is a necessary and sufficient condition that they hold of their subject in an unqualified way.

study, since Cicero's *loci* derive from the tradition of the κοινοὶ τόποι.[10]

The κοινοὶ τόποι are 'common' in more than one sense. They are common to the three genres of oratory Aristotle distinguishes in *Rhet.*, but likewise they are common to dialectic and rhetoric. We may distinguish three types of κοινοὶ τόποι according to the level of analysis:

(i) Some κοινοὶ τόποι, primarily those to be found both in *Top.* and in *Rhet.*, follow their counterparts in *Top.* very closely, in that they, after an introductory label like 'from contraries', instruct one to examine, for instance, whether 'the contrary of A holds of the contrary of B', if 'B is A' is to be proved (e.g. *B* 23, 1397^{a}7–19).

(ii) Other κοινοὶ τόποι consist merely of such an introductory label and an example of the type of argument in question; sometimes these κοινοὶ τόποι admit of an analysis in terms of the former type, i.e. as pointing to a logical relationship of two propositions of the form 'B is A', but often enough this is not the case (e.g. *B* 23, 1398^{a}32–^{b}19). Here the introductory label is apparently meant to guide an associative process that might lead to an argument rather than to give a precise description of (the format of) a 'premiss' to be used in a rhetorical syllogism.

(iii) A third group of κοινοὶ τόποι largely resembles the ἔλεγχος-analysis in *Rhet. ad Alex.*, in that they provide no logical analysis or characterization of a possible type of argument;[11] Aristotle occasionally acknowledges that he is drawing on useful material he found in contemporary rhetorical handbooks at his disposal (*B* 24, 1402^{a}17).

Looking ahead to Cicero, it may be noted already here that a good number of the *loci* in his *Topica* show similarity in function with the second group of κοινοὶ τόποι, i.e. they are not used by Cicero in a way to suggest that he takes them to have a logical

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[10] There is disagreement among scholars about what logical requirements an enthymeme involving εἴδη has to fulfil; contrast Sprute (1982) with Burnyeat (1994).

[11] e.g. *B*23, 1400^{a}35–^{b}2 Kassel: Ἄλλος, εἰ ἐνεδέχετο βέλτιον ἄλλως ἢ ἐνδέχεται ὧν ἢ συμβουλεύει ἢ πράττει ἢ πέπραχε σκοπεῖν· φανερὸν γὰρ ὅτι, εἰ [μὴ] οὕτως ἔχει, οὐ πέπραχεν· οὐδεὶς γὰρ ἑκὼν τὰ φαῦλα καὶ γιγνώσκων προαιρεῖται ('Another *topos* is to consider whether the accused person can take or could have taken a better course than that which he is recommending or taking, or has taken; if he has *not* taken this better course, it is clear that he is not guilty, since no one deliberately and consciously chooses what is bad': trans. Rhys Roberts, revised).

substructure as clearly definable as that of Aristotelian dialectical
τόποι (which is not to say that he takes them to have no substruc-
ture at all; see below).

A further point of contact between *Rhet.* and Cicero also should
be mentioned here. Both Aristotle and Cicero illustrate their τόποι/
loci with arguments they found elsewhere, that is, they do not
normally draw up arguments for illustration themselves.[12] This
points to an aspect of the Aristotelian τόποι which has not been
mentioned as yet. Though being primarily meant to be tools for
finding arguments, τόποι can also be used for *testing* given argu-
ments (this is how the answerer in a γυμνασία will use them, in
order to avoid having to admit the contradictory of his original
thesis) or at least for *describing* given argument-structures.

THEOPHRASTUS

Aristotle's pupil and friend Theophrastus is frequently named
when possible influences on the theory of τόποι between Aristotle
and Cicero are considered. No doubt such an influence is possible,
but the evidence for it is much weaker than is commonly held.

It is true that Theophrastus worked on the theory of style, which
Aristotle had treated somewhat cursorily in his *Rhet.* and *Poet.*[13]
But there is no reliable evidence for a Theophrastean interest in
rhetorical methods of invention.[14]

There is strong evidence, however, for an interest in dialectical
τόποι. First, Theophrastus seems to have drawn up a system of
hypothetical syllogisms, i.e. syllogisms whose first premiss is a
ὑπόθεσις, a compound proposition like 'If *p*, then *q*' or 'Either *p*
or *q*'. The τόποι, with their underlying rule being explicitly formu-
lated as a first premiss, were in some way or other included in this
system,[15] though it is unclear to what extent. This was a develop-
ment likely to broaden the gap between dialectical and rhetorical
τόποι.[16] Moreover, Theophrastus distinguished formally between
'precept' and 'rule', calling the former παράγγελμα and the latter
τόπος. That Theophrastus saw the core of the τόπος in the 'rule'

[12] See Brunschwig (1996), 40–1 and Trevett (1996).
[13] Frr. 508–59 in Fortenbaugh (1992), ii.
[14] See frr. 672–80 ibid.
[15] See Solmsen (1929a), 58–72, in particular 65–6.
[16] Alex. Aphr. *in An. pr.* 389. 31–390. 9 (= fr. 111E Fortenbaugh). On this text
see Barnes (1985).

squares with accommodating the τόποι in a system of hypothetical syllogistic, but likewise points to a more theoretical interest in the topical doctrine and a logically more rigorous conception of it.[17] The so-called Florentine fragment, regarded by some scholars as a fragment of Theophrastus' Ἀνηγμένοι τόποι ('topoi reduced'), shows 'rules', not 'precepts'.[18]

After Theophrastus,[19] only his successor as head of the Peripatos, Strato of Lampsakos, is known to have written about τόποι, but not much more than book-titles is extant.[20] The next direct evidence for Aristotelian τόποι dates from 55 BC, namely Cicero's *de Oratore*, where for the first time he discusses the list of *loci* later used in the *Topica*.

STANDARD RHETORIC AFTER ARISTOTLE

How invention developed in standard rhetorical theory during the Hellenistic era may be inferred from Cicero's *De inventione* and the *Rhetorica ad Herennium*.[21] Although items of Aristotelian and

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[17] Alex. Aphr. *in Top.* 135. 2–18 (= fr. 123 Fortenbaugh).

[18] Fortenbaugh (1992) i, app., text 2. See also Philippson (1929), Solmsen (1929*b*), Barnes (1985), 134–5.

[19] It is possible that a contemporary of Theophrastus, the Democritean Nausiphanes of Teos (b. *c*.360 BC; his fragments and *testimonia* are collected as DK62, vol. ii, pp. 155 ff.), had an interest in Aristotelian rhetorical τόποι. He was the first teacher of Epicurus (cf. *Pap. Herc.* 1005) and held views on rhetoric which suggest that he was influenced by Aristotle, for instance, that philosophers were especially skilled in the use of ἐνθυμήματα and παραδείγματα, which corresponded to συλλογισμοί and ἐπαγωγαί in scientific proofs (Philod. *Rhet.* cols. xxxviii f. Sudhaus). Unfortunately, the account in Philodemus is very compressed and hostile (Epicurus later disparaged his association with Nausiphanes). If Nausiphanes was interested in ἐνθυμήματα, he must have been interested in τόποι; but we cannot say more about any influence he may have exercised, and he certainly did not prevent Epicurus from taking a very hostile attitude to rhetoric. On Nausiphanes in general see von Fritz (1935), Longo Auricchio–Tepedino Guerra (1980), and Warren (2002), ch. 7.

[20] D.L. 5. 59: Τόπων προοίμια, Περὶ τοῦ συμβεβηκότος (= frr. 20, 25 Wehrli); §60: Περὶ τοῦ ὅρου, Περὶ τοῦ ἰδίου (= frr. 23–4 W.). A comment of Strato's on a particular τόπος is reported by Alex. Aphr. *in Top.* 339. 30 ff. (= fr. 30 W.). That the Stoics took Strato to be the last Peripatetic who was interested in dialectic seems to emerge from Plut. *De Sto. Rep.* 24. 1045 F (fr. 19 W. = *SVF* ii. 126).

[21] It is now the *communis opinio* that both works depend for the treatment of *inventio* on one common source; conclusive arguments for this position have been provided by Adamietz (1960). Still under discussion is whether this source was a book or a lecture course from which both authors took notes, possibly at different times; cf. Kennedy (1972), 126 ff.

Stoic argumentative theory crept into the common handbooks, invention of arguments continued to be practised along the lines of *Rhet. ad Alex.*[22] Admittedly, standard theory now included the treatment of rhetorical syllogisms, and provided *loci* to 'find' arguments which could be used in these syllogisms (and elsewhere); this is certainly to be credited to an impact of Aristotelian theory on the standard tradition. But in this standard tradition, these two elements are strangely dissociated. Basically the discussions of rhetorical syllogisms provide patterns of presenting an argument rather than descriptions of their logical structure. And since the model—at several removes—for the 'syllogism' of the standard tradition is normally a hypothetical syllogism of the Stoic variety,[23] it is not surprising that the close link between τόπος and συλλογισμός in Aristotle's *Topics*—τόποι provide premises from which given propositions may be deduced, and these deductions are the συλλογισμοί—is no longer in evidence. The *loci* of the standard tradition are functionally very similar to those in *Rhet. ad Alex.*

As heuristic devices, one could either again have general propositions formulating a widely accepted view, which were no longer interpreted as first premises of a rhetorical syllogism, but used without much theoretical underpinning, as in *Rhet. ad Alex.* Or one could have *loci* applicable to all three *genera causarum*, focusing on material aspects of the case rather than on the logical relationship between states of affairs or propositions about these states of affairs. In *Inv.* we find a cluster of *loci* 'of the person and of the act' (1. 34–43),[24] the assumption being that every argument pertinent

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[22] By the beginning of the 1st c., στάσις theory (cf. Ch. 1) had certainly become the main element in the discussions of *inventio*. But while στάσις theory is meant to lead to a question to be decided, our present concern is the methods of finding arguments pertinent to the settling of a question.

[23] There is, however, a possibility that Peripatetic discussions of hypothetical syllogisms stray in, too; cf. Fortenbaugh (1998).

[24] This group of *loci*, which Cicero discusses under the heading *confirmatio*, is well integrated in Cicero's general plan, and there are several passages closely connected with it. So it is striking that the *Auctor ad Her.* lacks them. But Adamietz (1960), 42 has pointed out that at least one of the passages referring in Cicero to the *loci* of 1. 34–43 shows very close correspondences with its counterpart in the *Auctor*; so it is likely that the common source of the two *artes* had the *loci* and that they were suppressed by the *Auctor*. The *loci* 'of the person and of the act' as well as their impact on the later Latin tradition are studied by Leff (1983). That every discourse is in the end based on the elementary parameters 'person' and 'act' comes of course from Greek theory. Hermogenes begins his influential treatise Περὶ στάσεων with

to a case must either relate to the persons involved or the subject under discussion. The individual *loci* are identified with notions meant to guide the imagination, like 'lifestyle' or 'age' (both belonging with 'person'), providing a kind of checklist through which the orator can go when searching an argument. So, for instance, a crime committed by a young man out of rage could be excused with reference to his age and youth's proneness to unreflected action.

CICERO

In Cicero's *de Oratore*, written in 55 BC, we find the list of Aristotelian τόποι he would also treat eleven years later in the *Topica*. Cicero tells us in general terms that they originate from Aristotle (2. 152) and that they are superior to ordinary means of rhetorical invention (sc. such as those discussed in *Inv.*) in that they may be compared to rich streams rather than rivulets like ordinary means of invention (2. 162). In anticipation of the commentary on the *prooemium*, it may be added that Cicero in *Topica* 1–5 claims to possess a copy of Aristotle's *Top.*, and that his character Antonius in *de Orat.* claims to have read *Rhet.* (2. 160); nowhere, however, is the source for the *loci* identified with either of these works.

If we want to understand how Cicero conceives of *loci* and of their use, our analysis should proceed in the following way. The *loci* are characterized by their names—the 'introductory labels' we found in Aristotle's *Rhet.*—like 'definition', 'genus', or 'species'. Now the first part of the *Topica* (§§9–24) consists of legal arguments which are instantiations of the argumentative patterns associated with the individual *loci*. In *de Orat.* Cicero illustrates each of them with an example from a well-known trial; in the *Topica* the examples are taken from Roman private law, that is, they represent arguments that are legal in subject-matter or are even taken from a legal source. By analysing Cicero's examples we can find out how

the statement that a πολιτικὸν ζήτημα, i.e. a doubtful particular question, always has to do with πρόσωπα and πράγματα (p. 29. 7–11 Rabe); the division in Hermogenes and his commentators is discussed by Schouler (1990). Equally, the treatise Περὶ εὑρέσεως, transmitted under the name of Hermogenes, but possibly not written by the author of Περὶ στάσεων, relies on the two categories in its introductory lines (p. 93. 5–8).

he interpreted the *loci*. We can also draw on the middle part of the book where Cicero gives advice as to how to use the various *loci*.

I give a summary of what will be discussed in detail in the commentary. Finding an argument with the help of the *loci* is to work in such a way that, if, for instance, 'The *ius civile* is something useful' is the proposition to be proved, one will consider the definition of *ius civile* to see whether it can provide an argument. In this case, by defining the *ius civile* and showing that 'something useful' may be predicated of this definition, we can use this as an argument for the proposition to be established.

On the one hand, these *loci* are different from the rhetorical-school methods of invention proposed in the *Inv.*, in that they instruct one to consider abstract terms or terms referring to 'logical' relationships like that of genus and species; on the other hand, their use is similar to that of the standard methods, in that one is given a list of concepts that may trigger an associative process rather than a collection of rules or precepts reducible to rules, as the τόποι in Aristotle's *Top.* are.

It certainly is possible to analyse several illustrative arguments presented in the *Topica*, for instance the one just quoted, in terms of Aristotle's treatment of τόποι in *Top.* or to formulate a rule of inference on which the argument is based. Occasionally Cicero himself formulates such a principle explicitly (§23 *Quod in re maiore valet, valeat in minore*). So while it is reasonable to assume that he used the *loci* in most cases intuitively in the way outlined above, he would, if pushed, certainly have explained them in terms of an underlying rule (in fact, he would have associated more than one rule with any given *locus*).[25] That the analysis in Aristotelian terms is frequently possible has to do with the fact that most of the items in Cicero's list of *loci* classify terms, and hence inevitably lead to arguments which lend themselves to an interpretation along the lines of Aristotle's *Top.*

Although the *loci* discussed by Cicero show similarities to the second group of κοινοὶ τόποι in Aristotle's *Rhet.*, it is clear that some of the items in this list of *loci* come from *Top.* rather than from *Rhet.* or even from Stoic logic. In the light of the scanty evidence for the post-Aristotelian development of dialectical τόποι, we may assume that Cicero's *loci* reflect a post-Aristotelian

[25] See the commentary on §88.

tradition of rhetorical τόποι which have been rearranged and sup-
plemented with the help of *Top.* and other sources.

THE RHETORICAL TRADITION AFTER CICERO

Given the lack of texts earlier than *de Orat.* which allow us to form
a more precise picture of the *Topica*'s main source, one needs to
survey later Latin and Greek texts in search of one whose essential
overlap with the material used in the *Topica* proves it to be Hel-
lenistic in substance and hence makes it an indirect witness to the
type of source the *Topica* is based on.

The Latin rhetorical tradition has nothing to offer, for various
reasons. Quintilian has some Aristotelian material in *Inst. Or.* 5
which is not in Cicero, sometimes quite close to Aristotle's *Rhet.*
itself, sometimes more likely to reflect some sort of handbook-
account. However, he is an author who largely resists source-
analysis. This is due to his command of the subject and to his
working method, which involved drawing on as much material as
possible and combining freely whatever seemed worth being
handed down. Most of the *Rhetores Latini Minores* adopted the
non-Aristotelian approach to rhetorical invention proposed in
Inv., and Martianus Capella, Isidore, and Cassiodorus, who dis-
cuss Cicero's *loci*,[26] either depend on the *Topica* directly or on each
other.

In the whole of the Greek rhetorical tradition, I have found only
one text important for our purposes, namely the Anonymus
Seguerianus, to be treated separately in the next chapter.

BOETHIUS AND THEMISTIUS

Leaving the rhetorical tradition, the last author to be considered in
this survey is Boethius, who around the year 520 wrote a commen-
tary on the *Topica* and a monograph on topical argument (*De
Topicis Differentiis*). Boethius' treatment of the *loci* should
be discussed here for two reasons. First, understanding of his
quite complex view of topical argument—which he owes to the

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[26] The references are Mart. Cap. 5. 473 ff. Dick; Isid. *Etym.* 2. 30–1; Cassiod.
Inst. 2. 15 ff. Martianus certainly used the lost commentary on the *Topica* by the
rhetorician Marius Victorinus; cf. Hadot (1971), 115–41.

Aristotelian commentator Themistius—is indispensable for bene-
fiting from his explanation of Cicero, on which I shall draw later in
the commentary. Secondly, embedded in his theory of topical
argumentation, Boethius has a list of *loci* which is very close to
Cicero's. And since his source Themistius is highly unlikely to
have borrowed these τόποι from Cicero himself, they are to be
taken as evidence for the tradition Cicero's *loci* come from.

In Cic. Top. and *De Top. Diff.* are perhaps the latest of Boethius'
logical works.[27] The commentary on the *Topica* in six books is
transmitted incompletely, containing only the explanation of
§§1–76. The extant part therefore only covers the first two of the
three major sections into which the *Topica* may be divided; this state
of preservation might reflect the opinion that the last section of the
Topica does not form a unity with the rest of the book. Although
Boethius' interests naturally diverge to some extent from those of
the modern interpreter, his attempts to come to grips with the
juridical side of the *Topica* and his analyses of the structure of the
arguments developed with the help of *loci* are very helpful.

De Top. Diff. is a monograph on topical argumentation in four
books; it exercised strong influence on medieval thinking about
logic.[28] In Book I preliminary things like the subject–predicate
structure of a proposition or the various types of negations are
discussed, Books II and III deal with dialectical *loci*, and in Book
IV rhetorical *loci* are treated, i.e. the *loci* of the person and of the
act (*De Inv.* 1. 34–43).[29]

Boethius' view of topical argumentation, expounded in *De Top.
Diff.* and underlying his explanation of the *Topica* throughout,
may be sketched as follows:

A *locus* is the 'seat of an argument' (*sedes argumenti*), as Cicero
himself puts it in the *Topica* (§8; 1185 A Migne), which helps to
generate an argument on a doubtful issue. A *locus* can either be a
maxima propositio or a *differentia* (sc. of a *maxima propositio*).

A *maxima propositio* is a basic, general proposition which is
known *per se* and does not derive its credibility from other propos-
itions, but rather provides others with credibility. For *maximae
propositiones* can take on the role assigned to them, i.e. to lend

[27] See de Rijk (1964*b*) 153–4, 157–61.   [28] See Stump (1982).

[29] On book 4 see Leff (1978).

plausibility to doubtful propositions or *res dubiae*, only by virtue of their logical independence on other propositions (1185 B). *Maximae propositiones* may produce credibility on a doubtful issue in two ways: they may either represent one step of an argument or provide the underlying structure of an argument as a whole. Boethius gives two examples: in one, the question at issue is: 'Is it better to be king than to be consul?'

  (i) *Regnum diuturnius est quam consulatus, cum utrumque sit bonum.*
     Rule by a king lasts longer than rule by a consul, although both are good.
 (ii) *Quod diuturnius est bonum eo quod est parvi temporis melius est.*
     But a good that lasts longer is better than one which lasts a short time.
(iii) *Regnum igitur melius est quam consulatus.*
     Therefore rule by a king is better than rule by a consul.

Here the *maxima propositio* is embodied into the argument as assumption (ii), which permits the step from (i) to (iii).

Alternatively, the *maxima propositio* may warrant an argumentation as a whole; in Boethius' second example the proposition to be argued for is: 'The envious man is not wise.'

  (i) *Invidus est qui alienis bonis affligitur.*
     An envious man is one who is grieved by others' good fortune.
 (ii) *Sapiens autem alienis bonis non affligitur.*
     But a wise man is not grieved by others' good fortune.
(iii) *Invidus igitur sapiens non est.*
     Therefore an envious man is not wise.

In this example, according to Boethius, the inference from the premises (i, ii) to the conclusion (iii) is possible, because the *maxima propositio* 'Things whose definitions are different are themselves different' works as a warrant of the argument as a whole. And because an argument may be understood as an instantiation of a *maxima propositio*, *maximae propositiones* are also called *loci* by Boethius, i.e. *sedes argumenti*.

In another sense, *differentiae* too may be termed *loci*, i.e. *sedes argumentorum* (1186 A). *Differentiae* are general terms like *genus*, *definitio*, or *contrarium*. They label classes of *maximae propositiones*, e.g. all *maximae propositiones* dealing with definitions are grouped under the *differentia* 'definition'. In virtue of the

differentia's function of classifying *maximae propositiones*, it may itself be called a *locus*. That they are fewer in number than the *maximae propositiones* guarantees their easier memorization (1186 B). It is, of course, *loci* like those treated by Cicero which appear in Boethius' outline as *differentiae*.

Although it is not difficult to imagine how *maximae propositiones* could help in finding arguments, Boethius' primary tool in this respect is the *differentiae*. Since all propositions may be interpreted as formed from a logical predicate which is predicated of a logical subject (1175 B), and all argument is basically syllogistic (1184 DE)—which is taken to mean reducible to categorical syllogisms as discussed in Aristotle's *Analytica priora*[30]—the process of finding an argument consists essentially in finding an intermediate or middle term by means of which two terms whose connection is in doubt may be connected affirmatively or separated in a negative statement (*In Cic. Top.* 279. 30–1). The *differentiae* are on this reading the names of classes of possible intermediate terms.

Compare for illustration Boethius' explanation of the *locus ex definitione* in Cicero (§9; *In Cic. Top.* 288. 4 ff.). The question at issue is whether knowledge of the *ius civile* is useful, i.e. whether the predicate 'to be a *scientia utilis*' is true of the subject *ius civile*. The term *ius civile* itself, being part of the *quaestio*, must be left aside. So Boethius asks what 'inheres in the subject', thus turning to the first of the three major groups in Themistius' classification; there he finds the *differentia* 'definition' and its associated *maxima propositio* 'No definition can be separated from what it defines'. Applying it to the doubtful question, one has to define *ius civile* and try whether the predicate of the *quaestio*, 'scientia utilis', is true of the definition of *ius civile*, too. If so, one can conclude from this that *ius civile* itself is useful, too, using the definition of *ius civile* as the intermediate term, which allows an affirmative connection of the subject and the predicate in question.

At the end of book III of *De Top. Diff.* Boethius tries to unify or reduce to one another the *loci* of the *Topica* and those of Themistius.

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[30] Barnes (1999), 77: 'Categorical syllogistic studies categorical arguments. An argument is categorical if all its components (its premisses and its conclusion) are categorical propositions. A proposition is categorical if it ''says one thing of one thing''—or better, if it is simple in the sense of not containing two or more propositions as components.'

He, not surprisingly, is quite successful in doing this. Here the question arises why *loci* like Cicero's form part of Boethius' complicated theory of topical argument. So in addition to the systematic account given above, a few further remarks from the historical point of view are necessary.

Boethius is unlikely to have invented the theory of topical argument he expounds in *De Top. Diff.* and uses in *In Cic. Top.* It is obvious from Averroes' Middle Commentary on Aristotle's *Top.* that the concept of a *maxima propositio* was already used by Themistius.[31] Since Themistius also exhibits the τόποι discussed by Boethius, Boethius will have inherited the theory as a whole from him.

In the light of the agreement between Cicero's *loci* and certain κοινοὶ τόποι in Aristotle's *Rhet.*, one can make a guess as to the origin of the *differentiae*. It is likely that Themistius or, more probably, his source secondarily interpreted τόποι similar to Cicero's, which originated from a Peripatetic *rhetorical* tradition, as *differentiae* (this assumption will be confirmed by the conclusions of the next chapter). The function *differentiae* are intended to fulfil—to facilitate the finding of a middle term—presupposes a reinterpretation of topical argument in the light of the developed syllogistic of Aristotle's *Analytica priora*. It seems reasonable to view this as an attempt of Peripatetics of the Imperial era to extend the claim that syllogistic is the overall proof theory to the rhetorical branch of the τόποι.

Even in their guise as *differentiae*, however, the 'Ciceronian' *loci* are in Boethius only loosely connected with the concept of the *maxima propositio*. One could use *differentiae* to find middle terms without recourse to *maximae propositiones*, and the use of *maximae propositiones* to account for the cogency of an argument has in itself nothing to do with the invention of arguments.

There is independent evidence for a theory like that of the *maximae propositiones*.[32] Ebbesen has observed that *maxima propositio* is Boethius' translation for ἀξίωμα.[33] We find ἀξιώματα— fulfilling roughly the same role as *max. prop.* in Boethius—in

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[31] Averroes in the translation of Adam de Balmes, fo. 28[r–v] Iuntina; cf. Stump (1974), 89–91 and Ebbesen (1981), 118.

[32] See Ebbesen (1981), 112–24, (1982), 111–18; Barnes (1993), 184–5; Mau (1960), 52–9.

[33] Cf. *Top.* Θ1, 155[b]15 with Boethius' translation.

Galen's *Institutio logica* (chs. 16–17), a schoolbook on logic dating from the later second century. For Galen an ἀξίωμα is a general, primitive proposition, which is ἐξ ἑαυτοῦ πιστόν (p. 40. 4 Kalbfleisch) and which underwrites relational syllogisms as what one would call today a rule of inference.[34]

Much more could be said about the evidence from Galen, but for our purposes it suffices to say that the theory which appears in Boethius as the doctrine of the *max. prop.* must originally have had nothing to do with τόποι. The combination of *loci* of the Ciceronian type with *max. prop.* in one uniform theory presupposes that ἀξιώματα were identified with Aristotelian τόποι or, in particular, with what we had called 'rules' above; this equation is in evidence in Boethius (*in Cic. Top.* 282. 44–283. 2) and in Themistius. The theory as a whole could then be viewed as an attempt to unify Aristotelian theories of rational argument and in particular the traditions into which the theory of τόποι had disintegrated.

I postpone to the next chapter the answer to the question in how far information about Cicero's *loci* may be drawn from Boethius' *differentiae* considered in themselves, and ask briefly how far Boethius can be used to shed light on Cicero's *use* of the *loci*.

Leaving aside all cases in which Boethius' analysis of Cicero's handling of the *loci* is simply mistaken, e.g. where he misunderstood a legal example or failed to realize the limits of his theory, it can be said that Boethius often makes logical structures in Cicero explicit which the latter created by an intuitive use of the *loci*. On the rare occasion when Cicero explicitly formulates a rule underlying his argument, this is glossed by Boethius in the following way (308. 3–9 on §23):

Notandum vero, quod Tullius maximam propositionem argumentationi inclusit, hoc modo: Quod in re maiore valet, valeat in minore; et deinceps ea nisus argumentationem expedivit, ut manifestius appareat id, quod primo volumine commemoratum est, has maximas propositiones aliquotiens quidem argumentationibus includi, ut in praesenti monstratur exem-

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[34] Barnes (1993), 184–5 argues that the ἀξιώματα are meant by Galen to form part of the syllogisms rather than to constitute an underlying rule of inference. I find the linguistic argument he offers for this view—that the ἀξίωμα is said to provide the σύστασις of the syllogism and that σύστασις means 'construction'—unconvincing, because this meaning does not seem to fit all the occurrences of σύστασις in the section in question. However that may be, in Boethius and Themistius we find *maximae propositiones* in both roles.

plo, alias vero vires argumentationibus dare, ut in superioribus exemplis locorum.

Moreover, we should note that Cicero included the maximal proposition in the argumentation, in this way: What is acceptable in a greater thing should be acceptable in a lesser; then relying on the maximal proposition, he developed the argumentation. And so what I mentioned in the first book is clearer here, namely, that these maximal propositions are sometimes included in argumentations, as is shown in the present example, and sometimes give force to argumentations, as in the previous examples for *loci*. [Trans. Stump, revised.]

The Anonymus Seguerianus

CICERO'S *loci*, or rather the terms used to designate them, are in themselves by and large neutral against the distinction between dialectical and rhetorical Aristotelian τόποι, which is not very clear anyway. To say more about the material origin of Cicero's source, about who created the list as opposed to who passed it on to Cicero, one can only rely on the two authors who preserve lists of τόποι very similar to Cicero's without depending on Cicero himself.

One of them is Themistius/Boethius, the other is the so-called Anonymus Seguerianus, a Greek rhetorical treatise dating from the Imperial era (henceforth Anon.). Their agreement with Cicero and with one another is documented in Table 1 at the end of this chapter; a more detailed comparison of Anon. and Cicero is given in Table 2.

In this chapter my aim is not so much to reconstruct Cicero's source; this can largely be done on the basis of the evidence provided by the *Topica* alone. Rather, I am interested in the context in which Cicero's *loci* were once placed, because only this context can tell us something about the nature of the list of *loci* he uses. It is of course only when the close similarity of the τόπος lists in Cicero, Anon., and Boethius is firmly established that we can draw *general* inferences about them from the original context of *one* of these lists (see Tables 1–2). And if it was a reasonable suggestion that Cicero's *loci* were used by Philo of Larissa in his rhetorical teaching, the 'original context' of τόποι like Cicero's should, in some way or other, invite adoption by a sceptical Academic who wishes to teach rhetoric.

THE ANONYMUS

The examination of this text aims at showing that Cicero's *loci* in the last instance derive from a Peripatetic rhetorical tradition. The notion of a 'Peripatetic rhetorical tradition' requires some

explanation. I use this expression in contradistinction to 'school rhetoric'. To this latter category I would assign, for instance, the *Rhet. ad Alex.*, the handbook of Hermagoras of Temnos (as far as we can reconstruct it), Cicero's *Inv.*, *Rhet. Her.*, Hermogenes' *Stat.*, and many of the *Rhetores Latini Minores*.[1] From Hermagoras, that is from around the middle of the second half of the second century onwards, a version of στάσις doctrine may count as a peculiar feature of school rhetoric; and as we can infer from Cicero's *Inv.*, from the *Rhet. Her.*, and from what we know about the rise of Stoicism in the Hellenistic era, by the time of Hermagoras there was a discernible influence of Stoic theories of argument (see below for further detail) in the school-rhetorical tradition. By contrast, I use 'Peripatetic rhetorical tradition' to denote a tradition, lost in its entirety and traceable only as scattered items of doctrine, of rhetorical handbooks which closely followed Aristotle's views on rhetoric (and dialectic, where both fields overlap).

This tradition may for further clarification be contrasted with what Solmsen in two famous articles called the 'Aristotelian tradition',[2] referring to portions of Aristotelian doctrine which were adopted by the school-rhetorical tradition. Clearly, in their time school-rhetorical handbooks with Aristotelian intrusions and 'Peripatetic rhetorical handbooks' may occasionally have shaded into each other.

Although it is conceivable that a 'Peripatetic rhetorical tradition' was established by Peripatetics, it does of course not follow that throughout antiquity everyone dealing with such a tradition was himself a Peripatetic.

The Anon. is a rhetorical handbook without any philosophical aspirations, dating probably from the late second or early third century AD.[3] It is based on three main sources, the handbooks of the rhetoricians Harpocration, Neocles, and Alexander, son of Numenios.[4]

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[1] Cicero's *de Orat.* or Quintilian's *Inst. Or.* draw on a wide variety of texts and, as works *reflecting* on rhetoric, pursue goals which are rather different from those of rhetorical handbooks, which is why they cannot readily be placed in this category. However, these two works may provide evidence for 'school rhetoric'.

[2] Solmsen (1968).

[3] There are annotated editions by Graeven (1891) and Dilts–Kennedy (1997).

[4] On these writers see the introduction in Dilts–Kennedy (1997), pp. xi–xv; on Neocles Stegemann (1935); on Alexander Brzoska (1894*a*) and Walde (1996).

The treatise is not our only source for the views of Alexander and Neocles: our evidence for them is extended further by Maximus Planudes' scholia on Hermogenes' *Inv.*, in vol. v of Walz's *Rhetores Graeci* and by the anonymous scholia on the same work in vol. vii.[5] These texts are to be used with caution because they are much later than the Anon. and evidently draw on a much wider range of material than just the three handbooks on which the Anon. is based.[6] I shall use them as evidence for views of Alexander or Neocles only when an identifiable item of doctrine is assigned by name to either of them.

In what way does the Anon. draw on Harpocration, Neocles, and Alexander? Much of the material in it can be assigned to one of these sources, since it is often stated explicitly where a particular piece of information comes from. Yet it is unlikely that the handbook as we have it is simply a compilation drawing on the three authors; Graeven (1891), pp. xii ff. plausibly argued that the Anon. is the epitomized version of a τέχνη based on these sources.[7]

THE ΤΌΠΟΙ AND THEIR CONTEXT

In principle, the explicit references to sources in the Anon. put us in a position to contextualize the list of τόποι. Unfortunately the list itself is not clearly assigned. The last writer mentioned before it is Neocles, so the *prima facie* reading points to him. I shall later examine the relevant text in detail.

For the moment I propose a different approach. In the section on proof (§§143–96), the Anon. primarily relied on Neocles and

[5] There is also a fragment of a handbook by one Alexander which Walz identified as inserted into the text of Menander Rhetor in the famous Cod. Parisin. Gr. 1741 (known as A to readers of Aristotle's *Rhet.* and *Poet.*, as P to readers of Menander Rhetor), and which he printed in *Rhet. Gr.* ix. 331–9. I am less confident than Walz that this is by Alexander, son of Numenios.

[6] Graeven (1891), pp. lx and lxii n. 3 and, following him, Angermann (1904), 55–9 are too speculative in their use of these texts.

[7] Graeven's proposal has, in my view too easily, been dismissed by Dilts–Kennedy (1997), pp. x f. I reproduce one of Graeven's arguments (p. xii), relating to the Anon.'s treatment of 'proof', with which I shall be concerned later. In Anon. §§157–9 and the anonymous scholia on Hermog. *Inv.*, *Rhet. Gr.* vii. 762, three definitions are given of the ἐνθύμημα, assigned to Neocles, 'some people', and Harpocration respectively. The Anon. then moves on to a slightly different subject, while the scholia continue with more material on the same subject from Neocles and Harpocration. Graeven has a point that the natural way to interpret this state of affairs is to regard the Anon.'s account as abbreviated.

Alexander, and one can partly reconstruct the treatment of proof in these two authors. It will emerge that in Alexander's τέχνη the τόποι would have stood in a distinctly Aristotelian surrounding, indeed would have been intertwined with it, while they would have been an intrusion in Neocles, who more or less straightforwardly followed the path of school-rhetoric. Before that one final methodological remark should be made: while I am reconstructing parts of Alexander's handbook, it will become clear that what I am really interested in is the *source* of Alexander. In my opinion, Alexander himself was not a Peripatetic philosopher, but rather one of those rhetoricians who relied on a Peripatetic rhetorical tradition. But I shall come back to this matter; first we have to ascertain the contents of his handbook.

There is a pertinent passage outside the treatment of 'proof' which may serve as an introduction, since it conveys an idea of the overall understanding of rhetoric presupposed in Alexander's τέχνη (§§30–1 Graeven):

Ἀλέξανδρος δὲ ὁ τοῦ Νουμηνίου πρὸς ἕκαστον τῶν εἰρημένων ἀπαντῶν πρῶτον μὲν ἐκεῖνο μέμφεται, ὡς οὐκ ὀρθῶς τῆς ῥητορικῆς κατωπτεύκασι τὴν φύσιν στοχαστικῆς[8] οὔσης· αὐτοὺς γὰρ λελήθασι, φησίν, ὡς περὶ ἐπιστήμης διαλεγόμενοι. διαφέρει δὲ ἡ ἐπιστήμη τῆς τέχνης, καθὸ ἡ μὲν ἀδιαπτώτων ἐστὶ θεωρημάτων καὶ μίαν ἐχόντων τὴν φύσιν, τέχνη δὲ [ἀπὸ] κινουμένων καὶ ἀλλοτε ἄλλην ἀναλαμβανόντων φύσιν. τέχνης οὖν οὔσης τῆς ῥητορικῆς καὶ τῶν θεωρημάτων αὐτῆς πρὸς τοὺς καιροὺς ἁρμοζομένων ἁμαρτάνουσιν ἐπιστημονικῶς διδόντες τὰ θεωρήματα καὶ λέγοντες ἀεὶ δεῖν προοιμιάζεσθαι.

[This, then, is their argument,] but Alexander, son of Numenius, replying to each of the statements, first complains that we have not rightly perceived the nature of rhetoric, which is 'stochastic'; for it has escaped their attention, he says, that they were talking about rhetoric as if it was a science. Scientific knowledge differs from art in that the former is characterized by infallible theorems that have a single nature, but the theorems of an art are changeable and sometimes take on a different nature. Since rhetoric is an art and its theorems are adapted to occasions, the Apollodoreans err in stating theorems scientifically and saying that it is always necessary to use a prooemium. [Trans. Dilts–Kennedy.]

Here the Anon. relates Alexander's position concerning the question whether every speech should include a *prooemium*. Alexander's

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[8] στοχαστικῆς < τέχνης > Wilamowitz.

view that some speeches require it and some do not seems merely
commonsensical, but his justification is remarkable. Rhetoric, he
says, is a τέχνη, a body of knowledge which is by nature στοχαστική,
that is without the exactness of an ἐπιστήμη that rests on incontro-
vertible theorems; rhetoric refers to things that are constantly
changing, for which reason it is inappropriate to give precepts as
to what one should 'always' do. With this argument, Alexander
opposes the successors of Apollodorus of Pergamon, a rhetorician
of the middle of the first century BC, whom he may be found
attacking also elsewhere in the Anon. The Apollodoreans held that
there should be a *prooemium* in every speech. Strangely, some inter-
preters have assumed that Alexander is ascribing to the Apollodor-
eans the notion attacked here, that rhetoric is an ἐπιστήμη in the
sense specified in the passage.[9]

That this cannot be correct emerges already from αὐτοὺς
γὰρ λελήθασι, φησίν, ὡς περὶ ἐπιστήμης διαλεγόμενοι, in which
Alexander criticizes the Apollodoreans for failing to realize that
they talk about rhetoric *as if it were an ἐπιστήμη*. Rather, I should
assume that Alexander uses a characterization of rhetoric which he
already found associated with the material on which he was drawing.
There rhetoric was characterized as (a τέχνη) of a stochastic nature
and *as such* contrasted with an ἐπιστήμη. And the context was pre-
sumably not whether every speech should have a *prooemium*. For it
seems slightly inappropriate to rely on as fundamental a consider-
ation as that about the technicity of rhetoric in order to settle such a
marginal question.

There is a history of assigning the sort of status to rhetoric which
we find in the present passage. This allows us to evaluate Alexan-
der's (or rather his source's) assessment of rhetoric and draw up a
background for the comparison of his views on proof with those of
Neocles. Aristotle himself characterized rhetoric as dealing with
the contingent and set up his doctrine of rational argument accord-
ingly,[10] in the sense that he assumed rhetoric to deal with plausible
or 'reputable' propositions (ἔνδοξα) rather than with true ones (e.g.

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[9] See Brzoska (1894*b*), Weissenberger (1996). There is textual evidence that
Apollodorus used ἐπιστήμη in connection with rhetoric (*Proleg. in Hermog. de stat.*,
p. 322. 18 ff. Rabe = fr. 1c Granatelli), but no indication that the term was intended
to have the strong technical sense employed in the passage quoted.

[10] *Rhet. A*2, 1357ᵃ24 ff. On the early history of the dispute about the technicity
of rhetoric see also Hutchinson (1988).

Rhet. *A*2, 1356^{b}32–4), and also that he allowed for more relaxed standards of conclusiveness in rhetorical arguments as opposed to philosophical ones.[11] This implies (at least) two different convictions. The first is the acknowledgement that rhetoric, in virtue of its subject-matter, can never arrive at the certainty of a science, that rhetorical argument is not about arriving at certainty in the first place. The second is the view that, while it is possible and desirable to set up canons of how a proper rational argument in a rhetorical context should look, and while these canons are modelled on those holding for scientific proofs, it will happen only by coincidence that a rhetorical argument meets the standards applying for scientific proof.

In his commentary on Aristotle's *Topics* written around AD 200, the Peripatetic philosopher Alexander of Aphrodisias distinguishes between 'stochastic' arts like medicine, rhetoric, and navigation, and 'productive' arts like building or weaving (p. 32. 12– 34. 5 Wallies).

Stochastic arts proceed in a systematic, but not fully determined manner; their function is simply to aim at everything possible to achieve their end, so that their success is not to be judged by the final outcome, and their failure is due to the nature of the art itself, which is such that its objects are also influenced by external factors. Productive arts, by contrast, proceed in a fixed manner; their function is to aim at reaching their end, so that their success is evaluated by the end product, and their failure is due solely to the practitioner's faulty performance.[12]

I wish to make three brief points about the evidence from Alexander of Aphrodisias. First, the account of the notion of a στοχαστικὴ τέχνη elucidates and supplements in a self-explanatory way Alexander Numeniou's characterization of rhetoric as a τέχνη with a stochastic nature.[13] Second, it will be clear that the conception of rhetoric as a stochastic art fits well with, indeed looks like an elaboration of, the understanding of rhetoric in Aristotle's *Rhetoric*. Third, since the idea seems to impose itself that we are dealing

[11] See Burnyeat (1994), 24–30.

[12] Ierodiakonou (1995), 474, who provides a full interpretation of the Alex. Aphr. passage and of the notion of a 'stochastic art'. See also Blank (1998), 135– 6, 247. Quintilian was familiar with the notion, too, as emerges from *Inst*. *Or*. 2. 17. 23–27.

[13] That this sort of definition of rhetoric must have strayed into the school-rhetorical tradition emerges from Sopatros' scholia on Hermog. τέχνη, *Rh*. *Gr*. v. 3 ff.; cf. also Cic. *de Orat*. 1. 107–9, on which see Leeman–Pinkster (1981), 190–4.

with an essentially Peripatetic way of assessing rhetoric, we can inquire further and ask whether the available evidence on the Peripatos allows us to give a date for this view. Before Critolaus in the middle of the second century BC, the last Peripatetic whose fragments betray first-hand knowledge of Aristotelian treatises is Strato of Lampsakos, who died around 278 (on him see also Ch. 2).[14] In general we have very little evidence for Peripatetic activities for the period from Strato's death to Critolaus' time as a scholarch, and the situation is even worse in the field of rhetoric. Strabo, in a notoriously dubious context, says that the Peripatetics after Theophrastus spent their time 'orating θέσεις',[15] which may suggest rhetorical activity; but this information is very unspecific and cannot be relied on. We know that Critolaus criticized Aristotle for the rank he had assigned to rhetoric and that Critolaus questioned the status of rhetoric as an art (Quint. *Inst. Or.* 2. 17. 15 = fr. 25 Wehrli). Other fragments (fr. 26–9 Wehrli) strongly suggest that he rejected rhetoric completely, that is, without allowing for the possibility of methodical persuasive speech in social and political contexts which was philosophically acceptable; nor have we reason to believe that he allowed for some kind of popular philosophical discourse which could be seen as alternative rhetoric (see the material discussed in the commentary on §§79– 86). If we assume that the information in Alexander's handbook on the status of rhetoric reflects the views of Peripatetics interested in rhetoric, then we have no evidence to suggest placing them in the period between Strato and Critolaos, and we should have to see them as sharply opposing their scholarch's views if they were contemporaries of Critolaos. But we positively know that pupils of Critolaos, in an apparent modification of the Peripatos' attitude to rhetoric, taught it (2. 15. 19), just as we know that in the same period pupils of the Academic Charmadas did.[16] Now for a Peripatetic teaching Aristotelian rhetoric after a phase where the Peripatos not only rejected standard rhetoric but also Aristotle's views of rhetoric, it would be a natural move to use the notion of a stochastic art in order to explain why Aristotle could call rhetoric an art, and why Critolaus could disagree. Admittedly, we cannot be

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[14] See Bignone (1973), 274 and Theiler (1957), 130.

[15] Strabo 13. 1. 54, on which see Barnes (1997*b*), 12 n. 55.

[16] See Brittain (2001), 307 for the philosophers' changing attitudes to rhetoric in the 2nd c.

sure, but the period after the middle of the second century BC is a probable time for Peripatetics to define rhetoric as a stochastic art.

To conclude the discussion of this first passage from the Anon., we may say that the assessment of rhetoric which Alexander's τέχνη included seems to reflect Peripatetic views, and perhaps those of *c*.135 BC and later, and provides us with a certain framework of expectation as to his views on proof.

I shall now compare the treatment of πίστις in Alexander and Neocles:

(i) Alexander in §144 distinguishes between rhetorical proof (πίστις) and scientific or philosophical proof (ἀπόδειξις), stating that ἀπόδειξις relies on true premises and consists of conclusive arguments, while a πίστις need neither be true nor conclusive. In this Alexander employs a logical notion of proof and acknowledges a difference between rhetorical and philosophical argument with respect to the epistemic status of the premises used (cf. *Top. A*1, *An. pr. A*1) and with respect to logical cogency. The terminological distinction between ἀπόδειξις and πίστις is in Aristotle as well, though not in Aristotle alone, and the status assigned to rhetorical argument ties up exactly with what we heard about the 'stochastic nature' of rhetoric. Neocles in §160 uses ἀπόδειξις with reference to rhetorical argument and neither here nor elsewhere in the Anon. betrays any interest in, or awareness of, a difference between rhetorical and philosophical argument. His definition of ἐνθύμημα in §157 does not rely on logical categories, but focuses primarily on external aspects of an argument (arrangement and number of steps).[17]

(ii) In §145 Alexander makes the distinction between technical and non-technical proofs known from Aristotle's *Rhet.* (*A*2, $1355^b35-1356^a1$), which, however, has a wide distribution in the rhetorical tradition in general and is in substance already pre-Aristotelian (*Rhet. ad Alex.* p. 30. 11 ff. Fuhrmann); in §146 two types of technical proof are given, enthymeme and example (cf. *Rhet. A*2, 1356^a35 ff., there appearing together as the third of three subtypes of technical proofs, the other two being ἦθος and πάθος). Neocles too uses the distinction between technical and

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[17] Neocles ap. Max. Plan. on Hermog. *Inv.*, *Rhet. Gr.* v. 403. 22–4 decribed the συλλογισμός in Stoic terms: Νεοκλῆς δέ φησιν, ὅτι ὁ μὲν συλλογισμὸς ἐκ λημμάτων καὶ ἐπιφορᾶς συνέστηκε; cf. e.g. S.E., *PH* 2. 135.

non-technical proofs, but then divides the former into ἀπὸ τοῦ πάθους and ἀπὸ τοῦ πράγματος (§147). This may still sound Aristotelian, but the proofs ἀπὸ τοῦ πράγματος are subdivided into εἰκός, τεκμήριον, and παράδειγμα (§149), which may be compared with *Rhet. ad Alex.* p. 30. 15.[18]

(iii) Alexander's definition of the παράδειγμα (§155) reminds us of Aristotle's because of its reference to induction (ἐπάγων; cf. *Rhet. A*2, 1365ᵃ35–56ᵇ5) and again employs logical categories, cast in Aristotelian terminology: an example is a λόγος seeking to establish the particular through the particular (cf. *An. pr. B*24, 69ᵃ15), the general through the particular (in *An. pr. B*24, 69ᵃ16–19 and *Rhet. A*2, 1357ᵇ27–30 this is peculiar to induction), or the similar through the similar (this idea is obviously not peculiarly Aristotelian; but cf. *Rhet. A*2, 1357ᵇ28–9). Neocles' definition of the παράδειγμα shows no trace of the idea that an example is an induction (§154).

(iv) Alexander's definition of the τόπος is identical with a characterization we find in Alexander of Aphrodisias' commentary on Aristotle's *Top.*, where it introduces a quotation from Theophrastus' *Topics* (§169: . . . ἀφορμὴ ἐπιχειρήματος ἢ ἀφορμὴ πίστεως [εἰ], ὅθεν ἄν τις ὁρμώμενος ἐπιχείρημα εὕροι; cf. Alex. Aphr. *in Top.* 126. 11–20).[19] Neocles distinguishes general from particular τόποι with reference to στάσις doctrine (§170), a distinctly non-Aristotelian element of school-rhetoric.

(v) Alexander's definition of γνώμη, as well as his explanation of the difference between γνώμη and ἐνθύμημα (*Rhet. Gr.* vii. 765. 11–13) follows closely Ar. *Rhet. B*21, 1394ᵃ21 ff.; contrast Neocles on γνώμη (*Rhet. Gr.* vii. 765. 3–9).

Before turning to the two sections in the Anon. where the τόποι themselves are treated, we may state that, in the light of the

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[18] If Graeven's proposal for the filling of the *lacuna* in Anon. §152 is roughly correct, then Neocles distinguished, in a manner reminiscent of Aristotle, between necessary and non-necessary inferences 'from signs', τεκμήρια and σημεῖα. However, this does not necessarily represent evidence against the view that Neocles is largely free of elements of Aristotelian doctrine. For the distinction between tokens and signs seems to have been so widespread in the rhetorical tradition as to be fittingly assigned to what Solmsen called the 'Aristotelian tradition'; see Allen (2001), 35–6 n. 37 and in general his 'Study i' in the same work.

[19] Since in the quotation from Theophrastus in Alex. Aphr. ἀφορμή is picked up by a form of ὁρμᾶσθαι, scepticism as to the origin of the definition seems out of place.

evidence presented, Alexander is the source one would expect the τόποι to come from.[20]

The two sections mentioned, both without explicit assignment to a source, contain the list of τόποι (§§169–81) and an example of their use respectively (§§183–5);[21] from their internal coherence and from cross-references it is evident that they come from the same source. The passage exemplifying the use of the τόποι mainly consists of a demonstration how one τόπος ('from definition') may be used for arguing for and against the same θέσις.[22]

This is remarkable both with respect to the material from Alexander and in itself. Of course one could assume that rhetorical argument in general is not committed to truth and may therefore be employed for arguing for contradictory conclusions. The material from Alexander surveyed above, however, would provide something like a *theoretical foundation* for this: using the same τόπος to draw up arguments for contradictory conclusions is in tune with Alexander's characterization of rhetorical argument as—unlike scientific proof—not normally involving true propositions (§144, mentioned under (i) above), and with his refusal to grant rhetoric the status of an ἐπιστήμη.

Moreover, the passage may be connected with Cicero's remark about the Peripatetics' rhetorical training *in utramque partem* of a θέσις (*de Orat.* 3. 80). And it provides a concrete parallel for Cicero's linking of Aristotelian τόποι with the practice of arguing for and against a rhetorical θέσις (*Or.* 46). Apparently this was a traditional way to use them, and a way which was different from what standard rhetoric does with a θέσις. For in standard rhetoric a θέσις is usually *either* attacked *or* defended.[23]

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[20] None of the quotations from Neocles and Alexander elsewhere alters this picture by giving Alexander a significantly more 'Stoic' outlook or Neocles a more 'Aristotelian' one. The references are: (i) Alexander: *Rhet. Gr.* v. 403. 22, vii. 763. 14, 763. 20, 765. 11, 765. 26. (ii) Neocles: *Rhet. Gr.* v. 395. 12, 395. 21, 403. 22, vii. 762. 18, 763. 8, 763. 30, 764. 2, 764. 16, 765. 5.

[21] §§186–7, not immediately relevant to my argument here, belongs with §§183–5 and refers back to the list of τόποι in §§169–81 (for the content of §§186–7 cf. Ar. *Rhet. B*25, in particular 1402ᵃ30–4).

[22] Anon. §183. That in this passage an argument for and against a θέσις is at issue is made explicit in §184; there we are told that an analogous argument for a ὑπόθεσις is made possible by adding a περίστασις—no doubt to the θέσις, for it is characteristic of a θέσις that it has no περιστάσεις.

[23] On the θέσις in connection with standard rhetorical education see Kaster (1995), 282–3, Heath (1995), 16–17, Patillon–Bolognesi (1997), pp. lxxxiii–xci.

So far, then, there is little reason to doubt that the τόποι come from Alexander and that the material assigned to him in the Anon. represents the 'original context' of the τόποι.

THE PASSAGE INTRODUCING THE τόποι

Although Graeven realized that Alexander's handbook must have shown strong Aristotelian influences and Neocles' by contrast Stoic ones,[24] he took the τόποι to come from Neocles, on the grounds that he is the last person named in the section introducing the list of τόποι.[25]

So in order to defend the view that the τόποι come from Alexander, we have to find an argument against the *prima facie* reading of this paragraph. I give Hammer's text (i/2. 382. 3–10 Spengel–Hammer), which is at least readable, and a rudimentary app. crit.:

> §169: *Τόπος μὲν οὖν ἐστιν, ὡς Ἀλέξανδρός φησιν, ἀφορμὴ ἐπιχειρήμα-*
> *τος ἢ ἀφορμὴ πίστεως* [εἰ *del.* Seg.]*, ὅθεν ἄν τις ὁρμώμενος ἐπιχείρημα*
> *εὕροι.*

> 1 §170: *Τῶν δὲ τόπων ἔνιοι μέν, ὡς ὁ Νεοκλῆς φησι, κοινούς τινας*
> *κατὰ πασῶν τῶν στάσεων εὑρήκασιν, οἱ δὲ ἰδίους ἑκάστης στάσεως·*
> *Ἀριστοτέλης δὲ καὶ κοινοὺς καὶ ἰδίους τοὺς μὲν πλείστους εὕρηκε, περὶ*
> *δὲ τῶν ἰδίων διαλέγεται συμφωνῶν καὶ αὐτὸς Εὐδήμῳ τῷ Ἀκαδημαϊκῷ.*
> [Punctuation slightly altered.]
>
>   1–2   κοινούς τινας ... εὑρήκασν οἱ δὲ ἰδίους   Sp.:   κοινῶς τινα ...
> εἰρήκασιν οἱ δὲ ἰδίως P **3** εὕρηκε V.: εὖαδεν P: εὖρεν Sp.: εὖ διεῖλε Seg.[26]

Of the topics, some (sc. people), as Neocles says, discovered such (sc. topics) which are common to all stases, others (sc. discovered) such

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[24] Graeven (1891), pp. lxii n. 2, lxviii n. 1.

[25] Employing an unreliable stylistic criterion, Dilts–Kennedy (1997), pp. xiii f. assume the τόποι might come from Alexander.

[26] P is the *codex unicus* of the Anon. (Cod. Parisin. Gr. 1874); Seg. is the first editor, Séguier de Saint-Brisson; V. is Volkmann (1885); Sp. is Spengel. Dilts–Kennedy (1997) print Hammer's text, but mistranslate it: 'Some topics, as Neocles says, invent *something in common to all stases*, but others are specific to each stasis, and Aristotle discovered most common and specific topics, but in discussing special topics he is in agreement with Eudemus the Academic' [my emphasis]. The passage in italics would call for the neuter plural in Greek. Moreover, Dilts–Kennedy translate εὑρήκασιν (l. 2) by a present tense, but εὕρηκε (l. 3) by a past tense (and assume different senses of 'to find' for the two verbs). Graeven puts in daggers after εὕρηκεν in l. 3, where he prints the MS reading εὖαδεν, and before τῷ Ἀκαδημαϊκῷ. I offer an alternative translation.

(sc. topics) which are specific to each stasis. Aristotle, however, discovered most common *and* specific topics, but in discussing special topics he is in agreement with Eudemus the Academic.

The passage is—like many others in the Anon.—highly corrupt. And there is the possibility that the Anon. is epitomized; some source-indicators may have been lost. That either this or, more plausibly, a conflation of material from Alexander and Neocles is very likely to have happened is suggested by the *content* of the paragraph.

After a definition of the τόπος which comes from Alexander and is very probably Theophrastean (above, (iv)), we are told that Neocles distinguished general and particular τόποι with respect to στάσις theory. The connection thus made between τόποι and στάσις theory is odd in its context.

The point is not so much that to call τόποι 'common' with reference to στάσεις (rather than to subject-areas or the three *genera causarum*, as Aristotle intended the term) was unprecedented, or that a reinterpretation of Aristotelian τόποι in order to link them to στάσις theory was inconceivable. Rather it is that στάσις theory is traditionally geared to particular questions (ὑποθέσεις), because particular questions are what ordinary rhetoricians have to settle. And it emerges from §§214 and 216 that Neocles construed the notion of στάσις in this traditional way, with reference to ὑποθέσεις. But in §183 we are given a demonstration how the first τόπος 'from definition' may be used to argue not a ὑπόθεσις but a θέσις on either side. So it is difficult to reconcile the actual use made of a τόπος with what Neocles is reported to have said about τόποι. It follows that there is a good case for the view that Neocles' remark did not originally introduce the list of Aristotelian τόποι given in §§171 ff., which are evidently supposed to be θέσις-related. If Neocles discussed τόποι, they will have been like those in *Inv*. 1. 34–43 (see Ch. 2, section 'Standard Rhetoric after Aristotle'), which refer to material aspects of the case rather than providing logical principles which may help constructing an argument, as Aristotelian τόποι do.[27] It also has some weight that Neocles clearly relied on

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[27] See Leff (1983) on this type of στάσις-doctrine-related *loci* in the Latin tradition; in §218, coming from Neocles (cf. §214), τόπος seems to be used in this sense: Κατὰ δὲ τόπον ἀνακεφαλαίωσις γίνεται ὅταν <τις> τὰ ἔν τινι τόπῳ ἐμπεριεχόμενα συντόμως ἐκτιθῆται, ὡς ἐν ταῖς συμβουλαῖς ἡ ἀνακεφαλαίωσις· ''ἐπέδειξα ὑμῖν καὶ δίκαιον καὶ συμφέρον καὶ πρέπον καὶ δυνατὸν καὶ ῥᾴδιον'' 'Recapitulation by

στάσις theory (cf. again §§214, 216), which in the passages expressly assigned to Alexander is not mentioned at all.

The reference to Aristotle and Eudemus the Academic may also point to a conflation of sources. Before I explain why this is so, it should be made clear that it is odd that Eudemus is called an Academic here. For there is no reason whatsoever to assume that the fellow member of the Academy to whom Aristotle dedicated a dialogue on the soul had an interest in the doctrine of τόποι, or in dialectic and rhetoric in general for that matter, while we have solid evidence that the Peripatetic Eudemus of Rhodes, a contemporary of Theophrastus, had such an interest (cf. fr. 25 Wehrli and Fortenbaugh 2002). So on any interpretation of this passage we should assume that at some stage of the transmission someone misguidedly glossed the previouly unspecified Eudemus as 'the Academic'. The argument for a conflation of sources arises from the two names Aristotle and Eudemus: we have seen before that Peripatetic material can be expected to come from Alexander rather than Neocles, and this would of course include references to Aristotle and Eudemus. Given that Alexander's definition of the τόπος, which is likely to go back to Theophrastus, had already been given (§169), Aristotle and Eudemus are likely to have been mentioned by Alexander. Yet the last source mentioned before Aristotle and Eudemus come in is Neocles.

These arguments may, I hope, support the assumption that §170 is composed from two sources; that is to say, the sentence from τῶν δὲ τόπων to ἑκάστης στάσεως in l. 2 is an isolated item taken from Neocles and with this exception §§169–85 represent a coherent passage taken from Alexander. A reason why the compiler could have inserted this sentence here would be that both Alexander and Neocles distinguished, though in different senses, κοινοὶ and ἴδιοι τόποι.

Thus the presumed content of the πίστις section of Alexander's τέχνη suggests that there was a Peripatetic rhetorical tradition as

topic occurs whenever things included in some topic are briefly set out, like the recapitulation in deliberative speeches: ''I have shown you (that this proposed action) is just and beneficial and appropriate and possible and easy'' ' (trans. Dilts–Kennedy).

defined above and that the τόποι to be found in Cicero in the end originate from it.[28]

However, other information we get about the content of Alexander's τέχνη—which often is fairly conventional, 'school-rhetorical'—shows that Alexander merely used such a tradition and was not himself a Peripatetic; this dovetails with the observations made above in connection with the passage §§30–1. That there are a few Stoic terms among Cicero's and Alexander's τόποι is easily compatible with this conclusion;[29] it is well known that already in the late Hellenistic era the boundaries between Stoic and Peripatetic doctrines in some areas began to blur.[30] But we shall have to investigate in the commentary how exactly these Stoic terms got into an essentially Peripatetic tradition.

PERIPATETIC RHETORIC AND THE FOURTH ACADEMY

A practical reason why Philo of Larissa could have adopted elements of a rhetorical theory of this sort is its applicability to general questions, which features prominently also in the Anon. But it is also the overall approach to rhetorical argument that could have made this theory attractive for him. Academic dialectic had in itself already strongly rhetorical features, with its practice of discussing on either side as plausibly as possible what rhetoric would qualify as 'general questions' as, for instance, in Carneades' famous and disturbingly effective speeches for and against justice.[31] If Philo, as argued in Ch. 1, actually modelled his rhetorical training on this philosophical dialectic, he would have found a rhetorical theory congenial which made a point of defining plausibility rather than truth as the realm of rhetoric. Likewise, he would have found it congenial that the Peripatetics, evidently in virtue of their understanding of dialectical and rhetorical argument, had already been using the method of τόποι to draw up arguments εἰς ἑκάτερον μέρος of general questions, for the

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[28] *Pace* Kennedy (1994), 87: 'Although Cicero, Quintilian and others refer to Peripatetic rhetoric on a number of occasions, they sometimes mean Aristotle and Theophrastus, rather than later Peripatetics, and it does not seem possible to identify a specifically Peripatetic tradition in Hellenistic rhetoric.'

[29] e.g. Cicero: *ex antecedentibus, ex consequentibus, ex repugnantibus*; Anon.: μάχη.

[30] On the impact of this development on the rhetorical tradition see Kroll (1936), 6.

[31] See also Brittain (2001), 323–6.

purpose of philosophical inquiry, and—on the evidence of Anon. §183 and Cic. *Or*. 46—also for rhetorical exercises.[32]

Let us take things a little further. The above considerations may serve to show that Philo had a motive; did he also have the opportunity? If we bring together the observation made above in connection with §§30–1 that the 130s BC are a probable *terminus post quem* for Peripatetics to view rhetoric as a stochastic art and if we further take into account that the agreement of the τόποι-lists in the Anon. and in Cicero makes 55 BC (the date of the *de Orat*.) or rather the early 80s (when Cicero met Philo and attended his rhetorical training sessions) the *terminus ante quem* for the drawing-up of such lists, we get a window of *c*.130–80 when the Peripatetics must have developed the streamlined system of τόποι which we find in the Anon. and in Cicero. So Philo may have had an opportunity too.[33]

But if someone finds fault with the assumption that Philo himself adopted the Peripatetic theory of τόποι, the conclusions drawn from the Anon. remain unaffected with respect to their relevance for the assessment of the *Topica*.

THEMISTIUS/BOETHIUS

It is now clear, too, that Themistius/Boethius can only be of limited usefulness for understanding the historical background of

[32] The partial structural parallelism of the methods of sceptical Academics and Peripatetics in the Hellenistic era is manifest also in another, related area. It is well known that the contrast of opposing views is one of the principles according to which the tenets of philosophers in the doxographical tradition are organized. The sources show a shift of attitude in the use of this method similar to that which I am presuming for the use of the τόποι. Mansfeld (1990), 3063: 'The Skeptical mode of presentation, later called *diaphonia* (disagreement), is not much more than a diaeresis (from a purely formal point of view, it of course still is) employed to a different purpose. The diairetic construction of a *status quaestionis*, or listing of such views as were available and even, sometimes, theoretically possible, could be used to help one, in a preliminary way, to discover the truth; this is how Aristotle and Theophrastus used it. It could also be used to produce a stalemate. The disagreement(s) could be allowed to remain as they were, and suspension of judgement could be recommended. This is how the Academics used it. One may say that part of the history of ancient doxography is contained in the switch from a Peripatetic dialectical *dihairesis*, with the emphasis on finding one's way towards the truth, to an Academic *dihairesis* stated in the shape of a *diaphonia* in order to preclude, or indefinitely to postpone, a decision.'

[33] Incidentally, what does not seem an option, given the evidence set out above, is that Philo himself (or another Academic like Charmadas) directly used Aristotle's *Rhet*. (or *Top*.); for the close similarities between Cicero and the Anon. would then have to be explained by the (implausible) assumption that the Anon. reproduces an Academic adaptation of Aristotelian material.

the *Topica*. For in Boethius we find the list of *loci* entirely *deprived* of what was its original context. The examination of the list itself yields only two flimsy results: (i) The *loci* are divided into three groups, the division clearly being inspired by Aristotle's division of *rhetorical* proofs into technical and non-technical ones. (ii) The *loci* in Boethius which have no counterpart in Cicero usually come from Aristotle's *Top.*; since Themistius wrote a commentary on Aristotle's *Top.*, he may well be responsible for these additions.

Finally, I list in Table 1 correspondences and divergences between Cicero, the Anon. (§§169–80 Graeven), and Themistius (Boethius, *De Diff. Top.* 1194 B ff. Migne); Table 2 is a more detailed comparison between Cicero and the Anon.[34]

TABLE 1. *Correspondances and divergences between Cicero, the Anonymus Seguerianus, and Themistius/Boethius*

Cicero	Anonymus	Themistius
ex definitione	ὁλόκληρος ὁ ὅρος	*in definitione*
ex nota/notatio interpretatione	ἐτυμολογία	*a nominis*
coniugata	παρώνυμον/συστοιχία	*ex coniugatis*
genus	γένος	*a genere*
forma	εἶδος	*locus specierum/partium*
similitudo	ὅμοιον	*similitudines*
differentia	διαφορά	*differentia*
contrarium	μάχη	*opposita*
adiuncta	παρεπόμενον	*transsumptio* (?)
ex antecedentibus	—	—
ex consequentibus	—	—
ex repugnantibus	—	—
(causae) efficientes	—	*causae/efficientes*
effectae res	—	*effectus*
comparatio	παράθεσις	*comparatio*
ex auctoritate	κρίσις	*rei iudicium*

[34] An important point of agreement between Cicero and the Anon. consists in the fact that both treat a number of τόποι in the same order (definition at the beginning, *argumentum ex auctoritate* at the end etc.); this is less easily documented in the table itself, since the paradosis of Cicero's source is sometimes divided up between first and second discussion of a *locus*. I shall take the τόποι in the Anon. in order of occurrence as point of reference.

TABLE 2. *Comparison between the lists of* τόποι *in the Anonynus Seguerianus. and Cicero*

Anonymus Seguerianus	Cicero, *Topica*
§169 Definition of the τόπος	(?) Cf. §§7 ff. with commentary.
§172 Ὅρος	§§26–34
(*a*) ὁλόκληρος ὁ ὅρος	§9 *definitio*
(*b*) τὰ ἐν τῷ ὅρῳ	
γένος	§13 *a genere*, §§39–40
< εἶδος >	§14 *a forma generis*
ἴδιον	(§29 . . . *usque eo persequi dum proprium efficiatur*)
διαφορά	§16 *a differentia*
(*c*) τὰ παρακείμενα αὐτῷ	
ἐτυμολογία	§§10, 35–7 *notatio*
παρώνυμον	—
ἐπίθετον	—
ὑποκοριστικόν	—
§173 διαίρεσις	
(*a*) καταρίθμησις	§10 *partium enumeratio*
(*b*) μερισμός	§§28, 33–4 *partitio*
(*c*) εἰδικὴ διαίρεσις	§§28, 33–4 *divisio*
§174 παράθεσις	§23 *ex comparatione*, §§68–1
κατὰ τὸ μᾶλλον, κατὰ τὸ ἧττον, κατὰ τὸ ἴσον	§23 *in maiore, in minore, in re pari*
§175 συστοιχία	§12 *coniugatio* (συζυγία), §38
§176 περιοχή	—
(*a*) ἃ ὡς μέρη περιέχεται	
(*b*) ἃ ὡς κατὰ δύναμιν περιέχεται	
§177 ὁ δὲ ἐκ τῶν ὁμοίων τόπος	§15 *a similitudine*, §§41–5
(*a*) κατὰ τὴν ποιότητα	
(*b*) κατὰ τὴν ἀναλογίαν	
§178 τὸ παρεπόμενον	§18 *Ab adiunctis*
πρὸ τοῦ πράγματος, ἐν τῷ πράγματι, μετὰ τὸ πρᾶγμα	§§50–2 *ante rem, cum re, post rem*
§179 μάχη	§17 *ex contrario*, §§47–9
(*a*) ἀντικείμενα (contradictories)	(See the commentary)
(*b*) ἐναντία	
στερητικά (e.g. τέχνη ἀτεχνία)	
οὐ στερητικά (e.g. ἀγαθόν κακόν)	
§180 δύναμις (eight types)	—
§180 κρίσις	§24 *ex auctoritate*, §§72–8
ἀπὸ θεῶν, ἀπὸ ἡρώων, ἀπὸ συγγραφέων, ἀπὸ φιλοσόφων, ἀπὸ ποιητῶν	(§78 *et oratores et philosophos et poetas et historicos*)

4

The Legal Aspect of the *Topica*

In the second and first century BC, Roman legal science came into being. Fundamental reforms in the legal procedure were followed by changes in legal methodology, conceptualization, and in the organization of legal data. These changes have been characterized as a revolution. The *Topica* was clearly conceived under the impression of these developments and must be read in the light of them.

There is need for contextualization on another level too. In his *de Oratore*, Cicero proposes a reform of the *ius civile* in his day from the standpoint of the orator/advocate, and one needs to determine how far the *Topica* are a contribution to this larger programme.

ROMAN LEGAL SCIENCE

The ancestors of the Roman jurists were one group of state priests, the *pontifices*.[1] As the name indicates, they were originally concerned with the rites relating to the divine powers one encounters when building bridges in an unfamiliar and unexplored region. Their area of responsibility ranged, apart from the occupation to which they owe their name, from the 'exchange' with the river-god *Tiberis*, the care for the calendar and the *Annales*,[2] to legal advice with respect to sacral and other law (which were originally not clearly distinguished).

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[1] See Latte (1960), 195–212, 400–1, Wieacker (1986), Watson (1992). Kunkel (1967), 45–7 at 47 infers from his prosopographical survey of Republican jurists that certain links between the priesthoods and the *iurisconsulti* were still in existence in the middle of the second century BC.

[2] See Frier (1999).

From them, in a process of 'secularization', a small group of men of socially elevated status sprang who formed a class of *iurisconsulti*; initially they were mostly senators, later on (in the second and first century BC) they increasingly came from the ranks of the *equites*.[3] Their task was a threefold one: *respondere*, *cavere*, and *agere*.[4]

Respondere is the issuing—usually in oral form—of an opinion on a particular case at the request of a layman, magistrate, judge, or other *iurisconsultus* free of charge; *cavere* is 'the drafting (and advising on drafting) of wills, forms of contract, and other transactions';[5] *agere* denotes a person's acting in a trial or the advice given on his behalf by a jurist (this implied mainly to choose or—later—to draft appropriate *actiones* for a given case). It was quite common for jurists to act as *patroni* and plea on behalf of their clients in court until the mid-second century BC;[6] after that professional advocates supplanted them (see below).

From very early on, Roman private trials had two phases; in the first, the issue was identified (see below), the second was the actual trial before a lay judge, and the *responsa* given by the jurists were normally used in this second phase by the parties, who had sought advice to back up their position, or by the judge. These *responsa* were not necessarily backed up or justified in any way, but often received their force simply from the reputation of the issuing person. Legal science and the thought-processes by which legal opinions were formed had no theoretical underpinning in these days and rested on a—not *a priori* primitive—intuitive grasp of legal problems, which one generation of jurists conveyed to the next in an informal mode of instruction which, with its focus on observation as opposed to actual teaching, is in some ways reminiscent of the *tirocinium fori* orators were to undergo later. It is conceivable that the work of the jurists was in some way wedded to the patron–client system and thereby integrated into the larger framework of the social relationships obtaining in Roman society.[7]

[3] Kunkel (1967), 40–4, 50–3; cf. Cic. *Off*. 2. 65.
[4] See Watson (1974), 104–10, Wieacker (1988), 557–63. Cicero himself was not regarded as a *iurisconsultus* by his contemporaries, because he pursued none of these tasks; see Georgesco (1948).
[5] Watson (1974), 105; Wieacker (1988), 557 calls this use of *cavere* 'sprachpsychologisch aufschlußreich'.
[6] The primary evidence is collected by Watson (1974), 106 n. 2.
[7] See especially Bauman (1983).

In the second century BC, at the time when the Roman élite began to become interested in Greek philosophy and science, what had steadily emerged as Roman jurisprudence was confronted with social developments and, evidently in response to these, changes in the legal procedure which caused major shifts in the jurists' business and also put them into a hitherto unknown competitive situation.

First, the older method of private trials, the *legis actio*, was gradually replaced by the formulary procedure.[8] This required the designing of a *formula*, a 'title' under which a case could be subsumed in its first phase before the *praetor* (who then referred the matter to the lay judge for decision). These *formulae*, which set out precisely the *quaestio iuris* to be settled, were constantly subject to formal and material revision and thus constituted a means by which the legal system could respond to the change of legal problems which went with the changes of society.[9] For instance, the *actio ex empto* ran like this (in the reconstruction of Lenel 1927, 289, expanded):

Quod Aulus Augerius de Numerio Negidio hominem quo de agitur emit, qua de re agitur, quidquid ob eam rem Numerium Negidium Aulo Agerio dare facere oportet ex fide bona, eius, iudex, Numerium Negidium Aulo Agerio condemna, si non paret, absolve.

Whereas AA bought from NN the slave on account of whom the action is brought, whatever on that account NN ought to give to or do for AA in accordance with good faith, in that amount, judge, condemn NN to AA. If it does not appear, absolve him.

Watson (1987), 1075 comments on this *actio*:

This praetorian innovation as it stands does not tell a lay purchaser much: not what the requirements are for a valid contract of sale, not what the seller's obligations to him are, not what damages will be due for any default. But we should not conclude therefore that in creating the contract of sale and so developing the law the Praetor was deliberately or negligently increasing its insecurity . . . Rather the implication must be that the Praetor could afford to be so brief because those people who might get involved with a lawsuit in whatever capacity had some idea of the nature of the contract and of their rights and duties under it. As with almost all 'legislation', details of interpretation are left to be worked out later.

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[8] On the role of a *lex Aebutia* (dating from the mid-2nd c.) in that connection see Gaius *Inst*. 4. 30, Gellius, *NA* 16. 10. 8; Kaser–Hackl (1996), 153–61.

[9] Cf. Watson (1974), 31–62, Selb (1986); and my commentary on §9.

A *legis actio*, by contrast, had—a remnant from its origin in sacral law—a fixed wording that had to be put forward exactly by the involved individuals in an almost ceremonial fashion. Despite the fact that jurists tried to 'adapt' ancient provisions to changing realities by bold interpretations, the *legis actiones* constituted a static element of legal procedure.[10]

Secondly, in the second phase of a trial (*apud iudicem*), public oratory had an ever-increasing influence. Not surprisingly, private trials saw a kind of competition between jurists and rhetorical advocacy;[11] one famous trial, the *Causa Curiana*, was actually stylized by Cicero himself as a clash between rhetoric and jurisprudence, between the rhetoricians' and the jurists' techniques of interpreting legal documents. And oratory, primarily based on school-rhetoric with στάσις doctrine as its main element, aimed at winning the case for the client at almost all costs, virtually unrestricted by non-utilitarian considerations. Moreover, in the political and social climate of the late second and early first century BC, a jurist's reputation was no longer enough to claim validity for an argumentative position grounded on his *responsum*; this holds in particular if one takes into account that in this period *iurisconsulti* increasingly came from the ranks of the *equites* (see above).

[10] On strained interpretations of outdated provisions see my commentary on §24 and Watson (1991), 19–20. On the two procedures see Kaser (1966), 29–31, where a brief comparison is given.

[11] In *Caec.* 77–80 Cicero presents an elaborate comparison between the jurist Aquilius Gallus, on whose expertise he was relying in his defence of Caecina, and the jurist consulted by the opposite side; surely this sort of thing must have had a corroding effect on the authority of the legal profession as a whole. Cf. also Cic. *Mur.* 29: *Deinde vestra* [addressing jurists in general and Ser. Sulpicius Rufus in particular] *responsa atque decreta et evertuntur saepe dicendo et sine defensione oratoris firma esse non possunt* ('Furthermore, your legal opinions and pronouncements are often overturned by a speech and cannot be upheld without oratory to defend them'); *Or.* 141: *Nam quis umquam dubitavit quin in re publica nostra primas eloquentia tenuerit semper urbanis pacatisque rebus, secundas iuris scientia? Cum in altera gratiae, gloriae, praesidi plurimum esset, in altera praescriptionum cautionumque praeceptio, quae quidem ipsa auxilium ab eloquentia saepe peteret, ea vero repugnante vix suas regiones finisque defenderet* ('Who has ever doubted that in peaceful civil life eloquence has always held the chief place in our state, and jurisprudence has been of secondary importance? The reason is that the former brings with it a large measure of popularity, glory, and power; the latter brings instruction in prosecution of suits and securing bonds and warranties. Jurisprudence does indeed often ask aid from eloquence, and when opposed by eloquence can scarcely defend its own province and territory'). There is also anecdotal evidence suggesting that the jurists must have loathed the advocates; cf. D. 1. 2. 2. 43. On the procedure *apud iudicem* and the role of public speaking in it see also Kaser–Hackl (1996), 360–9.

To cope with the changes in the legal system, and with the flexibility (and also to an extent vagueness) inherent in the formulary procedure, a rationalization of legal knowledge was desirable. Further, the authority of *responsa* could have been enhanced by some degree of verifiability, i.e. by revealing or exhibiting the rationale by which they were arrived at. Finally, the antagonism with public oratory and the damage it could inflict on the authority and ultimately effectiveness of the legal profession needed addressing.

The jurists did not fail to respond to the new developments. Up to the second century juristic literature was largely restricted to collections of *legis actiones* and commentaries on the Twelve Tables, which had been set up in the fifth century.[12] Then Quintus Mucius Scaevola (cos. 95) wrote his *Ius Civile* in eighteen books, which, although its structure was still heavily influenced by the content and arrangement of the Twelve Tables, represented a novelty in that it covered a number of topics of contemporary law (e.g. actions on sale and partnership, possessory interdicts) as dealt with in the praetor's edict,[13] which included a continuously updated, but in its core fairly stable collection of *formulae*.[14] Possibly in this period another new genre of juristic literature was established, the collection of *responsa*.[15] Such collections would point in the same direction as Q. Mucius' *Ius Civile*, because they too, and to an even stronger degree, represented a direct move towards the legal problems of the present (as opposed to the attempt to adapt the dated *legis actiones*, including a codification four centuries old,[16] to the legal problems of the first century by means of exegesis).

In the *Ius Civile*, Q. Mucius employed new methods of dealing with legal material. The *Ius Civile* was arranged 'generatim' (D. 1. 2. 2. 41), i.e. it tried to categorize and classify legal institutions,

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[12] The most recent edition of the Twelve Tables is, together with a commentary, in Crawford (1996), ii. 555–721.

[13] See Watson (1974), 143–57 (with older literature at 156 n. 3) and Wieacker (1988), 596–600 at 597, for reconstructions of the structure of the *Ius Civile*.

[14] On the evolution of the praetor's edict see Kaser (1984) and Selb (1986).

[15] There is disagreement among legal historians about this point; see Liebs (1990) with further literature. I take *de Orat*. 2. 142 as evidence that Cicero was familiar with this genre of juristic literature.

[16] The provisions in the Twelve Tables were viewed as *actiones*, too; cf. the commentary on §64.

e.g. possession or tutelage, of which five types are distinguished.
Given the tasks of interpretation which the formulary procedure
imposed on the jurists, it is clear that this way of organizing legal
knowledge and making it more accessible can be seen as an effective
response to the changed conditions in which jurists were now oper-
ating. The question arises whether methods of Hellenistic science
provided the rationale for such divisions.[17] A fair answer seems to be
that, while it is impossible to find any particular rules of philosoph-
ical division employed or even the relevant terminology 'correctly'
used in Q. Mucius' fragments, the mere idea of organizing a certain
body of knowledge by means of classification and division is likely to
be inspired by the philosophical doctrines all educated Romans of
this time were exposed to.

Q. Mucius is also known for his interest in legal definition
(though we have evidence that he was not alone in this respect).[18]
Evidently, the meaning of a problematic term in a legal text of
whatever kind is often decisive. And a definition may determine
the range of a provision. Here too the question has been raised
whether one should expect particular philosophical theories of
defining behind these definitions; I again would suggest an answer
along the lines indicated above. And Q. Mucius, in this respect
directly competing with certain precepts of Hermagorean rhet-
orical theory, made a number of attempts to establish standards
for the interpretation of legal documents.[19]

There is also the interesting device of the 'hypothetical case', i.e.
the discussion of a case stripped of some or even most of the
features a corresponding particular case would have.[20] This

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[17] i.e. methods to organize a certain body of data by means of divisions, classifi-
cations, and, where necessary, definitions of crucial concepts. While such methods
were universally employed even by non-philosophers (cf. Fuhrmann 1960), there
were also various philosophical versions of them, e.g. the Stoic (cf. Long–Sedley
1987, ii, no. 32). The views held by legal historians range from the assumption that
highly specific methods of organization were adopted by the jurists (Behrends
1976) to the denial of any theoretical rationale that may be traced to a particular
origin (Watson 1974).

[18] All relevant material is collected by Coing (1953).

[19] See Frier (1985), 162–3: '. . . Through definition, he discovers examples of
equivalent wording in wills (Ulpian, D. 28. 5. 25. 3) and conveyances (Pomponius, D.
18. 1. 66. 2). He explores the effects of including or omitting a guarantee of title in
conveyances (Celsus, D. 18. 1. 66. 2). Nonsensical clauses should be treated as if
unwritten (Q. Mucius, D. 50. 17. 73. 3).'

[20] Ibid. 164: 'At another place (*Fin*. 1. 12), Cicero recounts a discussion among
the three ''founders'' as to whether it was true that the offspring of a slave woman

was—on the evidence we have—first used by jurists of the gener-
ation preceding Q. Mucius' and later became characteristic of
Roman law. Its purpose can plausibly be explained as 'to link
this new legal science to the hurly-burly of the courts, while at
the same time preserving its autonomy as a discipline' (Frier 1985,
163). Discussing legal cases on this hypothetical level put legal
science at one remove from the relativity obtaining in the courts
and was thus, together with the other strategies explained above,
one way of meeting the various challenges the jurists had to face; as
to the competition between orators and jurists in actual trials, the
jurists' withdrawal from the lawcourts is of course another.[21] It is
on this background that we should consider Cicero's ideas about
juristic methodology.

CICERO'S PROPOSALS FOR A REFORM
OF THE *IUS CIVILE*

Cicero has a keen interest in legal matters, which is not as obvious
for a Roman advocate as it might seem. While he is by and large
happy with the Roman legal system (*Leg.* 2. 62), he could of course
as an advocate find fault with individual rules (*Caec.* 95 ff.) or
criticize laws of the past which turned out to have detrimental
effects (*Rep.* 2. 63). Following Stoic thought, he promoted the
'law of nature' (*Leg.* 2. 9 ff. and elsewhere), and rhetorical theory
lead him to develop general views about how the notion of equity
might enter into legal decision-making.[22]

However, Cicero thought that in the organization, presentation,
and analysis of legal material there was considerable room for
improvement. In *de Orat.*, he has the speaker Crassus advance
arguments why the *orator perfectus* should be skilled in law (1.
185–92).[23] Crassus states that in some recent trials (the fictitious

should count as *fructus* and therefore belong to a usufructuary rather than to her
owner; Brutus held that it was untrue (a view that prevailed in later law: Ulpian, D.
7. 1. 68. pr), while P. Scaevola and Manilius held the opposite. What is interesting
about this debate is that it develops not in relation to some specific and actually
impending case, but rather in relation to a hypothetical case, one that has been
sundered from any particular social background, simplified to remove all its extra-
neous circumstances, and then presented for discussion.'

[21] Evidence for this withdrawal is collected by Crook (1995), 40–1.
[22] See Stroux (1949), Wieacker (1950), and Fuhrmann (1971).
[23] On the passage see Bona (1980) and Nelson (1985).

date of the dialogue is 91 BC) orators have made fools of themselves by not knowing properly the law pertinent to their case. In particular, it is clear that Crassus' remarks refer to cases held before the praetor, carried out according to the formulary procedure (1. 166–9). I have remarked above how the replacement of the system of the *legis actiones* by the formulary procedure had made the law more flexible and more adaptable to the particular case. However, this flexibility came with an increased complexity of the legal material an orator had to be familiar with (at least if compared with the relatively concise framework provided by the Twelve Tables and the *legis actiones*).

Evidently in response to this development, Crassus makes a proposal: just as one could determine the τέλος of the various sciences or skills (music, geometry, astronomy, rhetoric etc; 1. 187) and arrange the relevant data in the form of a τέχνη, one could, after determining the τέλος of the *ius civile*, use philosophical methods of division, partition and defining, *quae* [sc. *ars*] *rem dissolutam divulsamque conglutinaret et ratione quadam constringeret* ('in order that it might give coherence to things so far disconnected and sundered, and bind them in some sort of scheme'; 1. 188).

Sit ergo in iure civili finis hic: legitimae atque usitatae in rebus causisque civium aequabilitatis conservatio. Tum sunt notanda genera et ad certum numerum paucitatemque revocanda. Genus autem id est, quod sui similis communione quadam, specie autem differentis, duas aut pluris complectitur partis. Partes autem sunt, quae generibus eis, ex quibus manant, subiciuntur. Omniaque, quae sunt vel generum vel partium nomina, definitionibus, quam vim habeant, est exprimendum (*de Orat*. 1. 188–9).

Let the goal then of the civil law be defined as the preservation, in the concerns and disputes of citizens, of an impartiality founded on statute and custom. We must next designate the general classes of cases, restricting these to a small fixed number. Now a general class is that which embraces two or more species, resembling one another in some common property while differing in some pecularity. And species are subdivisions, ranged under those general classes from which they spring; while all the names, whether of general classes or species, must be so defined as to show the significance of each. [Trans. Rackham, adjusted.]

For a number of reasons we should not assume that this was an enterprise the historical Crassus rather than Cicero himself intended to undertake: the problem of the sheer number of *formulae* will have become pressing only in the course of the first century. It is

very likely that Cicero wrote a *De iure civili in artem redigendo*, whose purpose may be inferred from the title together with our passage in *de Orat*. 1 (see Mette 1954). We see these principles at work in Cicero's own provincial edict of 51 BC (*Att*. 6. 1. 15).[24] And we have, as a supplement to the *locus ex definitione*, an extensive discussion of methods of classification and definition in the *Topica* (§§26–34).

Cicero's suggestions are motivated by two different considerations. On the one hand he wants to make the law more accessible for the orator, on the other he wants to improve legal science for its own sake. Both aspects may overlap, but should be distinguished where possible. Looking both at the developments of legal science discussed above and at the *de Orat.*, we can make out that the jurists and Cicero move in a similar direction, but that Cicero wants to drive the analysis and the systematization of legal material much further than contemporary jurists.

From the viewpoint of *legal practice*, one may wonder whether this is not a counterintuitive, 'academic' suggestion, and whether the analogy of law with other 'sciences' does not yield a distorted picture in the first place. However, in later *didactic* works on law like Gaius' *Institutiones*, we find elaborate principles of organization as proposed by Cicero at work. And this fits partly with the ideas behind Cicero's proposals, which are put forward very much for didactic reasons, that is, to make the law more teachable and hence digestible for orators (as emerges from the context in *de Orat.* 1 and is also implied by the very idea of a τέχνη, which has the notion of teachability inbuilt).

Intertwined with this goes another idea, rather to be assigned to 'improving legal science for its own sake': that it is always better to do methodically what you otherwise do intuitively.[25] Here we can

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[24] See Rawson, (1978), 27 = (1991), 342: '. . . when composing his provincial edict in 51, Cicero followed Scaevola's famous edict issued when he was governor of Asia (as the Senate apparently expected prospective governors to do) in its content but not in its organization. By introducing the principle of *divisio* he made it much shorter: *breve autem edictum est propter hanc meam* διαίρεσιν, *quod duobus generibus edicendum putavi*; *quorum unum est provinciale*, specially concerned with the province, while the second contains the usual material of an edict, and *tertium de reliquo iure dicundi* ἄγραφον *reliqui*, referring people to the praetor's edict.'

[25] Explicitly formulated for the first time in Arist. *Rhet. A*1, 1354[a]1–8, and ubiquitous in Cicero (cf. *Top*. 2: . . . *disciplinam inveniendorum argumentorum ut sine ullo errore ad ea ratione et via perveniremus*).

refer to the *Topica* passage mentioned above (§§26–34), in which Cicero, using examples taken from legal sources (definitions, divisions etc.), shows that these may actually be analysed in terms of *philosophical* methods of definition and division. Most illuminating is a section in the *Brutus* (§§152–4), where Cicero compares Q. Mucius Scaevola to Servius Sulpicius Rufus. The latter is—as a jurist—regarded as superior to the former, because he has *ars* rather than *usus*. (Cicero had, as a young man, listened to Scaevola giving *responsa*. Servius studied rhetoric at Rhodes with Cicero.) That Servius has *ars* is due to the fact that he has learnt dialectic (in the Stoic sense), i.e. methods of division and defining, epistemology and logic.[26]

Hic [sc. Servius] enim adtulit hanc artem omnium artium maximam quasi lucem ad ea quae confuse ab aliis aut respondebantur aut agebantur (§153).

This art, the mistress of all arts, he brought to bear on all that had been put together by others without system, whether in the form of legal opinions or in actual trials.

That is, his knowledge of dialectic was evident in his juristic practice (*respondere*, *agere*; cf. also §154).[27] So, according to Cicero, familiarity with the disciplines the Stoics brought together under the heading διαλεκτική enhances a jurist's clarity of thought and expression, and Servius is the example of this.[28]

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[26] Cf. the complementary passage in *Or.* 113 ff., where training in dialectic is recommended to the orator. For the manner in which reference is made to διαλεκτική in both the *Brut.* and *Or.* passages see also *Luc.* 91, *Tusc.* 5. 72; S.E. *P.H.* 2. 213; D.L. 7. 47.

[27] The passage is often misinterpreted in that Servius is said to have written the kind of handbook Crassus envisages in the *de Orat.*; see e.g. Behrends (1976), Nelson (1985). Cicero says something quite different: *ars* is something Servius *has*, not what he *writes* or has written. *Ars* means 'skill' here, not τέχνη (= technical handbook). Admittedly, *artes* can on a different level of description be viewed as dispositions of the mind of the craftsman, e.g. in Quint. *Inst. Or.* 2. 18. 3, but a glance at the phrasing of the sentence shows that this cannot apply here. It is only in §153 when Servius' writings are praised as admirably combining dialectical skill with *litterarum scientia* and *loquendi elegantia*. A technical handbook would not be described in these terms. See also Bona (1980), 353–4.

[28] Stein (1978) analyses all texts reporting views of Servius in order to find out whether Cicero's assessment was justified; he concludes (p. 184): 'Several of Servius' reported opinions exemplify Cicero's description of his dialectical skills in his analysis of legal problems. They show why it was that Cicero, whose knowledge of law was superficial rather than profound, was so impressed by Servius. He delighted in precise verbal explanations, sharp distinctions, the use of ridicule to

All this in a way sketches another intellectual context the *Topica* belong to. In particular, the passage from the *Brutus* gives an idea why Cicero might want to get Trebatius interested in argumentative theory. But it does not yet show how the particular theory expounded in the *Topica* is relevant to this. To shed light on this problem, too, we have to turn to the second book of the *de Oratore*.

Let us look at a passage preparing for the introduction of the Aristotelian τόποι discussed also in *Topica*. The theme is that in a trial it is always the fundamental question presented by a case which matters, i.e. the θέσις, while all particular aspects merely add to the picture. To illustrate this, Cicero refers to the famous *Causa Curiana*,[29] in which a Coponius, whose wife was pregnant, had stated in his will that a Curius should become secondary heir if his son, yet to be born, died before coming into inheritance, i.e. before puberty. Coponius himself died unexpectedly, and a son was never born. Curius claimed to be heir, on the grounds that this was what Coponius wanted. The male relatives of Coponius, who would have been the heirs on intestacy, contested this view, because the letter of the will included no provision to this effect.

Cicero continues as follows (2. 141–2):

Nihil ad copiam argumentorum neque ad causae vim ac naturam nomen Coponi aut Curi pertinuit; in genere erat universo rei negotioque, non in tempore ac nominibus, omnis quaestio: cum scriptum ita sit 'si mihi filius genitur, isque prius moritur', et cetera, 'tum mihi ille sit heres', si natus filius non sit, videaturne is, qui filio mortuo institutus heres sit, heres esse: perpetui iuris et universi generis quaestio non hominum nomina, sed

belittle an argument. He seemed to be running rings round his more stolid predecessors and colleagues and in many cases was manifestly able to improve the rationality of their decisions. Cicero did not notice, however, that Servius was inconsistent. He was insufficiently rigorous in the application of his principles. He did not fully accept that he had a responsibility to the law itself, that there were objective limits to its interpretation beyond which he ought not to pass. He could not always resist the temptation to use his undoubted skills to justify an opinion which he wanted to give, perhaps to satisfy an importunate client, but for which there was no foundation in the law. He would be aware that such was his prestige that his opinion might well be accepted by praetor or judge even when it was not well founded. In short, Servius lacked self-discipline. He showed how dialectic could be used in the law, but it was left to others, like Labeo, to use it in a coherent and consistent manner.' For Cicero's knowledge of the private law of his time see e.g. Wieacker (1978), for the social and political constraints under which jurists were operating see e.g. Bauman (1983) and Bauman (1985) *passim*, with Behrends (1990).

[29] Cf. the commentary on §44.

rationem dicendi et argumentorum fontis desiderat. (142) In quo etiam isti nos iuris consulti impediunt a discendoque deterrent; video enim in Catonis et in Bruti libris nominatim fere referri, quid alicui de iure viro aut mulieri responderit; credo, ut putaremus in hominibus, non in re consultationis aut dubitationis causam aliquam fuisse: ut, quod homines innumerabiles essent, debilitati iure cognoscendo voluntatem discendi simul cum spe perdiscendi abiceremus. Sed haec Crassus aliquando nobis expediet et exponet discripta generatim; est enim, ne forte nescias, heri [Crassus spoke on the previous day] nobis ille hoc, Catule, pollicitus, se ius civile, quod nunc diffusum et dissipatum esset, in certa genera coacturum at ad artem facilem redacturum.

The identity of Coponius or of Curius had nothing to do with the wealth of argument or with the essential character of the case. The whole inquiry turned upon an abstract question, founded in the facts of the matter, not in any occasion or personalities: the words in the will being '*If a son is born to me, and such son dies before*' etc., '*then let so-and-so be my heir*,' and no son having in fact been born, ought that party to inherit who was nominated heir in substitution for a deceased son? An inquiry depending upon a fixed and general rule of law needs no men's names, but methodical presentation and the sources of arguments. (142) And here again those learned jurisconsults embarrass us and frighten us away from more learning. For I observe that in the treatises of Cato and Brutus the advice given by counsel to clients of either sex is generally set down with the parties named: I suppose, to make us think that some reason for seeking advice or for the discussion originated in the parties and not in the circumstances; to the end that, seeing the parties to be innumerable, we might be discouraged from studying the law, and might cast away our inclination to learn at the same moment as our hope of mastery. But these matters Crassus will one day disentangle for us and set forth arranged under heads; for you must know, Catulus, that yesterday he promised us that he would collect under definite heads the civil law, at present dispersed in disorder, and would reduce it to an easy system. [Trans. Rackham, adapted.]

In the *Causa Curiana*, the general question to be settled is whether in cases *like the one under discussion* the person named as secondary heir comes into inheritance; the individuals involved, however, do not matter with respect to the settlement of *this* question. Cicero continues that from the rhetorical point of view, dealing with the *general question* requires knowledge of the *fontes argumentorum*, i.e. the Aristotelian τόποι.

   In §142 *init.*, then, Cicero refers to collections of *responsa* by second-century jurists which fall short of the standard just set up for legal questions from an orator's viewpoint. There, rather

misleadingly, the names of the conflicting parties are given, followed by the assessment of the jurist. No effort is made to boil down the individual case to a general question which is likely to recur in other cases and hence might easily be absorbed by a learner, even though another jurist, by *usus* rather than *scientia*, could be expected to extract a principle. But while this state of affairs puts off the orator from learning civil law, the τέχνη of the *ius civile* to be written by Crassus will do away with it, arranging legal material in a rational fashion.

If we take this together with passages where Cicero has Trebatius give a *responsum* (*Topica* §23), using an argument classifiable as a non-technical proof, or where he tells Trebatius that after some training he would be able to find the *locus* proper to whatever question there might be (*Fam.* 7. 21, cf. Appendix; *Top.* 41), this picture imposes itself: Trebatius is supposed to use the *loci* in his practice as a jurist to argue reflectively, in a systematic and abstract way, i.e. on the level of a θέσις. While Cicero does not himself acknowledge the movement of legal science towards the discussion of hypothetical cases (in the sense described above)—his critique focuses on a particular type of legal literature—he is suggesting that legal cases should be considered on the same level of abstraction. The idea of a τέχνη of the *ius civile* ties up with that, inasmuch as many *loci* in the *Topica* involve the use of definitions and of classifications; arguing *a genere*, *a forma generis*, *a definitione*, or *a partium enumeratione* is much eased if one can have recourse to a τέχνη in the sense indicated.[30]

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[30] There is an interesting parallel for this in Arist. *Top.* In *A* 14, 105ᵇ12–15 a manual for drawing up an inventory of ἔνδοξα is given, i.e. of the reputable propositions which are discussed in dialectical conversations: Ἐκλέγειν δὲ χρὴ καὶ ἐκ τῶν γεγραμμένων λόγων, τὰς δὲ διαγραφὰς ποιεῖσθαι περὶ ἑκάστου γένους ὑποτιθέντας χωρίς, οἷον περὶ ἀγαθοῦ ἢ περὶ ζῴου, καὶ περὶ ἀγαθοῦ παντός, ἀρξάμενον ἀπὸ τοῦ τί ἐστιν ('One should also collect premisses from written works, and make up tables, listing them separately about each genus, e.g. about good or about animal (and about (every sense) of good), beginning with what is' [trans. Smith]). According to this paragraph, the dialectician should survey appropriate writings in search for propositions which are ἔνδοξα and classify them according to a certain pattern. The ordering principle is the thing the ἔνδοξον is about, more precisely: the subject of the ἔνδοξον analysed as a subject–predicate proposition. Each file on a given subject—the good, the living being—should begin with a definition (τὸ τί ἐστιν). Clearly, this is supposed to make the dialectical τόποι, whose function I have explained in Ch. 2, more easily applied. On the passage see Brunschwig (1967), 131 and Smith (1997), 90.

This may suffice to show that illustrating the *loci* with legal examples is not just an *ad hoc* idea of Cicero. Possibly the θέσις division (§§79–85) is likewise intended by Cicero to be used by the jurist, as a set of guidelines for analysing a case in order to arrive at the question which is to be settled; but I admit that Cicero has left this for the reader to conjecture. And there is so much strictly rhetorical material in the last part of the *Topica* (e.g. §§97–100) that it seems fair to say that at least this last part is an *addendum* to, rather than an integral part of, the work.

RHETORICAL VS. LEGAL INVENTION

Let us now consider more closely how using *loci* as a jurist would work.

An orator using the theory of *loci* would normally start from a proposition he wants to establish. This proposition, set to him by the circumstances of his case or possibly determined by means of a στάσις-like theory, would of course be only one element in a complex argumentative strategy. He would then turn to a *locus*, say *a definitione* or *a genere*, which furnished him with a second proposition, from which his intended conclusion could be inferred. Whether or not he used the argument 'found' in this way in the actual speech would primarily depend on the likeliness of an audience accepting it, though at times other factors like, for instance, moral scruples may enter into his evaluation of a possible argument.

Invention as undertaken by a jurist is similar in the sense that the jurist too will have to determine what the question at issue (*quaestio iuris*) is, and in doing this he may well rely on a στάσις-like method too. But once this question has been isolated, legal invention is different from rhetorical invention in several respects. First, a jurist will normally look at a case in an impartial way, i.e. he will start from a contradictory pair of propositions rather than from an intended conclusion, and only then reach a conclusion. Secondly, he may have to consider legal statutes pertinent to the case under discussion. Thirdly, his choice of an argument for one or another pole of the contradictory pair represented by the *quaestio iuris* will not necessarily be guided by the quest for plausibility—indeed, he would not hesitate to offer a *prima facie* vastly implausible argument—but by the diverse set of ideas which determines legal decisions.

What does this mean for the applicability of a rhetorical theory of argumentation to legal problems? As to the first point, there is obviously not a great difficulty. Instead of setting up an argument for a given proposition, one can use the *loci* to draw out the consequences of a legal problem; the *loci* were after all a method of arguing *in utramque partem* on the *same* proposition (*Or.* 46; cf. Chs. 1, 3; it would be nice if Cicero himself had made this connection somewhere). The fact that often a jurist needs to consider what actually the law was can also be overcome; in this case the *locus* may yield a hermeneutical strategy to *interpret* the provision in question in order to settle the case. There is a very clear example for this in §10 of the *Topica*, where a legal problem needs to be considered in the light of a provision from the Twelve Tables, which is then interpreted with the help of the *locus* 'from etymology'. And finally, the topical doctrine is entirely neutral as to the question on what grounds we accept an argument found with its help; it may simply be employed to find arguments which *might* be pertinent to a given question.

So we may find it clumsy to apply the *loci* to legal problems, we may think that no one would use such a theory to do legal invention (on this point, however, see below). But we have reason to assume that Cicero had something along these lines in mind, and it would be difficult to show that it was an absurd idea.

I add a few miscellaneous points. It has been indicated in Ch. 2 that τόποι have a double nature, in that they may be used as heuristic devices to *find* arguments but also as patterns to *describe* arguments or argument-forms. The latter is due to the fact that Aristotelian τόποι represent the result of an attempt to *objectify* patterns of argument normally used intuitively. And since Cicero has clearly taken several of his legal examples from actual legal sources (see below, next section), the *Topica* also contain an interesting element of analysis. It is an achievement worth noting if Cicero identifies, say, the *argumentum a genere* as a recurrent pattern of legal argument (§14).[31] A glance at a modern textbook on juristic logic shows that a good number of Cicero's *loci* still feature as types of legal argument.[32] By the same token, he may use

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[31] To illustrate this point, I shall occasionally cite in the commentary arguments by Republican jurists which fit the argumentative pattern under discussion.

[32] Cf. Klug (1982).

the *loci* and his knowledge of theories of causation to show that in a provision from the Twelve Tables there is an implicit distinction between deliberate and inadvertent action (§64). Indeed, with respect to legal problems Cicero was the first to put theoretical reflection on causality on the map.[33]

And as to the question how this analytical aspect of the book fits with the objective of advertising a method of *thetical* rhetoric to Trebatius: by exposing abstract, 'thetical' patterns in given legal arguments Cicero will have aimed at raising Trebatius' awareness of the existence of such structures in legal discourse, which could, once identified, be created methodically.

THE *TOPICA* AS A SOURCE FOR EARLY LEGAL TEXTS

Anyone seeking an introduction to Roman private law of the Republican era will quickly discover from the *indices locorum* of standard works on the subject that the *Topica* itself is treated as an important source for law of this period,[34] and that the evidence from the *Topica* is often compared with or interpreted in the light of later evidence mainly from the *Digests* or Gaius' *Institutiones* as if it represented material of equal quality. This being so, it is vital to get a clear idea of the status of the legal arguments in the book, and to ask whether Cicero's own agenda may have had certain distorting effects on the source material he was relying on. Further, one might suspect (and indeed has suspected) that Cicero

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[33] But cf. Antiphon's second tetralogy.

[34] Such standard works include Kaser (1962), Watson (1965), (1967), (1968), (1971), (1974), Wieacker (1988). For the writer of a commentary on the *Topica*, this of course presents a methodological problem inasmuch as one cannot hope to advance our understanding of the work if one, as it were, reverses the process by which such standard works used the *Topica* to reconstruct certain legal provisions of the period, and simply relies on them in order to elucidate the text of Cicero. Apart from the *Topica*, the sources for Republican law include the rather sparse reports given by the classical jurists, Cicero's reports about conflicts between jurisprudence and rhetoric, and his speeches in private trials. In addition, there is something like legal anecdotes in Val. Max. and Gellius (on whom see Dirksen 1871). Matters of language are sometimes treated in Varro's *De lingua latina*. An invaluable tool is the study by Horak (1969), who has searched the standard collections of legal fragments by Lenel and Bremer for all *responsa* given by jurists down to Labeo (d. *c*. AD 15) that have a justification attached.

may have made sustained use of particular legal works by eminent Republican jurists.[35]

   Such speculations can be dealt with briefly. References to the Twelve Tables are very difficult to assign to a particular work because of the extensive exegesis the Twelve Tables were subjected to before the formulary procedure was introduced—we know of interpretative works by several jurists or scholars, and these will just be those we know of. In §10 a provision from the Twelve Tables is interpreted with the help of a verbal explanation by the antiquarian L. Aelius Stilo Praeconinus (there is a textual problem connected with the name; see the commentary), but even if the identification was certain, we should be unable to tell if this antiquarian did not draw on a commentary on the Twelve Tables by Sex. Aelius Catus, the so-called *Tripertita*.[36] The interpretation of another provision in §24 by Q. Mucius' father Publius cannot be assigned to a particular work either. The content of the *Ius Civile* by Q. Mucius himself is, despite an enormous scope for different reconstructions, well enough attested through references in authors other than Cicero to make it virtually certain that Cicero did not draw on it extensively. But there is another work attested for Q. Mucius, the so-called *liber singularis ὅρων*. The title obviously creates certain expectations, and the *Topica* do contain some definitions, one of them assigned to a Scaevola (§29); and these definitions can roughly be squared with certain Aristotelian methods of defining (they start from a general categorization of the definiendum, which is then narrowed down through further qualifications). However, if we look at the six fragments which

   [35] See Scherillo (1952), Crifò (1967/8), Fuhrmann (2000).
   [36] Evidence for this work is more or less limited to D. 1. 2. 2. 38: . . . *deinde Sextus Aelius et frater eius Publius Aelius et Publius Atilius maximam scientiam in profitendo habuerunt, ut duo Aelii etiam consules fuerint, Atilius autem primus a populo Sapiens appellatus est. Sextum Aelium etiam Ennius laudavit et exstat illius liber qui inscribitur 'tripertita', qui liber veluti cunabula iuris continet: tripertita autem dicitur, quoniam lege duodecim tabularum praeposita iungitur interpretatio, deinde subtexitur legis actio* ('Next Sex. Aelius and his brother P. Aelius and also P. Atilius evinced the greatest depth of knowledge in their public teaching. As a result, the two Aelii even became consuls, while Atilius was the first person to whom the people gave the name *Sapiens* (The Wise). Indeed, Ennius wrote in praise of S. Aelius, a book of whose survives bearing the title *Tripertita*. The book contains as it were the cradle of the law. It is called the *Tripertita*, since the first part is the relevant law from the Twelve Tables, to which is annexed an interpretation of the law, and then the text is rounded off with a description of the appropriate *legis actio*'). On Cicero's contribution to the text of the Twelve Tables see Coleman-Norton (1950–1).

supposedly come from the *liber singularis* ὅρων,[37] it turns out that they do not at all resemble Aristotelian definitions (nor Stoic ones). Whether this undermines the plausibility of Q. Mucius' ever having written such a book or not,[38] it certainly makes it less likely that there is a connection between this work and the definitions in the *Topica*. Nor do the jurists who are mentioned by name or otherwise identifiable suggest any particular source. They are P. Mucius Scaevola (§24), his son Q. Mucius Scaevola Pontifex (§29), Aquilius Gallus (§32), and Ser. Sulpicius Rufus (§36), and again Q. Mucius Scaevola (§§37 and 38) and Aquilius Gallus (§51);[39] there are good grounds for believing that one of the opinions cited in connection with the *causa Mancini* in §37 is that of M. Iunius Brutus (see the commentary). In conclusion, it seems reasonable to assume that Cicero drew on multiple sources not identifiable for us and also relied on material he had come across earlier

[37] Fragments 45–50 in Lenel (1889), 762–3: 45 = D. 41. 1. 64 *Quae quisque aliena in censum deducit, nihilo magis eius fiunt* ('Someone else's property, which a person enters as his own in the census, does not thereby become his'); 46 = D. 43. 20. 8 *Cui per fundum iter aquae debetur, quacumque vult in eo rivum licet faciat, dum ne aquae ductum interverteret* ('Anyone to whom a way through a farm for water is due may make a conduit in it along the line he wishes, provided that he does not change the line of the water channel'); 47 = D. 50. 16. 241 *In rutis caesis ea sunt, quae terra non tenentur quaeque opere structili tectoriove non continentur* ('Those things are regarded as belonging to *ruta caesa* which are not planted in the soil and are not included in any building work or roofed structure'); 48 = D. 50. 17. 73. pr and 1 *Quo tutela redit, eo et hereditas pervenit, nisi cum feminae heredes intercedunt. Nemo potest tutorem dare cuiquam nisi ei, quem in suis heredibus cum moritur habuit habiturusve esset, si vixisset* ('Inheritance follows tutelage unless female heirs intervene. No one can grant a tutor to anyone except someone whom he had among his heirs when he died or would have had if he had lived'); 49 = D. 50. 17. 73. 2 *Vi factum id videtur esse, qua de re quis cum prohibetur, fecit; clam, quod quisque, cum controversiam haberet habiturumve se putaret, fecit* ('Something is regarded as having been done by force if someone did it when he was forbidden to do it; done secretly if someone did it when he thought that he had or would have had controversy over it'); 50 = D. 50. 17. 73. 3–4 *Quae in testamento ita sunt scripta, ut intellegi non possint, perinde sunt, ac si scripta non essent. Nec paciscendo nec legem dicendo nec stipulando quisquam alteri cavere potest* ('Those things which are written in a will in such a way that they cannot be understood are as if they were not written. Nor can anyone stand surety for another by making a pact or laying a condition or stipulating').

[38] On doubts whether Q. Mucius ever wrote such a work see Schmidlin (1976), 107 (who himself believes in the authenticity).

[39] On the Aelius mentioned in §10 see above. In §38 only 'Mucius' is named, which is probably Q. Mucius, given that he features in the previous paragraph (as 'Scaevola P. filius'). Fuhrmann (2000), 60 observes that the references proceed in chronological sequence down to Servius, as do those of the jurists in Cic. *Fam.* 7. 22 to Trebatius (Sex. Aelius Paetus, M'. Manilius, M. Iunius Brutus, Q. Mucius Scaevola Pontifex, C. Trebatius).

in various contexts, like those *exempla* which were in his dossier for
Off. (cf. *Top.* 66 and *Off.* 3. 61) or others he became familiar with
when as a boy he received instruction on the Twelve Tables.

This means that every piece of legal information needs to
be considered in its own right and carefully weighed against evi-
dence from elsewhere. I refer to the commentary for details and
give here only a summary of the observations made there. While
there are numerous cases where later evidence is consistent with
the assumption that Cicero reproduced a legal argument he found
in a source, there are also cases in which this is less likely. For
instance, the definition of *ius civile* in §9 is likely to be Cicero's own
and not one set up by the jurist Aquilius Gallus, as has been
suggested by Crifò (1967/8), 140. In §16 there is a legal argument
which is at variance with later provisions on the same topic, so that
there may have been a change of the law at a later stage, or else
Cicero may be advancing one of his rhetorical arguments. In §21
Cicero seems to have formulated a general rule on the basis of a
particular case which is unlikely to have been considered valid by
contemporary jurists. In §24 he records what is likely to be a
responsum by P. Mucius Scaevola, which he may have found in
a collection of *responsa* or in an antiquarian work under the heading
ambitus; while there is no reason to doubt that Scaevola gave this
interpretation of the provision in question, it is difficult to tell
whether other jurists would have agreed with him.

In short, many of the legal arguments in the *Topica* are best
described as plausible arguments on legal problems of the kind an
advocate/orator would use to persuade a lay audience; as such, they
may or may not represent what was the law in Cicero's day. And as
the case of §24 shows (which may be compared with §38), even
where a jurist's opinion is more or less verbally quoted, it may just
represent one of several views that could be taken on a given
matter.

THE *TOPICA* IN THE TWENTIETH CENTURY

In 1953, the legal historian Theodor Viehweg published a book
entitled *Topik und Jurisprudenz*. In it, he attacked the view, trad-
itional in continental Europe, that legal decision-making is about
deducing decisions about particular cases from the relevant stat-
ute, i.e. that legal decision-making is a process of syllogistic

reasoning. Starting from the Aristotelian statement that his *Topics* provide a method to deal with προβλήματα (*Top. A*1, 100ᵃ19–20), he claimed that law has in fact to deal with problems which are merely to be taken as starting-points for the finding of solutions. And the tools for finding these solutions (analogies, general conceptions like *aequitas*, or other legal principles) he called *topoi*, extending the original meaning of the term into vagueness. His views initiated a discussion which is still continuing.

For a long time in the United Kingdom and in the United States there was no participation in the quarrel, perhaps because Viehweg had tried to shatter an understanding of legal decision-making which appeared unworldly to people accustomed to Common Law anyway. But in recent times, a discipline called legal semiotics has developed in the United States. One of the objectives of legal semiotics is to reduce legal arguments to typical recurrent argument-forms in order to make successful arguing as a lawyer teachable to students; another is to explore legal argument from the viewpoint of theories of narrative.[40] And it is not surprising that Viehweg's ideas have now gained some currency in this context (see Balkin 1996, 214). Few works of Cicero have received so much attention from non-classicists as the *Topica*.

[40] See the stimulating collection of articles by Brooks–Gewirtz (1996).

5

The Transmission of the *Topica*

THE MANUSCRIPTS

WE know of some 140 manuscripts of the *Topica*, including short fragments and *deperditi*; all but one of those extant have been taken into account in the present edition. I begin by listing those manuscripts which were written before the fourteenth century:[1]

A   Leiden, Bibliotheek der Rijksuniversiteit Voss. Lat. F. 84, fos. 77^r–79^v, 83^{r-v} (§4 *non potui igitur*–§28 *auctoritate edictis magis*; §73 *ergo argumentatio*–fin.), s. ix

B$_A$ Leiden, Bibliotheek der Rijksuniversiteit Voss. Lat. F. 84, fos. 76^v, 80^r–82^v (init.–§4 *tum etiam suavitate*; §28 *Divisionum autem*–§72 *prodese possimus*), s. ix

B   Leiden, Bibliotheek der Rijksuniversiteit Voss. Lat. F. 86, fos. 103^r–109^r (§4 *non potui igitur*–§28 *auctoriate edictis magis*; §73 *ergo argumentatio*–fin.), s. ix

m   Florence, Biblioteca Medicea Laurenziana S. Marco 257, fos. 58va–60vb, s. ix

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[1] I refrain from changing the symbols for MSS used by earlier editors, mainly because the MSS I shall be using for the edition have always been designated by straightforward enough symbols. As regards MSS which had so far been looked at only by Di Maria, I use the symbols assigned by him in the unpublished *conspectus lectionum codicum collatorum* which formed the second volume to his 1992 Palermo doctorate, which eventually became his edition. A reader would be able to obtain this *conspectus* by inter-library loan—and may then find it convenient to have only one set of symbols. The *conspectus* consists of the text of the *Topica* as printed in Wilkins's OCT and 4,118 footnotes to the text which, in the form of a negative apparatus, name variant readings and, by subtraction, the MS source(s) for the reading printed in the text. The *conspectus* covers all pre-15th-c. MSS except Klosterneuburg 1098, Paris Lat. 16598 (both s. xiii), Paris Lat. 7786 (s. xiv), and London Burney 275 (s. xiv). However, I have not used Di Maria's collations.

C₂ Cologne, Erzbischöfliche Diözesan- and Dombibliothek 198, fo. 1ᵛ (init.–§5 fin.), s. x (also includes Boethius' commentary)

V Leiden, Bibliotheek der Rijksuniversiteit Voss. Lat. F70, fos. 1ʳ–5ᵛ, s. x (also includes Boethius' commentary)

M Munich, Bayerische Staatsbibliothek Clm 6367, fos. 18ᵛ–26ʳ, s. x (also includes Boethius' commentary)

P₁ Paris, Bibliothèque nationale de France nouv. aqu. lat. 1611, fos. 51ᵛ–55ᵛ, s. x

P₂ Paris, Bibliothèque nationale de France lat. 7710–I, fos. 2ʳ–10ᵛ, s. x

P₄ Paris, Bibliothèque nationale de France lat. 7711, fos. 2ʳ–7ʳ, s. x (also includes Boethius' commentary)

a Einsiedeln, Stiftsbibliothek 324, fos. 72–92, s. x ex. (also includes Boethius' commentary)

L Leiden, Bibliotheek der Rijksuniversiteit B.P.L. 90, fos. 1ʳ–12ʳ, s. x ex. (also includes Boethius' commentary)

V₂ Valenciennes, Bibliothèque municipale 406–I, fos. 2ʳᵃ–51ʳᵇ, s. x–xi (also includes Boethius' commentary)

B₂ Bamberg, Staatsbibliothek Class. 13, fos. 37ʳ–41ᵛ, s. xi (also includes Boethius' commentary)

B₁ₐ Bamberg, Staatsbibliothek Class. 14, fos. 1ᵛ–18ᵛ (complete text), s. xi

B₁ᵦ Bamberg, Staatsbibliothek Class. 14, fos. 21ᵛ–175ʳ (init.–§76 *quoddam multitudinis testimonium*, spliced section by section with Boethius' commentary), s. xi

B₃ Berlin, Staatsbibliothek zu Berlin—Preußischer Kulturbesitz Lat. 2° 603, fos. 1ᵛ–9ᵛ, s. xi (also includes Boethius' commentary)

E Edinburgh, National Library of Scotland Adv. 18. 7. 17–II, fos. 12ᵛ–17ᵛ (init.–§36 *ex verbo ut*), s. xi

F₁ Frankfurt, Stadt- und Universitätsbibliothek Barth. 112 (init.–§76 *quoddam multitudinis testimonium*, spliced section by section with Boethius' commentary), s. xi

F₂ Freiburg im Breisgau, Universitätsbibliothek frg. 54, fo. 2 (§19 *non esset nuntium remisit*–§30 *ad mutando*, with gaps), s. xi

F₃ Florence, Biblioteca Medicea Laurenziana S. Marco 173, s. xi (also includes Boethius' commentary)

C₁   Cologne, Erzbischöfliche Diözesan- und Dombibliothek 191, fos. 99ʳ–124ʳ, s. xi

M₁   Munich, Bayerische Staatsbibliothek Clm 14272–III, fos. 93ᵛ–128ᵛ (spliced section by section with Boethius' commentary), s. xi

O₁   Oxford, Bodleian Library Laud. Lat. 49–I, fos. 97ᵛᵃ–99ᵛᶜ, s. xi (also includes Boethius' commentary)

O₂ᵦ Oxford, Merton College 309-III, fos. 123ʳ–201ᵛ (init.–§76 *quoddam multitudinis testimonium*, spliced section by section with Boethius' commentary), s. xi

P₃   Paris, Bibliothèque nationale de France lat. 14699, fos. 100ᵛᵃ–168ʳᵇ (the text besides Boethius' commentary such that Boethius occupies a narrowly spaced and broad column near the spine, and the *Topica* is written in a widely spaced column in the outer margin), s. xi

P₅   Paris, Bibliothèque de l'Arsenal 912, fos. 82ʳ–91ᵛ (init.–§44 *usus est qui testamento*), s. xi

d   Sankt Gallen, Stiftsbibliothek 818, fos. 247–87, s. xi

b   Sankt Gallen, Stiftsbibliothek 830-II, fos. 265–82, s. xi

c   Sankt Gallen, Stiftsbibliothek 854, fos. 1–21 (init.–§70 *ut haec in comparatio*), s. xi (also includes Boethius' commentary)

R   Vatican City, Biblioteca Apostolica Vaticana Reg. lat. 1405, fos. 22ᵛ–56ʳ, s. xi

V₁   Vienna, Österreichische Nationalbibliothek 2269, fos. 108ʳᵃ–111ʳᵇ (complete text), fos. 111ʳᵇ–133ʳᵃ (init.–§76 *quoddam multitudinis testimonium*, spliced section by section with Boethius' commentary), s. xi

V₃   Vatican City, Biblioteca Apostolica Vaticana Vat. lat. 8591, fos. 44ᵛ–63ʳ, s. xi

O   Vatican City, Biblioteca Apostolica Vaticana Ottob. lat. 1406, fos. 44ᵛ–57ᵛ, s. xi ex.

C₄   Berne, Burgerbibliothek C219-I, fos. 1ᵛ–8ᵛ (init.–§73 *artis expers in tes****), s. xi–xii (also includes Boethius' commentary)

L₁   Florence, Biblioteca Medicea Laurenziana plut. 50. 10, fos. 1ʳ–9ʳ, s. xi–xii

P₆   Paris, Bibliothèque nationale de France lat. 7712, fos. 1ʳ–9ʳ, s. xi–xii (also includes Boethius' commentary)

e Berlin, Staatsbibliothek zu Berlin— Preußischer Kultur-besitz Lat. 2° 252, fos. 81vb–86vb (init.–§99 *affectiones perturbantur*), s. xii

C Chartres, Bibliothèque municipale 498 deperditus, fos. 52va–58rb, s. xii (a microfilm is held by the Institut de Recherche et d'Histoire des Textes, Paris)

E$_1$ Erlangen, Universitätsbibliothek 191, fos. 28^v–39^v, s. xii

F Florence, Biblioteca Medicea Laurenziana S. Marco 166, fos. 24^r–32^r, s. xii

K Klosterneuburg, Stiftsbibliothek 1098-III, fos. 36ra–43vb, s. xii

L$_2$ London, Lambeth Palace Library 339, fos. 101^v–113^r, s. xii

O$_{2a}$ Oxford, Merton College 309-II, fos. 115^v–118^v (§73 *persona autem non qualiscumque*–fin.), s. xii

P$_7$ Paris, Bibliothèque Nationale de France lat. 4696, fos. 25^r–36^r, s. xii (also includes excerpts from Boethius' commentary)

V$_4$ Vatican City, Biblioteca Apostolica Vaticana Vat. lat. 1722, fos. 1^r–8^r (init.–§79 *alios esse aptiores locos*), s. xii

M$_2$ Venice, Biblioteca Nazionale Marciana Lat. Z. 273 (1574), fos. 30^v–43^r, s. xii

A$_{1a}$ Milan, Biblioteca Ambrosiana A 177 inf., fos. 1^r–2^v (complete text), s. xiii

A$_{1b}$ Milan, Biblioteca Ambrosiana A 177 inf., fos. 2^v–15^v (init.–§76 *quoddam multitudinis testimonium*, spliced section by section with Boethius' commentary), s. xiii

P$_9$ Paris, Bibliothèque nationale de Paris lat. 16598, fos. 20^r–33^v, s. xiii

B$_5$ Vatican City, Biblioteca Apostolica Vaticana Borgh. 131, fos. 108^r–116^r, s. xiii

R$_1$ Vatican City, Biblioteca Apostolica Vaticana Reg. lat. 1511, fos. 74^v–80^v, s. xiii ex.

A list of manuscripts written in the fourteenth, fifteenth, and sixteenth centuries is to be found in Di Maria's edition, pp. xxxviii f.; Reeve (1998), 138 has supplemented his list of Renaissance witnesses by Berlin Lat. 4° 572 (Phillipps 1003), Florence Laur. San Marco 272, Holkham 377, BL Harl. 3509, Naples Naz. IV

A41 and V B18, New Haven Yale Marston 183, Kraków Jagell. 1949.[2] I have not tried to find further Renaissance witnesses.

THE HYPOTHESIS

All manuscripts of the *Topica* can be shown to descend from a common archetype. The text in the oldest three of these manuscripts (A and B; m) has two major gaps. MS m is a copy of A; A and B are not copies of each other; they descend from a common hyparchetype, called β. And while the text of the *Topica* in A remained a torso, B was completed, still in the ninth century, by the insertion of four folios which drew on a different source; these folios are called B $_A$.[3]

   These inserted folios as well as all remaining manuscripts of the *Topica* can be shown to go back to a common hyparchetype which I call α.[4] Around AD 500 Boethius wrote his extensive commentary on the *Topica* in which he often quotes or, more importantly in the present context, closely paraphrases Cicero's text (up to §77, that is, because the commentary has not come down to us in its entirety).[5] Scribes in the Middle Ages who were producing copies of the *Topica* often had this commentary on their desk, either to improve their understanding of the text they were copying or because they were producing manuscripts which in various forms juxtaposed the *Topica* and the Boethian commentary. As a natural result of this practice, the tradition of Cicero's *Topica* became contaminated with readings from Boethius' commentary; however, this contamination did not necessarily make the text worse, because often Boethius had read a better text than the one

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   [2] I have not seen New Haven Yale Marston 183, which was sold at a Sotheby's auction in London in December 1961 and whose present owner I was unable to identify.
   [3] The symbol B$_A$ was introduced by Di Maria; it is meant to reflect the fact that the inserted folios were transferred to MS A in 1860 by the then librarian at Leiden, W. G. Pluygers, on the suggestion of Karl Halm.
   [4] Di Maria introduced the symbol α, but only to denote the agreement of the set of eight *integri* which he used in his edition.
   [5] We have reason to believe that the commentary originally covered the whole of the *Topica*: it ends in mid-course, and there is a fragment extant from the section which is lost; the fragment is printed in Orelli–Baiter (1833), 389–95, the best available edition of the commentary, which will be used throughout. Professor Giorgio Di Maria of Palermo University is producing a new edition of the commentary.

preserved in our manuscripts, and scribes were thus in a position to improve the text they found in their Cicero manuscripts through reference to Boethius. One can use this Boethian contamination to rank the descendants of α on the criterion of how sincere they are.[6]

If it is reasonably certain from agreements in error that the *integri* of the *Topica* actually descend from one complete copy of the text which survived into the ninth century, then it will be clear that contaminated manuscripts which show a *de facto* better text than their uncontaminated relatives, i.e. correct readings where the latter show errors, are likely to owe this better text not to vertical transmission, but to the influence of Boethius. And if scribes were able to use Boethius like a manuscript in places where he preserved a text closer to what Cicero wrote than the uncontaminated descendants of α did, we should be able to do the same and thus repeat in a controlled enviroment, as it were, the process by which the uncontaminated descendants of α were corrected with the help of Boethius. Hence the rationale of the present edition is to edit the *Topica* from manuscripts A and B/B_A, some descendants of α which can be shown to be virtually free from Boethian contamination (adL), and Boethius' commentary, which I shall use like a manuscript of the *Topica* where it is available (as a symbol for Boethius I use $\mathcal{B}$).

The stemma governing the present edition looks like this:
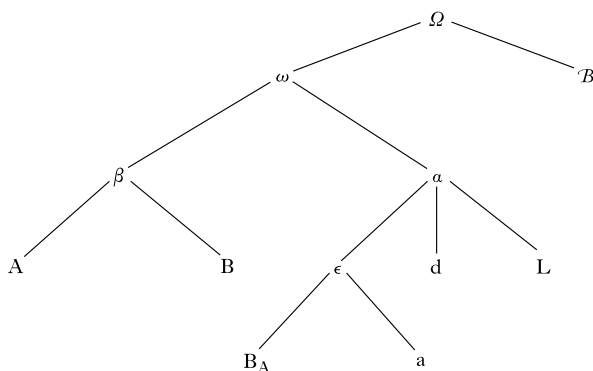
Information on the rationale of the apparatus is given in the final section of this chapter.

A, B, AND m

A, B, and m contain most of Cicero's *Philosophica* in the order *ND*, *Div.*, *Tim.*, *Fat.*, *Topica*, *Parad.*, *Luc.*, *Leg.* Not before 850, A and B were in Corbie, for m, which can be assigned to that house with certainty and which was written in the second half of the ninth century,[7] depends partly on B (*ND*, *Div.*), partly on A (*Tim.–Leg.*).

B and A were written in north-eastern and northern France respectively, though not at Corbie itself. The fact that they come from different scriptoria and have different subsequent histories as well as different secondary correctors suggests that they were in Corbie only for the time of the production of m and afterwards returned to the libraries from which they had been borrowed.[8]

In Corbie A and B were subjected to a process of correction, apparently in the course of preparing them to serve as exemplars of m. First the text of the *Topica* in A was corrected against B (correction-layer **A¹**), then B was corrected against A (correction-layer **B¹**).[9] Since neither A¹ nor B¹ draws on a third manuscript, each being based on the other and emendation alone, an editor of the *Topica* can be selective in recording their corrections in the app. crit.[10] The B_A folios were inserted into B to supplement the incomplete text of the *Topica* after the production of m, and very probably not in Corbie.[11]

The *Topica* text in A and B has two major gaps (§§1–3 *Maiores nos res . . . tum etiam suavitate*; 28–73 *-tuum more . . . possimus. Haec*). Neither of the two manuscripts is a copy of the other; see Di Maria, p. xviii and below, 'The Analysis of the Tradition'. Hence A and B derive from a common hyparchetype β.

[7] Cf. Beeson (1945), Bischoff (1966).

[8] P. L. Schmidt (1974), 131 n. 7.

[9] For details see ibid. 108 ff., 121 ff. Schmidt's conclusion that A¹ and B¹ do not reflect readings of a third (now lost) MS has been called into question by Zelzer– Zelzer (2001), who believe that Schmidt overestimates the sophistication of Caro- lingian scribes. The question can only be settled by a detailed examination of all the corrections in the text of *Leg.* (or of the *Topica*); such a discussion is provided by Schmidt for *Leg.* and by Reinhardt (2002) for the *Topica*, but is absent from Zelzer– Zelzer (2001).

[10] Reinhardt (2002), 325.

[11] For a reproduction of these folios see the facsimile of A = Plasberg (1915).

The fact that more than half of the text is missing in A and B poses two main problems connected with each other: First, the overlap between A and B on the one hand and the *integri* on the other is fairly short; that is, the stretch of text in which one would have to look for errors which establish the second hyparchetype α against β is only some fifty Ciceronian paragraphs long. Consequently, when the *integri* share errors in that part of the text where β is not available, one cannot be sure if these are errors of α or of the archetype from which all extant manuscripts of the *Topica* descend (ω). The second problem is how to affiliate B_A, which is obviously only available where A and B are not, and thus cannot be tested as to whether it shows the errors defining α.

THE SURVIVING α ERRORS

The large majority of the *integri* share a set of eight errors. None of these errors is outside the compass of a medieval corrector to remove, in particular of one who had Boethius' commentary at his disposal. Sometimes a manuscript may lack one of these errors, rarely two, and very rarely three. Where this is the case, it can be shown either that the manuscript is contaminated with readings from the β tradition or that it is a sophisticated manuscript into whose (or whose source's) production there went a considerable amount of critical effort, so that the missing error in question is to be seen against the background of a number of other attempts to improve the text by conjecture; typically some attempts of this sort will be more successful than others.

In cases where α errors are missing, one criterion for deciding whether a given manuscript casts doubt on the relevance I assign to a particular error and, ultimately, on my hypothesis that there is one hyparchetype for the *integri*, is to ask whether the manuscript has something to contribute to the text which is unique to it and which can only be the result of stemmatic transmission. For if in such cases it can be shown that the manuscript in question is contaminated with readings from Boethius' commentary and that Boethius was available whenever the manuscript exhibits a reading better than that of the uncontaminated witnesses and certainly not the result of conjecture, then the assumption is reasonable that missing α errors are the result of correction in the case in question.

Yet while it is necessary to draw the reader's attention to this matter, one need not make the problem appear bigger than it is:

only manuscripts which one would not mistake for textual sources of value, let alone as resources from which to edit the text, show more than one missing α error. The argument *ex eventu* for the validity of my analysis of the tradition is of course that it is actually possible to edit the text in the way suggested here, that is, arguably correct readings which are not in any of the manuscripts used nor in Boethius but appear in other manuscripts are all within the compass of a medieval corrector; if I had ended up with readings which did not pass this test, this would have suggested that there was at least one source other than α for the complete text.

The surviving α errors are:

1. §6 *ea scientia* : *eam scientiam* α

The accusative would have to be an apposition to *iudicandi vias* ('namely . . . '). As to the content, Cicero says that the Stoics call their method of *iudicare* 'dialectic'; that is, the Stoic way of *iudicare* is the issue here, and it is not implied in the present context that what the Stoics call 'dialectic' was actually an invention of Aristotle's (a notion Cicero may have in mind in *Fin.* 4. 3 and 8–10). That means that *iudicandi viae* must be a broader category than διαλεκτική and must mean judgement in the general sense, in principle comprising Aristotelian and Stoic ways of *iudicare*. Having an object of *persecuti sunt* (*iudicandi vias*) and an apposition to it (*eam scientiam . . .*) would on the most natural reading make the two categories coextensive. Boethius ad loc. makes it clear that the science which the Stoics call dialectic had not been invented by Aristotle or used by Peripatetics. In fact we find this error nowhere corrected—it is in evidence in all α manuscripts—but a reader who had digested Boethius' commentary might have been able to do so.

2. §19 *factum est* : *factum sit* α

A glance at the subsequent examples (in §§20–1) or even at the very next verb shows that Cicero has cast them in the indicative, and for a reason: they are not in any sense hypothetical; rather, they are actual arguments of the 'If it is day, it is light' variety we know from Stoic logical fragments. A corrector who just read on could have spotted the indicatives that follow, or he might have compared Boethius 303. 22–3: *Quod si culpa mulieris factum est divortium*, or 303. 34: *At si viri culpa factum est divortium*, or 303. 42–3 *et passim*. Cf. also Di Maria 70–2 ad loc.

3. §88 *aut si huius rei haec* : *aut si huic rei haec* α

Not too difficult to correct. Boethius is no longer available here.

4. §90 *tributionem sui cuique* : *cuique* om. α

The turn of phrase was well known (see Otto 1890, 337–8), which was largely due to Cicero himself, cf. *Off*. 1. 15 and Dyck (1996) on 1. 21. A number of manuscripts emend to *tuitionem* (in a random pattern).

5. §90: *conventis* : *conveniens* α

Di Maria was the first editor to print *conventis* here, and rightly so. His argument for this reading runs (pp. 111–12):

Verbum *conventum* Ciceronis est, etiam in libris *de officiis* de iure civili pro appellatione adhibitum: *Facere promissa*, *stare conventis*, *reddere deposita commutata utilitate fiunt non honesta* (III 25, 95), quod in *Partitionibus* quoque *oratoriis* de vi aequitatis usurpatum est: *Quae autem scripta non sunt*, *ea aut consuetudine aut conventis hominum et quasi consensu obtinentur* (37, 130); haec si cum *Topicis* conferantur (*Una pars legitima est, altera conventis, tertia moris vetustate firmata*), eadem prorsus, ordine paululum mutato, appareant significari, ut *Topica* videantur *Partitionibus* membratim respondere: *conventis* = *conventis hominum et quasi consensu*; *moris vetustate* = *consuetudine*; *firmata est* = *obtinentur*.

The case for *conventis* is very strong indeed; how strong is that against *conveniens*? Di Maria is rather optimistic: '. . . *conveniens* (lectio recepta) minime reiciendum est, cum *convenit* interdum absolute idem significet atque *constituitur*, *omnium consensu accipitur*.' In fact the evidence for the present participle in the strong meaning 'established by convention' is very thin; *OLD* s.v. *conveniens* 2 at least acknowledges that this is not the same sense as the standard 'appropriate, fitting, conformable' or 'internally consistent, harmonious' (1a and 1b respectively), but gives only our passage and Sic. Fl. *agrim.* p. 103 Thulin: 'ex convenienti (termino) ad convenientem rectus finis observari debebit',[12] where *conveniens* is used in a sufficiently different sense of 'established by convention' to be disallowed (quite apart from the fact that Siculus Flaccus is a somewhat dubious authority for classical usage). *TLL* iv. 840. 50–841. 23 lists our passage (with the reading *conveniens*) under '*translate*: A *i.q. aptus, congruus, consentaneus*: 1. *absolute*', which as a lemma lacks analysis (contrast *OLD*), and none of the passages quoted has *conveniens* in the sense in which it is allegedly used here.

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[12] A search by means of the PHI 5 database has yielded no further parallels.

6. §92 *instruuntur* : *instituuntur* α

Difficult to correct, and for modern critics at something of a blind spot at the edge of a lacuna first posited by Kayser (1860); see the commentary below.

7. §97 *moratae* : *moderatae* α

For *moratae* see Di Maria 113–14, who quotes *Inst. Or.* 4. 2. 64 on *oratio*: *Nam praeterquam planam et credibilem vult* (sc. *Cicero*) *esse evidentem, moratam cum dignitate*.

8. §98 *adaugeat* : *augeat* α

Adaugere is technical in rhetorical contexts (e.g. Cic. *Inv.* 2. 56, 2. 75, 2. 101; *Rhet. Her.* 3. 2), and while trivialization from *adaugeat* to *augeat* is a natural if mistaken move, a change in the opposite direction seems highly unlikely. However, there is the problem that some α manuscripts read *aut augeat*, which was explained by Di Maria 114 in the following way: '*Aut* ex *ad*-inter *ut* et alterum *aut* facile factum est.' While this is true in principle, it seems doubtful that this is the way by which some *integri* got to the reading *aut augeat*. Firstly, *aut augeat* may just as well be a conjectural attempt to improve on *augeat*, prompted by the single *aut* which the correct text has and/or by the previous *ut*-clause. Secondly and more importantly, if the *integri* actually read *adaugeat* at some stage, there should be some manuscripts showing this reading. But we never find *adaugeat* in a non-β manuscript: the *integri* read *augeat* or *aut augeat*. This suggests strongly that *aut augeat* in some *integri* is emended from *augeat*, not a corruption of *adaugeat*.

Di Maria, p. xx lists six of these errors as to be found in the six *integri* he uses to back up the evidence from A and B (nos. 4 and 6 are not on his list); however, he gives no indication which of the *integri* not used by him fail to show these errors, and does not draw further inferences from these errors as to the question how the complete text of the *Topica* reached the ninth century. Other editions fail to address the question altogether; Wilkins's OCT (= Wilkins 1903), for instance, mentions only three of these errors (4, 6, and 7) in the app. crit.

BOETHIAN CONTAMINATION AND ITS ROLE IN THE ASSESSMENT OF MANUSCRIPTS

When Michael Reeve wrote the section on the transmission of the *Topica* in *Texts and Transmission* (= Reeve 1983), he remarked

that 'the text of the commentary influenced manuscripts of Cicero has been suspected but not proved.' Since 1983 two editions of the *Topica* have been published, both in 1994—Riccio Coletti[13] and Di Maria—which occasionally acknowledge Boethian influence on manuscripts of Cicero, but do not systematically investigate the problem. Michael Winterbottom, who reviewed Di Maria's edition and also wrote an article in which he assessed the *integri* used by him with respect to their relative contamination by readings from Boethius' commentary,[14] urged that 'a thorough rethinking of the tradition was needed' with respect to this problem. In this section I first give a brief description of the format of Boethius' commentary, then illustrate the way in which Boethius has influenced the *Topica* tradition, and finally describe the procedure by which I have tested Cicero manuscripts for Boethian contamination.

Boethius' commentary is not subdivided into brief and self-contained lemmata as other ancient commentaries are, but combines extensive discussions of relevant legal and philosophical secondary material with the actual explanation of what Cicero says, thus yielding a continuous narrative. The commentary comes closest to Cicero's text when it quotes or closely paraphrases phrases, sentences, or short paragraphs from Cicero. These paraphrases may in Boethius have the structuring function lemmata have in commentaries like Servius' on Vergil—in this case they precede the explanation of the text—or they may conclude a discussion of related material, thus highlighting in what way this material has bearings on the text. In any case, contamination arises primarily from the sections where Cicero is closely paraphrased, although the broader context may of course play a role in determining what a scribe, self-consciously or not, ultimately writes.

Let me now offer some examples which will illustrate the nature of Boethius' influence on the Cicero tradition. A conspicuous instance is the gloss *earum autem rerum quae non sunt* in §27, which is an intrusion from the Boethian commentary (p. 320. 6–7); this gloss is in all extant manuscripts of the *Topica*, thus representing an error that defines ω, and dates it after AD 500, when Boethius wrote. The gloss makes no sense in its context and does not present

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[13] On which see Wisse (2000) and Reeve (1998), 141: 'A work of compilation, not of analysis.'

[14] Review: Winterbottom (1997); article: Winterbottom (1996).

further problems. But usually when Boethius has influenced the Ciceronian text in a negative way, by introducing readings which represent errors in Cicero, the situation is less clear-cut. In §24 the correct text is *quod parietis communis tegendi causa tectum proiceretur*, and while *β* and the majority of the *integri* read *quod*, others read *quantum*, adopted by the Budé editor Bornecque, which is likely to come from Boethius 309. 44 ff. *hoc esse solum ambitus aedium quantum tectum proiceretur* (see the commentary on §24). One might object that *quantum* was the result of conjecture here; so this instance illustrates that the case for Boethian influence would have to be made through cumulative argument.

The situation is more misleading when at places where α was corrupt the text has been corrected with the help of Boethius; here anyone who analysed the tradition while unaware of the problem of Boethian influence would tend to take such readings to be vertically transmitted. §71 contains the sentence:

Si consilio iuvare cives et auxilio aequa in laude ponendum est, pari gloria debent esse ei qui consuluntur et ei qui defendunt; at quod primum, est; quod sequitur igitur.

Boethius 383. 6–12 writes:

Si consilio iuvare cives, quod iuris peritorum est, et auxilio, quod oratorum est, aequa in laude ponendum est, pari gloria debent esse ii, qui consulunt, id est, periti iuris, et ii, qui defendunt, id est, oratores; at, quod primum, est, id est, consilio autem iuvare cives et auxilio aequa in laude ponendum est: quod sequitur igitur, id est, infertur.

Those α manuscripts which can be shown to be influenced by Boethius on the method outlined above (and to be explained in detail below) read the correct text in §71 as set out above (except for *consulunt*), while the uncontaminated witnesses after *qui defendunt* read *et ita fit quod primum est par id quod sequitur* or something similar; this nonsense is not difficult to correct when compared with the Boethius section quoted above. Scribes who did not just copy but actually thought about the text and who had Boethius' commentary at their disposal were able to produce manuscripts of the *Topica* which at some places offered a text much closer to what Cicero wrote than the uncontaminated α manuscripts could provide.[15]

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[15] Most of the early MSS include a text of the *Topica* followed by Boethius' commentary (α must have looked like this); cf. the list above. Other MSS include

Previous editors, who were unaware that the *integri* very probably descend from one common source and who did not appreciate the problem of Boethian contamination, edited the work from A and B, some uncontaminated α manuscripts, and some of their contaminated relatives, which they selected on the criterion of how good the text they offered *de facto* was.

In selecting the manuscripts from which to edit the *Topica*, I applied the following procedure: having collated a fair number of manuscripts and having identified the eight α errors described above, I checked all known manuscripts of the *Topica* for these eight errors. I then collated in full all manuscripts written before the fourteenth century.[16] These were then tested for Boethian contamination by a modified version of the method Winterbottom (1996) applied to the eight *integri* used by Di Maria. I compared all readings found in them with Boethius' commentary and drew up a list of those readings which were paralleled in Boethius and which represented errors in the text of Cicero. Then, by a simple numerical system, I ranked manuscripts according to how many readings of this list they showed.

The next question was where α had been corrected by reference to Boethius. To inquire into this problem, I looked again at those manuscripts which ended up at the top of my list by virtue of showing no or very little Boethian influence, and checked them for shared errors not in evidence in the manuscripts further down

two texts of the *Topica*, a complete text and one in some way juxtaposed with the commentary. Two different formats are in evidence for this: (i) The two works may be presented in adjacent columns as e.g. in Paris Lat. 14699 (s. xi). Since the commentary is much longer than Cicero's text, the Boethius text would form one wide, narrowly spaced column in fairly small letters, while the Cicero text would be in larger letters, in a very narrow column, and very generously spaced. In the production of such a MS, Boethius' text would be copied first. (ii) The two texts can be spliced in such a way that the scribe copies a paragraph from Cicero, then attaches the section of Boethius' commentary relevant to this paragraph, and then proceeds to the next pericope of Cicero and so forth (e.g. Milan, Ambros. A 177 inf., s. xiii). MSS of this type tend to differ slightly in the way in which they divide up the text (just as any two modern editors would disagree on paragraph division). Both formats are likely to produce Boethian contamination in the Cicero text: consider the thought-processes needed to splice texts appropriately or to match the Cicero with the Boethius text in case (i). However, while we can observe Boethian contamination happening in both types of MS and while this may sensitize us to what may be Boethian readings in the Cicero text, the contaminated Cicero texts produced in this way do not seem to feed back into the Cicero tradition.

[16] I describe the method by which all later MSS were tested below, 'The Analysis of the Tradition'.

on the list. These errors would then give me an indication where the text of the archetype as preserved in the uncontaminated witnesses needed correcting, which in turn would allow me to find out quickly where corrections would have to be the result of conjecture as opposed to comparison with Boethius, because he was of no help in the passage in question. Of course, where β is unavailable because of its gaps, one cannot tell if these errors are errors of ω or of α. Note also how long this list of errors is; there are quite a number of probable α errors, and even if in the stretch of text where β is unavailable the majority of errors were errors of ω as opposed to α, the list suggests that the eight α errors which survived in the majority of the *integri* are just the tip of the iceberg.

Had there been a second source for the complete text, this would have shown up in the course of this procedure in form of correct readings which could not be explained with reference to Boethius and could not be the result of conjecture.[17] There would also have been grounds for suspicion if a manuscript had had few hits on the first list but many on the second.

Finally, I worked out relationships between the manuscripts as far as this was possible (see below, 'The Analysis of the Tradition') and then chose, from the group of uncontaminated manuscripts, those from which to edit the text.

This is the list of Boethian errors (i.e. readings in the Cicero manuscripts which may come from or be inspired by readings in Boethius' commentary). The correct reading is given first, otherwise presentation follows the style of a negative app. crit.; the manuscripts exhibiting the error are in the relative order of the list at the start of this chapter. The list does not include fragments which are substantially shorter than the passage covered by Boethius' commentary (with the exception of A, B, and B_A, whose readings I have added for information), nor does it include manuscripts which are *descripti* or otherwise uninteresting for the present purpose because of their relationship to other extant manuscripts (V_I, B_{Ib}).

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[17] The test does not apply to α alone: an error on which α and β agree because it was in ω and which is not to be found in the later MSS would cast doubt on the singularity of ω, if it could not have been corrected through Boethius or conjecture.

1. §1: *libellos*: *libros*, cf. 271. 37
   P_1e
2. §2: *ratione et via*: *rationem via*, cf. 271. 41–3
   $(B_A)MP_1P_4aLV_2B_2B_{1a}B_3F_1F_3C_1M_1O_1O_{2b}P_3P_5dcROC_4L_1$
   $P_6eCP_7M_2A_{1a}A_{1b}P_9B_5R_1$
3. §2: *perveniremus*: *perveniretur*, cf. 271. 43
   $(B_A)A_{1a}$
4. §3: *Aristotelia*: *Aristotelica*, cf. 272. 15
   $MP_4aLV_2B_2B_{1a}F_1F_3C_1M_1O_1O_{2b}P_3dcRV_3OC_4L_1P_6eE_1FKL_2$
   $P_7V_4M_2A_{1a}A_{1b}P_9B_5R_1$
5. §3: *ignoretur*: *ignoraretur*, cf. 272. 19–20 *nesciretur*
   O_1c
6. §5: *nolui*: *volui*, cf. 272. 34 *voluisset*
   KL_2
7. §5: *haec* after *itaque* omitted 272. 41
   P_3
8. §5: *artes*: *partes*, cf. 270. 29, 274. 17, 276. 12
   $VP_1P_2P_4LB_2B_{1a}B_3F_1F_3M_1O_1O_{2b}P_3dbcRV_3OC_4L_1P_6eCE_1\ FKL_2$
   $P_7V_4M_2A_{1a}P_9B_5R_1$
9. §7: *erit*: *fuerit*, cf. 276. 29
   F_3
10. §9: *evolvitur*: *evolvit*, cf. 287. 35
    $P_1B_{1a}F_3OCB_5$
11. §10: *elicitur*: *agitur*, cf. 291. 4
    $(AB)F_1Re$
12. (§10:) *Aelia Sentia* before or after *lex*, cf. 291 *passim* (see commentary on §10)
    $VP_1P_2P_4V_2B_{1a}B_3F_1F_3C_1M_1O_1O_{2b}P_3bcRV_3OC_4L_1P_6CE_1FKL_2$
    $P_7V_4M_2A_{1a}A_{1b}P_9B_5R_1$
13. §12: *huius modi*: *hoc modo*, cf. 297. 15
    (E)
14. §14: *convenerat*: *convenit*, cf. 299. 26
    $C_1E_1L_2$
15. §14: *fuerit*: *fuit*, cf. 299. 26
    M_2
16. §15: *faciunt*: *fecerunt*, cf. 300. 5
    B_2KL_2
17. §18: *deminuit*: *diminuit*, cf. 302 *passim*
    $P_2O_{2b}P_5bcV_3P_6CKL_2P_7V_4M_2A_{1b}B_5R_1$
18. §18: *puerorum*: *puerulorum*, cf. 302. 29
    $VMP_2aB_2B_{1a}F_3C_1M_1O_1O_{2b}bcV_3L_1eCA_{1a}$
19. §20: *conubium*: *conubii ius*, cf. 304. 41
    $B_3O_1OFL_2V_4M_2B_5R_1$

20. §21: *pugnat*: *repugnat*, cf. 305. 40
    $P_2P_4F_3V_3OL_1P_6E_1FKL_2P_7V_4M_2A_{1a}A_{1b}B_5$
21. §22: *rebus*: *causis*, cf. 306. 6–7, 314. 47
    $P_2P_4V_2B_{1a}F_1O_{2b}V_3C_4L_1P_6E_1FKL_2P_7V_4A_{1b}P_9B_5R_1$
22. (§22:) *sed qui*: *at si quis*, cf. 306. 20 *si enim is*
    $P_1P_2P_4F_3M_1P_3V_3C_4L_1CE_1FKL_2P_7V_4A_{1b}B_5R_1$
23. §22: *enim eius*: *enim eius parietis*, cf. 306. 34 *causa enim vitii forma est parietis*
    $VP_1aLV_2B_2B_3F_3C_1O_1O_{2b}dcCP_7A_{1b}$
24. §23: *convenit*: *convenerit*, cf. 307. 6, 10, 16
    V_2F_1O
25. §23: *ex*: *a*, cf. 307. 24
    $V_2B_{1a}F_1M_1$
26. §23: *eius*: *huius*, cf. 307. 37 *hoc modo*
    $LV_2F_1F_3P_3dcCKL_2V_4A_{1b}$
27. §24: *quod*: *quantum*, cf. 310. 1
    $V_2B_{1a}F_1F_3M_1O_{2b}P_3RV_3OC_4L_1eE_1FKL_2V_4M_2A_{1a}P_9B_5$
28. §24: *tecto in*: *in tectum*, cf. 310. 3 *in suum tectum*
    $VMP_1aLB_3F_3C_1O_1P_3bcV_3C_4L_1eCE_1FKL_2P_7V_4A_{1a}A_{1b}B_5R_1$
29. §27: *parietem*: *parietes*, cf. 320. 5
    KL_2
30. (§27:) [], cf. 320. 6–7
    ω
31. §28: *consistat*: *consistit*, cf. 321. 22
    $B_2B_3C_1OFP_7V_4B_5$
32. §29: *haec*: *hoc*, cf. 328. 27 *hoc modo*
    $V_2B_{1a}F_1M_1P_3RV_3C_4P_6E_1FL_2P_7$
33. §31: *dicunt* or something similar after $\pi\rho o\lambda.$, cf. 332. 15
    $P_2P_4O_{2b}P_3V_3eCFKL_2P_7V_4M_2A_{1b}B_5R_1$
34. §31: *percepta*: *praecepta*, cf. 332. 15
    CF
35. §33: *tum*: *autem*, cf. 334. 13 *partitione autem*
    MOL_1K
36. §36: *vis*: *ius*, cf. 336. 37
    V_2
37. §42: *mandaris*: *mandaveris*, cf. 340. 35
    $V_2B_{1a}O_{2b}V_3OP_6CFKL_2V_4M_2P_9B_5$
38. §42: *Graece . . . nominatur*: *Graeci . . . nominant*, cf. 340. 33
    C
39. §44: *mortuus*: *moreretur*, cf. 341. 18
    OCR_1
40. §44: *obtinuissent*: *obtinuisset*, cf. 341. 25
    $P_2V_2B_{1a}B_3F_3C_1M_1O_{2b}P_3bV_3OC_4L_1P_6CE_1FKL_2V_4M_2A_{1b}P_9B_5R_1$

41. §48: *Graeci appellant*: *Graece appellantur*, cf. 344. 32
    $P_2P_4M_1P_3V_3OL_1P_6E_1FKP_7V_4M_2B_5$
42. §48: *praeposito*: *praepositio*, cf. 344. 34–5
    $P_2V_2F_3M_1O_{2b}V_3OC_4P_6CE_1FL_2P_7V_4M_2A_{1b}P_9$
43. §48: *ut* before *dignitas*, cf. 344. 38
    $P_2B_2F_3O_{2b}V_3OC_4L_1P_6E_1FKL_2P_7V_4M_2A_{1b}P_9B_5R_1$
44. §49: *diversa*: *adversa*, cf. 344. 17
    $P_2V_3OL_1FKL_2M_2A_{1b}P_9B_5R_1$
45. §49: *vocant* after *Graeci* (for *Graece*), cf. 345. 15
    eL_2
46. §51: *inquiebat*: *inquibat*, cf. 346. 7
    $P_1P_2F_3B_{1a}O_{2b}OKL_2V_4M_2A_{1b}P_9$
47. §51: *patiere*: *patere*, cf. 346. 11
    C_1C
48. §51: *videare*: *videar*, cf. 346. 13
    $P_2F_1F_3O_{2b}C_4K$
49. §54: *et his alia negatio rursus adiungitur* or something similar after
    negaris[2], cf. 364. 15–6
    $P_2P_4O_{2b}V_3OL_1E_1FKL_2V_4M_2A_{1b}P_9B_5R_1$
50. §55: *hoc*: *hunc*, cf. 364. 35
    $MP_1V_2F_1F_3M_1O_{2b}P_3RC_4L_1P_6CA_{1b}R_1$
51. §56: *dicitur*: *nuncupatur*, cf. 366. 1
    $P_2P_4M_1P_3V_3OL_1P_6CFKP_7V_4R_1$
52. §58: *eam vim*: *ea*, cf. 367. 17
    $P_2O_{2b}P_3V_3L_1E_1L_2V_4M_2A_{1b}P_9$
53. §61: *accidissent*: *cecidissent*, cf. 369. 34
    $P_2P_4LV_2B_{1a}F_1O_1O_{2b}P_3cV_3OC_4L_1P_6eCE_1FKL_2P_7V_4M_2A_{1b}P_9$
    B_5R_1
54. §62: *libellum*: *librum*, cf. 370. 34
    F_3
55. §62: *animi* after *perturbatione*[2], cf. 370. 25
    P_6FB_5
56. §62: *et cito* omitted, cf. 370. 39
    de
57. §63: *subiectae*: *subiecta*, cf. 371. 38–41
    a
58. §66: *agier*: *agi*, cf. 378. 23 (some Bo. MSS)
    $P_4V_2B_{1a}F_1F_3RV_3L_1L_2P_7V_4$
59. §66: *eius* omitted, cf. 378. 30
    $P_2B_{1a}F_3O_{2b}V_3OL_1KL_2P_7V_4M_2A_{1b}P_9B_5R_1$
60. §69: *et* for *atque*, cf. 380. 36
    $P_1aB_{1a}CK$
61. (§69): *inanimis*: *inanimatis*, cf. 381. 36

$P_1P_2P_4B_{1a}B_3F_1F_3C_1M_1O_1O_{2b}P_3dcRV_3OC_4P_6eCE_1FKL_2P_7V_4$
$M_2A_{1a}P_9B_5R_1$

62. §70: *se ipsa*: *se ipsis*, cf. 382. 1
$P_1F_3O_{2b}V_3OFKL_2P_7V_4M_2A_{1b}P_9B_5R_1$

63. §71: *consuluntur*: *consulunt*, cf. 389. 9
$VMP_1P_2P_4V_2B_2B_{1a}B_3F_1F_3C_1M_1O_1O_{2b}P_3bRV_3OC_4L_1P_6$
$eCE_1FKL_2P_7V_4M_2A_{1b}P_9B_5R_1$

This yields the following ranking:

MS	no. of Boethian errors	date
V	6	s. x
M	6	s. x
b	6	s. xi
a	7	s. x ex.
d	7	s. xi
L	7	s. x ex.
B_2	9	s. xi
B_3	10	s. xi
R	10	s. xi
A_{1a}	10	s. xiii
c	11	s. xi
O_1	12	s. xi
P_1	14	s. x
C_1	14	s. xi
e	14	s. xii
P_4	14	s. x
M_1	16	s. xi
B_{1a}	16	s. xi
C_4	17	s. xi–xii
V_2	17	s. x–xi
F_1	17	s. xi
P_3	18	s. xi
P_9	19	s. xiii
P_6	19	s. xi–xii
E_1	19	s. xii
P_2	22	s. x
P_7	22	s. xii
A_{1b}	22	s. xiii
R_1	22	s. xiii ex.
L_1	23	s. xi–xii
M_2	23	s. xii

O_{2b}	24	s. xi
C	24	s. xii
B_5	24	s. xiii
F_3	25	s. xi
O	26	s. xi ex.
F	27	s. xii
V_3	27	s. xi
V_4	28	s. xii
K	30	s. xii
L_2	32	s. xii

We may note that there is an overall tendency for the number of Boethian errors to increase over time, but that we have also instances of heavily contaminated early manuscripts (P_2, and to a lesser degree V_3) as well as instances of comparatively late manuscripts which show few Boethian errors (A_{1a}).

Next, those passages where the (majority of the) manuscripts showing the smallest number of these Boethian errors agree in error against the other witnesses; on my hypothesis, these errors, where they do not appear in contaminated witnesses, must have been corrected there rather than the correct reading stemmatically transmitted. For this assumption to be sustained, I should have to show that Boethius provided sufficient help to correct the text in cases where we could rule out emendation on the grounds that the corruption in question was too severe. I cite Boethius where he might have given rise to a correction and mark potential α errors with an α, others with $\alpha\omega$ (indicating that they are errors of α *or* ω), or ω as appropriate.[18] The manuscripts cited are B_A (see above); Einsiedeln 324 (s. x ex.; a); Leiden Voss. Lat. F 70 (s. x; V); Munich, Bayerische Staatsbibliothek Clm 6367 (s. x; M); Leiden B.P.L. 90 (s. x ex.; L); St. Gallen. 830 and 854 (s. xi; b and c respectively); St. Gallen 818 (s. xi; d); Paris nouv. aqu. lat. 1611 (s. x; P_1); Bamberg Class. 13 (s. xi; B_2); Berlin Lat. 2° 603 (s. xi; B_3); Milan Biblioteca Ambrosiana A 177 inf. (s. xiii; A_{1a}), and Oxford Laud. Lat. 49–I (s. xi; O_1).[19] I provide a partial stemma now, and submit the evidence for it below.

[18] Of course, one would expect the process of correction of errors to apply in the same way to those in ω and α; it would decrease the plausibility of my analysis of the tradition if we often found α errors corrected, but ω errors never.

[19] I shall explain below why Vatican Reg. Lat. 1405 (s. xi; R) is not included here.

α

ε   ζ   η

B_A a   M   L   d   b   c   V P_1 B_2 B_3 A_{1a} O_1
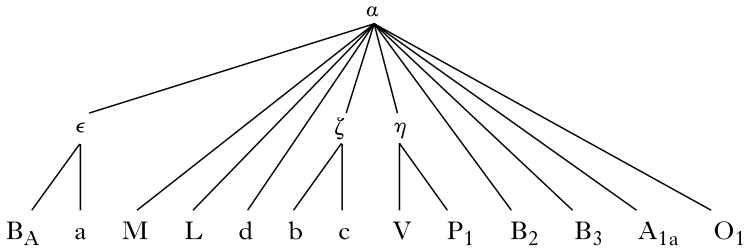
The errors are as follows (when two readings are given, the first is the correct reading):

1. §4: *cavisses*: *scripsisses* (β) abcdLMVP₁B₂B₃ O₁: ω. Cf. 272.34

2. §18: *praetoris*: *populi romani* abcdLMVB₂B₃: *populi r(omani)* P₁: *romani* A₁ₐ: *p(opuli) r(omani)* O₁: α. Cf. 302. 17–18 *ex edicto praetoris*

3. §22: *enim eius*: *enim eius parietis* abcdLMVP₁B₂B₃ O₁: α. A potential Boethian error on which the sincere MSS agree against the contaminated (cf. 306. 24)

4. §23: *reguntur*: *regantur* (β) abcdLMVP₁B₃O₁(*regnantur* A₁ₐ): ω. Cf. 307. 44 *reguntur*

5. §27: *tangive*: *tangique* abcdMVP₁B₂B₃A₁ₐO₁: α. Another potential Boethian error; cf. 320. 6 *tangique*

6. §28: *iuris* omitted (β) adM: ω. Cf. 321. 21 *iurisperitorum*

7. §31: *cognitionis indigens* (*enod.* omitted) for *cognitio enodationis indigens* B_AabcdP₁; L has *cuiusque enodationis indigens* (*cogn.* om.); M has *cuiusque cogitationis indigens* before correction; V is illegible because of water damage: αω. Cf. 332. 17 *cognitio enodationis indigens*

8. §32: *per* omitted B_AabcdLMVP₁B₃O₁: αω. Cf. 333. 8 *per translationem*

9. §37: *putat esse*: *esse putat* (see Adams 1994, 28–31), B_AabcVP₁B₂ A₁ₐO₁(*esse putat esse* d): αω. Cf. 337. 4–5 *putat esse*.

10. §39: *arbitro*: *arbitrio* acLMVA₁ₐ: αω

11. §43: Before *sic si* B_AabcdLMVP₁B₂B₃A₁ₐ O₁ have inserted *ex eodem similitudinis loco*: αω. Boethius lacks the repetition and could prompt less attentive readers to emend (attentive ones would not need prompting)

12. §45: *muta*: *multa* B_AabcdLMVP₁B₂B₃A₁ₐO₁: αω. Here it is the juxtaposition with *mortui* that may prompt the emendation.

13. §45: *mortui* omitted B_AbcdLVP₁(M has it after *excitentur*) B₂A₁ₐO₁: αω

14. §49: *aientibus* cdB₃: *agentibus* B_AabLP₁(V has *ai.* after erasure) B₂A₁ₐO₁: αω. Cf. 344. 5 *aientia*

15. §53: Editors print *argumenti locus est simplex*; several MSS omit *simplex* (thus B$_A$ adVLP$_1$, with the second hands adding it before *est* in a, after it in V and P$_1$); bcMB$_2$ B$_3$O$_1$ read *argumenti simplex locus est*; A$_{1a}$ reads *argumenti locus est simplex*. Now B$_A$aLV (which omit *simplex*) in addition read *tractandus*. Since *tractandus* is a conjecture obviously designed to make sense of the text without *simplex* (rather than an error by a scribe), and since *tractandus* is likely to have been in α, the omission of *simplex* goes back at least to α's source. Which does not mean, of course, that the omission of *simplex* has to be an error of ω; thus: αω. Cf. 360. 21–2, which provides *simplex*.

16. §53 *fin.*: *legata igitur*: *legata autem* B$_A$acdLM (b has *igitur* after erasure) B$_2$B$_3$: αω

17. §55: *non dicatur*: *dicatur* B$_A$abcdLMVP$_1$B$_2$B$_3$O$_1$: αω

18. §58: *non habet*: *habet* B$_A$abcdLMVP$_1$B$_2$RO$_1$(*habet sed* B$_3$): αω

19. §63: *etiam ea*: *etiam ut ea* B$_A$abcdLMVP$_1$B$_2$B$_3$ A$_{1a}$O$_1$: αω

20. §64: *quae quamquam*: *quamquam* B$_A$abcdLMVP$_1$B$_2$B$_3$ A$_{1a}$O$_1$: αω

21. §64: *obiurgatione enim et admonitione*: *obiurgatione et admonitione enim* B$_A$adLMVP$_1$B$_2$B$_3$O$_1$ (bcA$_{1a}$om. *enim*): αω

22. §68: *spectantur*: *expectantur* B$_A$abcdLMVP$_1$B$_2$B$_3$O$_1$: αω

23. §73: *In tempore* is the correct text (B$_2$A$_{1a}$), *β* omits *in*, B$_A$adLVP$_1$O$_1$-read *e* instead (P$_1$ does so before correction); bB$_3$ have *ex tempore*; likewise M after correction (*et tempore* before correction); c is no longer available here. So ω omitted *in*, and α supplied the conjecture *e*. Cf. 387. 7–8 *in tempore*

24. §80: *autem aut*: *autem* (*β*) abdLMVP$_1$B$_2$B$_3$ A$_{1a}$O$_1$: αω

25. §82: *a naturane*: *naturane* adLM (*naturale* b) VP$_1$B$_2$A$_{1a}$ O$_1$: α

26. §82: *qua de commutatione* is the correct text; abdLMVP$_1$B$_2$B$_3$ A$_{1a}$O$_1$read *qua de mutatione*; B reads *quadam mutatione*; A^1 has *e com-* over an erasure: ω

27. §86: *sicut cum*: *sic* abdLMP$_1$B$_2$(A$_{1a}$^{sl} add. *cum*): α

28. §93: *ea futura* VP$_1$(*ea saepe futura* M) B$_2$B$_3$A$_{1a}$O$_1$: *futura* (*ea* om.) abdL: α

29. §96: *ut duae*: *aut duae* abdLMVP$_1$B$_2$B$_3$A$_{1a}$O$_1$: α

30. §98 *init.*: *consequitur*: *sequitur* abdLMVP$_1$B$_2$B$_3$ A$_{1a}$O$_1$: α

31. §98: *si ita affecti iam*: *si ita iam affecti* abdLVP$_1$(*si ita iam ante affecti* M) B$_2$B$_3$O$_1$: α

It seems plain that major defects of α can as a rule be healed with reference to Boethius, while all remaining errors are emendable. If we now ask how this second list should affect our assessment of the manuscripts abcdLMVP$_1$ B$_2$B$_3$A$_{1a}$O$_1$, which were placed at the top of our first list, we may observe that against the reading of the

majority of the witnesses representing the most sincere part of the tradition (abdLMV) cP_1O_1 have the correct reading occasionally (errors not in evidence in c: 6, 14, 15; P_1 : 6, 10, 15, 16, 28; in O_1: 7, 10, 15, 28), B_2B_3 somewhat more frequently (B_2 : 4, 7, 8, 10, 23, 28; B_3: 7, 9, 10, 13, 14, 15, 25, 27, 28), and A_{1a} even more frequently (1; 3; errors 6 and 7 along with others; 8 with B_2; 15 with others; 16 alone; 17 alone; 18 alone; 23 with B_2; 28 with $B_2B_3O_1$). This means that a slight increase in Boethian errors is usually matched by a slight increase in correct readings against the most sincere witnesses, which is what we would expect: Boethian influence would have detrimental and salutary effects simultaneously. I shall evaluate these observations and explain my choice of manuscripts for the edition in the next section, because Boethian influence is only one of several factors which have to enter into the selection procedure.

   Finally, the rationale of reporting Boethian readings in my app. crit. should be explained. When the manuscripts from which the text is being edited do not give us the correct reading at a given passage and it is arguable that later manuscripts which show the correct reading may have got it from Boethius, I list the oldest manuscript to have the correct reading[20] and the passage in Boethius which may have inspired the correction of the ω or α reading; when there is only a later manuscript cited and no Boethian parallel, the reader is looking at a passage where the ω or α reading was wrong and, or so I argue, at some stage corrected by conjecture.[21] This is my main purpose in listing Boethian parallels (what I have called 'using Boethius like a manuscript' above); naturally, one consequence of the sorting procedure described above is that a large number of variants in contaminated witnesses which are likely to come from Boethius no longer appear in the apparatus. Otherwise

[20] I cannot be more precise on this than the datings I find in Munk Olsen or catalogues of the relevant library.

[21] The reader who wishes to question the correctness of my account of the tradition should thus begin by scrutinizing these readings and making the case for the view that these readings could only have been stemmatically transmitted. Here is a list (i) of passages where archetypal errors have been corrected and where Boethius was available; (ii) of passages where archetypal errors have been corrected and Boethius is unavailable (I give the correct reading only; details can be discovered from the app. crit.): (i) §10 *locupleti is est*; §31 *cognitio*; §32 *per translationem*; §33 *diductio*; §43 *quia*; §45 *mortui*; §53 *igitur*; §55 *autumas*; §62 *efficiunt*; §66 *agier*; §71 *quod*; §72 *ambigeretur*; §73 *in.* (ii) §45 *muta*; §55 *quin omnis*; §64 *enim et admonitione*; §73 *his*; §80 *aut*.

I have systematically compared the readings of my manuscripts with Boethius' commentary and list Boethian parallels whenever they occur, sometimes in support of what I take to be the correct reading, sometimes to discredit a reading, and sometimes simply to draw the reader's attention to a parallel which though it seems insignificant to me may not to others.

THE ANALYSIS OF THE TRADITION

Errors connecting all extant manuscripts with each other in the section of the text where both *β* and the *integri* are available are:

§8   *ducuntur* A¹B¹: *dicuntur* ω
§23 *rerum* om. ω
§27 [*earum autem rerum quae non sunt*] hab. ω
§90 [*atque etiam–nominatur*] hab. ω
§92 post *instruuntur* lacunam statuit Kayser

And in the stretch of text where *β* is unavailable, so that we cannot be sure whether we are dealing with errors in ω or in α:

§2   *ea* coni. nescio quis: *eam* ω
§34 *videbantur* coni. Orelli: *videantur* ω
§39 [*genus est aqua pluvia*] secl. Friedrich
§44 *instituissent* coni. Bornecque: *instituisset* ω
§67 *iis* (vel *is*, *eis*) edd.: *his* ω

I proceed to the documentation on the analysis of the tradition, beginning with the least contaminated manuscripts.

Manuscripts A and B. As has been said above, relatedness of these two witnesses is obvious from their sharing two major gaps.²²

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²² α cannot descend from a sibling of AB corrected and supplemented from an *integer* source. Here is a list of errors peculiar to *β*, several of which are very difficult to correct: §6 *quae et* α: *quaeque et* β; §10 *elicitur* α: *agitur* β; §11 *sunt* ante *quodam modo* transp. *β*; §11 *forma* α: *formula* β; §14 post *pecunia* hab. $\bar{p}\,\bar{e}\,cum\,non\,iam$ β; §14 post *ea* hab. *gř* β; §14 *manum*¹ α: *manu* β; §14 *enim* om. *β*; §19 *ab*² om. *β*; §22 *posset* α: *possit* β; §23 *usus auctoritas* α: *usus auctoritasque* β; §75 *odiosas* α: *otiosas* β; §75 *imprudenter* α: *imprudentes* β; §76 *est*² α: *sunt* β; §77 *et*¹ om. *β*; §77 *deinceps* α: *deinde* β; §77 *aerii* α: *aeris* β; §82 *scientia* α: *scientiae* β; §82 *sit necne sit* α: *sitne necne sit* β; §82 *commutatione*³ α: *mutatione* β; §83 *et*⁴ α: *est* β; §83 post *adsentator* hab. *sit* β; §84 ante *iniquo* habet *de* β; §86 ante *actionis* hab. *de* β; §88 ante *effectis* hab. *ex.* β; §89 *vel incommoda* α: *damna* B¹: om. *β*; §90 ante *iniquo* hab. *de* β; §93 *quoniam* α: *quae* β; §94 ante *honestate* hab. *de* β; §94 *deque* α: *deve* β; §97 *locis*¹ α: *alocis* β; §99 *et*² om. *β*; §99 *cum* α: *quam* β; §100 *ratione* α: *oratione* β.

Neither is a copy of the other, as follows from the fact that each has its unique set of errors.

Errors of A against B: §9 ante *id* hab. *ad* A, *at* A¹   §74 *iracundia*: *iracundiae* A   *quo id*: *quid* A   §75 *suscipiendine*: *suscipiendive* A   §87 *definitionem*: *definitionum* A

Errors of B against A: §4 *videretur*: *viderentur*, corr. B¹   §15 *quam*: *quae*, corr. B¹   §28 *consultis*: *consultibus* B   §82 *ecquid aequum*: *et de quom* Bᵃᶜ, *et de quum* Bᵖᶜ   §89 *in comparationem*: *in comparatione* B, exp.

The next question is the origin of the folios B_A. I have indicated above that I believe them to derive from α too, and in particular from a descendant of α which is also the source of Einsiedeln 324 (a; s. x ex.); this common source I call ε. Agreement in error between a and B_A is documented in the critical apparatus. These readings, however, are frequently also in other manuscripts not used for the edition. Below I shall provide two lists: (i) a list of errors which B_A a share against all or the vast majority of the pre-Renaissance manuscripts; (ii) a list of errors peculiar to B_A and a respectively. If the errors collected in (i) could be seen as sufficient to establish the existence of ε, B_A would be affiliated indirectly (direct affiliation, as the reader will recall, is impossible, because B_A is not available where β is and vice versa.

Here are the errors connecting B_A and a (I indicate briefly the distribution of each error in the tradition):

§1   *his libris*: *iis libris* B_A a [not to be found in any other pre-Renaissance MS]

§30 *his casibus*: *iis casibus* B_Aa [and VP₁, i.e. η; both s. x]

§44 *quae commemoratio* aᵖᶜ (cf. *B* 341. 25): *qua commemoratio* aᵃᶜB_A [not to be found in any other pre-Renaissance MS]

§61 *his trabibus*: *iis trabibus* B_Aa [not to be found in any other pre-Renaissance MS]

§64 *magis quam* aᵖᶜ: *magisque* aᵃᶜB_A [and Berlin Lat. fol. 603, s. xi, Cologne Dombibl. 191, s. xi]

§66 *arbitrio* aᵛˡ: *arbitro* B_Aa [and Frankfurt S. Bartholomaei 112, s. xi]

Another oddity shared by B_A and a deserves mentioning here. In §30 the vast majority of the MSS read ἰδέας or some version of it (the correct reading is εἴδη; see the commentary); of the sincere witnesses only B_A and a have both variants, with B_A reading *hideas eide*, and a εἰδέας in the main text and *EIΔH* apparently in a

corrector's hand in the margin.[23] Did the scribe of ϵ venture the conjecture $\epsilon\ddot{\iota}\delta\eta$ in the margin?[24]

Of all the MSS written before the fourteenth century, there is one other that reads *hideas eide* like B_A: Cologne Dombibl. 191, s. xi (C_1), which we found in agreement with B_Aa on one of the errors which connect them against the other sincere witnesses. Moreover, C_1 like a has *artes* in §6 init. (before correction, and *partes* after correction, impossible to tell from microfilm by which hand); I take *artes* to be an emendation in a or possibly of ϵ, in which case it was changed back to *partes* by B_A (α read *partes*). C_1 reads all the errors defining α, so it cannot be a descendant of B as completed by B_A; nor is it a copy of a, since it does not read a's *Sonderfehler*. C_1 also shows a substantial number of the non-Boethian errors which the most sincere witnesses share against the heavily contaminated descendants of α. It was exposed to a medium degree of Boethian influence (see the table above). Overall C_1 is a very sloppy production with numerous omissions, which a corrector tried to heal (relying on a MS and, to a much higher degree than the original scribe, Boethius). This makes it impossible to say whether it is a third descendant of ϵ which has been garbled, or a direct descendant of α which has been exposed to cross-contamination from ϵ. It is unlikely, however, that the scribe of C_1 came up with *hideas eide* completely independently of ϵ.

B_A and a show the following errors peculiar to each (in §§1–46):

B_A wrong against a: §30 *dicendo* a: *docendo* B_A §32 *publica* a: *pullica* B_A §34 *quot* a: *quod* B_A *res est* a: *res* B_A §37 *deditum* a: *dicendum* B_A §42 *qua plurimum* a: *quam plurimum* B_A §43 *in urbe²* a: *in urbem* B_A §45 *habent vim* a: *habentium* B_A etc.

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[23] The fact that the words are in Greek letters seems insignificant, because the scribes of a in general reproduce Greek words more accurately than any of the other sincere MSS; cf. app. crit. The oldest correction layer in a often brings the text back in line with dL, evidently referring back to the exemplar of a in these cases (see below on a). Cf. §43 *adigere* in the margin of p. 80 (MS is not foliated), which in ink-colour as well as type of pen used is closest to *ΕΙΔΗ* in the margin of p. 48. There is no indication whether *ΕΙΔΗ* is to be taken as a correction, a supplement, or a *varia lectio*.

[24] The reader may want to compare what the scribes of a do to other Greek words in the *Topica*. While a good grasp of Greek is a rarity in northern France in the tenth century (but not quite so rare further south, notably in St Gallen, and in Italy), an ability to spell Greek words correctly in capitals is well documented; cf. Berschin (1980), 33–58, 159–75. We also know that tables were available which showed the Greek and Latin alphabets in juxtaposition. See also Bischoff (1967a) and (1967b).

a wrong against B_A: §1 *multos* B_A: *multo* a   §28 *sub eo* B_A: *sub eodem* a   §29 [*ut illud*] B_A: *uti illud* a   §30 *utroque verbo* B_A: *verbo* om. a   §31 *referri* B_A: *inferri* a   §40 *haec argumentatio* B_A : *hec arg.* a[pc]: *hoc arg.* a[ac] etc.[25]

I believe that the case for ϵ is strong enough; cf. also Di Maria, p. xxvii, who first noted how similar B_A and a are.

While the hand of B_A is—like that of B—of northern French origin, a was written in northern Italy according to Munk Olsen;[26] however, as Di Maria, p. xxvi with n. 51 notes, Bernhard Bischoff left a note in the Stiftsbibliothek at Einsiedeln, in which he stated that on his view a was written in north-eastern France. I shall return to geographical matters below. B_A was corrected by a hand different from that of the main scribe ($B_A{}^1$); it was this hand which adapted B_A to B by the addition of §28 -*tratuu(m) more aequitate consistat* on fo. 105^v and by the insertion of §73 *Ergo argumentatio . . . §74 necessitas fidem quae tu(m) a corporibus* at fo. 108^v bottom and the top of fo. 109^r.[27]

The text of the *Topica* in a was written by several scribes, each of whom, probably while the manuscript was still being produced, corrected the sections of text copied by the others. Many of these corrections bring a back in line with d and L. When B_A and a agree before correction but the corrector of a brings it back in line with dL, one of the following explanations will be correct. (i) The corrector may be referring back to the exemplar; it is not very likely that this exemplar (ϵ) included a large number of passages which first invited misreading by the scribes of both B_A and a, and then revealed themselves as actually in agreement with dL to the corrector of a, but ϵ may well have included *variae lectiones*, as a does. (ii) Reference to Boethius (e.g. §44 *venisset* and *quae*, §53 *simplex*, §64 *magis quam*, §66 *arbitrio*), and on p. 87 (§77) '*Hucusque commentum*' is added in the right margin in a corrector's hand clearly belonging to the oldest layer of corrections. (iii) Emendation. I have found no evidence to suggest that the corrector of a refers to a second MS. Since we cannot tell which explanation

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[25] On errors peculiar to B_A and reproduced in R see below; otherwise the errors peculiar to B_A and a respectively are occasionally replicated in other MSS, but at random.

[26] Munk Olsen (1982–9), i. 168 in turn relies on Bruckner (1943), 24.

[27] Cf. Di Maria, pp. xv f., who, however, is wrong in assuming that B^1 and $B_A{}^1$ are the same person; see Reinhardt (2002), 326–8 on this.

applies in any given case, I indicate agreement of B_A and a before correction by ϵ. As for the corrections in a, given their similarity, it seems preferable not to use different symbols for corrections in the first and second hand (normally *any* correction is signalled by a^{pc}, the original reading by a; in a few clear-cut cases, though, I have identified corrections in the scribe's hand).[28]

In what follows I shall set out the relationships among the *integri*; in doing this, I shall start from the least contaminated manuscripts, moving gradually to the more contaminated. Unsurprisingly, given the nature of the contamination, this will entail that I proceed more or less chronologically. Occasionally, however, I shall diverge from this pattern, e.g. when a manuscript depends on—or shows strong influence from—a manuscript which has just been discussed. Finally, I admit that I find it very difficult to make progress in the analysis of the relationships among the contaminated witnesses, which is, in my view and for the reasons set out above, a rather thankless task anyway.

Manuscripts b and c: St Gallen 830 (b; s. xi) and 854 (c; s. xi; incomplete, containing the text up to §70 *ut haec in comparatio*),[29] among the most sincere witnesses, agree against the other manuscripts at the following places (occasionally the same reading comes up in a later manuscript, as will be noted in square brackets):

§8   *rationem*: *orationem* bc [Valenciennes 406, s. x–xi]
§20 *A consequentibus—oportet* om. bc, b^{2mg}
§27 *cerni tamen*: *cerni autem* bc
§35 *genus hoc*: *hoc genus* bc [London Lambeth Palace 339, s. xii]
§38 *quem modo*: *quem ad modum* bc [A_{1a}]
§49 *contrariis omnibus contraria*: *contraria contrariis omnibus* bc
§50 ante *evenerit* hab. *quod* c, *quid* b
§51 *admonet autem*: *admonet* (*autem* om.) bc [Vat. Lat. 1722, s. xii]
§52 *locus* om. bc
§62 *appetitione*: *petitione* bc
§62 *voluntate*[3] om. bc
§66 *quid virum uxori quid uxorem viro*: *quid uxorem viro quid virum uxori* bc
§68 *aut maiora*: *maiora* (*aut* om.) bc

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[28] I am following Di Maria's policy in this; cf. his description of a (pp. xxvi f.).
[29] The text in c breaks off in such a way that its incompleteness cannot be due to the falling out of folios.

Since b and c share numerous errors peculiar to themselves,[30] they must derive from the same descendant of α; I called their common source ζ above. Since b and c can be *shown* to descend from α at one more remove than other witnesses to be brought into the picture in a moment, since the actual text which they have seems to be marginally worse than that in some other sincere manuscripts, and since c is incomplete, I shall not use them for the edition.

The next manuscripts to be considered are St Gallen 818 (s. xi; d); Leiden Voss. Lat. F70 (s. x; V); Leiden B.P.L. 90 (s. x ex.; L); Munich, Bayerische Staatsbibliothek Clm. 6367 (s. x; M); Paris nouv. aqu. lat. 1611 (s. x; P_1); and Berlin Lat. fol. 252 (s. xii; e). They do not form a group in the usual sense but are discussed here together because they show fewer Boethian errors than the witnesses further down on my list or are related to each other. All these manuscripts show errors of their own such that none can be assumed to be a copy of any of the other. The Parisinus is a conservative manuscript, which is not as carefully produced as, for instance, d or V; further, there is a distinct possibility that it derives from the same descendant of α as V.[31] This places the two at one further remove from α than other witnesses; in addition, using V would be awkward because it has a fairly substantial water damage. M is a manuscript with innovations, some of which are to be found in other parts of the tradition and appear here for the first time; the nature of these variants is such that they are likely to be conjectures, and because

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[30] b cannot simply be a copy of c, because c is incomplete and b is not. Nor can b be a partial copy of c; these are the errors peculiar to c in the first twenty paragraphs of the *Topica*, c is wrong against b at the following places: §1 *scribere* om.; §3 *debuerunt*: *debuerint*; §9 *evolvitur* om.; §10 *is est*: *esse*; §11 *effectis*: *affectis*; §12 *commutantur*: *mutantur*; §15 *usus* om.; §17 *inter se contraria*: *contraria inter se*; §18 *servorum*: *servulorum*; §18 *exulum*: *exsulo*. Nor can c be a copy of b; these are the errors peculiar to b in the first twenty or so paragraphs: §2 *tamen facile*: *tam facile*; §2 *mei causa quam quia tua*: *mei quam causa tua*; §4 *aut ingratum id aut*: *aut id ingratum fuisse aut*; §23 ante *hoc modo* habet *Crcō* b.

[31] P_1 and V omit against all other MSS the final *argentum est* in §53, read *eum* for *eumve* in §66, and omit *ex alio hoc* in §88. In addition, the two MSS omit *rerum* in §7 (the same error in only two other MSS, Paris Lat. 7709, s. xi and Bamberg Class. 13, s. xi), *argumenta* in §45 (the same error only in the text spliced with Boethius' commentary in Bamberg Class. 14, s. xi and Laur. San Marco 173, s. xi), read *argumentum* for *argumentum* in §53 (the same error only in the complete text in Vienna, Österreichische Nationalbibliothek Lat. 2269, s. xi), and omit *lege* in §95 (the same error only in Laur. San Marco 173, s. xi). A glance at the stemma provided below for the relationships between the texts in Bamberg Class. 14 and Laur. San Marco 173 will put these parallel occurrences in context.

of the age of M we have no evidence to suggest that they reflect input from another manuscript.[32] In the first, but more so in the second hand,[33] M occasionally shows variant readings which—in the oldest part of the tradition—are otherwise only to be found in b and c;[34] if M is accurately dated, this suggests that the scribe/first corrector of M had access to ζ (b and c are a century younger than M). M's innovations disqualify it as a manuscript from which to edit the text. This leaves me with d and L. Since they cannot be *shown* to derive from α at more than one remove, since they arguably have the best text in the group just surveyed, and since using only one direct descendant of α does not yield a sufficiently clear picture of what α read, I use both d and L. Manuscript e, which was used by Di Maria and whose merits have been called into question by Reeve (1998), 139, shows all α errors and some Boethian influence; more importantly, it agrees with d against the other witnesses at a significant number of places,[35] which, on balance, is more likely to be due to contamination than to actual dependence. In any case, the similarities of d and e represent good grounds for excluding e from any app. crit. to this text.[36]

I add that the analysis given above squares with what we know about the presumable places of production for these manuscripts (B_A northern France; a Italy according to Munk Olsen, northern France according to Bischoff; V France; P_1 France; M Germany; L Germany; d St Gallen; b St Gallen; c 'Germany or Switzerland' according to Scherrer 1875, 289). As always, any account of this sort is underdetermined by the evidence available, but it is possible to draw the following picture. In the second half of the

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[32] These include: §1 *C.* : *Censor*; §4 post *scripsisses* ad. *vel praestitisses*[masl]; §16 *an in tabulis debeatur*: *vel in tabulis aut in nominibus debeatur*; §27 post *vobis* ad. *iuris peritis*[masl]; §44 post *usus est* habet *agens de eo*[mamg] (cf. the commentary); §44 *instituti essent*: *instituit*; §44 post *venisset* habet *sed heres*.

[33] The hand of the first correction layer in M, while sufficiently different from the first hand, may well be almost contemporary with the latter.

[34] e.g. §1 *brevi tempore*: *brevi iam tempore*; §4 post *diutius* hab. *denegare*[sl]; §8 *rationem*: *vel o-*[masl].

[35] §2 *quam cum*: *cumque*; §5 *quidem mihi id*: *id quidem* (*mihi* om.); §18 *capite numquam*: *numquam capite*; §21 *legavit*: *delegavit*; §24 *tectum* ante *tegendi* transp. e, om. d; §28 *eius* post *abalienatio* om.; §39 *veniens*: *veniente*; *propiore*: *propius*; §42 *si cui*: *si is cui*; §47 *sequamur*: *quaeramus* d: *queramus* e; §50 *autem* om. (also London Lambeth Palace 339, s. xii); §50 *edicto*: *edicto populi* R; §51 ante *ad Ciceronem* hab. *vade*; §62 *et cito* om.; §63 *et latenter efficitur*: *quae latenter efficiatur*; §90 *deinceps* om.

[36] e contains the famous Cicero collection put together for Wibald of Corvey; see Reynolds (1983), pp. xxxvi, 83.

ninth century, a copy of α which became the common source of B_A and a was in the northern French library into which B returned after it had served as an exemplar for m (the hand of B_A is northern French too, but cannot be associated with Corbie).[37] A century later, manuscript a may have been copied from it there, if Bischoff is right about the hand, or somewhere in Italy, if Munk Olsen is right; it is not an unparalleled phenomenon in this period that a manuscript should move south to Italy from northern Europe.[38] However, I have found no surviving descendants of a which would shed more light on this (but I have not checked the fifteenth-century manuscripts in this respect). The common source of V and P_I can be located in France, and two other descendant of α must have reached St Gallen, the one which served as exemplar for d, and the common source of b and c (ζ). However, while b is a product of the scriptorium in St Gallen, c cannot be assigned to this place on palaeographical grounds, and, as argued above, we have reason to assume that ζ was available to whoever produced M a century before b and c were produced. It would be unsafe to assume that α was located in Germany on the grounds that M and L, which cannot be *shown* to descend from α at more than one remove (though this is virtually certain for M, given the nature of the text it has), were both written in Germany. 'In the 840s Lupus of Ferrières was interested in a papyrus manuscript of the commentary [sc. Boethius'] owned by St. Martin's Tours . . . Did it include the text of Cicero?'[39]

Four other manuscripts with few Boethian errors (see the list above) are Bamberg Class. 13 (B_2, s. xi); Berlin Lat. 2° 603 (B_3, s. xi); Oxford Bodleian Library Laud. Lat. 49–I (O_I, s. xi); and the complete text (as opposed to that spliced with Boethius' commentary) in Milan, Biblioteca Ambrosiana A177 inf. (A_{Ia}, s. xiii). In all these there were correct readings to be found where the most sincere witnesses read errors, and an argument has to be provided why they should owe these virtues as well as their vices to Boethian influence. For all of them it holds true that they do not provide a reading which is correct, which is not to be found in the most sincere witnesses, and which cannot be the result of Boethian

[37] P. L. Schmidt (1974), 115 n. 14.
[38] Reynolds (1983), p. xxix.
[39] Reeve (1983), 130 n. 31, referring to Lupus, *Ep.* 16. 3 Marshall. The majority of the oldest *integri* contain both the *Topica* and Boethius' commentary.

influence or emendation. In general, all four are fairly carelessly written with a high number of individual errors, minor omissions, etc. And while $B_2B_3O_1$ are rather unsophisticated productions, A_{1a} shows numerous interesting readings which are peculiar to it (e.g. §9 *evolvitur*: *explicatur*; §38 *coniugatione*: *constructione*; §44 *instituisset*: *constituisset*); against the background of the overall quality of the text, there is no reason to regard these as anything other than conjectures. It is, however, evident that some thinking went into the writing of A_{1a}, which would explain the observation made above concerning the increased number of correct readings in A_{1a} where the most sincere witnesses read errors.

Two groups of manuscripts from this upper part of the list seem to be defined by two *prima facie* glaring errors. The first group, consisting of $B_2B_3A_{1a}$, Oxford Merton College 309–iii, s. xi (O_{2a}), Cologne Dombibl. 191, s. xi (C_1), all omit §39 *eius generis formae loci vitio et manu nocens* (the Ambrosianus retains *eius*, however). The second group, consisting of P_1VO_1, Paris Lat. 7712, s. xi–xii (P_6), Vatican Borgh. 131, s. xiii (B_5), Munich 14272–III, s. xi (M_1), all omit §19 *Ab antecedentibus autem et consequentibus et repugnantibus hoc modo*. If these were stemmatically relevant readings, they would obviously establish two further hyparchetypes, and in particular they would place P_1 and V at one further remove from α. However, both errors are such that several scribes could make them independently from each other, and within the two groups the manuscripts in question are not connected by further errors peculiar to them.

As to the middle section of our list, an actual group of manuscripts consists of Valenciennes 406 (V_2, s. x–xi), Bamberg Class. 14 (B_1, s. xi), Vienna 2269 (V_1, s. xi), and Florence Laur. San Marco 173 (F_3, s. xi). Both the Bamberg and the Vienna manuscript include two texts (one complete, one spliced section by section with Boethius' commentary and ending where the latter ends; the four texts are referred to as B_{1a}/B_{1b} and V_{1a}/V_{1b} respectively). With respect to V_2, B_1, and V_1, the relationships of these manuscripts to each other have been established by Di Maria, pp. xxi–xxiii and xxv f.; it remains only for me to bring F_3 into the picture (see opposite).

I reproduce Di Maria's list of errors establishing the relationship between V_2, B_{1a} and B_{1b},[40] and reserve a separate footnote for

[40] Errors shared by all three texts (in §§1–45) and defining *γ*: (i) §6 *appellant*: *appellabant*; (ii) §14 *habentur*: *habebantur*; (iii) §28 *quod*: *quae*; (iv) §30 *formae*: *for-*
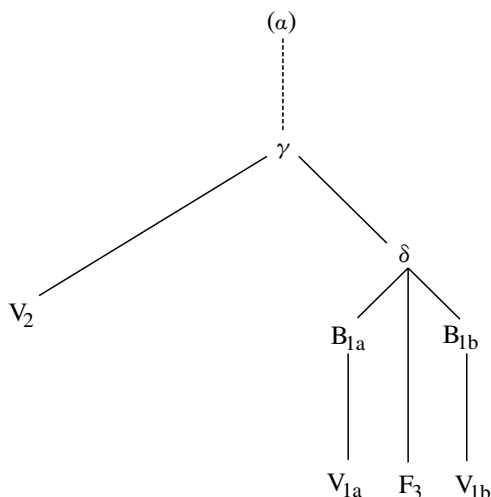
F_3.[41] I am not in a position to do more for the manuscripts that show a medium degree of contamination by Boethius.

There remain the manuscripts at the bottom of the list, i.e. those showing strong influence from Boethius. A bad manuscript of this type would show some good readings (where the archetypal reading has been corrected through Boethius) in juxtaposition with interpolations, wild conjectures, and the like; a good manuscript of this type would have all the virtues of the manuscripts of the previous type, but exhibit restraint with respect to conjectural

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marum; (v) §31 *secernenda*: *discernenda*; (vi) §33 *saepe*: *semper*; (vii) §45 *etiam*: *etiam sunt*; (viii) §45 *similitudinis*: *similitudines*; (ix) §45 *habent vim*: *habentium* (also in B_A). Errors connecting B_{1a} and B_{1b} against V_2 (in §§1–52) and defining §: (i) §28 *fin.*: *nihil*: *non*; (ii) §29 *a communitate*: *communitate*; (iii) §30 ante *utroque* habent *in*; (iv) §31 *conturbatus*: *conturbat*; (v) §36 *mulus* om.; (vi) §36 *legitimo* om.; (vii) §40 *persequare*: *persequor ego*; (viii) §48 στερητικά: ctetika; (ix) §51 *videare*: *videar*; (x) §51 *non* om. B_{1a} cannot simply be a copy of B_{1b}, for the latter is incomplete while the former is not; nor can B_{1a} be a partial copy of B_{1b}, for B_{1b} has *Sonderfehler* (e.g. §4 *optimus*: *optimi*; §13 *ducitur*: *argumentum ducitur*); nor can B_{1b} be a copy of B_{1a}, for it has the following *Sonderfehler*: §10 *aliquod* om.; §12 *argumentum* om.; §71 *ei* om.; §74 *quae* om.

[41] Of the errors defining γ (see previous n.), F_3 has nos. (i), (v), and (ix); of those defining δ, it has all except (i) and (v); it shows none of the errors peculiar to B_{1a}. Because the V_2 errors missing in F_3 are fairly easy to correct, I have opted for the above stemma (rather than a less clear-cut positioning of F_3 outside the stemma which would put the γ and δ errors in F_3 down to contamination).

activity. The latter feature would be apt to disperse doubts as to where the good readings of these manuscripts come from, so long as it was not perceived on what scale the Cicero tradition is contaminated with readings from Boethius' commentary. The best of these manuscripts are Chartres 498 *deperditus* (C, s. xii), Florence Laur. San Marco 166 (F, s. xii), and Vatican Ottob. Lat. 1406 (O, s. xi); Di Maria used all three for his edition. I reproduce the list of agreements between them against the sincere witnesses as drawn up by Di Maria, p. xxiv (which of these readings are likely to derive from Boethius can be discovered through a comparison of this list with the Boethian errors noted above):

§1 *satis* ante *digniores* posuerunt CF
§6 *habeat*: *habet* CF
§6 *inveniendi*: *inveniendi vero* FO (C non legitur)
§10 post *est* habet *enim* FO
§13 *quoad*: *quo ad* CO
§15 *eae*: *exesae* CO (*exese* O): *hae exesae* F
§20 *conubium*: *conubii ius* FO
§22 *sed qui*: *at si quis* CF
§27 *si agnationem* om. CO
§28 *consistat*: *consistit* FO
§30 ante *formae* habent *vero sunt* FO
§31 *generis et*: *generis* FO
§31 post πρόλημψιν habent *dicunt* CFO
§31 post *cuiusque* habent *forma* FO, *forme* C
§33 post *partium* habent *enim* FO
§34 *vocant*: *vocantur* CO
§35 *appellant*: *vocant* CF
§36 *frenos*: *frena* CF
§37 ante *ex* habent *et* FO
§37 *redisse videantur*: *videantur redisse* CF
§39 post *propiore* habent *loco* CFO
§38 *iugata*: *coniugata* FO
§39 *quorum alterum . . . alterum*: *quarum altera . . . altera* FO
§43 *adigere*: *addicere* FO
§44 ante *qui* habent *agens de eo* FO
§44 *mortuus*: *moreretur* CO
§44 iuxta *hereditatem* habent *secundus heres* FO (ante F, post O)

These agreements set apart CFO from the sincere witnesses; however, many of these readings are to be found in manuscripts showing strong Boethian influence. And while this part of the

tradition resists further analysis, it is worth mentioning that from fairly early on manuscripts exist which show a large number of these errors; Paris Lat. 7710-i (s. x), for instance, anticipates a number of errors of CFO and C in particular. There may be a common source for the Parisinus and C, but all this is too unclear and too irrelevant to the constitution of the text to be dealt with in detail here.

Two things remain to be done. Some oddities need to be discussed, and a list of the manuscripts with missing α errors (including those dating from the Renaissance) has to be provided. The oddities are Vat. Reg. Lat. 1405 (R, s. xi) and Oxford, Merton College 309-ii (s. xii); the latter is a fragment, covering only §73 *persona autem non qualiscumque* until the end of the text.[42] R contains an unusual mixture of works, namely texts by Gerbert and Bede, and the *Somnium Scipionis*; but this may not be original. It is more remarkable that it has only one of the eight α errors given above (§6 *eam scientiam*); further, it shows only very moderate Boethian influence (see the list above). That it is unlikely that R descends from a second complete copy of the text which survived into the ninth century emerges from the following agreements with B:

§10 *elicitur*: *agitur* βR
§11 *forma*: *formula* βR
§23 *auctoritas*: *auctoritasque* βR
§75 *imprudenter*: *imprudentes* βR
§77 *et ornatus*: *ornatus* βR
    deinceps: *deinde* βR
    aerii: *aeris* βR
§78 *quos studio quos doctrina*: *quos doctrina quos studio* βR
§82 *in qua de commutatione*: *in quadam mutatione* B: *in quantam mutatione* R [developed out of B's reading]
    sit necne sit: *sitne necne sit* βR
    ecquidnam: *etquidnam* B¹R
    commutatione: *mutatione* βR
§83 *et eodem*: *est eodem* βR
[§83 β read *sit* before *adsentator*, R omits *avarus qualis*—the situation in β, unlike the correct text, would allow for a *saut du même au même*]
§84 *iniquo*: *de iniquo* βR

[42] Ox. Merton 309-ii is bound into one codex with Merton 309-iii, which is a century older than 309–ii, spliced with Boethius' commentary, and ends with §76 *quoddam multitudinis testimonium*. If 309–ii was supposed to complete the text in 309-iii, it is strange that 309-ii does not begin where 309-iii ends.

§86 init. *actionis*: *de actionis* βR
§87 *altero*: *de altero* β [and some contaminated MSS] R
§88 *adiunctis etiam is*: *adiuncti etiam ei* BR
§88 *et effectis*: *et ex affectis* βR
§89 *fugiendoque*: *fugiendove* βR
§90 init. *iniquo*: *de iniquo* βR
§90 *duas* om. βR
§93 *quoniam*: *quae* β [and some contaminated MSS] R
§94 *deque*: *deve* βR
§94 *contingit*: *continget* βR
§94 *laudetur*: *laudatur* β [and some contaminated MSS] R
§95 *vocant*: *appellant* βR
§95 *alii quasi*: *aliqui* B^{1}R
§100 *ratione*: *oratione* βR

Further, R agrees in error with α *passim*, and also shows several of the *Sonderfehler* of B_A against abcdLMVP$_1$:

§33 *cuique*: *cuicumque* B_AR
[§34 *res est enim infinitior*: *est* om. B_A, post *infinitior* transp. R]
§49 *velut*: *vel* B_AR
§57 *fere*: *ferme* B_A^{pc}R: *ferre* B_A^{ac}
§63 *inest*^{1}: *est* B_AR

And while R shows little Boethian influence, it has been exposed to some horizontal transmission; I list some errors which are also found elsewhere in the tradition:

§14 *habentur*: *habebantur* Rγ (et al.)
§28 fin. *nihil*: *non* Rδ (et al.)
§29 *ut haec*: *ut hoc* RγF (et al.), cf. *B* p. 328. 27
§29 *confectum*: *confecta* Rγ (et al.)
§30 *formae*: *formarum* Rγ (et al.)
§31 *conturbatus*: *conturbat* Rδ (et al.)
§39 *persequare*: *persequor ego* Rδ (et al.)
§65 *consilia*: *consilio* γ (et al.)

On balance, it seems more likely that R is a descendant of B as completed by B_A which, for better or worse, has been exposed to some cross-contamination, than that it is a descendant of α which has been contaminated with readings from B/B_A. The very existence of manuscripts like R, which must have had some influence on the tradition just like all other witnesses, may serve as a back-up argument for cases where I should explain missing α-errors as the result of correction rather than the result of vertical transmission.

What licenses us to assume this kind of influence is not just general plausibility, but actual manuscript evidence. The fragment which is Oxford Merton 309-ii (s. xii) reads *instruuntur* in §82, but does show all other α errors where it is available; in addition, it shows the following errors otherwise peculiar to β:

§77 *deinceps*: *deinde*
§78 *quos studio quos doctrina*: *quos doctrina quos studio*
§82 *commutatione*: *mutatione*
§89 *fugiendoque*: *fugiendove*
§90 init. *iniquo*: *de iniquo*
§95 *vocant*: *appellant* βR

I shall now name those *integri* with missing α errors and say what can be said about them in the light of the analysis above; I count eleven *integri* where one α error is missing, three where two α errors are missing, and one where three are missing.

Paris nouv. acq. lat. 1611, s. x (P₁); reads §19 *factum est*; has only been used by one editor so far, Riccio Coletti; if it is on the evidence set out above plausible to assume that this MS and V derive from the same descendant of α, then there is reason to believe that the error was corrected in P₁(V reads *factum sit*).

Klosterneuburg 1098–iii, s. xii; reads §19 *factum est*; has never been used by an editor.

Paris Lat. 4696, s. xii; reads §19 *factum est*; has never been used by an editor.

Paris Lat. 7711, s. x; reads §19 *factum est*; has never been used by an editor.

Valenciennes 406, s. x–xi (V₂); reads §19 *factum est*; cf. the stemma above: δ read *factum sit*. So here, too, there is further reason to assume that *factum est* in V₂ is due to correction.

Munich Lat. 14272-iii, s. xi; reads §19 *factum est*; has never been used by an editor.

Frankfurt Barth. 112, s. xi; reads §19 *factum est*; has never been used by an editor (and breaks off after §76 *quoddam multitudinis testimonium*).

Paris Lat. 7712, s. xi–xii; reads §97 *moratae*; has never been used by an editor.

Vat. Lat. 8591, s. xi; reads §97 *moratae*; has never been used by an editor.

Vat. Borgh. 131, s. xiii; reads §97 *moratae*; has never been used by an editor.

Laur. San Marco 173, s. xi (F₃); reads §88 *huius*; has never been used by an editor; cf. the stemma above: δ read *huic*.

London, Lambeth Palace 339, s. xii; reads §19 *factum est* and §97

moratae; has never been used by an editor.

Ambros. A 177 inf., s. xiii; reads §88 *hius* and §90 *sui cuique*; has never been used by an editor. See the discussion of this MS above.

London, British Library Burney 275, s. xiv; reads §19 *factum est* and §98 *moratae*; has never been used by an editor.

Vienna 2269, s. xi (V₁); reads §88 *huius*, §90 *sui cuique* and *convenientis* (sic). The last reading mentioned seems to suggest that a MS reading *conventis* has been compared; the MS cannot have got these readings through vertical transmission, cf. the stemma above.

All later manuscripts, including those dating from the fifteenth and sixteenth centuries, were submitted to the following procedure: if a manuscript showed all eight α errors, I did not enquire further. If one or more of these errors were not in evidence (and there is no manuscript in which more than two α errors are missing), I first checked the manuscript for contamination through Boethian errors by going through the list set out above, and then checked all the passages where the uncontaminated witnesses agreed in error against the later contaminated witnesses. If a manuscript had shown few Boethian errors but many correct readings at places where the sincere witnesses agree in error against the contaminated manuscripts, I should have enquired further. However, since this was not the case, all that remains to be done is to name those *recentiores* with missing α errors.

Ambros. E 14 inf., s. xiv; reads §19 *factum est* and §97 *moratae*; has never been used by an editor.

Vat. Lat. 1723, s. xv; reads §90 *sui cuique*.

Florence, Biblioteca Nazionale Centrale II. i. 64, s. xv; reads §98 *moatae* (sic).

Florence, Biblioteca Medicea Laurenziana Conv. Soppr. 475, s. xv; reads §98 *moratae* (*moderatae*ˢˡ).

Venice, Marcianus VI 65 (2847), s. xv; reads §98 *moratae*.

Munich 812, s. xv; reads §98 *moratae*.

Vat. Chigianus H VI 186, s. xv; reads §98 *moratae*.

Vat. Lat. 2110, s. xv; reads §98 *moratae*.

Vat. Urb. Lat. 318, s. xv; reads §88 *huius*.

Vat. Urb. Lat. 328, s. xv; reads §88 *huius*.

Paris Lat. 7703, s. xv; reads §19 *factum est*.

Vat. Lat. 3079, s. xv; reads §19 *factum est*.

Vat. Lat. 2902, s.xv; reads §19 *factum est*.

Vat. Lat. 1476, s. xv; reads §19 *factum est*.

Vicenza 136 (2, 8, 19), s. xv; reads §19 *factum est*.

Vat. Lat. 1712, s. xv; reads §19 *factum est* and §98 *moratae*.
Vat. Ottob. Lat. 1996, s. xv; reads §19 *factum est* and §98 *moratae*.

THE APPARATUS CRITICUS

The two Leiden manuscripts A and B as well as some of the oldest *integri* show some archaic forms (mostly superlatives), which are recorded in the apparatus. General convention is not to print these unless the author in question is known to be deliberately archaizing. Further, Cicero himself is likely to have wavered between different spellings so that conservatism, even if it was practically possible, would lead to inconsistency. And there is at least one instance where the stemma shows that an archaic spelling has been secondarily introduced.[43] I have therefore suppressed archaic spellings; of course archaic forms like §66 *agier* are a different matter.

Another question of editorial policy is the matter of the pronouns *hic* and *is*, which, esp. in the dative and ablative plural, are frequently confused (nor are oddities like *hisdem* entirely absent). This confusion, which is widespread in medieval manuscripts, has been studied by Ziegler (1897), and discussed by Pohlenz in the preface to his Teubner edition of *Tusc.* (1918), pp. xxi f. as well as Di Maria 56–7. Given the degree of confusion in evidence, it seems reasonable first to determine independently from the manuscript evidence which pronoun should be used in a given passage,[44] and then to match this with the manuscript evidence. I have tried to be consistent in the spelling, printing *iis* where the manuscripts may suggest *eis* or *īs*; here too Cicero himself may have been inconsistent. When one or two reputable witnesses agree against the rest on a correct or wrong reading, this may be significant, but otherwise one has to write what makes sense and just report the evidence.

In the app. crit. and the critical appendix, I have tried to be concise by reporting *lectiones singulares* in a negative fashion, but whenever there is even a slight chance of unclarity, I have used the positive format. The critical appendix is meant to give the reader a picture of all the readings exhibited by the manuscripts used. With respect to A, B and a, the reader can get this information from Di Maria as well, but his edition may be inaccessible, in particular

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[43] §58 *proxumus* ε.
[44] In this I relied on K.–St. i. 619–21; in doubtful cases there will be a note in the commentary.

outside Europe. For d and L full information on their readings is given here for the first time.

For convenience, I repeat here that for a given reading the citation of a manuscript other than those from which I edit the text means that one is looking at a passage where an archetypal (or hyparchetypal) reading has been corrected, and the manuscript cited is the earliest to show this correction. Where the symbol 𝓑, together with a manuscript otherwise not used, is cited as source, the passage has (in my view) been corrected with Boethius' help, and I name the earliest witness for the correction. 'Cf. 𝓑' accompanies readings which are found in one or more of the manuscripts from which the text is edited *and* in Boethius. Sometimes it is quite likely that this agreement is due to actual contamination from the latter (e.g. §10 *agitur β*), sometimes the agreement seems to be coincidental. I have tried to be unbiased and have reported every resemblance I could find; any other policy could be seen as suppression of evidence in this particular edition.

As to the symbol ς in the commentary, I shall use it to refer to readings of *integri* (more than one manuscript, but a different set of manuscripts in every instance) which I take to be due to contamination from Boethius or to conjecture. Usually, some of these witnesses can be identified through reference to Di Maria. I shall discuss only those readings which were adopted by earlier editors or may otherwise seem to merit consideration.

I have reparagraphed the text, and have tried to punctuate lightly.

Sigla

A	Leidensis Vossianus Lat. F84, s. ix
	A^1 Corrector librario aequalis
B	Leidensis Vossianus Lat. F86, s. ix
	B^1 Corrector librario aequalis
β	Consensus codicum AB
B_A	Folia additicia a codice B in A translata, s. ix
	B_A^1 is qui folia additicia interseruit et correxit, s. ix
a	Einsiedlensis 324, s. x^{ex}
ϵ	Consensus codicum B_Aa
d	Sangallensis 818, s. xi
L	Leidensis B.P.L. 90, s. x^{ex}
α	Consensus codicum adL (B_A)
$\mathcal{B}$	Boethii commentarius in Ciceronis Topica
ς	Consensus nonnullorum codicum contaminatorum
b	Sangallensis 830, s. xi
c	Sangallensis 854, s. xi
ζ	Consensus codicum bc
M	Monacensis Lat. 6367, s. x
V	Leidensis Vossianus Latinus F70, s. x
P_1	Parisinus n.a.lat. 1611, s. x
η	Consensus codicum VP_1
e	Berolinensis Lat. 2° 252, s. xii
B_2	Bambergensis 13, s. xi
B_3	Berolinensis Lat. fol. 603, s. xi
A_{1a}	Ambrosianus A177 inf., s. xiii (textus continuus)
O_1	Bodleianus Laud. Lat. 49, s. xi
C_1	Coloniensis 191, s. xi
R	Vaticanus Reginensis Lat. 1405, s. xi

COMPENDIA

exp.	expunxit
^{pc}/p.c.	post correctionem
^{ac}/a.c.	ante correctionem

m	manus
ma	manus altera
sl	supra lineam
vl	varia lectio
mg	in margine

In hoc conspectu ii dumtaxat codices laudantur quorum lectiones vel in apparatu critico vel in appendice critica vel in commentario citantur.

M. Tulli
Ciceronis
Topica

Topica

1 **1** MAIORES nos res scribere ingressos, C. Trebati, et his libris
quos brevi tempore satis multos edidimus digniores, e cursu ipso
revocavit voluntas tua. Cum enim mecum in Tusculano esses et in
bibliotheca separatim uterque nostrum ad suum studium libellos
5 quos vellet evolveret, incidisti in Aristotelis Topica quaedam, quae
sunt ab illo pluribus libris explicata. Qua inscriptione commotus
continuo a me librorum eorum sententiam requisisti; **2** quam cum
tibi exposuissem, disciplinam inveniendorum argumentorum, ut
sine ullo errore ad ea ratione et via perveniremus, ab Aristotele
10 inventam illis libris contineri, verecunde tu quidem ut omnia, sed
tamen facile ut cernerem te ardere studio, mecum ut tibi illa
traderem egisti. Cum autem ego te non tam vitandi laboris mei
quam quia tua id interesse arbitrarer, vel ut eos per te ipse legeres
vel ut totam rationem a doctissimo quodam rhetore acciperes
15 hortatus essem, utrumque, ut ex te audiebam, es expertus.

3 Sed a libris te obscuritas reiecit; rhetor autem ille magnus
haec, ut opinor, Aristotelia se ignorare respondit. Quod quidem
minime sum admiratus eum philosophum rhetori non esse cogni-
tum, qui ab ipsis philosophis praeter admodum paucos ignoretur;
20 quibus eo minus ignoscendum est, quod non modo rebus iis quae
ab illo dictae et inventae sunt allici debuerunt, sed dicendi quoque
incredibili quadam cum copia tum etiam suavitate. . . .

1–22 suavitate $B_A adL$

8–9 *Boethius 271. 41–3* ut sine ullo errore ad argumentorum inventionem . . .
veniretur   *272. 3–4* ut sine ullo labore . . . ad ea (sc. argumenta) mens, sed quadam
via ac ratione perveniat   17 *272. 15–6* illa sese Aristotelica ignorare confes-
sum   18–19 *272. 19–20* is philosophus a rhetore nesciretur

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1 his *dL*: iis ϵ 9 ea *edd.*, *cf. B*: eam α ratione et *Lambinus*: rationem α
perveniremus α: perveniretur B_A^{pc}, *cf. B*   12 mei causa *d*   17 Aristotelia
B_A: -ca $adB_A^{1}L$, *cf. B*   19 ignoraretur a^{vl}, *cf. B*   20 iis ϵ: his *dL*

1 I HAD undertaken to write a work on a larger subject, my dear Trebatius, and more in keeping with those of which I have just produced several in a short time, when your desire recalled me in mid-course. For when you were with me at my Tusculan villa and each of us unrolled in the library books of his choice for study, you happened upon something called the 'Topics' of Aristotle, set out in several books. Prompted by this title, you at once asked me what these books were about; **2** when I had explained it to you, that they contained a theory invented by Aristotle of how one might discover arguments methodically and without fear of error, you pleaded— with your usual tact, but nevertheless in a such way that I could see you were burning with zeal—that I might pass it on to you. But when I had encouraged you—not because I wanted to avoid a burden for myself but because I saw that it was in your own interest—either to read them for yourself or to receive full instruction on this from a certain very learned teacher of rhetoric, you tried both, as you told me.

3 But you were put off the books by their obscurity; and the eminent rhetorician replied, I believe, that he did not know this Aristotelian material. I was not surprised at all that a rhetorician was unfamiliar with a philosopher who is not known to the philosophers themselves, barring a few exceptions. It is all the harder to forgive the philosophers, because they should have been attracted not only by the things he had said and thought out, but also by an incredible richness and sweetness too of his expression.

1   **4** Non potui igitur tibi saepius hoc roganti et tamen verenti ne mihi
gravis esses—facile enim id cernebam—debere diutius, ne ipsi iuris
interpreti fieri videretur iniuria. Etenim cum tu mihi meisque multa
saepe cavisses, veritus sum ne, si ego gravarer, aut ingratum id aut
5   superbum videretur. Sed dum fuimus una, tu optimus es testis quam
fuerim occupatus; **5** ut autem a te discessi in Graeciam proficiscens,
cum opera mea nec res publica nec amici uterentur nec honeste inter
arma versari possem, ne si tuto quidem mihi id liceret, ut veni Veliam
tuaque et tuos vidi, admonitus huius aeris alieni nolui deesse ne
10   tacitae quidem flagitationi tuae. Itaque haec, cum mecum libros
non haberem, memoria repetita in ipsa navigatione conscripsi tibi-
que ex itinere misi, ut mea diligentia mandatorum tuorum te quo-
que, etsi admonitore non eges, ad memoriam nostrarum rerum
excitarem. Sed iam tempus est ad id quod instituimus accedere.
15   **6** Cum omnis ratio diligens disserendi duas habeat artes, unam
inveniendi alteram iudicandi, utriusque princeps, ut mihi quidem
videtur, Aristoteles fuit. Stoici autem in altera elaboraverunt;
iudicandi enim vias diligenter persecuti sunt ea scientia quam
διαλεκτικὴν appellant, inveniendi artem quae *τοπικὴ* dicitur, quae
20   et ad usum potior erat et ordine naturae certe prior, totam reli-
querunt. **7** Nos autem, quoniam in utraque summa utilitas est et
utramque, si erit otium, persequi cogitamus, ab ea quae prior est
ordiemur. Ut igitur earum rerum quae absconditae sunt demon-
strato et notato loco facilis inventio est, sic cum pervestigare
25   argumentum aliquod volumus, locos nosse debemus; sic enim
appellatae ab Aristotele sunt eae quasi sedes, e quibus argumenta
promuntur. **8** Itaque licet definire locum esse argumenti sedem,
argumentum autem rationem quae rei dubiae faciat fidem.
Sed ex his locis in quibus argumenta inclusa sunt alii in eo ipso
30   de quo agitur haerent, alii assumuntur extrinsecus. In ipso tum ex
toto, tum ex partibus eius, tum ex nota, tum ex iis rebus quae
quodam modo affectae sunt ad id de quo quaeritur. Extrinsecus
autem ea ducuntur quae absunt longeque disiuncta sunt.

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1 Non potui–33 *AB* (-tate. Non p. *B*) *adL*

3–4 *272*. *32–3* quod vel ipsi vel iis, quos ipse defenderit, plura cavis-
set   15 *270*. *29–30* Quum omnis ratio diligens disserendi duas habeat partes
(*cf*. *274*. *17*, *276*. *12*)

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4 cavisses *B*: scripsisses *ω*   ne si *A¹Ba*ᵖᶜ*d*: nisi *AaL*   5 optimus *α*:
optumus *β*   8 ne si *β*: nisi *α*   10 tacitae *βaL*: tacite *B¹d*   15 artes
βa: partes *dL*, *cf*. *B*   18 eam scientiam *α*   19–20 quae et *α*: quaeque et *β*
33 ducuntur *A¹B¹*: dicuntur *βα*

4 So I felt I could not remain in your debt any longer—your request was made repeatedly, yet I could easily see that you were afraid of being importunate—and I did not want the interpreter of the law to be himself the victim of a legal offence. And because you had often drafted things for me and my family, I was afraid that, if I were reluctant in this matter, this would come over either as ungrateful or as arrogant. As long as we were together, though, you can testify better than anybody how busy I was; **5** but when I had parted with you on my way to Greece, because neither the state nor my friends would use my help, and I could not stay in a country at war without losing face (assuming it had been possible without danger for my life), I did not want to frustrate your demand longer, even if it was not put into words; for when I came to Velia and saw your estate and your family, I was again reminded of my debt. So I have written this up from memory while at sea, for I had no books with me in the midst of my travels, and have sent it to you so that, by showing diligence in carrying out *your* requests, I might alert *you*, although you do not need a reminder, to keep my affairs in mind. But now it is time to move on to what we have undertaken to do.

6 All methodical treatment of rational discourse involves two skills, invention and judgement; Aristotle came first in both, it seems to me. The Stoics on the other hand concerned themselves with one of the two skills only; that is, they pursued ways of judging (arguments) diligently by means of that science which they call dialectic. The skill of invention, however, which is called *topice* and which was both of more immediate practical use and certainly prior in the order of nature, they completely neglected. **7** But since both skills are of the utmost usefulness and since we intend to pursue both, if time allows we shall begin with that which is prior. Just as it is easy to find hidden things, once their hiding-place has been pointed out and marked down, so we need to know the right Places if we wish to track down a certain argument; 'Places' is the name Aristotle gave those locations, so to speak, from which we can draw arguments. **8** Therefore we may define a Place as the location of an argument, and an argument as a reasoning that lends belief to a doubtful issue.

But of those Places in which the arguments are contained, some are attached to the subject under discussion itself, others are drawn from without. Attached to the subject under discussion are arguments drawn from the whole, from its parts, from etymology, and

1 **9** Sed ad id totum de quo disseritur cum definitio adhibetur, quasi involutum evolvitur id de quo quaeritur; eius argumenti talis est formula: Ius civile est aequitas constituta iis qui eiusdem civitatis sunt ad res suas obtinendas; eius autem aequitatis utilis cog-
5 nitio est; utilis ergo est iuris civilis scientia.

10 Tum partium enumeratio quae tractatur hoc modo: Si neque censu nec vindicta nec testamento liber factus est, non est liber; neque ulla est earum rerum; non est igitur liber.

Tum notatio, cum ex verbi vi argumentum aliquod elicitur hoc
10 modo: Cum lex assiduo vindicem assiduum esse iubeat, locupletem iubet locupleti (is est assiduus, ut ait L. Aelius, appellatus ab aere dando).

11 Ducuntur etiam argumenta ex iis rebus quae quodam modo affectae sunt ad id de quo quaeritur. Sed hoc genus in pluris partes
15 distributum est. Nam alia coniugata appellamus, alia ex genere, alia ex forma, alia ex similitudine, alia ex differentia, alia ex contrario, alia ex coniunctis, alia ex antecedentibus, alia ex consequentibus, alia ex repugnantibus, alia ex causis, alia ex effectis, alia ex comparatione maiorum aut parium aut minorum.

20 **12** Coniugata dicuntur quae sunt ex verbis generis eiusdem. Eiusdem autem generis verba sunt quae orta ab uno varie commutantur, ut sapiens sapienter sapientia. Haec verborum coniugatio συζυγία dicitur, ex qua huius modi est argumentum: Si compascuus ager est, ius est compascere.

1–24 *BAadL*

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1 *287. 31–3* ducimus a toto locum argumenti, quando totum illud . . . definitione complectimur   *319. 29–30* Nam si definitio est, qua explicatur id, quod definitur, quid sit   9 *291. 4* nomen quoque in ipso esse, de quo agitur   10 *291. 7– 8* Lex igitur Aelia Sentia (*cf. 291 passim*)   *291. 39–41* Nisi enim is qui assiduus locuples sit, non consequitur ut, quum lex Aelia Sentia assiduum assiduo vindicem esse iusserit, locupletem iusserit locupleti   17 *293. 11* ex coniunctis

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1–2 disseritur–evolvitur *om. B, add. B*¹ ᵐᵍ   1 cum *A*¹*B*¹, *cf. B*: tum *βα   post* adhibetur *hab.* qua *α, cf. B*   9 elicitur *α*: agitur *β, cf. B*   10 *post* lex *add.* elia *B*ₐ¹ *in B* (*cf. Reinhardt 2002, 327*): helia sentia *addendum in mg. a*: elia sentia lex *d*   11 locupleti *is est cod. Ox. Mert. 309–iii, s. xi* (*cf. B*?): locupletis est *β* (*om.* is, *add. B*¹): locuples is est *a* (locupleti locuples is est *a*ᵐᵃˢˡ): locuples est *dL*   11 L. Aelius *Wilkins*: laelius *βα*   14 sunt *ante* quodam modo *l. 13 transp. β*   15 est *B*¹*A*¹ˢˡ*α*: st *B*: *om. A* 16 formula *β*   17 coniunctis *βα, cf. B* : adiunctis *ς, edd.*   24 est¹ *β*: fit *α*

from those things which are somehow related to the subject at issue. Arguments drawn from outside are those which stand apart and are clearly dissociated.

9 But when a definition is applied to the entire subject under discussion, then that which is at issue and as it were wrapped up is unfolded. The standard phrasing of this pattern of argument is as follows: The civil law is equity put in place for the benefit of those who are (citizens) of the same state, for the purpose of securing the possession of what is theirs. But the knowledge of this equity is useful. Therefore, the science of the civil law is useful.

10 Next, the enumeration of the parts (sc. of the whole), which is handled in the following way: If someone has not been freed by either having his name entered in the census-roll or by being touched with the rod or by a provision in a will, then he is not free. None of these applies to the individual in question. Therefore he is not free.

Then, etymology; this is when an argument is drawn from the meaning of a word in this way: Since the law decrees that only an *assiduus* should stand in for an *assiduus*, it decrees that only a wealthy man should stand surety for a wealthy man (for the *assiduus*, as L. Aelius says, is so called from the paying of money).

11 Arguments are also derived from those things which are somehow related to the subject at issue. But this type has many subdivisions. For some arguments we call 'conjugate', some 'from the genus', some 'from the species', some 'from similarity', some 'from the difference', some 'from the opposite', some 'from those things which are concomitant of a certain state of affairs', some 'from antecedents', some 'from consequents', some 'from incompatibles', some 'from causes', some 'from effects', some 'from comparison with things more, equally, or less significant'.

12 'Conjugate arguments' are those which draw on words from the same family. And words of the same family are those which, while derived from the same head-term, have different grammatical forms: e.g., 'wise', 'wisely', 'wisdom'. Such a group of conjugate words is called a 'syzygy', and from it the following type of argument is derived: If this piece of land is common grazing, there is a right (for X) to graze cattle on it in common.

13 A genere sic ducitur: Quoniam argentum omne mulieri legatum est, non potest ea pecunia quae numerata domi relicta est non esse legata; forma enim a genere, quoad suum nomen retinet, numquam seiungitur; numerata autem pecunia nomen argenti retinet; legata igitur videtur.

14 A forma generis, quam interdum, quo planius accipiatur, partem licet nominare hoc modo: Si ita Fabiae pecunia legata est a viro, si ei viro materfamilias esset, si ea in manum non convenerat, nihil debetur. Genus enim est uxor; eius duae formae: una matrumfamilias (eae sunt quae in manum convenerunt), altera earum, quae tantum modo uxores habentur. Qua in parte cum fuerit Fabia, legatum ei non videtur.

15 A similitudine hoc modo: Si aedes eae corruerunt vitiumve faciunt quarum usus fructus legatus est, heres restituere non debet nec reficere, non magis quam servum restituere, si is cuius usus fructus legatus esset deperisset.

16 A differentia: Non, si uxori vir legavit argentum omne quod suum esset, idcirco quae in nominibus fuerunt legata sunt. Multum enim differt in arcane positum sit argentum an in tabulis debeatur.

17 Ex contrario autem sic: Non debet ea mulier cui vir bonorum suorum usum fructum legavit cellis vinariis et olearis plenis relictis putare id ad se pertinere. Usus enim, non abusus, legatus est (ea sunt inter se contraria).

18 Ab adiunctis: Si ea mulier testamentum fecit quae se capite numquam deminuit, non videtur ex edicto praetoris secundum eas tabulas possessio dari. Adiungetur enim, ut secundum servorum, secundum exsulum, secundum puerorum tabulas possessio videatur ex edicto dari.

1–29 *BAadL*

1 *313*. *22–3* Item quotiens a genere ducitur argumentum   3 *298*. *27–8* quoad suum nomen retinet   26 *302*. *17–18* ex edicto praetoris   27 *302*. *28* adiungitur ergo   28 *302*. *29* secundum puerulorum . . . tabulas

1 ducitur $a^{pc}dL$, *cf*. ℬ : dicitur βa 3 quoad $AB^{1}a^{pc}L$, *cf*. ℬ : quo ad *Bad* : donec a^{vl} 7 *post* pecunia *hab*. p̄ ē cum non iam $\beta(B^{1\,mg})$ legata est–37 si ea *om*. B, *add*. $B^{1\,mg}$ 8 *post* ea *hab*. gř β manu β 9 enim *om*. β 10 eae sunt α: eae ut sunt a^{pc} (ut^{sl}): earum β 15 usus *AL*: *om*. B (*ante* fructus *ras*. *2 litt*.), *ad*   24 ea–contraria *seclusit Hammer*   26 praetoris β, *cf*. ℬ : populi r(omani) α   27 adiungetur β (A^{pc}): adiungeretur A: adiungitur α, *cf*. ℬ   28 puerulorum *ad*, *cf*. ℬ

13 From the genus an argument is derived as follows: Since all the silver was bequeathed to the woman, it cannot be the case that the money which remained at home in form of coins was not bequeathed; for the species is never dissociated from the genus, as long as it retains its name; but money in form of coins retains the name 'silver'; therefore, it seems to have been bequeathed.

14 From the species of the genus, which for greater clarity one may sometimes call 'part', an argument is derived as follows: If money was bequeathed to Fabia to be paid by her husband on the condition that she was *materfamilias* to that husband, nothing is owed to her if she had not come under his legal power. For the genus is 'wife' (*uxor*); of wife there are two species: one is that of the *matresfamilias* (these are those who transferred into the power (sc. of the husband)), the other of those who are regarded as wives plain and simple. Since Fabia belonged to this latter species, nothing seems to have been bequeathed to her.

15 From similarity an argument is derived as follows: If a house whose usufruct has been bequeathed collapses or sustains damage, the heir need not rebuild or repair it, no more than to replace a slave if one of whom the usufruct had been bequeathed had died.

16 From difference an argument is derived as follows: If a man bequeathed to his wife all the silver that was his, it does not follow that such silver has been bequeathed which is (merely) recorded as being out on loan. For it makes a great difference whether silver is kept in the strongbox or is recorded as out on loan in the account book.

17 From the opposite an argument is derived as follows: The woman to whom the man bequeathed the usufruct of 'all his goods' should not believe that, if the oil and wine cellars were left filled, their content belonged to her. For it is use (*usus*), not its consumption (*abusus*) which was granted (the two are opposite to one another).

18 From concomitants an argument is derived as follows: If a woman has made a will who never underwent a 'curtailment of status', then the Praetor's edict does not seem to grant possession of the inheritance according to these tablets. For it will be a concomitant state of affairs that the Praetor's edict is held to grant possession according to the wills of slaves, exiles, and the underaged.

1　　**19** Ab antecedentibus autem et consequentibus et repugnanti-
bus hoc modo; ab antecedentibus: Si viri culpa factum est divor-
tium, etsi mulier nuntium remisit, tamen pro liberis manere nihil
oportet.

5　　**20** A consequentibus: Si mulier, cum fuisset nupta cum eo
quicum conubium non esset, nuntium remisit, quoniam qui nati
sunt patrem non sequuntur, pro liberis manere nihil oportet.

　　21 A repugnantibus: Si paterfamilias uxori ancillarum usum
fructum legavit a filio neque a secundo herede legavit, mortuo
10　filio mulier usum fructum non amittet. Quod enim semel testa-
mento cui datum est, id ab eo invito cui datum est auferri non
potest. Pugnat enim recte accipere et invitum reddere.

　　22 Ab efficientibus rebus hoc modo: Omnibus est ius parietem
directum ad parietem communem adiungere vel solidum vel for-
15　nicatum. Sed qui in pariete communi demoliendo damni infecti
promiserit, non debebit praestare quod fornix viti fecerit. Non
enim eius vitio qui demolitus est damnum factum est, sed eius
operis vitio quod ita aedificatum est ut suspendi non posset. **23** Ab
effectis rebus hoc modo: Cum mulier viro in manum convenit,
20　omnia quae mulieris fuerunt viri fiunt dotis nomine.

　　Ex comparatione autem omnia valent quae sunt eius modi: Quod
in re maiore valet valeat in minore, ut si in urbe fines non reguntur,
nec aqua in urbe arceatur. Item contra: Quod in minore valet,
valeat in maiore. Licet idem exemplum convertere. Item: Quod
25　in re pari valet, valeat in hac quae par est; ut: Quoniam usus
auctoritas fundi biennium est, sit etiam aedium. At in lege aedes
non appellantur et sunt ceterarum <rerum> omnium quarum
annuus est usus. Valeat aequitas quae paribus in causis paria iura
desiderat.

　　1–29　*BAadL*

　　2　*303. 34* At si viri culpa factum est divortium　　　18　*306. 30* ut suspendi
sustinerique non posset　　　22　*307. 43–4* si in civitate fines non regun-
tur　　　25–26　*308. 32* usus auctoritas fundi　　　27　*308. 35* sunt ceterorum
omnium

　　2　ab *om. β*　　　est *β, cf. ℬ* : sit α　　　11　cui¹ *βa*: alicui *a*ᵛˡ*dL*　　　16　fornix
*A*¹*B*¹α: fornex *β*　　　17　*Post* eius *hab.* parietis α　　　18　posset α, *cf. ℬ* : possit *β*
22　reguntur *ℬ*: regantur *βα*　　　25–26　usus auctoritas α, *cf. ℬ* : usus auctoritas-
que *β*　　　27　<> *suppl. Lambinus, cf. ℬ*

19 From antecedents and from consequents and from incompatibles an argument is derived as follows; from antecedents: If a divorce has occurred through an offence of the man, nothing (sc. of the woman's dowry) need remain for the children, even though it was the wife who gave notice of divorce.

20 From consequents: If the woman, although she was married to someone with whom there was no right to intermarry, gave notice of divorce, nothing need remain for the children, because any children who have been born do not follow the father.

21 From incompatibles: If the head of a family bequeathed to his wife the usufruct of female servants as a right to be granted by the son but not explicitly by the secondary heir, the woman will not lose the right of usufruct after the death of the son. For what has once been granted to someone by a will cannot be taken away from the person to whom it was granted against the latter's will. For 'to receive lawfully' and 'to surrender against one's will' are incompatible.

22 From efficient things in this way: Anyone has a right to build a wall to touch a party wall at a right angle; and this new wall may be either solid or pierced. But a man who has given guarantees against possible damage in demolishing a party wall will not be bound to make good the damage sustained by a doorway owing to a fault of the latter. For the damage was not caused by any fault of the man who demolished the party wall, but by a defect in building a structure so made that it could not stand by itself. **23** From effects caused: When a woman has transferred into the power of her husband, everything which belonged to the woman becomes the property of the husband as dowry.

And from comparison all arguments are valid which are devised in this way: What holds in a wider sphere, should hold in a more restricted one, e.g., if boundaries are not regulated in the city, neither should water be excluded in the city. Again, conversely: What holds in the more restricted sphere, should hold in the wider one. Here one can use the same example in reverse. Again: What holds in the equivalent sphere, should hold as well in this case, which is equivalent; e.g. Because use and warranty of a piece of land run for two years, it should also be two years for a house. Yet in the law a house is not mentioned, and it is (evidently) treated as belonging with the category 'all other things' for which use is one year. Let equity prevail which requires equal rights for equal cases.

1   **24** Quae autem adsumuntur extrinsecus, ea maxime ex auctor-
itate ducuntur. Itaque Graeci tales argumentationes ἀτέχνους
vocant, id est artis expertis, ut si ita respondeas: Quoniam P.
Scaevola id solum esse ambitus aedium dixerit, quod parietis com-
5 munis tegendi causa tectum proiceretur, ex quo tecto in eius aedis
qui protexisset aqua deflueret, id tibi ius videri.

   25 His igitur locis qui sunt expositi ad omne argumentum tam-
quam elementis quibusdam significatio et demonstratio [ad reper-
iendum] datur. Utrum igitur hactenus satis est? Tibi quidem tam
10 acuto et tam occupato puto. Sed quoniam avidum hominem ad has
discendi epulas recepi, sic accipiam ut reliquiarum sit potius ali-
quid quam te hinc patiar non satiatum discedere. **26** Quando ergo
unus quisque eorum locorum quos exposui sua quaedam habet
membra, ea quam subtilissime persequamur; et primum de ipsa
15 definitione dicatur.

   Definitio est oratio quae id quod definitur explicat quid sit.
Definitionum autem duo genera prima: unum earum rerum quae
sunt, alterum earum quae intelleguntur. **27** Esse ea dico quae cerni
tangive possunt, ut fundum aedis, parietem stillicidium, manci-
20 pium pecudem, supellectilem penus cetera; quo ex genere quae-
dam interdum vobis definienda sunt. [Earum autem rerum quae
non sunt] Non esse rursus ea dico quae tangi demonstrarive non
possunt, cerni tamen animo atque intellegi possunt, ut si usus
capionem, si tutelam, si gentem, si agnationem definias; qualium
25 rerum nullum subest quasi corpus, est tamen quaedam conformatio
\<et in animo\> insignita et impressa intellegentia quam notionem
voco. Ea saepe in argumentando definitione explicanda est.

   1–27 *BAadL*

   4–5 *310. 1* quantum tectum proiceretur   5–6 *310. 3* ut in suum tectum
aqua defluat   8–9 *310. 26–7* significatio quaedam et demonstratio ad reper-
iendum argumentum   10–11 *310. 31* Sed quoniam . . . avidissimum studii ad
has doctrinarum epulas   17 *319. 22–3* quarum genera duo esse propo-
nit   18–19 *320. 6* cerni tangique   19 *320. 5* parietes   21–2 *320.
6–7* earum vero rerum quae non sunt   26 *320. 21* conceptio est atque intelli-
gentia quam notionem vocavit

   4 quod *βaL*: quo *d*: quantum *ς, cf. ℬ* : quoad *cod. Lond. Egertonensis 2516, s. xiv*
5 tecto in *β*: in tectum α, *cf. ℬ*   8–9 [] *seclusit Friedrich, cf. ℬ*   10 quo-
niam *AB¹α, cf. ℬ* : cum *B*   17 *post* autem *hab.* sunt *d, post* prima *a*ˢˡᵐᵃ, *cf. ℬ*
18 tangive *β*: tangique α (*cf. ℬ*)   19 parietem *βa*ᵖᶜ*dL*: parietes *a, cf. ℬ* 20 cetera
β: et cetera *a*ᵐᵃˢˡ*dL*   21–22 [] *secl. Manutius, cf. ℬ*   24 qualium *β*:
quarum α 26 \<\> *suppl. Winterbottom*   intellegentia *βα, cf. ℬ* : intelligentiae
B¹   27 explicanda est α: ex. sunt *AB¹*: explicandas *B*: explenda sunt *a*ᵛˡᵐᵍ

24 But arguments which are taken up from outside the issue are primarily derived from authority. Therefore the Greeks call such arguments *atechnoi*, i.e. not involving the use of the art of rhetoric, e.g. if you give an opinion as follows: Because Publius Scaevola said that that space was to be treated as the surround of a house which was covered by a projecting roof intended to protect the party wall—from which roof-water flows towards the house of the neighbour who built the protecting roof—this appeared to you to be the law.

25 So the Places which we have expounded are as it were basic principles which can indicate and point the way to any argument. So is this enough? For someone who is as acute and as busy as you, I imagine it is. But because I have asked such a greedy soul to this banquet of learning, I shall entertain him in such a way that something is left over, rather than let you go away from here unsatisfied. **26** So, since every single one of the Places I have explained has its own constituent parts as it were, let us follow these up as subtly as possible. Let us first speak of definition.

A definition is a phrase which explains what the thing defined is. There are two primary types of definition: one of those things which exist, the other of those which are mentally apprehended. **27** Existing things I call those which can be seen and touched, like a piece of land, a house, a wall, a gutter, a slave, food and so on; you (sc. jurisconsults) sometimes have to define things of that sort. 'Non-existing things' I call those which cannot be touched and pointed out, but which nevertheless can be seen and grasped with the mind, e.g. if you define acquiring of ownership, guardianship, family, agnation. Underlying these things is no body, as it were, but a pattern and a concept stamped and imprinted on the mind which I call a notion. In discussion this often has to be explained through a definition.

28 Atque etiam definitiones aliae sunt partitionum aliae divisionum; partitionum, cum res ea quae proposita est quasi in membra discerpitur, ut si quis dicat ius civile id esse quod in legibus, senatus consultis, rebus iudicatis, iuris peritorum auctoritate, edictis magistratuum, more, aequitate consistat. Divisionum autem definitio formas omnis complectitur quae sub eo genere sunt quod definitur hoc modo: Abalienatio est eius rei quae mancipi est aut traditio alteri nexu aut in iure cessio inter quos ea iure civili fieri possunt.

Sunt etiam alia genera definitionum, sed ad huius libri institutum illa nihil pertinent; tantum est dicendum qui sit definitionis modus. **29** Sic igitur veteres praecipiunt: cum sumpseris ea quae sint ei rei quam definire velis cum aliis communia, usque eo persequi dum proprium efficiatur quod nullam in aliam rem transferri possit. Ut haec: Hereditas est pecunia. Commune adhuc; multa enim genera pecuniae. Adde quod sequitur: quae morte alicuius ad quempiam pervenit. Nondum est definitio; multis enim modis sine hereditate teneri pecuniae mortuorum possunt. Unum adde verbum: iure; iam a communitate res diiuncta videbitur, ut sit explicata definitio sic: Hereditas est pecunia quae morte alicuius ad quempiam pervenit iure. Nondum est satis; adde: nec ea aut legata testamento aut possessione retenta; confectum est. Itemque [ut illud]: Gentiles sunt inter se qui eodem nomine sunt. Non est satis. Qui ab ingenuis oriundi sunt. Ne id quidem satis est. Quorum maiorum nemo servitutem servivit. Abest etiam nunc. Qui capite non sunt deminuti. Hoc fortasse satis est. Nihil enim video Scaevolam pontificem ad hanc definitionem addidisse. Atque haec ratio valet in utroque genere definitionum sive id quod est sive id quod intellegitur definiendum est.

1–5 edictis magis- *BAadL*   **5** -tratuum–consistat *add*. *B* (*i.e. is qui folia B$_A$ inseruit*), *adL*   **5** Divisionum–29 B$_A$adL

4 *321. 21* iurisperitorum (*cf. 321. 26*)   **8** *321. 38* nexu   **14** *328. 22* efficiatur

4 iuris *a*^{sl}*L, cf. B* : *om. βad*   **6** eo *B$_A$dL*: eodem *a*   **8** nexu *a*^{pc}*dL, cf. B* : nexo *ε*   **14** efficiatur *a*^{pc}, *cf. B* : perficiatur *a*   **23** [] *edd.*

28 Further, some definitions consist of partitions, others of divisions; of partitions when the subject at issue is, as it were, dismembered into its parts, e.g. if one were to say the civil law was that which consists of laws, decrees of the senate, previous decisions, the authority of the jurisconsults, the edicts of the magistrates, custom, and equity. A definition based on division, on the other hand, comprises all species which are subordinate to the species which is being defined, in the following way: A legal transfer of property is either transfer with legal obligation or cession at law, of things which can be bought, between parties who can do this in accordance with the civil law.

There are also other types of definition, which, however, are of no relevance to the purpose of this book; we have only to explain what the mode of definition is. **29** So this is what the old authorities prescribe: when you have taken the feature which the thing you want to define shares with other things, continue along this route until a peculiar property is established which cannot be applied to any other thing. For example: Inheritance is money. So far this is a common quality; for there are many kinds of money. Add the following: which comes to somebody through the death of someone else. This is still not a definition; for there are many ways in which deceased persons' money may be held without there being an inheritance. Add one word: legally; and already the matter will seem to be distinguished from the kindred concepts, so that the definition now unfolds as follows: Inheritance is money which came to someone legally through the death of someone else. But this is not yet enough; add: which was neither bequeathed in a will nor retained in virtue of long-standing possession. Finished! And in the same manner: *Gentiles* (members of the same family) are 'people who have the same name.' This is not enough. 'Who are offspring of freeborn citizens.' Even that is not enough. 'None of whose ancestors has ever been a slave.' There is still something missing. 'Who have not undergone a reduction of status.' This is perhaps enough; for I see that Scaevola the Priest has added nothing to this definition. And this method works with both types of definition, whether the thing to be defined exists physically or is merely to be grasped in the mind.

1   **30** Partitionum [autem] et divisionum genus quale esset osten-
dimus, sed quid inter se differant planius dicendum est. In parti-
tione quasi membra sunt, ut corporis caput, umeri, manus, latera,
crura, pedes et cetera. In divisione formae, quas Graeci εἴδη
5   vocant, nostri, si qui haec forte tractant, species appellant, non
pessime id quidem sed inutiliter ad mutandos casus in dicendo.
Nolim enim, ne si Latine quidem dici possit, specierum et specie-
bus dicere, et saepe his casibus utendum est; at formis et formarum
velim. Cum autem utroque verbo idem significetur, commodita-
10   tem in dicendo non arbitror neglegendam.

       31 Genus et formam definiunt hoc modo: Genus est notio ad
plures differentias pertinens; forma est notio cuius differentia ad
caput generis et quasi fontem referri potest. Notionem appello
quod Graeci tum ἔννοιαν tum πρόλημψιν. Ea est insita et ante
15   percepta cuiusque cognitio enodationis indigens. Formae sunt igi-
tur eae in quas genus sine ullius praetermissione dividitur, ut si
quis ius in legem, morem, aequitatem dividat. Formas qui putat
idem esse quod partis, confundit artem et similitudine quadam
conturbatus non satis acute quae sunt secernenda distinguit.

20   **32** Saepe etiam definiunt et oratores et poetae per translationem
verbi ex similitudine cum aliqua suavitate. Sed ego a vestris exem-
plis nisi necessario non recedam. Solebat igitur Aquilius collega et
familiaris meus cum de litoribus ageretur, quae omnia publica esse
voltis, quaerentibus iis quos ad id pertinebat quid esset litus, ita
25   definire: qua fluctus eluderet. Hoc est quasi qui adulescentiam
florem aetatis, senectutem occasum vitae velit definire; translatione
enim   utens   discedebat a verbis propriis rerum ac suis.
Quod ad definitiones attinet hactenus; reliqua videamus.

1–28 $B_A adL$

6 *331. 37* commoditatem in dicendo   15 *332. 17* cognitio enodationis
indigens   20 *333. 8* per translationem

1 [] *Friedrich*² p. lxxvi   4 εἴδη *Schütz*: hideas eide B_A: εἰδήας *a* (ΕΙΔΗ
a^{mamg}): ΙΔΕΑΣ *d*: ideas *L*   6 dicendo *aLℬ*: docendo $B_A d$ 7 ne si
cod. Erlang. 191, s. xii: nisi α   8 his *L*: hiis *d*: iis ϵ   15 cognitio ℬ
(*cod. Parisin. Lat. 7710–I, s. x*): cognitionis ϵ*d*: *om. L*   enodationis *Lℬ, om.*
ϵ*d*   20 per translationem ℬ (*Clm 6367, s. x*): tralationem $B_A d$: translatione
B_A¹*aL*   24 quaerentibus *L*: -tibusque $a^{pc}d$: -tique ϵ   iis *a*: his $a^{pc}L$ (hiis *d*): ii
B_A

30 We have shown of what general nature partitions and divisions are, but we must say more plainly what the difference between the two is. In a partition there are, as it were, limbs, like the head of a body, the shoulders, the hands, the sides, the lower legs, the feet and so on; in a division there are species which the Greeks call *eidē*, while our writers, if any of them happens to talk about this matter at all, call them species, which is not bad, but awkward for inflection when you speak. I would rather not, even if it were possible in Latin, say *specierum* and *speciebus*, and there is often reason to use these cases; but I should like to say *formis* and *formarum*. And because both words mean the same, I consider that convenience in speaking should not be ignored.

31 They define genus and species in the following way: A genus is a notion applying to several different things; a species is a notion whose difference can be referred back to the genus as its source, as it were. I call notion what the Greeks sometimes call *ennoia* and sometimes *prolepsis*. This is an ingrained grasp of something, developed through previous perceptions, which requires articulation. Thus species are those things into which a genus may be divided without leaving out anything, e.g. if one were to divide 'the law' into the sum of all legal statutes, custom, and equity. Anyone who takes species to be the same as parts turns method on its head and, confused by a casual resemblance, does not distinguish sufficiently clearly what must be kept apart.

32 Again, orators and poets often define by using a word in a metaphorical sense, taking their cue from a certain similarity, and that with a certain charm. But I shall not move away from your (i.e. legal) examples unless I have to. So when shores were the issue, which you jurists want to be public property, and people who were concerned with this asked him what a shore was, Aquilius, my colleague and friend, used to define 'shore' as 'where the wave plays.' This is as if someone wanted to define adolescence as the bloom of youth, or old age as the sunset of life. For by using a metaphor he diverged from the proper words for the things. So much for definitions; let us look at the rest.

1   **33** Partitione tum sic utendum est nullam ut partem relinquas;
ut, si partiri velis tutelas, inscienter facias, si ullam praetermittas.
At si stipulationum aut iudiciorum formulas partiare, non est
vitiosum in re infinita praetermittere aliquid. Quod idem in
5   divisione vitiosum est. Formarum enim certus est numerus quae
cuique generi subiciantur; partium distributio saepe est infinitior,
tamquam rivorum a fonte diductio. **34** Itaque in oratoriis artibus
quaestionis genere proposito quot eius formae sint subiungitur
absolute. At cum de ornamentis verborum sententiarumve praeci-
10 pitur, quae vocant σχήματα, non fit idem. Res est enim infinitior; ut
ex hoc quoque intellegatur quid velimus inter partitionem et divi-
sionem interesse. Quamquam enim vocabula prope idem valere
videbantur, tamen quia res differebant, nomina rerum distare
voluerunt.
15   **35** Multa etiam ex notatione sumuntur. Ea est autem cum ex vi
nominis argumentum elicitur; quam Graeci ἐτυμολογίαν appellant,
id est verbum ex verbo veriloquium; nos autem novitatem verbi
non satis apti fugientes genus hoc notationem appellamus quia
sunt verba rerum notae. Itaque hoc quidem Aristoteles σύμβολον
20 appellat, quod Latine est nota. Sed cum intellegitur quid signifi-
cetur, minus laborandum est de nomine. **36** Multa igitur in
disputando notatione eliciuntur ex verbo, ut cum quaeritur
postliminium quid sit—non dico quae sint postlimini; nam
id caderet in divisionem, quae talis est: Postliminio redeunt haec:
25 homo, navis, mulus clitellarius, equus, equa quae frenos recipere
solet—sed cum ipsius postlimini vis quaeritur et verbum ipsum
notatur; in quo Servius noster, ut opinor, nihil putat esse notan-
dum nisi post, et liminium illud productionem esse verbi vult, ut in
finitimo, legitimo, aeditimo non plus inesse timum quam in med-
30 itullio tullium.

1–30 *B*_A*adL*

24 *336.27–8* hoc enim in divisionem caderet   28 *336.42–3* liminium vero
supervacuo putat esse productum

7 diductio *cod. Vat. Ottob. 1406, s. xi ex.*: deductio α   13 videbantur *coni.*
Orelli: videantur α   24 divisionem α, *cf.* ℬ : -ne *B*_A   28 illud *dL, cf.* ℬ :
potest illud *a* (p. *del.*): post et liminium *B*_A   29 finitimo *B*_A*L*: finitumo
ad   legitimo *B*_A*L*: legitumo *ad*   aeditimo *L*: aeditumo *εd*   29 timum *L*:
tumum *εd*

33 Partition is to be used sometimes in such a way that you do not leave out any part; e.g. if you want to make a partition of tutelage, you would act ignorantly if you left out any part. But if you make a partition of stipulations and legal formulae, it is not a fault to leave out something in such a boundless area. In a division on the other hand the same thing is a fault. For there is a definite number of species which are subordinate to each genus; whereas the spread of parts is often more indefinite, in the way several streams come from a single source. **34** Therefore, when in rhetorical handbooks the question comes up how many types of 'issue' there are, a definite number is immediately given. But when precepts on the ornaments of speech and thought are given, which are called *schemata*, the same thing does not happen. For the subject is rather indefinite, so that you can understand from this example too what I mean by the difference between partition and division. For although the words seem to mean almost the same, nevertheless, because the things designated are different, they [sc. our ancestors who made our language] willed that the names should be different.

35 Many arguments are also derived from denotation. This is when an argument is elicited from the meaning of a word. The Greeks call this etymology, that is in word-for-word translation *veriloquium* (saying of truth). But I shrink from the novelty of a word which is not particularly suitable and prefer to call this type denotation, because words denote things. Therefore Aristotle calls the same thing σύμβολον, which in Latin is token (*nota*). But when it is understood what is meant, there is less need to worry about the name. **36** In discussion many arguments are elicited from the word through (analysis of the) denotation, e.g. when the question is what *postliminium* (resumption of rights) is—I do not say what is covered by *postliminium*, for this would fall under division, which is of the form: 'These things return in virtue of *postliminium*: a man, a ship, a pack-mule, a stallion, a mare accustomed to the bit'—but when the meaning of *postliminium* itself is the issue and the word itself is etymologically explained. In this word our friend Servius, it appears, believes that nothing is to be explained etymologically except *post*, and wants *liminium* to be a mere extension of the word, just as in *finitimus*, *legitimus*, and *aeditimus*, *timus* has no more meaning than *tullium* in *meditullium*.

37 Scaevola autem P. filius iunctum putat esse verbum, ut sit in eo et post et limen; ut quae a nobis alienata cum ad hostem pervenerint, ex suo tamquam limine exierint, ea cum redierint post ad idem limen postliminio redisse videantur. Quo genere etiam Mancini causa defendi potest postliminio redisse, deditum non esse, quoniam non sit receptus; nam neque deditionem neque donationem sine acceptione intellegi posse.

38 Sequitur is locus qui constat ex iis rebus quae quodam modo adfectae sunt ad id de quo ambigitur; quem modo dixi in plures partes distributum. Cuius est primus locus ex coniugatione quam συζυγίαν vocant, finitimus notationi, de qua modo dictum est; ut si aquam pluviam eam modo intellegeremus quam imbri collectam videremus, veniret Mucius qui, quia iugata verba essent pluvia et pluendo, diceret omnem aquam oportere arceri quae pluendo crevisset.

39 Cum autem a genere ducetur argumentum, non erit necesse id usque a capite arcessere. Saepe etiam citra licet dum modo supra sit quod sumitur quam id ad quod sumitur; ut aqua pluvia ultimo genere ea est quae de caelo veniens crescit imbri, sed propiore, in quo quasi ius arcendi continetur, [genus est aqua pluvia] nocens: eius generis formae loci vitio et manu nocens quorum alterum iubetur ab arbitro coerceri, alterum non iubetur.

40 Commode etiam tractatur haec argumentatio quae ex genere sumitur, cum ex toto partis persequare hoc modo: Si dolus malus est, cum aliud agitur aliud simulatur, enumerare licet quibus id modis fiat, deinde in eorum aliquem id quod arguas dolo malo factum includere; quod genus argumenti in primis firmum videri solet.

37 But Scaevola, the son of Publius, believes that the word is a compound, so that it contains both *post* and *limen* (as carriers of meaning). On this reading, whatever things we lost control over when they passed over to the enemy and left, as it were, their own threshold, seem to return by *postliminium* when they later return to the same threshold. With this type of argument the case of Mancinus, too, can be defended, i.e. that he returned by *postliminium*, and that he had not been surrendered because he had not been accepted; for neither surrender nor donation could be conceived of (as completed) without acceptance.

38 Next follows the Place which consists of those things which are somehow related to the subject at issue; I said earlier that this is divided in several parts. The first Place of these is from conjugation, which the Greeks call 'syzygy'. (This is closest to that 'from denotation', which has just been discussed.) For example, if we regarded as rainwater only that water which we see to have accumulated through rain, Mucius would come along to tell us that, because the expressions 'rain' (*pluvia*) and 'through rain' (*pluendo*) are conjugate, all water which had risen through rain must be kept off.

39 But when an argument is derived from the genus, it will not be necessary to draw it from the head-term [i.e. the highest genus available]. Often it is permissible to draw it from further down, provided that the notion which is taken [for setting up an argument] is at least more general than the term to which it is applied; e.g. rainwater [in the technical sense] is in its highest genus 'water coming from the sky which rises through rain', but in a nearer [i.e. lower] genus, within which, as it were, the right of keeping off is already included, 'detrimental rainwater': the species of this genus are (i) (rainwater) which is detrimental through the fault of the place and (ii) (rainwater) which is detrimental as a consequence of human intervention. Of these the one is diverted on the order of the arbitrator, the other is not. **40** This argumentation taken from the genus is also conveniently handled by starting with the whole and pursuing the parts, as follows: If malicious deceit occurs when one thing is done, and another thing pretended, one may enumerate the ways in which this can happen, and then subsume under one of them that which according to your argument has been done by malicious deceit; this type of argument usually makes an especially strong impression.

1 **41** Similitudo sequitur, quae late patet, sed oratoribus et philo-
sophis magis quam vobis. Etsi enim omnes loci sunt omnium dis-
putationum   ad   argumenta   suppeditanda,   tamen   aliis
disputationibus abundantius occurrunt aliis angustius. Itaque
5 genera tibi nota sint; ubi autem iis utare, quaestiones ipsae te
admonebunt. **42** Sunt enim similitudines quae ex pluribus collatio-
nibus perveniunt quo volunt hoc modo: Si tutor fidem praestare
debet, si socius, si cui mandaris, si qui fiduciam acceperit, debet
etiam procurator. Haec ex pluribus perveniens quo vult appelletur
10 inductio, quae Graece ἐπαγωγή nominatur, qua plurimum est usus
in sermonibus Socrates. **43** Alterum similitudinis genus collatione
sumitur, cum una res uni, par pari comparatur hoc modo: Quem ad
modum fines quia magis agrorum videntur esse quam urbis, si in
urbe de finibus controversia est, finibus regendis adigere arbitrum
15 non possis, sic si aqua pluvia in urbe nocet, quoniam res tota magis
agrorum est, aquae pluviae arcendae adigere arbitrum non possis.
44 Ex eodem similitudinis loco etiam exempla sumuntur, ut Cras-
sus in causa Curiana exemplis plurimis usus est, qui testamento sic
heredes instituissent, ut si filius natus esset in decem mensibus
20 isque mortuus prius quam in suam tutelam venisset, hereditatem
obtinuissent. Quae commemoratio exemplorum valuit eaque vos in
respondendo uti multum soletis.

1–22 *B$_A$adL*

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13 *341. 10* quia solius agri sunt   14 *341. 9* adigere   20 *341. 18–19*
quam in suam tutelam pervenisset   21 *341. 25* Quae exemplorum commem-
oratio

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13 quia *B* (*cod. Parisin. Lat. 7711, s. x*^{pc}): qui α   14 adigere *a*^{vlmg}, *cf. B* :
adicere α   15 *ante* sic *hab.* ex eodem similitudinis loco α (*v. infra*), *caret B*
nocet *d*: non nocet ϵ*L*   16 adigere *B$_A$L*: adicere *ad*   19 instituissent
Bornecque: instituti essent *Madvig*: instituisset α   20 venisset *a*^{pc}*dL*, *cf. B*:
-ent ϵ 21 quae *a*^{pc}*dL*, *cf. B* : qua ϵ

41 Next follows similarity, which has a broad range, but for orators and philosophers more than for you jurists. For although all Places are there to supply arguments for all kinds of discussions, they nevertheless are more widely applicable to some questions, and more restrictedly to others. Therefore you should know the general types; but the issues themselves will advise you where to use them. **42** There are arguments from similarity which reach their goal by means of several comparisons in the following way: If a guardian has to keep faith, if an associate, if someone whom you have entrusted with something, if someone who has formally accepted responsibility, then an agent has to do the same. This procedure, which arrives at its aim from several instances, may be named induction, which in Greek is called *epagoge*; Socrates made extensive use of it in his discussions. **43** Another type of argument from similarity is formed by setting things against each other: a single thing is set against a single thing, or equal against equal in this way: Just as you could not bring in an arbitrator on boundary matters, if there is an argument in the city about boundaries, because these seem to belong to the countryside rather than to the city, so you could not bring in an arbitrator on diversion of rainwater, if rainwater has a damaging effect in the city, because the whole thing is rather a problem of the countryside. **44** Examples also are drawn from the same Place 'from similarity'. For instance, Crassus used in the case of Curius very many examples (of people) who had put down heirs in their will in such a way that they would have come into inheritance, had a son been born within ten months and had he died before he came to the age of maturity. This enumeration of examples was effective, and you tend to use it a lot in giving legal opinions.

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45 Imaginary examples also have the force of similarity; but they are more the province of the orator than of you jurists, although you, too, frequently use them, though in the following form: Assume someone had sold something which cannot be sold. Has it really thereby become the property of the person who accepted it? Or has, in doing this, the seller really obligated himself in any way? In this area orators and philosophers have licence to make dumb things talk, to raise dead people from the underworld, to speak of something which cannot possibly happen, in order to magnify or minimize something—this is called *hyperbole*—and to do many other strange things. But their field is broader (sc. than yours). Nevertheless, as I said before, arguments are drawn both in the most weighty and in the most trifling of questions from the same Places.

46 After similarity comes 'difference', which is the exact opposite of the previous topic; but it is the task of one and the same faculty to find what is different and what is similar. Of this type are the following: While you can lawfully pay what you owe a woman to the said woman without her guardian authorizing it, you cannot in the same way lawfully pay a male or female minor in the same circumstances.

47 Then follows the Place which is called 'from the opposite'. There are several types of opposites. One of these consists of things which, while falling under the same genus, are as different as possible from each other, e.g. wisdom and stupidity. By 'falling under the same genus' we mean those terms upon whose consideration something directly opposed springs to mind, e.g. slowness is opposed to quickness, but not feebleness. From this type of opposites such arguments arise: If we avoid stupidity, let us follow wisdom, and if we flee malice, let us follow goodness. These terms which, while coming from the same genus, are opposed to each other, are called *diversa* (entirely different things). **48** For there are also other opposites which we may call privatives in Latin, and which the Greeks call *steretika*. For if the prefix 'in' is attached, a word is deprived of that meaning which it otherwise would have, had 'in' not been attached as a prefix: e.g. dignity, indignity; humanity, inhumanity and other things of the same sort, which are treated in the same way as the opposites above which I called *diversa*.

49 Nam alia quoque sunt contrariorum genera, velut ea quae cum aliquo conferuntur, ut duplum simplum, multa pauca, longum breve, maius minus. Sunt etiam illa valde contraria quae appellantur negantia; ea ἀποφατικὰ Graece, contraria aientibus; Si hoc est, illud non est. Quid enim opus exemplo est? Tantum intellegantur in argumento quaerendo contrariis omnibus contraria convenire.

50 Ab adiunctis autem posui equidem exemplum paulo ante, multa adiungi quae suscipienda essent si statuissemus ex edicto secundum eas tabulas possessionem dari quas is instituisset cui testamenti factio nulla esset. Sed locus hic magis ad coniecturales causas, quae versantur in iudiciis, valet, cum quaeritur quid aut sit aut evenerit aut futurum sit aut quid omnino fieri possit. **51** Ac loci quidem ipsius forma talis est. Admonet autem hic locus ut quaeratur quid ante rem, quid cum re, quid post rem evenerit. 'Nihil hoc ad ius; ad Ciceronem,' inquiebat Gallus noster si quid ad eum quis tale rettulerat ut de facto quaereretur. Tu tamen patiere nullum a me artis institutae locum praeteriri ne, si nihil nisi quod ad te pertineat scribendum putabis, nimium te amare videare. Est igitur magna ex parte locus hic oratorius non modo non iuris consultorum, sed ne philosophorum quidem. **52** Ante rem enim quaeruntur quae talia sunt: apparatus, colloquia, locus, constitutum convivium; cum re autem: pedum crepitus, strepitus hominum, corporum umbrae et si quid eius modi; at post rem: pallor, rubor, titubatio, si qua alia signa conturbationis et conscientiae, praeterea restinctus ignis, gladius cruentus, cetera quae suspicionem facti possunt movere.

1–27 *B_AadL*

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4 *345. 14–15* ἀποφατικά . . . Graeci vocant　　*344. 6* aientia　　15–16 *346. 7–8* 'Nihil ad nos' inquibat et . . . ad rhetorem remittebat　　18–19 *346. 12–13* ne si in hoc libro nihil praeter tuae artis exempla conscripsero

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1 velut *dL*: vel ε　　4 Graece *B_A*: Graeci *B_A*¹α, *cf. B*　*post* Gr. *add.* appellant *a*ᵐᵃ, vocant *d, cf. B*　aientibus *d, cf. B* : agentibus ε*L*　　16 *ante* ad¹ *hab.* vade *d, cf. B*　　18 ne si *B_Ad, cf. B* : nisi *aL*　　27 possunt *dL*: possint *B_A a*

49 For there are yet other types of opposites, like those which form a pair with something else, e.g. double, simple; many, few; long, short; bigger, smaller. There are also those strongly opposite terms which are called negating; the Greeks call them *apophatika*, i.e. opposite to those which affirm; if this is the case, that is not. Why should an example be needed? It need only be understood in the search for an argument that all terms have opposites to match them.

50 For the argument from concomitants I have given an example above, namely that there would be many concomitants one would have to accept if we ruled that possession is granted on the basis of the edict according to these tablets which were set up by a person who had no right to make a will. However, this Place is more properly applicable to conjectural questions which come up in tribunals, when the question concerns present, past, or future fact, or what *can* happen at all. **51** This indeed is the form the Place itself takes. And it instructs us to inquire what happened before, contemporaneously with, or after the event. 'This has nothing to do with the law—it's Cicero's business', our Gallus used to say if someone had brought before him such a matter as turned out to be a question of fact. Nevertheless, you must allow me not to leave out a single Place belonging to the theory; for if you think nothing should be written which is not of direct concern to you, I fear you may be thought to be rather too fond of yourself. Now this rhetorical Place is for the most part not only not the province of jurisconsults, but not even of philosophers. **52** Matters antecedent to the event which are to be investigated are, for example: preparations, talks, a suitable place, an appointment, a banquet. Contemporaneous matters include: the tapping of feet, people shouting, the shadows of bodies, and what other things of that sort there may be. Subsequent matters include: paleness, a red face, staggering, and if there are any other signs of nervousness and bad conscience, further an extinguished fire, a sword with blood on it, and the other things which can raise a suspicion that something has been done.

53 Deinceps est locus dialecticorum proprius ex consequentibus et antecedentibus et repugnantibus. Nam coniuncta, de quibus paulo ante dictum est, non semper eveniunt; consequentia autem semper. Ea enim dico consequentia quae rem necessario conse-
quuntur; itemque et antecedentia et repugnantia. Quidquid enim sequitur quamque rem, id cohaeret cum re necessario; et quidquid repugnat, id eius modi est ut cohaerere numquam possit. Cum tripertito igitur distribuatur locus hic in consecutionem, antecessionem, repugnantiam, reperiendi argumenti simplex locus est,
tractandi triplex. Nam quid interest cum hoc sumpseris 'pecuniam numeratam mulieri deberi cui sit argentum omne legatum', utrum hoc modo concludas argumentum: 'Si pecunia signata argentum est, legata est mulieri; est autem pecunia signata argentum; legata igitur est'; an illo modo: 'Si numerata pecunia non est legata, non
est numerata pecunia argentum; est autem numerata pecunia argentum; legata igitur est'; an illo modo: 'Non et legatum argentum est et non est legata numerata pecunia; legatum autem argentum est; legata igitur numerata pecunia est'? **54** Appellant autem dialectici eam conclusionem argumenti in qua, cum primum
assumpseris, consequitur id quod annexum est primum conclusionis modum. Cum id quod adnexum est negaris ut id quoque cui fuerit adnexum negandum sit, secundus is appellatur concludendi modus. Cum autem aliqua coniuncta negaris et ex iis unum aut plura sumpseris ut quod relinquitur tollendum sit, is tertius appel-
latur conclusionis modus. **55** Ex hoc illa rhetorum ex contrariis conclusa, quae ipsi ἐνϑυμήματα appellant; non quin omnis sententia proprio nomine ἐνϑύμημα dicatur, sed ut Homerus propter excellentiam commune poetarum nomen efficit apud Graecos suum, sic cum omnis sententia ἐνϑύμημα dicatur, quia videtur ea quae ex
contrariis conficitur acutissima, sola proprie nomen commune possedit. Eius generis haec sunt:

1–31 *B$_A$adL*

1 *347. 14–15* a consequentibus   9 *360. 22* simplicem esse intellectum tractandi autem triplicem   18 *362. 41* legata est igitur numerata pecunia   26–27 *364. 24* non quod eodem nomine omnis inventio

1 est locus: locus est *L*   ex: a *d, cf. ℬ*   9 simplex *add. a*^{sl}, *cf. ℬ* : *om. B$_A$dL*   10 tractandi *a*^{pc} *post ras., d*: tractandus *ϵL*   18 igitur *η, s. ix–x, cf. ℬ* : autem α   24 ut *dL*^{pc}: *ras. 3 litt. ante* ut *B$_A$*: aut *aL*   26 quin omnis *cod. Sangallensis 830, s. xi*: quinominis *B$_A$*: quia non omnis *B$_A$*^{1}: qui nominis *a*: quod omnis *d, cf. ℬ*   30 conficitur *a*^{pc}*L*: conficiatur *ϵd*

53 Next, a Place which is peculiar to the dialecticians: 'from consequents', 'from antecedents' and from 'incompatibles'. For concomitants, which were dealt with above, do not always occur; but consequents do. For I call those items consequents which follow on something necessarily, and likewise antecedents and incompatibles. For whatever follows something necessarily is connected with it necessarily; and whatever is incompatible is of such a type that it can never be connected with it. Hence, although the Place shows a threefold division into consequence, antecedence, and incompatibility, it is a single Place as regards finding an argument, and threefold merely as regards handling it. For what difference does it make, having made the assumption that money in coins is owed to the woman to whom all the silver has been bequeathed, whether you conclude the argument in the following way: If money in coins is silver, it is bequeathed to the woman; but money in coins is silver; therefore, it is bequeathed; or in this way: If money in coins is not bequeathed, then money in coins is not silver; but money in coins is silver; therefore, it is bequeathed; or in this way: It is not the case both that silver is bequeathed and that money in coins is not bequeathed; but silver is bequeathed; therefore, money in coins is bequeathed. **54** But the dialecticians call that type of argument in which, when you take the first as posited, that which is attached to it follows, the first type of argument. When you deny that which is attached, so that that to which it is attached is to be denied, this is called the second type of argument. But when you deny a conjunction of propositions, and take as posited one or more constituent propositions of this conjunction so that that which is left is to be refuted, this is called the third type of argument. **55** From this spring the rhetoricians' arguments concluded from contraries which they themselves call enthymemes. Not that every expressed reasoning was not properly called enthymeme, but just as Homer made his name the common designation for 'poet' among the Greeks on the grounds of his excellence, so, although every expressed reasoning is called an enthymeme, only the type which is made up of contraries has properly taken possession of the common name, because it is thought to be the most pointed. Of this type are the following:

1   hoc metuere, alterum in metu non ponere!

eam quam nihil accusas damnas, bene quam meritam esse autumas
male mereri? id quod scis prodest nihil, id quod nescis obest?

56 Hoc disserendi genus attingit omnino vestras quoque in respon-
5 dendo disputationes, sed philosophorum magis, quibus est cum
oratoribus illa ex repugnantibus sententiis communis conclusio
quae a dialecticis tertius modus, a rhetoribus ἐνθύμημα dicitur.
Reliqui dialecticorum modi plures sunt, qui ex disiunctionibus
constant: Aut hoc aut illud; hoc autem; non igitur illud. Itemque:
10 Aut hoc aut illud; non autem hoc; illud igitur. Quae conclusiones
idcirco ratae sunt quod in disiunctione plus uno verum esse non
potest. **57** Atque ex iis conclusionibus quas supra scripsi prior
quartus, posterior quintus a dialecticis modus appellatur. Deinde
addunt coniunctionum negantiam sic: Non et hoc et illud; hoc
15 autem; non igitur illud. Hic modus est sextus. Septimus autem:
Non et hoc et illud; non autem hoc; illud igitur. Ex iis modis
conclusiones innumerabiles nascuntur, in quo est tota fere
διαλεκτική. Sed ne hae quidem quas exposui ad hanc institutionem
necessariae.
20   **58** Proximus est locus rerum efficientium quae causae appellan-
tur; deinde rerum effectarum ab efficientibus causis. Harum ex-
empla, ut reliquorum locorum, paulo ante posui et quidem ex iure
civili; sed haec patent latius.

   Causarum enim genera duo sunt; unum quod vi sua id quod sub
25 eam vim subiectum est certe efficit, ut: Ignis accendit; alterum, quod
naturam efficiendi non habet sed sine quo effici non possit, ut si quis
aes statuae causam velit dicere, quod sine eo non possit effici.

1–27 B_A*adL*

1 *364. 35, 365. 10* hunc metuere   2 *365. 23, 25* autumas   3 *365. 25,
31* mereri   8 *366. 3* disiunctionibus   14 *366. 20* addunt coniunctionum
negantiam   17 *366. 36* conclusiones innumerabiles   *366. 42–3* omnis fere
est dialectica   25–26 *367. 20 ss. passim*

1 hoc α: *om. B_A*, hunc $B_A{}^1$, *cf. ℬ*   2 autumas ℬ (*cod. Valentianensis 406, s.
x–xi*): aestumas ε : estimas *d* : estumas *L*   3 mereri B_A*a*^{pc}*L*, *cf. ℬ* : merere
ad   8 disiunctionibus $B_A{}^1$*dL*, *cf. ℬ* : diiun-ε   14 negantiam *aL*, *cf. ℬ* :
negantia B_A*d*   16 iis ε : hiis *d* : his *L*   17 concl. in. ε*L*, *cf. ℬ* : in. concl. *d*
fere α, *cf. ℬ* : ferre B_A: ferme $B_A{}^{pc}$ 18 hae quidem *a*^{pc}*dL*: haec q. B_A:
equidem *a*   20 proximus *dL*: proxumus ε   26 non habet sed, *cf. ℬ* :
habet et α

To think of fearing this, but not reckoning the other as something to fear!

Do you condemn the woman whom you accuse of nothing and assert that the woman you say deserves well deserves ill? What you do know does no good; does what you don't know do harm?

56 This type of arguing is wholly pertinent to the disputations in which you people give legal opinions, but it is more the province of the philosophers, who share with the rhetoricians the argument made up from incompatible propositions which is called third mode by the dialecticians, enthymeme by the rhetoricians. There remain several modes of argument of the dialecticians which consist of disjunctions: Either this or that; but this; therefore not that. And further: Either this or that; but not this; therefore that. These ways to conclude arguments are valid because in a disjunction it is impossible that more than one of the constituent propositions should be true. **57** But of the types of argument I have put down above, the former is called the fourth mode, the latter the fifth by the dialecticians. Then they add the negated conjunction in this way: Not both this and that; but this; therefore not that. This is the sixth mode. And the seventh mode: Not both this and that; but not this; therefore that. From these modes countless arguments arise, and dialectic altogether consists in this. But not even those which I have expounded are necessary for the present undertaking.

58 Next comes the Place which has to do with those things which produce effects; these are called causes. After that, the one which has to do with the things that result from causes that bring them about. Examples of these as of the other Places I have given above, and in particular some from the civil law; but these matters have a wider application.

There are, then, two types of causes: one which by its own force brings about with certainty the result that is subject to this force; e.g. fire ignites; the other which has not the feature of being (fully) efficient, but without which an effect cannot be brought about, e.g. if one wished to call the bronze the cause of the statue because it cannot be created without it.

1   **59** Huius generis causarum, sine quo non efficitur, alia sunt quieta, nihil agentia, stolida quodam modo, ut locus, tempus, materia, ferramenta, cetera generis eiusdem; alia autem praecursionem quandam adhibent ad efficiendum et quaedam afferunt per 5 se adiuvantia, etsi non necessaria, ut: Amori congressio causam attulerat, amor flagitio. Ex hoc genere causarum ex aeternitate pendentium fatum a Stoicis nectitur.

   Atque ut earum causarum sine quibus effici non potest genera divisi, sic etiam efficientium dividi possunt. Sunt enim aliae causae 10 quae plane efficiant nulla re adiuvante, aliae quae adiuvari velint, ut: Sapientia efficit sapientes sola per se; beatos efficiat necne sola per sese quaestio est. **60** Qua re cum in disputationem inciderit causa efficiens aliquid necessario, sine dubitatione licebit quod efficitur ab ea causa concludere. Cum autem erit talis causa ut in 15 ea non sit efficiendi necessitas, necessaria conclusio non sequitur. Atque illud quidem genus causarum quod habet vim efficiendi necessariam errorem afferre non fere solet, hoc autem sine quo non efficitur saepe conturbat. Non enim, si sine parentibus filii esse non possunt, propterea causa fuit in parentibus gignendi 20 necessaria.

   61 Hoc igitur sine quo non fit ab eo in quo certe fit diligenter est separandum. Illud enim est tamquam

                Utinam ne in nemore Pelio . . .

Nisi enim

25   accidissent abiegnae ad terram trabes,

Argo illa facta non esset, nec tamen fuit in his trabibus efficiendi vis necessaria. At cum in Aiacis navim crispisulcans igneum fulmen iniectum est, inflammatur navis necessario.

1–28 $B_A adL$

25 *369. 34* cecidissent   27 *369. 39* navim (*sed vid. l. 38* navem)

12 sese ϵL: se d 25 accidissent ϵ : concidissent d : cecidissent L, cf. $\mathcal{B}$ 26 his dL : iis ϵ 27 navim $dL, cf. \mathcal{B}$: navem ϵ

59 Of this class of causes, without which an effect cannot be brought about, some are dormant, of no active efficacy, somehow inert, like place, time, matter, tools, and other things like that; others provide a kind of preliminary to efficient action and carry with them certain assisting factors, albeit not necessary ones. For example: the meeting had brought the cause for love, the love the cause for the crime. It is from this type of causes, depending on one another from all eternity, that the Stoics fashion their chain of fate.

And just as I have distinguished types of those causes which cannot be brought about without an effect, so various types of efficient causes can be distinguished. For there are some causes which are straightforwardly efficient without anything assisting them, and others which like to be assisted, e.g. wisdom produces wise men by itself, whether it produces happy men by itself is a question. **60** Therefore, when in a discussion a cause comes up which brings about something necessarily, then one is free to make an infallible inference to what is brought about by this cause. But when the cause is such that the necessity to bring about an effect is not inherent in it, a necessary conclusion does not follow. And that sort of cause which has a necessary power of bringing about an effect rarely gives rise to error, but the type without which there is no effect is often confusing. For if without parents there cannot be children, it does not follow that there was a necessary cause for creating offspring in the parents.

61 We must therefore carefully separate the cause *without which* a thing does not happen from the cause by which a thing *certainly* happens. An instance of the former is:

> O would that not in Pelian grove ...

For unless

> the beams of fir had fallen to the ground,

that famous Argo would not have been built, but nevertheless there was no necessary force in those beams to cause something. But when the fiery lightning's jagged furrow has been hurled onto Ajax' ship, the ship is necessarily set on fire.

1   **62** Atque etiam est causarum dissimilitudo quod aliae sunt ut sine
ulla appetitione animi, sine voluntate, sine opinione suum quasi
opus efficiant, vel ut omne intereat quod ortum sit; aliae autem
aut voluntate efficiunt aut perturbatione animi aut habitu aut nat-
5   ura aut arte aut casu: voluntate, ut tu cum hunc libellum legis;
perturbatione, ut si quis eventum horum temporum timeat; habitu,
ut qui facile et cito irascatur; natura, ut vitium in dies crescat; arte,
ut bene pingat; casu, ut prospere naviget. Nihil horum sine causa
nec quidquam omnino, sed huius modi causae non necessariae.

10   **63** Omnium autem causarum in aliis inest constantia, in aliis non
inest. In natura et in arte constantia est, in ceteris nulla. Sed tamen
earum causarum quae non sunt constantes aliae sunt perspicuae, aliae
latent. Perspicuae sunt quae appetitionem animi iudiciumque tan-
gunt; latent quae subiectae sunt fortunae. Cum enim nihil sine causa
15   fiat, hoc ipsum est fortunae: eventus obscura causa et latenter effici-
tur. Etiam ea quae fiunt partim sunt ignorata partim voluntaria;
ignorata, quae necessitate effecta sunt; voluntaria, quae consilio. **64**
Quae autem fortuna, vel ignorata vel voluntaria. Nam iacere telum
voluntatis est, ferire quem nolueris fortunae. Ex quo aries subicitur
20   ille in vestris actionibus 'si telum manu fugit magis quam iecit'.
Cadunt etiam in ignorationem atque imprudentiam perturbationes
animi quae, quamquam sunt voluntariae—obiurgatione enim et
admonitione deiciuntur—tamen habent tantos motus ut ea quae
voluntaria sunt aut necessaria interdum aut certe ignorata videantur.

25   **65** Toto igitur loco causarum explicato, ex earum differentia in
magnis quidem causis vel oratorum vel philosophorum magna
argumentorum suppetit copia; in vestris autem si non uberior, at
fortasse subtilior. Privata enim iudicia maximarum quidem rerum
in iuris consultorum mihi videntur esse prudentia. Nam et adsunt
30   multum et adhibentur in consilia et patronis diligentibus ad eorum
prudentiam confugientibus hastas ministrant.

1–31 $B_A a d L$

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4 *370. 30* vel voluntate vel opinione efficit   14 *371. 41* Latent vero quae
fortunae subiacent   15 *372. 14* ut fortunae sit eventus qui latentibus causis
efficitur   20 *375. 4* Si telum manu fugit magis quam iecit   24 *375. 23*
certe ignorata   25 *377. 39* diviso causarum loco

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4 efficiunt *cod. Parisin. Lat. 7709, s. xi, cf. B* : efficiuntur α   15 latenter ϵL :
latens qua *d, cf. B*   16 *ante* ea *hab.* ut α   20 *ante* magis *hab.* manusve
L   magis quam $a^{pc}dL$, *cf. B* : magisque ϵ 22 quae *om.* α   22–23 enim
et admonitione *cod. Vat. Lat. 8591, s. xi* : et a. en. α   24 certe $B_A a^{pc}dL$, *cf. B* :
arte *a*   25 loco causarum $B_A a^{pc}dL$: c. l. *a, cf. B*

62 But there is also another distinction between causes, because there are some which, without any impulse of mind, any act of will, and any judgement, bring about what we may call their own work—for example, that everything which has come into being must perish. Others again have an effect through an act of will, agitation of the mind, disposition, nature, skill, or chance. An act of will: as when you read this book. Agitation of the mind, e.g. if someone is afraid of the outcome of our present situation. Diposition, e.g. if someone gets angry easily and quickly. Nature: Faults grow day by day. Skill: Someone paints well. Chance: Someone has a favourable voyage. None of these things happen without a cause, nor for that matter does anything at all happen without a cause, but causes of this type are not *necessary*.

63 But if we look at all causes, one finds consistency in some but not in others. In natural disposition and in expertise there is consistency, in the others there is none. And of those causes which are not consistent, some are manifest, others are hidden. Manifest are those which involve an impulse of the mind and a judgement; hidden are those which are subject to fortune. For because nothing happens without a cause, the characteristic of fortune is just this: an event is brought about by an obscure cause and in a hidden way. Further, things which are done are partly involuntary, partly intended; involuntary are those which are brought about by necessity; intended are those which are brought about by consideration. **64** But those events which are due to fortune are either involuntary or intended. For throwing a javelin is subject to will, hitting someone you did not want to hit is due to fortune. Hence that substitute ram of your action 'if the spear escaped from the hand rather than was thrown.' Also in the category of involuntary action and unforeseen action belong states of mental agitation which, although they are subject to will—for they are laid to rest by reproach and admonition—nevertheless have such force that things subject to will sometimes seem either necessary or at least involuntary.

65 So now that the whole 'Place from causes' has been explained, we can see that from their wide variety a great abundance of arguments is provided in important cases belonging to orators or philosophers; but in *your* cases if not as many arguments are provided, then perhaps more subtle ones. For among private cases it is in those about the most important matters that

66 In omnibus igitur iis iudiciis, in quibus 'ex fide bona' est additum, ubi vero etiam 'ut inter bonos bene agier oportet', in primisque in arbitrio rei uxoriae, in quo est 'quod eius melius aequius', parati esse debent. Illi dolum malum, illi fidem bonam, illi aequum bonum, illi quid socium socio, quid eum qui negotia aliena curasset ei cuius ea negotia fuissent, quid eum qui mandasset eumve cui mandatum esset, alterum alteri praestare oporteret, quid virum uxori, quid uxorem viro tradiderunt. Licebit igitur diligenter argumentorum cognitis locis non modo oratoribus et philosophis, sed iuris etiam peritis copiose de consultationibus suis disputare.

67 Coniunctus huic causarum loco ille locus est qui efficitur ex causis. Ut enim causa quid sit effectum indicat, sic quod effectum est quae fuerit causa demonstrat. Hic locus suppeditare solet oratoribus et poetis, saepe etiam philosophis, sed iis qui ornate et copiose loqui possunt, mirabilem copiam dicendi cum denuntiant quid ex quaque re sit futurum. Causarum enim cognitio cognitionem eventorum facit.

68 Reliquus est comparationis locus, cuius genus et exemplum supra positum est ut ceterorum; nunc explicanda tractatio est. Comparantur igitur ea quae aut maiora aut minora aut paria dicuntur; in quibus spectantur haec: numerus, species, vis, quaedam etiam ad res aliquas affectio.

1–23 $B_A adL$

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2 *378. 23* bene agier (agi *nonnulli codd.*)   3 *378. 24–5* in primisque   *378. 25* in iudicio uxoriae rei   5 *378. 43* quid socius socio   7–8 *379. 6* quia virum hoc praestare oportet uxori   22 *380. 1* aut speciem ipsam intuentes

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1 iis : his ϵL : *om. d*   2 agier $\mathcal{B}$ (*cod. Carnot. 498, s. xii*) : agere α 3 primisque $B_A dL, cf. \mathcal{B}$: primis quem a arbitrio $a^{vl} dL, cf. \mathcal{B}$: arbitro ϵ 4 parati aL : paratius B_A (-us *add.* $B_A{}^{1uv}$) : periti d 5 quid^1 $B_A{}^1 a^{pc} L, cf. \mathcal{B}$: quis ϵd socium $B_A d$: socius $aL, cf. \mathcal{B}$ 7 oporteret $a^{pc} d$: oportet $\epsilon L, cf. \mathcal{B}$ 12 ex : e ϵL : *om. d*   22 spectantur haec *Lambinus, cf. $\mathcal{B}$* : haec spectantur *cod. Berolin. Lat. fol. 252, s. xii*: exspectantur haec α (-ten-a^{pc})

judgments seem to me to depend on the wisdom of the jurisconsults. For they help a great deal, are drafted in for advice, and provide the weapons for diligent advocates who take refuge in their wisdom. **66** So in all those trials in which 'in good faith' is added (to the formula), or indeed 'as needs be good practice among good men' and in particular in marriage arbitrations, where 'what is better and fairer' is added, they have to be prepared. It was they who have taught us the concepts of fraud, good faith, equity, the responsibilities of partner to partner, of an agent to his principal, of mandator and mandatee to each other, and of husband to wife and wife to husband. Therefore, it will be possible, once the Places of arguments have been diligently grasped, not only for orators and philosophers, but also for jurisconsults to argue with abundant material about the questions brought before them.

67 Connected with this Place from causes is the one which is concerned with the effects arising from causes. For just as a cause indicates what has been brought about, so what has been brought about shows which cause had been there. This Place usually provides orators and poets, but often also philosophers, at least those who can speak in an ornate and rich fashion, with a marvellous fullness of speech, when they depict what will follow from this or that matter. For the insight into causes brings about the insight into outcomes.

68 What remains is the Place from comparison whose general nature I have expounded above, and of which I have given an example, as I did with the others; now its handling is to be explained. Comparison, then, is between things which are larger, smaller, or equal. In these one looks at the following: number, kind, force, a certain relationship to some things.

69 Numero sic comparabuntur plura bona ut paucioribus bonis
anteponantur, pauciora mala malis pluribus, diuturniora bona
brevioribus, longe et late pervagata angustis, ex quibus plura
bona propagentur quaeque plures imitentur et faciant. Specie
autem comparantur ut anteponantur quae propter se expetenda
sunt iis quae propter aliud et ut innata atque insita assumptis et
adventiciis, integra contaminatis, iucunda minus iucundis, honesta
ipsis etiam utilibus, proclivia laboriosis, necessaria non necessariis,
sua alienis, rara vulgaribus, desiderabilia iis quibus facile carere
possis, perfecta incohatis, tota partibus, ratione utentia rationis
expertibus, voluntaria necessariis, animata inanimis, naturalia
non naturalibus, artificiosa non artificiosis. **70** Vis autem in
comparatione sic cernitur: efficiens causa gravior quam non efficiens;
quae se ipsa contenta sunt meliora quam quae egent aliis; quae in
nostra quam quae in aliorum potestate sunt; stabilia incertis; quae
eripi non possunt iis quae possunt. Affectio autem ad res aliquas
est huius modi: principum commoda maiora quam reliquorum;
itemque quae iucundiora, quae pluribus probata, quae ab optumo
quoque laudata. Atque ut haec in comparatione meliora, sic dete-
riora quae iis sunt contraria. **71** Parium autem comparatio nec
elationem habet nec summissionem; est enim aequalis. Multa
autem sunt quae aequalitate ipsa comparentur; quae ita fere con-
cluduntur: Si consilio iuvare cives et auxilio aequa in laude ponen-
dum est, pari gloria debent esse ii qui consuluntur et ii qui
defendunt; at quod primum, est; quod sequitur igitur.

Perfecta est omnis argumentorum inveniendorum praeceptio ut,
cum profectus sis a definitione, a partitione, a notatione, a con-
iugatis, a genere, a formis, a similitudine, a differentia, a contrariis,
ab adiunctis, a consequentibus, ab antecedentibus, a repugnanti-
bus, a causis, ab effectis, a comparatione maiorum, minorum,
parium, nulla praeterea sedes argumenti quaerenda sit.

1–31 $B_A adL$

11 *381. 35–6* animata quoque inanimatis   17 *382. 17* (*et passim*) aut rei
publicae aut principibus   24 *cf. 383. 6–26*

6 iis ς : his α   9 iis ς : his α   11 inanimis ϵL : -matis $B_A{}^1$ *d, cf.* $\mathcal{B}$
17 principum *adL*$^{\text{pc}}$, *cf.* $\mathcal{B}$: -pium α   24 ii^2 ϵd : hi *L*   25 at quod $\mathcal{B}$ (*cod.
Parisin. Lat. 7710–I, s. x*): et ita fit quod α   quod^2 $\mathcal{B}$ (*cod. Parisin. n. a. lat. 1611, s.
x*$^{\text{vl}}$) : par ei quod B_A (ei $B_A{}^1$ *in ras.*, eius $B_A{}^{\text{uv}}$) : par id quod α

69 Comparison by number will entail preferring more good things to fewer, fewer bad things to a larger number, longer-lasting goods to shorter-lasting, those widely available to those in shorter supply, because from them more goods emerge and more people imitate and practice them. Comparison according to kind means that what is preferable for its own sake is preferred to what is preferred for the sake of something else; further, what is innate and ingrained to what is acquired and secondary, pure things to contaminated things, pleasant things to less pleasant things, what is decent to what is useful, what is readily available to what is hard to get, what is necessary to what is not necessary, what is one's own to what is another's, what is rare to what is common, what is desirable to the things you can easily do without, what is already perfect to what is incomplete, what is whole to its parts, what possesses reason to what does not, what is subject to will to what is inevitable, what is animate to what is inanimate, what is natural to what is not natural, what is artistic to what is not artistic. **70** Force is a point of reference in comparisons in this way: An efficient cause has more weight than one that is not efficient; what is self-sufficient has more weight than what requires help from others; what is in our power has more weight than what is in other people's power; what is stable has more weight than what is uncertain; what cannot be taken away has more weight than what can. Relationships to certain other things work like this (in comparisons): what is beneficial to the leading men has more weight than what is beneficial to the rest; likewise what is more pleasant, approved by more people, or is praised by the best. And just as these items are better in terms of a comparison, what is contary to them is worse. **71** The comparison of equal things does not involve an element of 'higher' or 'lower'; for everything is on the same level. But there are many things which are compared on the grounds of equality itself. These arguments are formed more or less like this: If to support citizens with advice and do it with help are to be held in the same esteem, then those who give advice on legal matters and those who defend people in court must have equal share of glory; but the first holds; therefore what follows (holds).

Instruction in finding arguments is now complete: when you have proceeded from definition, from enumeration of parts, from etymology, from conjoints, from the genus, from the species, from similarity, from the difference, from contraries, from

72 Sed quoniam ita a principio divisimus ut alios locos dicer-
emus in eo ipso de quo ambigeretur haerere, de quibus satis est
dictum, alios adsumi extrinsecus, de iis pauca dicamus, etsi ea nihil
omnino ad vestras disputationes pertinent; sed tamen totam rem
efficiamus quandoquidem coepimus. Neque enim tu is es quem
nihil nisi ius civile delectet, et quoniam haec ita ad te scribuntur ut
etiam in aliorum manus sint ventura, detur opera ut quam plur-
imum quos recta studia delectant prodesse possimus. **73** Haec ergo
argumentatio quae dicitur artis expers in testimonio posita est.
Testimonium autem nunc dicimus omne quod ab aliqua re externa
sumitur ad faciendam fidem. Persona autem non qualiscumque est
testimoni pondus habet; ad fidem enim faciendam auctoritas
quaeritur, sed auctoritatem aut natura aut tempus affert. Naturae
auctoritas in virtute inest maxima; in tempore autem multa sunt
quae afferant auctoritatem: ingenium, opes, aetas, fortuna, ars,
usus, necessitas, concursio etiam non numquam rerum fortui-
tarum. Nam et ingeniosos et opulentos et aetatis spatio probatos
dignos quibus credatur putant; non recte fortasse, sed vulgi opinio
mutari vix potest ad eamque omnia dirigunt et qui iudicant et qui
existimant. Qui enim rebus his quas dixi excellunt, ipsa virtute
videntur excellere.

74 Sed reliquis quoque rebus quas modo enumeravi quamquam
in his nulla species virtutis est, tamen interdum confirmatur fides,
si aut ars quaedam adhibetur—magna est enim vis ad persuaden-
dum scientiae—aut usus; plerumque enim creditur iis qui experti
sunt. Facit etiam necessitas fidem, quae tum a corporibus tum ab
animis nascitur. Nam et verberibus, tormentis, igni fatigati quae
dicunt ea videtur veritas ipsa dicere et quae perturbationibus
animi, dolore, cupiditate, iracundia, metu, qui necessitatis vim
habent, afferunt auctoritatem et fidem.

1–8 *B$_A$adL*   8 Haec *adL*   8 ergo argumentatio–30 *ABadL*

2 *385. 41* de quibus ageretur   14 *387. 7–8* in tempore (*vide etiam 387. 29*)

2 ambigeretur *cod. Bamberg. 13, s. xi, cf. B* : ambigetur *εL* : ambigitur *d*
6 et *om. B$_A$dL* : *post* haec *eras. a*   10 re ext. α : e. r. *A, B del., B$_A$^{1}*   14 in^2
cod. Parisin. Lat. 14699, s. xi, cf. B : e α : *om. A, B del.*   20 his *Clm 6367, s. x* :
iis *B del.*, B^1 α   25 iis *A, B del.* (is *B^1*), *ad* : his *L*   26 etiam *A^{1}Bad* : enim
AL

concomitants, from consequents, from antecedents, from incom-
patibles, from causes, from effects, from the comparison of bigger,
smaller or equal things, no further seat of an argument will have to
be sought.

72 We made a division at the beginning between Places inherent
to the thing at issue—these have now been covered extensively
enough—and Places taken from outside. Therefore, let us say a
few things about the latter, even if they have no relevance whatso-
ever to your legal discussions. Now that we have taken it up, let us
cover the whole subject. For you are not the sort of person who
enjoys nothing but civil law, and given that the work is addressed
to you but with a view to its also coming into the hands of others,
let us take trouble to provide something which is as profitable as
possible to those whose pleasure is in reputable learning. **73** Well
then, the argumentation which is called 'without art' rests on
testimony. 'Testimony' in the present context we call everything
which is brought in from some outside area to create belief. It is not
just anyone who has the weight to provide a testimony; to create
belief authority is needed, and authority is conferred either by
nature or by time. The greatest authority belonging to nature lies
in virtue; in the field of time there are many things which can
confer authority: talent, power, age, one's fortune, skill, practice,
necessity, occasionally also the fortuitous combination of events.
For people think that men of talent or wealth, or those whom time
has tested, are worthy of credit; perhaps this is not right, but the
opinion of the many can hardly be changed, and those who judge as
well as those who make assessments form all their views with
reference to it. For everyone who excels in the respects I have
mentioned is believed to excel through virtue itself.

74 In the other things which I have enumerated, there is no
obvious impression of virtue; nevertheless belief is sometimes
corroborated, if either a certain skill is applied—for great is the
power of our science to persuade—or indeed practiced, because in
most cases those are trusted who are experienced. Belief is also
created by necessity, which arises sometimes from the body, some-
times from the mind. For what people say who are being tortured
by scourging, the rack, or fire, is thought to be spoken by truth
itself, and what is said through passions of the mind, pain, desire,
anger, or fear, carries with it authority and belief, because these
psychological states have the force of necessity.

1 **75** Cuius generis etiam illa sunt ex quibus verum nonnunquam invenitur pueritia, somnus, imprudentia, vinolentia, insania. Nam et parvi saepe indicaverunt aliquid quo id pertineret ignari et per somnum, vinum, insaniam multa saepe patefacta sunt. Multi etiam
5 in res odiosas imprudenter inciderunt, ut Staieno nuper accidit qui ea locutus est bonis viris subauscultantibus pariete interposito quibus patefactis in iudiciumque prolatis ille rei capitalis iure damnatus est. Huic simile quiddam de Lacedaemonio Pausania accepimus. **76** Concursio autem fortuitorum talis est ut si inter-
10 ventum est casu cum aut ageretur aliquid quod proferendum non esset aut diceretur. In hoc genere etiam illa est in Palamedem coniecta suspicionum proditionis multitudo; quod genus refutare interdum veritas vix potest. Huius etiam est generis fama vulgi, quoddam multitudinis testimonium. Quae autem virtute fidem
15 faciunt ea bipertita sunt; ex quibus alterum natura valet, alterum industria. Deorum enim virtus natura excellit, hominum autem industria. **77** Divina haec fere sunt testimonia: primum orationis (oracla enim ex eo ipso appellata sunt, quod inest in his deorum oratio), deinde rerum in quibus insunt quasi quaedam opera
20 divina: primum ipse mundus eiusque omnis ordo et ornatus; dein-ceps aerii volatus avium atque cantus; deinde eiusdem aeris sonitus et ardores multarumque rerum in terra portenta atque etiam per exta inventa praesensio; a dormientibus quoque multa significata visis. Quibus ex locis sumi interdum solent ad fidem faciendam
25 testimonia deorum.

1–25 *ABadL*

1 generis etiam α : etiam generis β   3 quo id α : quo *B post ras.* : quod *B* : quid *A*   5 odiosas α : otiosas β   imprudenter α : imprudentes β   Staieno *dL* : statiaeno β : staleno *a*   10 proferendum β*a*ᵖᶜ*L* : -rundum *d* : -runt *a*   11 est α : sunt β   14 virtute β*a*ᵖᶜ *L* : avirtute *ad*   16 excellit *B*ᴵᵘᵛ, *a*ᵖᶜ*L* : -let β*ad*   18 oracla β : oracula *B*ᴵ α   his *BaL*: iis *Ad*   20 et *om.* β   20–21 deinceps α : deinde β   21 aerii α : aeris β

75 Under this head also come the following occasional sources of true statements: childhood, sleep, inadvertence, drunkenness, insanity. For children, too, have often given someone a clue, not knowing what the information meant, and through sleep, wine, and insanity many things have often been exposed. Many have also fallen into enmities through inadvertence, as recently happened to Staienus who said things—while certain honest men were eavesdropping on him from behind a wall—which, when made public and brought to court, led to his conviction on a capital charge. We read something similar about the Spartan Pausanias. **76** A fortuitous combination of events occurs, for example, if there has been some accidental intervention when something was being done or said which was not meant to be made public. Of that kind is also the vast variety of suspicions heaped on Palamedes; this sort of thing truth itself is sometimes unable to refute. There are two types of things which create belief on grounds of virtue: one of them has force by nature, the other by deliberate effort. The supreme virtue of the gods is due to their nature, supreme virtue in men comes from their efforts. **77** There are the following types of divine testimony: first speech (for oracles have their name from the fact that the speech (*oratio*) of the gods is in them); secondly, things in which divine works of some kind may be said to reside: of these, the first is the world itself and all its order and splendour; next the flights of birds through the air and their singing; then sounds and flashes of fire given from the air, and portents manifest in many things on earth; and also the premonitions of the future which are derived from the inspection of entrails. Many things have been seen, too, through dreams experienced while asleep. It is from these Places that evidence from the gods is often drawn for the creation of belief.

78 In homine virtutis opinio valet plurimum. Opinio est autem non modo eos virtutem habere qui habeant, sed eos etiam qui habere videantur. Itaque quos ingenio, quos studio, quos doctrina praeditos vident quorumque vitam constantem et probatam, ut Catonis, Laeli, Scipionis aliorumque plurium, rentur eos esse qualis se ipsi velint; nec solum eos censent esse talis qui in honoribus populi reque publica versantur, sed et oratores et philosophos et poetas et historicos, ex quorum et dictis et scriptis saepe auctoritas petitur ad faciendam fidem.

79 Expositis omnibus argumentandi locis primum illud intellegendum est nec ullam esse disputationem in quam non aliquis locus incurrat nec fere omnis locos incidere in omnem quaestionem et quibusdam quaestionibus alios quibusdam alios esse aptiores locos. Quaestionum duo genera: alterum infinitum, definitum alterum. Definitum est quod ὑπόθεσιν Graeci, nos causam; infinitum quod θέσιν illi appellant, nos propositum possumus nominare. **80** Causa certis personis, locis, temporibus, actionibus, negotiis cernitur aut in omnibus aut in plerisque eorum, propositum autem aut in aliquo eorum aut in pluribus nec tamen in maximis. Itaque propositum pars est causae. Sed omnis quaestio earum aliqua de re est quibus causae continentur, aut una aut pluribus aut non numquam omnibus.

81 Quaestionum autem 'quacumque de re' sunt duo genera: unum cognitionis alterum actionis. **82** Cognitionis sunt eae quarum est finis scientia, ut si quaeratur a naturane ius profectum sit an ab aliqua quasi condicione hominum et pactione. Actionis autem huius modi exempla sunt: Sitne sapientis ad rem publicam accedere. Cognitionis quaestiones tripertitae sunt, aut sitne aut quid sit aut quale sit quaeritur. Horum primum coniectura, secundum definitione, tertium iuris et iniuriae distinctione explicatur.

1–30 *ABadL*

3–4 quos doctrina praeditos α : d. q. p. β   4 quorumque vitam *B*¹ *ad* : quorum quitam α : quorum vitam *L*   5 rentur β : viderentur α   7 reque publica α : atque re publica β   10 primum illud β : illud primum α   10–11 intellegendum est α : i. sit β(*B*¹) : intelligendus *B*   11 quam β : qua α   14 locos β : locus α   19 aut² *cod. Laur. plut. 50. 10, s. xi–xii* : *om.* βα   aliquo *A*ᵖᶜ*B* : aliquos *a*ᵐᵍ, *dL* : *om. a*   in³ *om.* α   20 maximis *Aa*ᵐᵍ*dL* : maxumis *A*ᵖᶜ*B*   23 sunt duo genera *edd.* : sint d. g. sunt β*aL* : sunt d. g. sunt *d* (sunt *per compend.*)   25 scientia α : scientiae β   a *om. ad*

78 In a man it is the impression of virtue that has the strongest force. But the impression is not only that those have virtue who do actually possess it, but also those who seem to possess it. Therefore people believe that those whom they see to be gifted with talent, zeal and learning, and whose life they perceive as principled and good, like Cato, Laelius, Scipio and many others, are the sort of people they want to be themselves; and they hold the view that this group includes not only those who enjoy the appreciation of the people and play a leading role in the state, but also orators, philosophers, poets, and historians from whose sayings and writings authority is often sought for the creation of belief.

79 Now that all Places of argument have been expounded, it first needs to be understood that there is no discussion whatsoever in which none of these Places occurs to one as suitable, that not all Places apply to every question, and that for certain questions certain Places are more suitable than others. There are two types of question: one is infinite, the other definite. 'Definite' is the one which the Greeks call *hypothesis*, and we 'case'; 'infinite' is the one which they call *thesis*, and we may call 'problem'. **80** A case is determinate with respect to certain persons, places, times, actions, or affairs, with respect either to all of them or to most of them; a problem with respect to some one of them or to several, but never to the most important. Therefore the problem is a part of the case. And every question is concerned with one of the aspects cases are about, either with one or with several or sometimes even with all of them.

81 There are two types of questions 'concerned with any possible subject': one pertains to understanding, the other to action. **82** Questions of understanding are those whose aim is the acquisition of knowledge, e.g. if the question is whether law arose from nature or from a kind of contract and covenant among human beings. Examples of 'action' are of the following kind: Is it the duty of the wise man to get involved with politics? Questions of understanding are divided into three groups: the question is either whether something is the case or what it is or of what kind it is. Of these the first is explained by conjecture, the second by definition, the third by the distinction between right and wrong.

Coniecturae ratio in quattuor partes distributa est, quarum una est cum quaeritur sitne aliquid, altera unde ortum sit, tertia quae id causa effecerit, quarta in qua de commutatione rei quaeritur. Sit necne sit: ecquidnam sit honestum, ecquid aequum re vera, an haec tantum in opinione sint. Unde autem sit ortum: ut cum quaeritur natura an doctrina possit effici virtus. Causa autem efficiens sic quaeritur: quibus rebus eloquentia efficiatur. De commutatione sic: possitne eloquentia commutatione aliqua converti in infantiam.

83 Cum autem quid sit quaeritur, notio explicanda est et proprietas et divisio et partitio. Haec enim sunt definitioni attributa; additur etiam descriptio, quam χαρακτῆρα Graeci vocant. Notio sic quaeritur: sitne id aequum quod ei qui plus potest utile est. Proprietas sic: in hominemne solum cadat an etiam in beluas aegritudo. Divisio et eodem pacto partitio sic: triane genera bonorum sint. Descriptio: qualis sit avarus, qualis adsentator ceteraque eiusdem generis in quibus et natura et vita describitur.

84 Cum autem quaeritur quale quid sit, aut simpliciter quaeritur aut comparate; simpliciter: expetendane sit gloria; comparate: praeponendane sit divitiis gloria. Simplicium tria genera sunt: de expetendo fugiendoque, de aequo et iniquo, de honesto et turpi. Comparationum autem duo: unum de eodem et alio, alterum de maiore et minore. De expetendo et fugiendo huius modi: Si expetendae divitiae, si fugienda paupertas. De aequo et iniquo: Aequumne sit ulcisci a quocumque iniuriam acceperis. De honesto et turpi: Honestumne sit pro patria mori? **85** Ex altero autem genere, quod erat bipertitum, unum est de eodem et alio: Quid intersit inter amicum et assentatorem, regem et tyrannum; alterum de maiore et minore, ut si quaeratur eloquentiane pluris sit an iuris civilis scientia. De cognitionis quaestionibus hactenus.

1–30 *ABadL*

3 qua de commutatione *A* : -e com- *in ras.* A^1 : qua de mutatione α : quadam mutatione *B*   3–4 sit necne sit α : sitne necne sit β   4 ecquid aequum *Aad* : et de quom *B* : et de quum B^1 : et quid aequum *L*   7 commutatione α : mutatione β   15 et α : est β   16 sint *A post ras.*, *B post ras.*, α : sunt β   *ante* adsentator *hab.* sit β   17 et¹ *om.* βα   20 simplicium $A^{pc}BL$: -cum *a d* : -cia *A*   24 *ante* iniquo *hab.* de β

The category 'conjecture' is divided into four parts: when we ask whether something is the case; whence it arose; what cause brought it about; when we inquire into the change of something. For example: Do the honourable and the fair really exist, or are they all just a matter of opinion? Can virtue be produced by nature or by teaching? By what means is eloquence produced? Can eloquence be turned, by some process of change, into the inability to speak?

83 But when the question is what something is, one has to explain the notion, the property, and the division and partition. For these belong with the definition. Description, which the Greeks call *character*, is also added. Notion is inquired into in the following way: Is justice that which benefits the more powerful? Property in this way: Is grief something that befalls only humans, or does it also befall animals? Division and partition: Are there three kinds of goods? Description: What kind of person is a miser, a flatterer, and the other things of the same type, in which both nature and life is described?

84 When the question is of what kind something is, the question is posed either in the simple form or by way of comparison. In the simple form: Is fame to be sought? By way of comparison: Is fame to be preferred to riches? Of the simple form there are three types: about choices and avoidances, about the just and the unjust, and about the honourable and the shameful. There are two types of those questions which involve a comparison: one about the identical and the different, the other about the larger and the smaller. Choices and avoidances in the following way: Are riches to be desired, is poverty to be avoided? The just and the unjust: Is it just to take revenge on anybody who has inflicted an injustice on you? The decent and the shameful: Is it decent to die for one's country? **85** Of the other class, which is twofold, one is about the identical and the different: What is the difference between a friend and a flatterer, a king and a tyrant? The other is about the larger and the smaller, e.g. if the question is whether eloquence or the science of the civil law is more valuable. So much for questions involving understanding.

86 Actionis reliquae sunt, quarum duo genera: unum ad officium, alterum ad motum animi vel gignendum vel sedandum planeve tollendum. Ad officium sicut cum quaeritur suscipiendine sint liberi. Ad movendos animos cohortationes ad defendendam rem publicam, ad laudem, ad gloriam; quo ex genere sunt querellae, incitationes miserationesque flebiles; rursusque oratio tum iracundiam restinguens, tum metum eripiens, tum exsultantem laetitiam comprimens, tum aegritudinem abstergens. Haec cum in propositi quaestionibus genera sint, eadem in causas transferuntur.

87 Loci autem qui ad quasque quaestiones accommodati sint deinceps est videndum. Omnes illi quidem ad plerasque, sed alii ad alias, ut dixi, aptiores. Ad coniecturam igitur maxime apta quae ex causis, quae ex effectis, quae ex coniunctis sumi possunt. Ad definitionem autem pertinet ratio et scientia definiendi. Atque huic generi finitimum est illud quod appellari de eodem et de altero diximus, quod genus forma quaedam definitionis est; si enim quaeratur idemne sit pertinacia et perseverantia, definitionibus iudicandum est. **88** Loci autem convenient in eius generis quaestionem consequentes, antecedentes, repugnantes, adiunctis etiam iis qui sumuntur ex causis et effectis. Nam si hanc rem illa sequitur hanc autem non sequitur, aut si huic rei illa antecedit, huic non antecedit, aut si huic rei repugnat illi non repugnat, aut si huius rei haec illius alia causa est, aut si ex alio hoc ex alio illud effectum est, ex quovis horum id de quo quaeritur idemne an aliud sit inveniri potest.

89 Ad tertium genus quaestionis, in quo quale sit quaeritur, in comparationem ea cadunt quae paulo ante in comparationis loco enumerata sunt. In illud autem genus in quo de expetendo fugiendoque quaeritur adhibentur ea quae sunt aut animi aut corporis aut externa vel commoda vel incommoda. Itemque cum de honesto turpique quaeritur, ad animi bona aut mala omnis oratio derigenda est.

1–31 *ABadL*

1 *ante* actionis *hab*. de β   3 sicut cum *A* : sic ut cum *B*¹ : sic ut *B* : sic α
6 rursusque α : rursumque β   8 propositi *coni*. *Hammer* : propositis
βα   15 et de altero β*L* : de altero *a* : et alio *d*   19 consequentes antecedentes β*ad* : c-tis a-tis *a*ᵖᶜ*L*   adiunctis : -cti βα   20 iis (is *Di Maria*, his ς) : eique *A* : ei *B* : ii *a* : hi *d* : hique *L*   *ante* effectis *hab*. ex β   22 huius β : huic α
24 aliud β : illud α   26 ad β*a* : at *dL*   27 ante *A*¹*B*¹ α : autem β
28–9 fugiendoque α : fugiendove β*L*ᵛˡ   30 vel incommoda α : damna *B*¹ : *om*.
β   31 derigenda *Ba* : dirigenda *Ad* : deridenda *L*

86 There remain questions about action, of which there are two types: one relates to duty, the other to emotion, its arousal, calming, or complete removal. A question relates to duty, e.g., when it is asked whether one should raise children. Under emotion come exhortations to defending the state, to praise, or to glory. To this type belong complaints, incitements, and tearful appeals for pity. And also any speech which from time to time mitigates anger, removes fear, restrains exuberant happiness, or wipes away grief. These question types, although they belong with problems, are transferable to cases.

87 We must next consider which Places apply to each of these questions. All of them apply to more than one, but, as I said, some are more suitable to some, and others to others. So for the treatment of conjecture those arguments are especially suitable which can be derived from causes, from effects, and from concomitants. For the question-type 'definition' the method and science of defining is most relevant. And especially close to this last type is the one which, as we said, is called 'from the identical and the different', which is a kind of species of definition. For if the question is whether obstinacy and tenacity are the same, this is to be judged by definitions. **88** Suitable Places for a question of this kind will be 'from consequents', 'from antecedents', 'from incompatibles', with those added that are drawn 'from causes' and 'from effects'. For if A follows B but not C, or if A precedes B but not C, or if A is incompatible with B but not with C, or if A is the cause of B but C has a different cause, or if A is the effect of B but C the effect of D, then with the help of any of these we can discover whether the thing at issue is identical with or different from the other thing.

89 With respect to the third type of question, in which it is asked of what quality a thing is, those aspects offer themselves for comparison which were listed above in connection with the Place from comparison. But with respect to that type in which the question is about choice and avoidance we draw upon advantages or disadvantages of mind, body, or external circumstances. Likewise when the issue is about the honourable and the shameful, every speech is to be directed to the good or bad qualities of the mind.

1   **90** Cum autem de aequo et iniquo disseritur, aequitatis loci colli-
gentur. Hi cernuntur bipertito, et natura et instituto. Natura partis
habet duas, tributionem sui cuique et ulciscendi ius. Institutio
autem aequitatis tripertita est: una pars legitima est, altera conven-
5   tis, tertia moris vetustate firmata. [Atque etiam aequitas tripertita
dicitur esse: una ad superos deos, altera ad manes, tertia ad homines
pertinere. Prima pietas, secunda sanctitas, tertia iustitia aut aequitas
nominatur.] De proposito satis multa, deinceps de causa pauciora
dicenda sunt. Pleraque enim sunt ei cum proposito communia.
10   **91** Tria sunt igitur genera causarum: iudici, deliberationis, lau-
dationis, quarum fines ipsi declarant quibus utendum locis sit.
Nam iudici finis est ius, ex quo etiam nomen. Iuris autem partes
tum expositae cum aequitatis. Deliberandi finis utilitas, cuius eae
partes quae modo expositae [rerum expetendarum]. Laudationis
15   finis honestas, de qua item est ante dictum. **92** Sed definitae
quaestiones a suis quaeque locis quasi propriis instruuntur
<∗ ∗ ∗> quae in accusationem defensionemque partitae; in quibus
exsistunt haec genera, ut accusator personam arguat facti, defensor
aliquid opponat de tribus: aut non esse factum aut, si sit factum,
20   aliud eius facti nomen esse aut iure esse factum. Itaque aut infitialis
aut coniecturalis prima appelletur, definitiva altera, tertia, quam-
vis molestum nomen hoc sit, iuridicialis vocetur. Harum causarum
propria argumenta ex iis sumpta locis quos exposuimus in prae-
ceptis oratoriis explicata sunt. **93** Refutatio autem accusationis in
25   qua est depulsio criminis, quoniam Graece στάσις dicitur, appel-
letur Latine status; in quo primum insistit quasi ad repugnandum
congressa defensio. Atque in deliberationibus etiam et laudationi-
bus idem existunt status. Nam et negantur saepe ea futura quae ab
aliquo in sententia dicta sunt fore si aut omnino fieri non possint
30   aut sine summa difficultate non possint; in qua argumentatione
status coniecturalis exsistit;

1–31 *ABadL*

3 cuique *om.* α   4–5 conventis β : conveniens α   5–8 [] *secl. Schütz*
13 eae β : hae α   14 [] *secl. Friedrich*   16 instruuntur β : instituuntur α
17 *lacunam statuit Kayser p. xxviii*   partitae $AB^1a^{pc}dL$: paratae *Ba*   23 iis
BdL : i- *in ras.* a : his *A*   25 quoniam α : quae β   29 fore si A^1B^1α :
forensi β   possint A^1B^1α : possent β

90 But when the issue is about the just and the unjust, the Places of equity will be assembled. These are divided in two, with respect to nature and with respect to institutions. Nature has two parts, giving everyone what is his due and the right of revenge. But the institution of equity is threefold; one part is based on law, the other on convention, the third is firmly grounded in the antiquity of custom. [Equity, too, is said to be threefold, with one part belonging to the gods who dwell aloft, the other to the spirits of the dead, the third to men. The first is called piety, the second holiness, the third justice or equity.] So much for the problem, now we need to say something about the case, but not so much. For it shares many features with the problem.

91 There are three types of case: judicial, deliberative, encomiastic. Their objectives indicate themselves which Places we must use. For the objective in a judicial case is doing justice, from which it also takes its name, and the parts of the law and those of equity have just been expounded. The objective in a deliberative case is utility, whose parts are those which have just been set out [as relevant to desirable aims]. The objective of an encomiastic case is honour, about which we have also spoken before. **92** Definite questions are all built up by their own, in a sense peculiar, Places . . . which are divided into accusation and defence. Of these there are the following types: The prosecution accuses someone of having committed a certain deed, the defence gives one of the following three replies: either that the deed has not been done or, if it has been done, that it had a different name, or that it had been done lawfully. The first type is therefore called negatory or conjectural, the second 'bearing on definition', the third, although this is an awkward name, juridical. Arguments suitable for these cases, and drawn from the Places I have set out, are expounded in the rhetorical handbooks. **93** The refutation of an accusation, in which the rejection of the charge lies, may be called *status* in Latin, because it is called *stasis* in Greek; this is where the defence, as it were, first assembles to fight back. And in deliberative and encomiastic cases the same *status* exist. For often it is asserted that what a speaker in stating his opinion has predicted to happen will not happen, if (one maintains) it is utterly impossible or can come about only with great difficulty; and here we have the conjectural *status*.

1 **94** aut cum aliquid de utilitate, honestate, aequitate disseritur deque iis rebus quae his sunt contrariae, incurrunt status aut iuris aut nominis; quod idem contingit in laudationibus. Nam aut negari potest id factum esse quod laudetur aut non eo nomine afficiendum
5 quo laudator affecerit aut omnino non esse laudabile quod non recte, non iure factum sit. Quibus omnibus generibus usus est nimis impudenter Caesar contra Catonem meum.

95 Sed quae ex statu contentio efficitur, eam Graeci κρινόμενον appellant, mihi placet id, quoniam quidem ad te scribo, qua de re
10 agitur vocari. Quibus autem hoc qua de re agitur continetur, ea continentia vocentur, quasi firmamenta defensionis quibus sublatis defensio nulla sit.

Sed quoniam lege firmius in controversiis disceptandis esse nihil debet, danda est opera ut legem adiutricem et testem adhibeamus.
15 In qua re alii quasi status existunt novi, sed appellentur legitimae disceptationes. **96** Tum enim defenditur non id legem dicere quod adversarius velit, sed aliud. Id autem contingit cum scriptum ambiguum est ut duae sententiae differentes accipi possint. Tum opponitur scripto voluntas scriptoris ut quaeratur verbane plus an
20 sententia valere debeat. Tum legi lex contraria affertur. Ita sunt tria genera quae controversiam in omni scripto facere possint: ambiguum, discrepantia scripti et voluntatis, scripta contraria. Iam hoc perspicuum est, non magis in legibus quam in testamentis, in stipulationibus, in reliquis rebus quae ex scripto aguntur
25 posse controversias easdem existere. Horum tractationes in aliis libris explicantur.

97 Nec solum perpetuae actiones sed etiam partes orationis isdem locis adiuvantur partim propriis, partim communibus, ut in principiis quibus ut benevoli, ut dociles, ut attenti sint qui
30 audiant, efficiendum est propriis locis; itemque narrationes ut ad suos fines spectent, id est ut planae sint, ut breves, ut evidentes, ut credibiles, ut moratae, ut cum dignitate. Quae quamquam in tota oratione esse debent, magis tamen sunt propria narrandi.

1–33 *ABadL*

1 *ante* honestate *hab.* de β   2 deque α : deve β   iis *ad* : eis β : his *L*   his βL : iis *ad*   3 contingit *ad* : contigit *L* : continget β   5 quo A^1B^1α : quod β   8 quae AB^1dL, *om. a, add.* a^{sl} : qui *B*   9 appellant β : vocant α   10 agitur β : agetur α   15 alii quasi α : aliqua si *A* : aliquas *B* : aliqui B^1 16 defenditur β : -detur α   18 ut β : aut α   20 debeat β : debeant α   28 locis α : alocis β   32 moratae β : moderatae α

94 When the discussion is about utility, honour, or equity or about such things as are contrary to these, the *status* of right law or of name offer themselves. The same applies in encomiastic speeches. For either it can be denied that what is being praised has happened, or it can be said that it should not be assigned the name the encomiast has given to it, or that it is altogether not praiseworthy, because it was not done rightly or not lawfully. Of all these ways of arguing Caesar made all too shameless use when he wrote against my *Cato*.

95 The dispute which arises from the *status* the Greeks call *krinomenon*; I prefer to call it, because I am writing to you, 'the issue before the court'. Those aspects of the case in which 'the issue before the court' is included I call 'what holds the case together', because they are, as it were, the support of the defence without which there can be no defence in the first place.

But because in the discussion of controversial questions there must not be anything which is stronger than the law, we have to take care that we bring in the law as helper and witness. In this matter there are other new *status*, as one might call them, but let us call them legal disputes. **96** For sometimes it is argued in a defence that the law did not say what the opponent would have it say, but something different. This happens when the wording of the law is ambiguous so that two different interpretations are tenable. Sometimes the intention of the writer is contrasted with the wording of a document; then it is asked whether the letter or the spirit should have more weight. Sometimes a law is brought in which is contrary to the other law. That is, there are three types of possible disagreement about every written document: ambiguity, discrepancy of letter and spirit, and contradictory texts. It is surely now clear that these same controversies may come up as much with respect to wills, stipulations, and other matters which arise from something written as with respect to laws. Their treatment is explained in other works.

97 Not only complete speeches, but also parts of a speech may be supported by the same kind of Places, partly peculiar, partly general; for example, in exordia, those who listen are to be made benevolent, docile, and attentive with the help of certain Places peculiar to exordia; the same holds for narrations, for them to work towards their goal, which is that they should be plain, short, clear, credible, of controlled pace, and dignified. Although these features

1 **98** Quae autem consequitur narrationem fides, ea persuadendo
quoniam efficitur, qui ad persuadendum loci maxime valeant
dictum est in iis in quibus de omni ratione dicendi. Peroratio
autem et alia quaedam habet et maxime amplificationem, cuius
5 effectus hic debet esse ut aut perturbentur animi aut tranquillentur
et, si ita affecti iam ante sint, ut adaugeat eorum motus aut sedet
oratio. **99** Huic generi, in quo et misericordia et iracundia et odium
et invidia et ceterae animi affectiones perturbantur, praecepta
suppeditantur aliis in libris, quos poteris mecum legere
10 cum voles. Ad id autem quod te velle senseram cumulate satis
factum esse debet voluntati tuae. **100** Nam ne praeterirem aliquid
quod ad argumentum in omni ratione reperiendum pertineret,
plura quam a te desiderata erant sum complexus fecique quod
saepe liberales venditores solent ut, cum aedes fundumve vendi-
15 derint rutis caesis receptis, concedant tamen aliquid emptori quod
ornandi causa apte et loco positum esse videatur; sic tibi nos ad id
quod quasi mancipio dare debuimus ornamenta quaedam volui-
mus non debita accedere.

1–18 *ABadL*

1 consequitur β : sequitur α 3 iis *ad* : his $Aa^{pc}L$: hiis B 5 hic α : is β
6 affecti iam β : i. af. α adaugeat β : augeat α 8 et² *om.* β 10 cum α :
quam β 12 ratione α : oratione β 13 a te *A post ras.*, B^1, α : ante β

are meant to be in evidence in the whole speech, they are more characteristic of narration. **98** Proof follows on narration, and because proof is primarily brought about by persuasion, it has been said in the books which deal with the whole theory of public speaking which Places have the strongest force for the purpose of persuasion. The peroration has yet again certain other Places belonging to it, and in particular amplification, whose effect in this case ought to be that hearts are either stirred up or soothed, or, if they have already been affected in this way, that the speech either heightens the audience's emotions or sedates them. **99** Precepts for this part of speech, in which compassion, anger, hatred, ill-will, and the other affections of the soul are aroused, are provided in other books which you will be able to read with me when you wish. With respect to that which I thought you wanted your wishes should now be abundantly satisfied. **100** For to make sure that I did not pass over anything which belonged to the sphere of finding arguments in any affair, I have gathered more than you desired, and I have done what generous sellers often do: when they have sold a house or a piece of land, 'reserving title to minerals and timber', they make a concession to the buyer, to keep something that seems to be suitable and in place as an ornamental feature. So over and above what I was bound to sell you, I wished to offer you some ornaments which were not part of my obligation.

Appendix Critica

2 multos: multo *a*   6 ab illo sunt *a*   7 cum quam *d*
10 inventa *d*   11 ut facile cernerem *a*   ardebam *a*^{vl} illa *om. a*
13 id tua *d*   id interesse: in. id *L*   vel¹–legeres *om. d*   te *om. B_A*,
add. $B_A{}^{\text{1 mg}}$ 15 audiebam a^{pc}: audiebas *a*   expertus $B_A{}^{\text{pc}}$:
expertes B_A 16 te obscuritas a^{pc}: obscuritas te *a*   17 ignorare
d^{pc}: ignore *d*   21 debuerunt *a*: debuerint a^{pc} (*corr. m. prima*)

1 igitur *om. L*   2 *post* diutius *hab.* denegare *L*   ipsi: ipsius *L*
3 videretur B^1: viderentur *B*   meisque B^1: meis quae *B*   5 dum:
cum *L*   8 possemus *d*   quidem mihi id: id quidem *d*   9 tua- A^1
(*atramentum addidit*)   9 ne: nec *d*   10 flagitationi a^{pc}: flagitioni *a*
10 mecum B^1: ecum *B*   11–2 tibique B^1: tibi quae *B*   13 mon-
itore *d*   rerum *om. B, add. B^1*   14 excitaremus *d*   15 ratio
diligens: d. l. *d*   disserendi: discernendi *L*   16 princeps a^{pc}: parti-
ceps *a*   ut *a om., add.*^{masl}   18 vias a^{pc}: via *a*   19 διαλ.: dia-
lecticen βα   τοπ.: topice βα   dicitur B^1: dicuntur *B*   20 ordine
B^{pc}: ordinae *B*   certe prior: prior certe *L*   21 utramque A^1:
utramquae *A*   22 prior est B^1: priorem *B*   24 et notato *om.*
B, add. B^1   25 argumentum aliquod: al. ar. *d*   26 aristotele
sunt AB^1 (-tile *A*) *aL*: aristoteles *B*: -tile *d*   eae βα*L*: hae *a*^{vl}: eae res *d*
27 esse *om. a*   argumentis *B*   29 his *AL*: hiis *ad*: iis *B*   31 iis
B: his *A*α   33 longeque B^1: longe quae *B*

2 *ante* id *hab.* ad *A* (at A^1)   3 iis *Ba*: his *AL*: hiis *d*   5 est²
om. A, add. A^{1sl} 6 modo B^1: mo *B*   7 nec: neque *L*   8 neque
ulla ∈*d*: nulla $a^{\text{pc}}L$ earum: harum *L*   9 cum A^1: *om. A*   13 iis
Ba: his *AL*: hiis *d*   14 plures *ad*   15–16 alia¹–similitudine *om.*
a, add. a^{mg}   18 affectis *A*   20 generis eiusdem: e. g. *L*   21 sunt
verba *a*: sunt *om. L*   uno A^1: uo *A*   varie A^1, *B post ras., ad*: variae β:
variis *L*   22 iugatio *d*   συζυγία: *CINZIΓIA* βα: *CINZΥΓIA* $a^{\text{pc}}d$:
CYNZΥΓIA L

1 quoniam: quo *a*   argentum A^1: argumentum *A*   2 relicta:
recta *L*   3 nomen retinet: r. n. *L*   5 videtur B^1: videt *B*
9 *post* est *hab.* et, *exp. B*   13 eae β *post ras.*, α: aeae *B*   15 quam

B^1: quae B is cuius: hisciui A 18 nominibus A^1: ominibus A: omnibus L^{uv} 19 differt: differret L 25–26 numquam capite d 27 servorum βad: servulorum $a^{pc}L$

Page 124

3 etiamsi $a^{vlsl}L$ 6 qui L^{pc}: quia L 9 legavit²: delegavit d 10 quod B^{pc}: quo B 16 debebit A^1: debit A 18 sustineri a^{vlsl} 19 viro a^{pc}: vicio a 22 maiore B^1: maiorum B valet: valeat d 23 arceatur A^1: arceantur A econtra d minore: re minore L 25 par: pars L 26 aedes *om.* L 27 ceterarum A^{pc}: ceterorum A, cf. B annuus a^{pc}: annus a

Page 126

1 maxime α: maxume β 2 ἀτέχνους: atechuns B: atechnos AB^1: atechnos a: aTHΓNOC d: antecnos L 3 expertis βaL: expertes A^1B^1a ᵖᶜd 4 Scaevolam a 5 tectum A^1BaL, *om.* d: tecum A quo A^1: qo A 10 puto *om.* d 11 accipiam a^{pc}: accipiebam a 13 quaedam B^1: quidam B 16 diffinitio ad est B^1: sunt B 17 diffinitionum ad duo *om.* B, *add.* B^{1sl} quae¹ B^1: qui B 18 intelleguntur B: intelliguntur B^1 19 aedis βad: aedes A^1B^1L 24 capionem B: captionem B^1 agnationem: gnationem L rerum A^{pc}: -rem A 27 definitione AB^{pr}: -nes B: diffinitione ad

Page 128

1 diffinitiones a 3 ius civile dicat dL 4 consultis $B\alpha$: -tus A: - tibus B^1 5 morum a 6 diffinitio ad 7 quod B_A^1: quo B_A 10 diffinitionum ad 11 diffinitionis ad 15 in commune d *post* commune *add.* est B_A^{1sl} 17 diffinitio ad 19 diiuncta ϵ: disiuncta B_A^1 diffinitio ad 23 uti illud a ut *om.* L, *add.* L^{sl} 27 diffinitionem a 28 diffinitionum a 29 intelligitur ϵ defin- *nunc demum* ϵdL

Page 130

8 utendum est B_A^1: utendumst B_A 9 verbo *om.* a 13 quasi B_A^1: qua B_A ad fontem d inferri a 14 ἔννοιαν: ennoeam ϵ: ENNIAN d : ennoean L πρόλημψιν: prolemsin ad: prolemsin (*ras.*) seu problesim B_A: prolempsin L 16 eae *om.* d 18 partis B_Ad: partes a 22 solebat B_A^1: soleba B_A igitur a^{pc}: enim a 23 pullica B_A 24 quos ad id B_A^1adL: quoddid B_A 26 tralatione d 27 discedebat: discebat L

page 132

5 divisione: definitione d 6 cuique adL: cuicumque B_A 8 quot B_A^1: quod B_A 10 σχήματα: schemata B_{al}: scemata ad 10 est *om.* B_A 15 notatione a^{pc}: notione a 16 ἐτυμολογίαν: ethymologian B_A: ethimologian adL 17 est verbum *om.* aL, *add.* a^{sl}

19 σύμβολον: symbolon $B_A dL$: simbolon a 20 est $B_A dL$: dicitur a
21 disputando B_A: disputanda $B_A{}^{1}$ 22 ut cum–23 aeditumo *vix legitur a*   27 Servus B_A esse putat a 29 aedit. non plus inesse $B_A d$ (esse dL): n. p. i. ae. a: et non plus inesse in his $B_A{}^{1}$

Page 134

2 et^1 *om. d*   et^2 a^{sl} *post* alienata *hab.* sunt d 5 deditum: dicendum B_A 6 non^2 *om.* B_A, *add.* $B_A{}^{1 sl}$ 8 iis ϵ: hiis d: his L
10 partis d 11 συζυγίαν: synzygian ϵ: cynzyian d: sinzygian L modo dictum est *om. a*, *add.* a^{mamg} 13 Mu nitius B_A: Mi nutius $B_A{}^{1}$ iugata: iuga L 17–8 sit supra d 19 veniente d 20 in quo–continetur *post* nocens *transp. d*   21 formae B_A: forma est $B_A{}^{1}$
24 partis ϵd: partes a^{pc} L 27 includere ad: incidere includere B_A: inc. inconcludere $B_A{}^{1}$: incidere L

Page 136

2 omnis a 5 iis ϵL: hiis d 6 ad- *exp. a*   8 *ante* cui *hab.* is d
9 perveniens a^{pc}: veniens a appellatur d 10 ἐπαγωγή: ΕΠΑΓΟΓΕ B_A (E-^{sl}) La: anagoge d qua: quam B_A 11 genus *om. L*   12 par *om. a*   14 controversia a^{pc}: contraversia a arbitrium a 15 possis $B_A{}^{1}$: possit B_A urbem B_A 16 adicere ar. a^{pc}: ar. adicere a
17 *ante* exempla *hab.* et B_A 18 *ante* testamento *hab.* in, *exp. a*
19 si *om.* B_A, *add.* $B_A{}^{1 sl}$

Page 138

1 ficta $B_A{}^{1}$: facta B_A habent vim: habentium B_A 2 *ante* uti *hab.* hiis d uti etiam: etiam uti L 5 se *om.* B_A, *add.* $B_A{}^{1 sl}$
8 ὑπερβολή: ΥΠΕΡΒΟΛΥ B_A (- H^{sl} *post ras.*) ad 10 ex *om. d, add.* d^{sl} 11 ducuntur $B_A{}^{1}$: dicuntur B_A 15 quod a^{pc}: quodquod a 18 autem *om. L*   quae a^{pc}: quod a 22 ta- $B_A{}^{1 sl}$: argumentalia B_A fugimus: fuimus L sequamur: queramus d 25 στερητικά: $c\tau\epsilon PH$tika ϵL: cteretika d 27 indignatas B_A 28 huiusdem a quae a^{pc}: quod a 29 superiorum a^{pc}: superius a

Page 140

1 quae a^{pc}: quod a 4 ἀποφατικά: apoφatika ad 8 autem *om. d*
9 *post* edicto *hab.* populi r. d, *cf.* §18   10 is *hab. bis d*   16 quid a^{pc}: quis a 16–17 quis tale ϵL: talem rem d 18 nisi *om.*, *add.* L^{sl}
22 sunt *om.*, *add.* L^{sl} 24 et *om. L*   25 perturbationis d 26 et cetera d 27 possunt movere: m. p. L

page 142

7 modi: m^o a 14 an a^{vlmg}, $B_A dL$: aut a 16 argentum *ante* est^2(15) *transp. d*   an: aut a 20 primum *bis a, alterum deletum*   23 iis: hiis d 26 ἐνθυμήματα : $eN\Theta YMHMATA$ ϵL : $eNTYMHMATA$ d

27 ἐνθύμημα: eΝΘΥΜΗΜΑ B_A *post ras.*, *a*: -ΜΑΤΑ B_A: eΝΤΥΜΕΜΑ
d 29 sententia a^{pc}: setentia *a* ἐνθύμημα: eΝΘΥΜΗΜΑ $B_A l$: -Ma*ad*

Page 144

3 *super* prodest *add.* non $B_A{}^1$ obest: *d hab. ras.* 5 disputa-
tiones a^{pc}: disputationis *a* 7 ἐνθύμημα: eΝΘΥΜΗΜa α 16 et¹
exp. a ante ex *hab.* atque *L* 18 διαλεκτική: dialectice εd; dialec-
tica a^{pc} 26 efficiendi a^{pc}: efficientibus *a* sine $B_A{}^1$ *ad L*: sint B_A

Page 146

2 *ante* nihil *add.* et $B_A{}^{1sl}$ nihil: nil *a* 3 autem *om. L* 8–9
Atque–possunt a^{mg} 12 qua re *d*: quare εL 14 *ante* erit *hab.*
non *d* 26 fuit in his tr. : in h. tr. f. *d*

Page 148

1 dissimilitudo a^{pc} : similitudo *a* 3 efficiant a^{pc} : efficiunt
a vel ut εd : velut *L* 9 modi : m° *a* 10 autem : igitur *L* inest¹:
est B_A 11 in¹ *exp. a* 14 subiectae : subiecta *a* 15 est
fortunae : fortunae est *L* 16 sunt : sint *d* 17 necessitate
effecta sunt : ex necessitate fiunt *d* 18 autem fortuna a^{pc} : f. a.
a 19 nolueris : volueris *a* 26 *ante* philosophorum *hab.* rhet-
orum, *exp. a* 30 multum a^{pc} : multa *a* in *exp. a*

Page 150

1 iis *om. d* 2 vero *om. d* 3 in²–uxoriae *om. d* 4 esse
hab. bis d 6 fuissent quid eum *in ras. a* 8 *ante* quid¹ *hab.* et
B_A 11 disputare a^{pc} : disputaret *a* 15 iis : his *d* 19 reli-
quus L^{pc} : relinquus *L* 21 aut maiora *in ras. a* aut paria *in ras. a*
22 numerus : -rum B_A 23 affectio B_A : -one $B_A{}^1$

Page 152

5 expetenda a^{pc} : -tan- *a* 9 alienis a^{pc} : -nas *a* rara : iura *a*
13 comparatione *a post ras.* : -nem *a* 14 egent a^{pc} : egant *a*
16 non a^{sl} 20 iis $B_A d$: eis *a* : his *L* 21 multa : multi *L*
22 aequalitatem *a* 24 ii¹ εd : hi *L* 28–29 a contrariis–repug-
nantibus *om. L*, *add.* L^{mg} 30 causis a^{pc} : causas *a* 31 nulla *a* :
nullum a^{pc}

Page 154

1 ita *bis, prius exp. a* 2–3 est dictum : dic. e. *d* 7 aliorum a^{pc} :
eliorum *a* 9 est posita $B_A{}^1$ est *in ras. B, del.* (*vide Di Maria 1994,*
p. xvi) 11 qualiscumque est A^{pc}, B^1 *del.*, *ad L* : qualiscumquest *A* :
qualiscumque sunt *B del.* 12 ante testimoni *hab.* quae $B_A{}^1$ facien-
dam A^1 : -dum *A* 13 natura *B post ras., del.* : naturam *u.v. B,*
del. naturae a^{pc} : -ra *a* 15 auctoritatem a^{pc}:-tas *a* 16–17

fortuitarum : fortunarum L 19 eamque A^{I} : eam quae A 23 his : iis d 29 iracundia A^{pc} : -diae A

Page 156

2 vinolentia $AB^{\text{I}}d$: vinulentia BaL 3 pertineret : perneret a ignari B *post ras.* : signari B 4 patefacta : pate a^{sl} 5–6 qui ea locutus est $A\alpha$: q(uae) alocutus B : quae locutus B^{pc} 9 fortuitorum L^{pc} : fortunitorum L talis a^{pc} : aulis a 9–10 si inter- a^{pc} : sunt a 10 casu $AB^{\text{pc}}a^{\text{pc}}dL$: cassu B : causa a cum B^{I} : quum B 11 illa : ille L palamedem Aa : -den d : palam_aeden B : palamenden L 12 multitudo a^{pc} : multimodo a 13 huius B^{I} : hius B 18 in *om.* d 20 omnis a : omnes a^{pc} 21 atque B^{I} : adque B *ante* eiusdem *hab.* eius, *exp.* a aeris a^{pc} : a. B^{Isl} : aeres a 23 exta a^{pc} : exita a

Page 158

1 virtutis a^{pc} : -tes a opinio est $A^{\text{I}}B^{\text{I}}\alpha$: opiniost β 5 laeli β : -lii $A^{\text{I}}B^{\text{I}}\alpha$ 6 qualis βad : quales $a^{\text{pc}}L$ 6–7 honoribus a^{pc} : oneribus a 7 et a : ut a^{pc} 8 poetas a^{pc} : poetis a 11 non : is d 12 locus a^{pc} : locis a 14 aptiores β : aptioris α quaestionum $A^{\text{pc}}a^{\text{pc}}BdL$: -nem Aa 14–15 infinitum definitum alterum α : d. a. i. β ὑπόθεσιν : hypothesin A : ypothesin B : ΥΠΟΘΗCIN a : ΥΠΟΘΕCIN dL 16 θέσιν : thesin β : ΘΕCIN α 19–20 in aliquo–propositum a^{mg} 20 omnis : -s B^{I} : omnium B^{uv} 21 earum : eorum a re est $A^{\text{pc}}ad$: rest $\beta(A^{\text{ac}})$: rerum est B^{I} 23 de re A^{Isl} 24 cognitionis[1] A^{pc} : -nes A 28 quaestiones a^{pc} : -nis a 29 quale a^{pc} : qualis a

Page 160

1 partes *om.* a 1–2 una est $A^{\text{I}}B^{\text{I}}\alpha$: una st B : una sit A 4 ecquidnam AaL : etquidnam $B^{\text{I}}d$: ec quidnam B re vera B : et sitne aliquid resvera B^{I} 5 sint B : sit B *post ras.*   6 efficiens a^{pc} : effiens a 8 commutatione : -ne a^{sl} 10 notio : nocio a^{pc} : noticio a 11 *ante* et divisio *hab.* sic in hominem, *exp.* a 12 χαρακτῆρα : ΧaPaKTHPa α : charactera B^{pc} : caracthera A : charectera B : characteran B^{I} notio a^{pc} : noticio a 13 est B^{I} : st B 14 beluas A^{pr} : belluas A 15 triane a^{pc} : tria a 16 ceteraque $AB^{\text{I}}dL$: -quae B : cetera quae a 18 cum B^{I} : quod B^{uv} quale–quaeritur A^{Imguv} 18 aut simpliciter– 19 sit a^{mg} 26 mori A^{pc} : moveri A 27 bipertitum B^{I} : -tium B *ante* quid *add.* ut B^{I}

Page 162

1 actionis : actiones a 2 *ante* sedandum *hab.* ad d planeve B : ple- B^{I} 3 suscipiendine : -dive A 4 *ante* cohortationes *add.* ut B defendendam : -dandam B 5 publicam a^{sl} 9 transferuntur B *post ras.* : transferantur B 14 definitionem : -num A

15 huic A^1 : hinc A quod *om.* L, *add.*^{sl} 20 qui : quae a
21 huic rei illa A^1 : h. reilla A aut si^1 : autsi A 22 illi non repugnat
a^{sl} 23 est^1 *om.* a est^2 : sit A 28 enumerata βdL : -ti a de
B *post ras.*, α : dequo β : deequo A^1 30–1 turpique A^1 : -quae A

Page 164

1 de aequo B^1 : dequo B 2 et instituto natura *om.* A, *add.*
A^{1mg} partis $A^1 B$: partes $A\alpha$ 3 et a^{pc} : ex a institutio A^1 : -
to A 4 aequitatis a : aequalitatis a^{pc} legitima ς : legituma
βadL 5 aequitas a : aequalitas a^{pc} 6 manes βaL :
manis $a^{pc}d$ 9 pleraque a^{pc} : pleroque a 11 fines : finis
a declarant : declarunt a 12 partes B^1 : partis B 13 aequitatis
a^{pc} : -tes a finis $A^1 B^1 \alpha$: fines β cuius B^{1sl} 16 quaestiones a^{pc} :
-nis a 18 personam arguat *om.* A, *add.* A^{1mg} 19 sit factum α : f.
s. β 25 $\sigma\tau\acute{\alpha}\sigma\iota\varsigma$: stasis $B\alpha$: stais AB^{pc} 26 Latine B^1 : -nae B
quo : qua a 28 status a^{pc} : statutus a ea futura : f. (ea *om.*) a
30 aut^1 B^1 : ad B possint : ponsint A

Page 166

1 aequitate : aequalitate a 4 laudetur : laudatur a 5 lauda-
tor B^1 : -tur B affecerit : ef- B 6 iure a^{mg} 8 $\varkappa\rho\iota\nu\acute{o}\mu\varepsilon\nu o\nu$:
crinomenon β : KPINOMeNON ad: KPINOMHNON L 9 ad te
B^1 : atte B 10 *post* continetur *hab.* et aeiectio a, *exp.*
ea : eae a
13 firmius : firmis a 14 danda est $A^1 B^1 ad$: dandast β 15 re
B^1 : te B existunt : existant a sed : A^{1sl} 16 disceptationes a^{pc} :
-nis a legem dicere : lege dicere a 17 aliud B^{pc} : alium B
18 ambiguum est B^1 : a. st B : a. sit B 19 oppinitur L 20 affer-
tur A^1 : defertur A ita $\beta\alpha$: ista $A^1 B^1$ 21 controversiam B^1 : -sia B
omni a^{pc} : omnis a 22 voluntatis a^{pc} : voluntatitis a 23 in legi-
bus B^{pc} : intellegibus B 27 actiones B^1: -nis β 28 isdem βa :
iisdem $A^1 B^1$ partim^1 A^1 : partem A communibus a^{pc} : -nis a
31 fines B^1 : finis B spectent : expectent a

page 168

2 maxime : maxume B^1 3 est A^{pc} : sit A dicendi B : -dum B^1
peroratio a : -onem a^{pc} 4 alia A *post ras.* : aliqua A maxime:
maxume B^{pc} : -mae B 6 sedet A *post ras.* : sedeat A 10 cumulate
B^1 : -tae B 13 complexus B^1 : complegus B fecique B^1 : fetique B

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Commentary

§§ 1–5

THE *prooemium* of the *Topica* poses a well-known problem. A 'Topics of Aristotle' is mentioned whose content Cicero tries to convey to Trebatius through his *Topica*.[1] But our Aristotelian *Top.* show little resemblance to the *Topica*. This 'contradiction' will be discussed under (i), other important aspects of the *prooemium* under (ii).

(i) *Cum enim mecum in Tusculano esses, . . . incidisti in Aristotelis Topica quaedam. . . .* I propose to take this at face value and to start from the hypothesis that there was such a book in his library, i.e. a book bearing this title, and that it was identical with 'our' *Top.* We may or may not have to abandon this hypothesis as we go through the text, but as a methodical principle I take this to be a sensible way to deal with information of this kind found in a text by Cicero: we believe him until evidence comes to light which makes it inevitable to review our position. Now it is obvious that our *Top.* cannot be identical with the primary source of *Topica* 1–78, which is a list of τόποι resembling the one in the Anon. Since this point is beyond question, an interpretation of the *prooemium* which allows us to defend the hypothesis about the 'Topics of Aristotle' would have to show that Cicero does not *identify* the book in his library with his primary source.

What follows is a close reading of the *prooemium*, supplemented with necessary background information. Detailed information on the interpretation of particular words or phrases is to be found in the commentary section.

Browsing with Cicero in the library of the *Tusculanum*, Trebatius hits upon a book entitled 'Topics of Aristotle' which attracts his interest.[2] As to the likely transmission of Aristotelian writings

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[1] I use *Topica* for Cicero's work, *Top.* for 'our' Aristotelian Topics (100^{a}18–164^{b}19 Bekker), and 'Topics of Aristotle' for the book in Cicero's library.

[2] Comparison of this piece of information with *Fam.* 7. 21 suggests that Cicero is referring to an actual event; see the Appendix.

during the Hellenistic era, there is no reason to doubt that in the fifties or forties of the first century BC Cicero possessed some acroamatic writings of Aristotle,[3] or that at this time the material on dialectic collected in 'our' *Top.* already formed a uniform whole.[4] Of course, there are other possibilities,[5] but without a compelling reason I should not wish to entertain them.

Trebatius asks Cicero about the content (§1 *sententia*) of the work. The account given by Cicero—that it is a method for finding arguments—is a fair description of Aristotle's *Top.*, though not one we find explicitly given by Aristotle himself. It is also the way in which Alexander of Aphrodisias characterizes the work in AD 200 (see the commentary), and it recalls the definition of the τόπος in the Anon. Seg., which suggests that it was an established way to refer to Aristotelian τόποι.

Trebatius is keen to learn more about the work and urges Cicero to pass on his knowledge about it (see the commentary on §2 *traderem egisti*). But Cicero is too busy to follow this request immediately, and asks him to read it himself or to consult a learned *rhetor* about it (*quodam* implies that it is a particular individual). Why a *rhetor*? Aristotle's *Top.*, of course, are not 'rhetorical' in any sense of the word. But the Aristotelian τόποι of Cicero's primary source are. One might take this as suggesting that the book called 'Topics of Aristotle' *is* the primary source of the *Topica*; our working hypothesis would of course become untenable. Alternatively, however, we could assume that Cicero's familiarity with a rhetorical tradition of Aristotelian τόποι might have shaped his views about the topical doctrine in general and thus have inspired the referral to a *rhetor*

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[3] See Barnes (1997*b*), who casts strong doubt upon the dogma that Andronicus of Rhodes's edition of the Corpus Aristotelicum, be it pre-Ciceronian or not, is largely responsible for the shape of the treatises as they have come down to us.

[4] We are dealing with two questions here. Is it likely that the material collected in our *Top.* formed a unity in Cicero's time? If so, is it likely that it was called 'Topics'? Although there is evidence suggesting that the books forming our *Top.* could be viewed as separate entities in the Hellenistic era (see Brunschwig 1967, pp. lxxii ff.; Moraux 1951, 54 ff.), *SE* 34—which summarizes *Top.* and *SE*—suggests that *Top.* and *SE* were conceived as a unity by Aristotle himself (see also Sandbach 1985, 19). And as to the second question: apart from the fact that the existence of the title shows that there was something called 'Topics of Aristotle', the references to the Τοπικά in Aristotle's *Rhet.* are too deliberate for us to assume their insertion by later *redactores* of Aristotelian material.

[5] Barnes (1997*b*), 56–7: 'Perhaps the work was a rank forgery? Perhaps a *sillubos* had fallen off the genuine copy of Aristotle's *Topics* and been stuck back on the wrong roll? Or perhaps . . . '[his aposiopesis].

rather than to a philosopher. This is a plausible option, too; so our hypothesis can for the moment be maintained. I add that Cicero took the applicability of τόποι to range over rhetorical and philosophical argument alike (*de Orat*. 2. 152), that is, he does not seem to be aware of the existence of 'non-rhetorical' τόποι.[6]

Since Trebatius himself found the book from Cicero's library 'obscure', a description which fits Aristotle's *Top*. very well but presumably not the source of the *Topica*, he turned to the *rhetor*, who, however, said that he did not know anything about 'this Aristotelian material' (§3 *haec Aristotelia*).

Cicero mocks at the *rhetor*'s ignorance of Aristotle, 'who is famous for the richness and smoothness of his style'. While the account of the situation suggests that the *rhetor* professed to be ignorant about this particular work only (see the commentary), Cicero—with a rhetorical sleight of hand—expresses amazement at his *general* ignorance of Aristotle. Otherwise the praise of the *copia* and *suavitas* of a work which had just been judged to be 'obscure' would be surprising.[7] Aristotle's *dialogues* were famous for their attractive style.[8] Finally, following Trebatius' request, Cicero wrote the *Topica* on board ship 'from memory', as he claims and no one believes.

Let me sum up. Cicero nowhere identifies the book in his library and the source of the *Topica*. The information we get about the book in Cicero's library, general though it is, suits our *Top*., which is a *disciplina inveniendorum argumentorum* (§2), in several volumes (§1), and obscure (§3). Cicero might have possessed a copy of Aristotle's *Top*. And even a superficial comparison of his primary source with the 'Topics' in his library, if identical with our *Top*., could have convinced Cicero that the two texts essentially represent two versions of the same theory.

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[6] In the first book of *Tusc*., he makes reference to a dialectical exchange in question and answer very similar to the one for which Aristotle's *Top*. is a manual (see Moraux 1968, 304–7). However, no suggestion is made that *loci* could play a role in such a dialectical discussion.

[7] Strictly speaking, it is not impossible that a writer should show *copia*, *suavitas*, and obscurity at the same time (Pindar may be an example); but the works at issue here seem to be a different case.

[8] *Luc*. 119: *Cum enim tuus iste Stoicus sapiens syllabatim tibi ista dixerit, veniet flumen orationis aureum fundens Aristoteles* (cf. Plut. *Cic*. 24). Although there are also some passages in the esoteric writings which could be described in this way (see Verdenius 1985), statements of this kind rather refer to the dialogues.

Other information we are given in the *prooemium* easily fits this picture. Having verified the relatedness of his primary source and the book in his library, Cicero presents Trebatius, as requested, with the essentials of Aristotle's theory of τόποι. His *Topica* has in fact 'Aristotelian' τόποι as opposed to the στάσις-based *loci* of the school tradition (cf. *Inv.* 1. 37–43),[9] and his work in that sense may be called *Topica Aristotelea* (*Fam.* 7. 21). To Trebatius, who must at least have tried to read the 'Topics of Aristotle' (§3), it might have been clear instantly that Cicero had neither translated it nor used it as a source. So the impression which my interpretation of the *prooemium* might give, that Cicero is deliberately vague or even misleading about the actual source of the book, need not have been that of the dedicatee.

Earlier interpreters have assumed either that the book in Cicero's library was his primary source for the *loci* (the 'one-book thesis')[10] or that it was not his primary source, so that he talks about one book and uses another (the 'two-books thesis').[11] The one-book thesis usually goes with the assumption that Cicero erroneously regarded the book in his library as Aristotle's *Top.*[12] This is, I believe, hardly reconcilable with the description Cicero gives of the book in his library. And, of course, if my argument was plausible that the *loci* have something to do with Philo of Larissa's rhetorical teachings, there would be an independent reason to reject the one-book thesis (unless we assume that Cicero is *deliberately* misleading).

The two-books thesis, a version of which I have just presented, has attracted far fewer scholars and, as far as I can see, none in the twentieth century. Wallies (1878) assumes that Cicero had Aristotle's *Top.* in his library, but actually used a *Topics* by Antiochus of Ascalon. As argued in the introduction, if the *Topica* have anything to do with the Academy, it is with the Fourth Academy of Philo.

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[9] Cicero himself stresses the difference of these two types of *loci*, preparing for the account of those in the *Topica*, at *de Orat.* 2. 117, 162.

[10] Boethius (but cf. 273. 2–6), Thielscher (1908), Kroll (1939), Philippson (1939), Riposati (1947), Bornecque (1960), Kaimio (1976), Barnes (1997*b*).

[11] Brandis (1829), Wallies (1878).

[12] Boethius, Riposati (1947), and Bornecque (1960) identify Cicero's primary source with *Top.*. Thielscher (1908) thought that Cicero in fact had our Aristotelian *Rhet.*, wrongly entitled 'Topics'.

(ii) Prose-style as it is known from Cicero's philosophical works and his rhetorical writings is in the *Topica* primarily to be found in the *prooemium* and the short epilogue (§100), where Cicero tries to give the technicalities which form the main body of the work a pleasant and urbane look. The tone of the *prooemium* reminds one frequently of that of Cicero's letters to Trebatius, which Eduard Fraenkel has termed as 'perhaps the happiest series in the large epistolary output of this unsurpassed letter-writer.'[13] In particular, Cicero adopts in the *Topica* a kind of expression which had always been characteristic for his interchange with Trebatius: a facetious use of legal terminology.[14] What, however, had been used in the letters for occasional jokes is pursued, particularly in the *prooemium*, so consistently that it seems almost artificial in view of Cicero's unhappy state of mind in summer 44, documented in his letters to Atticus. The individual instances of legal terms add up to a stylization of the dedication of the book as a legal transaction, with Cicero and Trebatius as the parties involved.[15] As to Cicero's stress on Trebatius' keen interest in the doctrine of *τόποι*, we may wonder whether Cicero has not simply grasped the opportunity to make Trebatius obliged to him, by responding to a less than urgent request: it is a commonplace to present a literary work as the belated or reluctant response to a repeated request made by the dedicatee (see Goldberg 1999, 225).

§1 Maiores ... ingressos. It is possible that *maiores res* refers to *Off.*, which Cicero wrote in the autumn/winter of the year 44 BC; but see Dyck (1996), 8 n. 20 for an alternative view. The relatively wide temporal gap between the announcement here (cf. *Fam.* 7. 19 of 28 July 44) and the first attestation of work on *Off.* (28 Oct.; *Att.* 15. 3. 6) may be explained by the political preoccupations which caused Cicero to abort the trip to Athens (cf. *Att.* 16. 7) to visit his son (*Off.* 1. 1). During the stage Velia–Regium, Cicero claims, he wrote the *Topica* (cf. *Fam.* 7. 19).

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[13] Fraenkel (1957), 66. Cf. von Albrecht (1973), 1261 ff. on points of contact between the style of the letters and that of the philosophical works in Cicero.

[14] See Shackleton Bailey (1977) on *Fam.*

[15] Horace in *Sat.* 2. 1, also dedicated to Trebatius and some fifteen years later than the *Topica*, represents Trebatius as a *iurisconsultus* giving *responsa* in legally coloured language to his 'client' Horace who asks for his advice. On this poem see McGinn (2001).

C. Trebati. On this form of address, *praenomen* and *nomen gentile*, and its relative formality (which fits a *prooemium*) see Dickey (2002), 51–3. There are two places where Cicero addresses Trebatius as *Testa* (*Fam.* 7. 13, 21, cf. 7. 22). In both letters Cicero wants to be cordial; in such situations it is natural to use the *cognomen* alone or the *cognomen* with an interjection or possessive pronoun (see Adams 1978, 150, 162–3). However, since no other ancient writer mentions the name *Testa*, nor does Cicero use it when writing to anyone else (not even Atticus), Sonnet (1932), 25 may be right in assuming that *Testa* is to be regarded as a kind of nickname (Roman *cognomina* may have their origin in such nicknames). Pliny (*Nat.* 26. 163, 28. 185) uses *testa*, apparently because of the similarity in colour, as a word for liver-spot or freckle, which fits well with *cognomina* like Flaccus, Naso, or Cicero. Less likely is a colloquial use for 'head', attested only with limited circulation within Romance.

his libris . . . digniores. This refers probably to the smaller works *Cato* and *Fat.*, which were completed in the first half of the year 44. Before that Cicero wrote *N. D.*, *Tusc.*, *Fin.*, the *Academica*, and *Div.*, which are unlikely to be meant here. *His* seems preferable to *iis*, since the reference is to something that is close (in more than one sense) to the speaker; see Hofmann–Szantyr 181 and Adams (1995), 587–9, esp. 587 n. 467, on *hic qui*.

satis multos. *Satis* with adjectives of quantity often means 'fairly, quite', cf. Caes. *Gall.* 7. 47. 2 *satis magna valles*.

mecum in Tusculano. Trebatius was Cicero's guest there on more than one occasion (cf. *Fam.* 11. 27. 1).

libellos. Why are the works referred to in the first sentence *libri*, but those mentioned here *libelli*? Cicero was not over-modest about his literary achievements, but he may be referring to his— no doubt very substantial and exquisite—library with a certain nonchalance.

Aristotelis Topica quaedam. It is important for the interpretation of the *prooemium* as a whole to grasp the force of *quaedam*. It has often been argued that *quaedam* suggests some uncertainty about the book. If the person who felt uncertainty were Cicero himself, he might be indicating some doubt about the attribution of the work to Aristotle; however, this does not easily square with the following, quite confident relative clause (*quae sunt ab illo pluribus libris explicata*). Yet it could also be Trebatius who

focalizes *quaedam*, i.e. the word could convey or, rather, recall a sentiment of his. I see no reason to assume that Trebatius was *uncertain* about the book or *puzzled* by the book-title. He will have been *intrigued* by it, as his subsequent actions suggest. Cicero might capture this in *quaedam*; cf. the sentence 'Yesterday you went to Blackwell's where you came across something called *Small Treatise on the Great Virtues*', where 'something' could be construed as referring to the addressed person's curiosity or interest when reading the title, assuming that the speaker had learnt about the event earlier. Incidentally, *quaedam* in this understanding will also reflect the reaction of the contemporary readership.

explicata. The connotation is 'to set forth *in order*', which will be an achievement if the material to be ordered is extensive or complicated. Cf. Catul. 1. 6 *omne aevum tribus explicare chartis* (note that historical works invite a reference to their well-ordered arrangement more than other types of work); Cic. *Brut.* 15 *ut explicatis ordinibus temporum uno in conspectu omnia viderem*; and *TLL* s.v. v/2. 1733. 40–9.

Qua inscriptione commotus. Book-titles (*inscriptiones*) were written on the *titulus* (Ov. *Ex P.* 4. 13. 7) or *index* (Cic. *Att.* 4. 4b. 11), a piece of writing-material stuck on the book-roll.

§2 disciplinam inveniendorum argumentorum. Cf. Alex. Aphr. *in Arist. Top.* 27. 19 ff.: μέθοδον γὰρ τινα εὑρετικὴν τῶν ἐπιχειρημάτων ἔχοντες 'having a method for finding arguments'. This is not a description of the topical doctrine we find in the *Top.* or any other work of Aristotle. However, it is an appropriate characterization, and it was invited by certain remarks of Aristotle's (*Top.* A18, 108^{b}32–3; Γ6, 120^{b}7–8; Z1; H5, 155^{a}37. *Rhet.* B25, 1403^{a}17–19). We can only guess when Peripatetics came to characterize τόποι in this way; it may well have been very early.

ad ea] *ad eam* α. Friedrich in the preface to his Teubner edition assigns this emendation to Klotz (p. lxxvi: *ex Boethio Klotz*), and subsequent editors simply copy him. Klotz in his edition of 1851, however, prints *ad eam*; if he actually made the emendation, this must have happened after 1851, but all his publications on textual criticism predate the edition (cf. Pökel 1882). Hammer (1879), 31 suggests emendation to *ad ea*, referring to Boethius, and adds in n. 65: *Idem ut ab aliquo pridem coniectum margini se adscripsisse benignissime me monuit humanissimus gymnasii nostri rector.*

ratione et via = ὁδῷ, cf. Aristotle, *Rhet. A*1, 1354ᵃ8. Cf. also
the quotation from Alex. Aphr. above under *disc. inv. arg.* The
Latin phrase is also in *Or.* 10, *Fin.* 1. 29, *Tusc.* 2. 6. It is a feature
of the Aristotelian tradition in rhetoric that its character of provid-
ing a precise method is underlined. The reading of the majority of
the MSS (*rationem via*) is an adjustment to *ad eam*. The earliest
edition known to me reading *ratione et via* is Lambinus (1566).

tu quidem. As far as the sense is concerned, this contrasting
quidem (German 'zwar') belongs with *verecunde*; *quidem* and pro-
nouns attract one another so strongly 'that they often distort the
logic of the expression' (Solodow 1978, 36–43, at 37).

mecum . . . egisti. Cicero uses juridical terminology (*agere cum
aliquo, ut* = to raise an action against someone in order to); cf.
Heumann–Seckel s.v. *agere* 10 and Berger (1953) s.v. *agere*: 'In a
civil trial, the procedural activity of the plaintiff (*is qui agit*). Ant. *is
cum quo agitur* = the defendant.' See e.g. D. 17. 1. 45.

traderem. One of the ambiguous words which have made the
prooemium open to speculation, cf. Huby (1989), 61. That it cannot
mean 'hand over' in a literal sense is evident from the following
sentence. 'Translate' is also unlikely, because the application of
τόποι to juridical cases is not covered by *tradere* in this sense; one
would expect Cicero to state that he advances well beyond Treba-
tius' request, and not only in quantity (§100). It would also be an
insult to Trebatius. 'Discuss' (Grube 1965, 172–3) hardly squares
with the meaning of *tradere*. The choice of *tradere* might have been
influenced by the fact that it means 'to deliver' in a technical legal
sense too, cf. Heumann–Seckel s.v., Kaser (1971), 416 ff. Matters
of *traditio* were obviously a frequent subject of lawsuits. So the word
could be translated by 'deliver', to render the legal overtones;
effectively, it means 'pass on this knowledge'.

vitandi laboris mei] α: *vitandi laboris mei causa* dς. That the
genitive without *causa* is possible here was first suggested by
Winterbottom (1996), 407. The causal force of the genitive
which accompanies the *verba iudicandi* is well known, and the
genitive can acquire a similar causal or final force also in other
uses (e.g. as 'genitive of rubric', see Hofmann–Szantyr 71 with
n. γ, or as 'genitive of respect', see ibid. p. 75 and Löfstedt 1909).
Early evidence for the *genitivus causae* in the narrow sense is fairly
thin, but the large number of related genitives as well as their
unquestionable age puts this into perspective (see the passages

from Plautus discussed by Löfstedt 1909, 85–6), and certainly for the first century BC there is no lack of evidence, e.g. *Rhet. Her.* 4. 50; Varro, *R.* 3. 32; Caes. *BG* 5. 8. 6 (with textual problem); *CIL* x. 9; xiii. 1782. It is uncertain what exactly the origin of the final genitive of gerund/gerundive constructions is (see Löfstedt 1942, 169–72), but there is no reason to doubt that it was perceived as a genuine Latin construction (as opposed to, e.g., a syntactical Hellenism). The following sentence from Fronto neatly illustrates that the two constructions were considered to be on the same level at the end of the second century AD (*Laudes fumi et pulveris* 1. 3, p. 215, ll. 21–3 van den Hout): *Namque hoc genus orationis non capitis defendendi nec suadendae legis nec exercitus adhortandi nec inflammandae contionis scribitur, sed facetiarum et voluptatis*, but this does not represent decisive evidence for the late Republican period. The examples for this earlier period have all raised suspicions: Ter. *Ad.* 270 *ne id adsentandi magis quam quo habeam gratum facere existumes*; *Rhet. Her.* 1. 26 *Cum dicat Orestes se patris ulciscendi matrem occidisse*. Perhaps Caes. *BG* 4. 17. 10 (where *causa* is in one branch of the tradition) and Cic. *Rep.* 1. 16 (where *causa* is not in the Vaticanus, but was added by Nonius in his paraphrase of the passage and printed by editors); on *Rep.* 1. 16 see Pasoli (1963). Probably the question to ask is why Cicero would want to use such a choice construction here. It is arguable that such genitives, which must have appeared somewhat stilted (solemn or bureaucratic, depending on the situation), were felt to have a legal flavour in suitable contexts. The genitive in the quasi-legal formula in Liv. 1. 32. 11 (where we should not follow Madvig in inserting *causa*, see Ogilvie 1965, ad loc.) is a case in point: *Confestim rex* [Ancus Martius] *his ferme verbis patres consulebat: quarum rerum, litium, causarum condixit pater patratus populi Romani Quiritium patri patrato Priscorum Latinorum hominibusque Priscis Latinis, quas res nec dederunt nec soluerunt nec fecerunt, quas res dari, solui, fieri oportuit, dic' inquit ei, quem primum sententiam rogabat, 'quid censes?'* This may equally account for the absence of the final genitive of gerundive constructions elsewhere in Cicero and for its presence here. For the *prooemium* of the *Topica*, with its legal stylization, is of course exactly the environment in which we should expect a legal mannerism of this kind. Re-motivation of such genitives through insertion of nouns or pre-/postpositions when their function was no longer always understood is attested already

for the early imperial period, in particular in subliterary Latin written by comparatively uneducated people (see Löfstedt 1909, 84; Adams 1990, 244–5).

ut ex te audiebam. On this use of the imperfect (which invokes the recollection of the person addressed) see K.–St. i. 124 and Hofmann–Szantyr 317.

§3 rhetor autem ille magnus. The *rhetor* as opposed to the *orator* is in Cicero's mature works often characterized as a person of limited intellectual background. Yet in §2 (*a doctissimo quodam rhetore*) Cicero cannot be ironic; otherwise it would be strange to refer Trebatius to him in the first place. Here in §3, however, after the *rhetor* has 'failed', there may be a hint of irony in *magnus*. That the *rhetores* do not know philosophers and in particular Aristotle is more than once stated in the *de Orat.* (e.g. 1. 84), where Cicero deals with peculiarly Aristotelian items of rhetorical theory, that is, the *loci* discussed in the *Topica* and the theory of emotion.

ut opinor. Another phrase which has given rise to widely diverging interpretations. We should begin by noting that the question what *ut opinor* 'refers to' is the same question as what it gives emphasis to. It cannot give emphasis to the following word (cf. Hubbell: ' . . . and the great teacher replied that he was not acquainted with these works, which are, I think, by Aristotle'), since otherwise the comment on the rhetor's declaration of incompetence concerning Aristotle would be somewhat odd, if the authorship of the work were doubtful to Cicero himself. What it must emphasize is *haec* (cf. Bornecque: ' . . . ce rhéteur habile t'a répondu, je crois, qu'il ne connaissait pas cette partie de l'œuvre d'Aristote'). The *rhetor* is expressing qualified ignorance.

Quod. Picking up an idea of the preceding sentence, which is then expounded in the epexegetic *acc. cum inf.* depending on *sum admiratus*; cf. K.–St. ii. 320 and Hofmann–Szantyr 572; the latter call the anticipation (not the connecting relative) an 'im ganzen mehr umgangssprachliche Verdeutlichung'.

copia . . . suavitate. For *copia* see Leeman–Pinkster–Nelson (1985), 196 on *de Orat.* 2. 6, where occurrences of *copia dicendi* or similar phrases are collected. In the light of these passages *copia* is defined as the result of the ability to find the appropriate expression in every situation; this ability is only at the disposal of those whose language is particularly rich, therefore *copia*. At *Fin.* 4. 10

copia dicendi appears as based on an analytical understanding of argumentation, and thus as a virtue of the philosophical speaker. *Copia* is found in juxtaposition with *suavitas* in *de Orat.* 3. 82, 121. The *suavitas* of Aristotle's style is also praised by Quintilian, *Inst. Or.* 10. 1. 83.

§4 debere. To be constructed absolutely rather than ἀπὸ κοινοῦ with *hoc*. Also to be taken in the legal sense, as it can establish an *iniuria*.

    ipsi iuris interpreti . . . iniuria. The antithesis of *ius* and *iniuria* is used in various proverbs and puns, cf. Otto (1890) s.v. *ius*; the best known of these is *summum ius*, *summa iniuria* (cf. Cic. *Off.* 1. 33 and Fuhrmann 1971).

    cavisses] *scripsisses* ω. Boethius read *cavisses* in his text of the *Topica*; this is suggested by this passage from his commentary (272. 28–33): *Iam vero sequentia multo etiam clarius benevolentiam petunt, velut hoc, quod elegantissime dictum est, veritum se esse, ne, si modeste postulantis verecundiae pernegasset, ipsi quodammodo iuris interpreti fieri videretur iniuria; et quod praecedens Trebatii meritum percepti beneficii memor exsequitur, id vero est, quod vel ipsi vel iis, quos ipse defenderit, plura cavisset*; cf. Di Maria 59 n. 11. *Cavisses* is thus the older attested reading. In a passage where legal terminology is abundant, the technical term for the drafting of legal documents as carried out by a jurist would be preferable and favoured by the principle of *utrum in alterum*. The linguistic arguments against *scripsisses* provided by Di Maria 58–9 (contrast Di Maria 1991) fail to convince. They are: (i) *cavere* in its technical legal sense never has an accusative in Cicero. (ii) On the two occasions when Cicero uses *gravari* absolutely (*Manil.* 58; *Lael.* 17), an infinitive must be mentally supplied from the context to understand what someone is unwilling to do. If we read *cavisses*, this infinitive would have to be *cavere*, which makes no sense, because Cicero was not a jurist and did not engage in *cavere*. *Ad* (i): apart from the fact that *cavere* does not occur often enough in Cicero to allow us to argue from how he usually construes it, the internal accusative *multa* is surely to be distinguished from a normal accusative object. *Ad* (ii): 'Is it really past the wit of man to supply ''quod rogabas facere'' with *gravarer*?' (L.A.H.-S. *per litteras*). Moreover, rhythm favours *cavisses* (see Zielinski 1904, 762 on the *s impurum*, which would produce *saepē* before *scrip-*

sisses). For Cicero playing on the juridical sense of *cavere* in a letter to Trebatius cf. *Fam.* 7. 6. 2. *Scribere* can of course mean the same as *cavere* (cf. *de Orat.* 2. 24; on *scribere* as a word for various tasks of a jurist see Wieacker 1988, 557 n. 27). [I am indebted to Dr Leofranc Holford-Strevens for making the case for *cavisses*.]

optimus … testis. *Testis* continues the legal allusions.

§5 cum opera mea … uterentur. After Caesar's death Cicero became quite quickly aware that further action would be needed if an even worse situation was to be avoided. But he came to realize that he was no longer able to exercise any influence in this respect; in *Att.* 14. 10. he deplores the fact that his suggestion to hold a sitting of the senate immediately after 15 March had found no approval. In *Att.* 14. 13 (dated 26 April) he expresses his fear for the first time that a new civil war might be impending, which already in *Att.* 15. 6. 1 (dated 24 May) seems inevitable to him.

inter arma versari. One might ask how going off to Greece could be more honourable than staying in Italy. In *Att.* 14. 13. 2–3 (367 S.-B.) of 26 April 44 Cicero says that after Caesar's death neutrality will no longer be possible (which would be Cicero's preferred position). We may assume that remaining neutral would not be honourable for Cicero because the Caesarians would think him ungrateful (given his pardon by Caesar) if he did not support them, while the Republicans (Sextus Pompeius or Brutus) would expect him to join them because of his joy at Caesar's murder and his overall political stance. (Note that *inter arma versari* does not itself mean 'to stay between the lines', i.e. remain neutral.)

tuaque et tuos. Trebatius probably originated from Velia; clearly he had an estate there, where Cicero might have stayed during his stop.

ne si tuto quidem. This is not an instance of *ne … quidem* framing two words instead of one, if it refers to a whole sentence and not to one word (see K.–St. ii. 55); *quidem* gives emphasis to *tuto*, thus creating a contrast with *honeste*.

deesse … flagitationi tuae. For this construction of *deesse* cf. *Div. Caec.* 47. 2, *Balb.* 4. 7; for the legal use of *deesse* cf. Heumann–Seckel s.v. 1b. *flagitatio* is very rare, meaning *acris admonitio*, *postulatio*, *provocatio* (*TLL* vi/1. 837); an inquiry into the development of its meaning is to be found in Usener (1901). It is surprising that Cicero uses such a strong word for Trebatius' request, but the

oxymoron *tacita flagitatio* yields a good effect. And by stressing that the *Topica* is a fulfilment of an urgent wish, Cicero plays down his own interest in doing Trebatius a favour.

haec ... memoria repetita ... conscripsi. Although Cicero's memory must have been outstanding, there is no reason to take this literally; the accompanying letter (*Fam.* 7. 21) tellingly fails to make the point again. As Immisch (1929), 118–19 pointed out, it is a common motif of *prooemia* to apologize for shortcomings of a literary work by pretending that it has been written from memory. But it is surely possible that Cicero revised his excerpts on board ship; literary work during the voyage is attested by *Att.* 16. 6. 4, where he reports that he read through his *Academica* and discovered that he had used the *prooemium* of *De gloria* already there (in the third book of the second edition).

diligentia mandatorum tuorum. *mandatum* and *diligentia* are also legal terms. The *mandatum* expires as a relationship of personal trust if one of the parties involved resigns from it formally (Kaser 1971, 578). Although the context is that of playful stylization of the dedication of the *Topica*, Cicero stresses here that he feels bound by his 'obligations' (and expects the same from Trebatius). On *diligentia* as care applied to legal transactions see Kaser (1971), 512.

ad memoriam nostrarum rerum. Cf. *Fam.* 7. 20. 2 (to Trebatius on 30 June 44) *sed valebis meaque negotia videbis*. After the dictator's death Trebatius, a close adviser of Caesar, seems to have maintained an influential position, which, however, cannot be assessed precisely; cf. Sonnet (1932), 46 ff. Although Cicero could identify himself with none of the rival parties wholeheartedly, he was, of course, regarded as a leading republican and felt the need to stay in touch with the circles around Antonius; cf. his letter to the Caesarian Oppius (*Fam.* 9. 29, in particular §3).

§§6–8

The section poses three problems, which will be dealt with separately: (i) the statement about the systematical place of τοπική (§6), (ii) the definition of the *locus* (§7), and (iii) the division of the *loci* (§8).

(i) According to §6, *omnis ratio diligens disserendi* comprises invention and judgement. Cicero equates the former with τοπική and

says that the latter was pursued by the Stoics in the form of
διαλεκτική, adding that Aristotle excelled in both subjects, while
the Stoics neglected invention.[1] A passage in *De fato* provides the
Greek behind *ratio disserendi* (*Fat.* 1: *totaque est* λογική, *quam
rationem disserendi voco*). I shall first—in section (*a*)—elucidate
what sort of statement is made about *ratio disserendi* in *Topica* 6.
Then—in section (*b*)—I shall try to shed further light on the
contrast between *invenire* and *iudicare*.

(*a*) Λογική is the third item in the division of philosophy into
ethics, physics, and λογική,[2] which is Academic in origin and
may go back to Xenocrates (fourth century BC) in particular.[3] In
the Hellenistic era, there was a variety of accounts as to what λογική
is concerned with. Many of the pertinent texts are classified as
Stoic fragments, which, however, does not imply that all of them
reflect views peculiar to the Stoic school. Since most of these
divisions are in evidence in Cicero, too, while there is no Greek
parallel for the particular division Cicero gives in *Topica* 6, ex-
plaining the rationale of the most common divisions will yield a
background for the appreciation of our passage.

 The division of λογική which is most common in Stoic fragments
is that into logic (διαλεκτική), epistemology, and rhetoric; episte-
mology and logic are related to one another in such a way that
epistemology helps to determine the epistemic status of the propos-
itions logic deals with.[4] A presumably older division of λογική,
which may go back to Xenocrates,[5] is that into rhetoric and dialectic
(dialectic understood as exchange of philosophical arguments in

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[1] This division has played an important role in the scholarly discussion about the
Topica. Kroll (1903), 590, following Wallies (1878), 8 ff. with marginal variations,
underlined the indeed very close similarity of *Fin.* 4. 10 and *Topica* 6 and concluded
that Cicero's source must be Antiochus, on the grounds that Antiochus is in the
background of *Fin.* 5, and *Fin.* 4 shows close parallels to *Fin.* 5 in its criticism of
Stoic ethics. Kroll restated his conclusion about the origin of the *Topica*'s source in
his *RE* article on rhetoric (Kroll, 1940). Apart from methodological qualms Kroll's
argument might give rise to, it can be demonstrated that many items of information
in the introductory section of *Fin.* 4 are distinctly un-Antiochean.

[2] I use λογική to denote the third part of philosophy, because it helps to avoid
confusion with the English term 'logic', which rather corresponds to the Greek
διαλεκτική.

[3] S.E. *Adv. Math.* 7. 16 (= Xenocrates fr. 1 Heinze); see also Frede (1974), 23–5.

[4] See D.L. 7. 38–41 (= fr. 1 Hülser) and Ierodiakonou (1993); see also Cic. *Ac.*
19 with Barnes (1997*a*), 142–3, *de Orat.* 1. 68, *Luc.* 114.

[5] S.E. *Adv. Math.* 2. 6–7 (= fr. 13 Heinze).

question and answer, a notion preserved also by the Stoics);[6] the
idea behind it will be that λογική is concerned with argumentation in
a general sense. The division of λογική into dialectic and rhetoric
may also embody the idea that dialectic is concerned with the *content*
of arguments, and rhetoric with their linguistic *form* (this view
could be inspired by the structure of Aristotle's *Rhet.*, whose first
two books are primarily concerned with rational argument and draw
heavily on the—dialectical—argumentative theory of the *Top.*,
while its third book is concerned with disposition and style).
Where λογική is more or less equated with logic (διαλεκτική), this
may be due to the importance of logic proper.[7] But since the phil-
osopher's attitude towards rhetoric was always an ambiguous one,
the implication might also be that rhetoric is not strictly speaking
the philosopher's business. Apart from the equation of διαλεκτική
and λογική, all these divisions are generic: they refer to the discip-
lines comprised by λογική.

   In *Topica* 6, however, the division of λογική is, or so shall I
argue, on a different level, naming the skills required by those
engaged in argumentation (invention, judgement). Similarly, one
can name the various branches of medicine and at the same time
say that medicine includes diagnosis and therapy. Clarification can
be gained from a parallel passage in Cicero (*Fin.* 4. 10):

Cumque duae sint artes, quibus perfecte ratio et oratio compleatur, una
inveniendi, altera disserendi, hanc posteriorem et Stoici et Peripatetici,
priorem autem illi egregie tradiderunt, hi omnino ne attigerunt quidem.

Now there are two arts which between them cover the field of reasoning
and oratory: one is the art of discovery, the other that of argument. Both
the Stoics and the Peripatetics dealt with the second of these, but, as for
the first, the Peripatetics made an outstanding contribution while the
Stoics barely touched upon it. [Trans. Woolf.]

The passage illuminates *Topica* 6 in two respects. First, in *Fin.* 4.
8–10, in the course of his criticism of Stoic philosophy, Cicero
deals with λογική (*disserendi ratio*; 4. 8 *init.*). He names and dis-
cusses some of the disciplines it includes, then he turns to the
invention–judgement distinction, with the remark about the
Stoics' neglect of invention attached. This makes it unlikely that
both divisions are supposed to be generic; notably, *Fin.* 4. 10 refers

[6] Ibid. 2. 6–7 (= fr. 35 Hülser); Cic. *Or.* 23–6, *Ac.* 5.
[7] *Leg.* 1. 62, *Luc.* 114, 142–6.

to *invenire* and *iudicare* as *artes* (not *partes*).[8] Second, the position of *ratio disserendi* in *Topica* 6 is occupied by *ratio et oratio* in *Fin.* 4. 10; one phrase glosses the other. Cicero is clearly talking about rational argument in a general sense. The pair *ratio et oratio* may encapsulate the understanding of λογική which underlies the generic division into logic and rhetoric and, by implication, the various ways to construe it (see above).

(*b*) *Topica* 6 need do no more than assign a place to τοπική, relying on the obvious fact that finding arguments is notionally prior to judging them (*ordine naturae*). Yet a case can be made that in Cicero's view *invenire* by means of τοπική and *iudicare* by means of διαλεκτική could represent subsequent phases in the process of drawing up an argument.

This is suggested by other passages in Cicero. There the ideal orator is advised to find the arguments to use in a given case with the help of Aristotelian *loci* and, at a second stage, to judge them as to their suitability and soundness. In *Or.* 43–50 (cf. Ch. 1), the *orator quem summum esse volumus* finds his arguments with the help of Aristotelian *loci* and then 'weighs and sorts out' (§48); similarly *Part. Or.* 8, 139.[9]

While there are many parallels for the generic divisions of λογική, there are only a few traces of invention and judgement elsewhere. In Quintilian (*Inst. Or.* 5. 14. 28), there is this text:

[Context: The orator should use syllogisms and enthymemes very sparingly] Namque in illis [sc. in dialecticis disputationibus] homines docti et inter doctos verum quaerentes minutius et scrupulosius scrutantur omnia et ad liquidum confessumque perducunt, ut qui sibi et inveniendi et iudicandi vindicent partis, quarum alteram τοπικήν, alteram κριτικήν vocant.

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[8] One might object that *Fin.* 4. 10 is not strictly speaking a parallel passage, because there the antithesis is that of *invenire* and *disserere* as opposed to *invenire* and *iudicare*. But Cicero may use *disserere* (as opposed to *dicere*) to refer to διαλεκτική, the *ars veri et falsi diiudicandi* (*de Orat.* 2. 157); see Reid (1885), 139–40 on *Ac.* 32. There is, however, a second problem: given the identification of *disserere* and διαλεκτική, in *Fin.* 4. 10 Cicero would equate *iudicare* and διαλεκτική, whereas in *Topica* 6 *iudicare* is a broader notion, and διαλεκτική only the Stoic way of *iudicare*. Evidently in *Fin. disserere* covers the art of judgement in general, i.e. also the Peripatetic way of doing it; Cicero seems to have been unaware of the fact that Aristotle and the Peripatetics on the one hand and the Stoics on the other meant quite different things by διαλεκτική (this emerges from *Or.* 113–15).

[9] In some rhetorical handbooks, the phase of εὕρεσις is followed by κρίσις. Quint. *Inst. Or.* 3. 3. 5. 9 (= Hermagoras fr. 1 Matthes); Sulp. Victor 320. 6–8 Halm.

In debates of this kind, scholars seeking the truth among fellow scholars go into everything with meticulous minuteness, and come to a clear and agreed conclusion; they claim the tasks both of invention and of judgement—τοπική and κριτική, as the Greeks call them. [Trans. Russell, revised.]

It is hard to say where this information comes from. Clearly, the use of the term κριτική makes it unlikely to be inspired by Cicero himself. Immediately before the passage quoted Quintilian says that he would prefer not to continue the discussion of rhetorical syllogisms as being *sacra*, esoteric knowledge. The passage seems to belong with that. There was apparently a tradition which linked the topical doctrine to the scrutinizing of arguments, and which for Quintilian belonged rather to philosophy. Perhaps the notion of κριτική, a word which is normally used to refer to a certain quality of the mind, the faculty of judgement,[10] may suggest that *iudicare* is meant to be in a wider sense the use of this faculty: the blocking-off of inappropriate, i.e. irrelevant or unconvincing or fallacious, arguments.[11] There is no conflict with Cicero and his reference to διαλεκτική, since διαλεκτική is introduced merely as the Stoic way of *iudicare*.

The various texts discussed above may suffice to warrant my claim that what Cicero says about the role of τοπική needs to be considered on the background of post-Aristotelian views on argumentation. However, while Aristotle does not provide direct help for understanding Cicero, he is not completely silent on the matter either. The first sentence of his *Top.* (100ᵃ18–21) runs:

Ἡ μὲν πρόθεσις τῆς πραγματείας μέθοδον εὑρεῖν ἀφ' ἧς δυνησόμεθα συλλογί-ζεσθαι περὶ παντὸς τοῦ προτεθέντος προβλήματος ἐξ ἐνδόξων, καὶ αὐτοὶ λόγον ὑπέχοντες μηθὲν ἐροῦμεν ὑπεναντίον.

The goal of this study is to find a method with which we shall be able to construct deductions from acceptable premisses concerning any problem that is proposed and—when submitting to argument ourselves—will not say anything inconsistent. [Trans. Smith.]

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[10] e.g. Alex. Aphr. *in Metaph.* 306. 6; Alex. Aphr. *in Top.* 27. 30–1; Gal. *De plac. Hipp. et Plat.* 7, p. 430. 29 De Lacy.

[11] Quintilian uses the passage to make the point that philosophers judge their arguments themselves, while orators have to submit their arguments to an audience's judgement. This is an ambiguous statement, but exploring its meanings would not shed light on Cicero.

In a dialectical discussion in question and answer, dialecticians in the role of questioners are supposed to use the τόποι as tools for finding or constructing their arguments; this is what the first part of the sentence up to ἐξ ἐνδόξων amounts to. If they are acting as respondents, dialecticians can use the doctrines expounded in the treatise to make sure that they do not accept premisses that are inconsistent with one another or with the claim they are defending. In this second case, the dialectician can use the τόποι to determine whether a premiss offered to him implies or is implied by any of the claims he is upholding (cf. Ch. 2 on 'rules'). This operation could be described as *iudicare*. The considerations which suggest that this feeds into what Cicero says in §6 only in an indirect way, mediated through a complex tradition, include that Aristotle's *Top.* is not concerned with rational discourse in general, but only with dialectical discussions, and that at least in §6 Cicero does not seem to envisage the possibility that τοπική could have a role in testing arguments, as opposed to finding them.

(ii) The definition of the *locus* has been compared with one we find in other writers:[12]

Alex. Aphr. *in Top.* 126. 11–20	Anon. Seg. §169	Theon, *Prog.* p. 106 Sp., Patillon–Bolognesi[13]	*Topica* 7–8
ἔστι δὲ ὁ τόπος ἀρχὴ καὶ ἀφορμὴ ἐπιχειρήματος [. . .] ἀπ᾿αὐτοῦ ὁρμωμένους ἔστιν ἐπιχειρεῖν.	τόπος μὲν οὖν ἐστιν, ὡς Ἀλέξανδρός φησιν, ἀφορμὴ ἐπιχειρήματος ἢ ἀφορμὴ πίστεως [εἰ], ὅθεν ἄν τις ὁρμώμενος ἐπιχείρημα εὕροι.	τόπος δὲ εἴρηται ὅτι ἀπ᾿αὐτοῦ ὁρμώμενοι οἷον ἐκ τόπου ῥᾳδίως ἐπιχειροῦμεν κατὰ τῶν οὐχ ὁμολογούντων ἀδικεῖν, διόπερ τινὲς καὶ ἀφορμὴν ἐπιχειρημάτων αὐτὸν ὡρίσαντο.	. . . locos nosse debemus; sic enim appell-atae ab Aristotele sunt eae quasi sedes ex quibus argumenta promuntur. Licet ergo definire locum esse argumenti sedem.

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[12] The similarity of the four authors' definition was observed by Ebbesen (1981), 111; it has since been acknowledged by Fortenbaugh *et al.* (1992), i. 262. Before them, Graeven had noted the agreement between Theon and Alexander Numeniou. Graeven thought that Theon had copied Alexander (which is unlikely for chrono-logical reasons), and therefore deleted ἢ ἀφορμὴ πίστεως, as the phrase is only in Theon.

[13] Patillon–Bolognesi (1997) maintain Spengel's pagination.

Possibly Cicero renders ἀφορμὴ ἐπιχειρήματος as *sedes argumenti*. While a proof cannot be offered, because a variety of Greek technical terms may be translated by *argumentum*, and *sedes* is certainly not an exact Latin counterpart for ἀφορμή, the seemingly vague similarity of the four definitions has to be seen against the background of other definitions of *locus communis*/κοινὸς τόπος, which prepare for the modern notion of a 'commonplace'.[14]

Around AD 200 Alexander of Aphrodisias cites the definition of a τόπος given above immediately before a second, more detailed definition, which he apparently quotes directly from Theophrastus' *Topics*. The fact that ὁρμᾶσθαι is used in the section quoted from Theophrastus in the sense implied in ἀφορμή is a hint that the definition of the τόπος as ἀφορμὴ ἐπιχειρήματος is Theophrastean in origin too (see also Ch. 3). That Alexander borrowed from the rhetorical tradition is unlikely in view of the scope of his commentary.[15] The section on τόποι in the Anonymus Seguerianus is introduced by the definition of the τόπος quoted.

So there is a possibility that Cicero's source for the *loci* presupposes Theophrastus. Not that his definition would be more than merely similar to that found in the other authors. But there is the further argument from the agreement of his *loci* with those discussed in the Anonymus, which in turn were introduced by a definition likely to originate from Theophrastus.

A further point to note is that an *argumentum* found with the help of a *locus* is viewed as something which lends credibility to a certain proposition rather than proving it (*quae rei dubiae faciat fidem*). Since Cicero is aware of a difference between *probabilis* and *necessaria argumentatio* (*Inv.* 1. 74), and since the Anon. Seg. reports similar considerations of Alexander, i.e. that rhetorical proof is concerned with plausibility rather than with truth (§144; §§30–1; see Ch. 3), the idea appears to be an actual feature of this sort of argumentative theory and not just conventional.

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[14] Cf. e.g. the section on κοινὸς τόπος in Hermogenes, *Prog*. ii. 9. 18–11. 16 Spengel.

[15] Theon in his *Progymnasmata*, dated to the 1st c. AD, states that 'some writers' have called the τόπος an ἀφορμὴ ἐπιχειρήματος. His τόποι, however, resemble more the ones in *Inv*. 1. 34–43. One would assume that the phrase was already common property of the technographical tradition, if there was not a certain tendency of Theon to use remote philosophical sources in his work; see Atherton (1993), 184–212 (Theon included in his *Prog*. a Stoic discussion of ambiguity).

(iii) The division of *loci* is one of the places where Stoic influence, due to a mediation of Aristotelian doctrines through Antiochus, has been suspected. The assumption is that the division was modelled on the so-called Stoic categories (ὑποκείμενον, ποιόν, πῶς ἔχον, and πρός τί πως ἔχον).[16] Cicero divides all proofs into technical and non-technical;; the former are ordered as follows:

(*argumenta quae*) *in eo ipso de quo agitur haerent*:

> (i) *ex toto* (= *ex definitione*)
> (ii) *ex partibus*
> (= *ex partium*
> *enumeratione*)
> (iii) *ex nota*
> (= ἐτυμολογία)
> (iv) *ex iis rebus quae*
> *affectae sunt*
> (covering all
> remaining *loci*)

The *loci* numbered (i) to (iv) allegedly correspond to the four Stoic categories. The idea is very implausible. One could think of no reason why Stoic categories could be used for classifying *loci*. Notably, arguments for the relationship have always been put forward in a peculiar way. Scholars have pointed to the similiar formulation of the fourth Stoic category and (iv) *ex iis rebus quae affectae sunt*—Ebbesen (1981), 109 assumes in the Greek source   ἀπὸ τῶν πῶς ἐχόντων πρὸς τὸ προκείμενον[17]—and   have

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[16] This view has been made popular by Wallies (1878), who relied on older studies; Kroll (1940), 1103 supported it. Ebbesen (1981) apparently regards this as possible, but makes the point that Stoic and Peripatetic divisions are frequently quite similar, so that attribution to the Stoics is not compelling. He refers to a passage in Quintilian (*Inst. Or.* 3. 6. 31–8 = fr. 189 Edelstein–Kidd) which deals with Poseidonius' division of the στάσεις; according to Ebbesen, Poseidonius had used the Stoic categories as a means of classification, which would indeed be a precedent for applying the categories to argumentative theory. In fact, what Poseidonius seems to do is to employ the Stoic division of φωνή (words and phrases as signifying) and πράγματα (what is signified by φωνή), elsewhere used to distinguish the two main kinds of sophisms, to classify quarrels related to written law (the subject area of the Hermagorean ζητήματα νομικά) under φωνή and the ζητήματα λογικά under πράγματα. The latter correspond so closely to the original Hermagorean outline of the στάσεις that it seems artificial to link them to the categories; the former do not suggest a relationship to the categories at all. The textual evidence for the Stoic categories is collected as frr. 827–73 Hülser; pertinent studies include Lloyd (1971) and Menn (1999).

[17] Alternatively, ὅ τι ἂν συμβεβήκῃ τῷ πράγματι for the *quippiam rem illam quod attingat* of *de Orat.* 2. 163.

then claimed that (i)–(iii) must correspond to the other three. The lack of a division of the *loci* in the Anonymus Seguerianus[18] and the very different one in Themistius suggest that the list initially had no divisions and that these belong to a revision of already existing material.

§6 (= fr. 75 Hülser; text 31F Long–Sedley) **Cum.** Apparently a *cum causale*, but the causal relation to the main clause is difficult to assess. Possible translations would be 'granted that' or 'it being the case that'; see K.–St. ii. 346 on the exact nature of the causal relationship expressed by *cum*. This connection may rest upon *diligens* in the subordinate clause, the argument being that because a *proper 'ratio disserendi*" includes invention *and* judgement, Aristotle was, i.e. had made himself, a master (the founder?) of *both* disciplines (note the position of *utriusque*).

   ratio diligens disserendi = λογική, which comprises dialectic and rhetoric (cf. *ratio et oratio* in *Fin.* 4. 10), thus amounting to '(method of) argumentation.'

   artes] βa: *partes* dL. One should follow β here, cf. also *inveniendi artem* below (α read *partes*; a's *artes* is a conjecture). As argued above, invention and judgement are not species or parts of *ratio disserendi*, but skills required from those who want to argue. Moreover, the parallel passage in *Fin.* 4. 10 also reads *artes*; *partes* may have come into the tradition via contamination from Boethius (cf. pp. 274. 17, 276. 12). For *habeat* 'involves', which needlessly puzzled Friedrich (1889), 284, see *OLD* s.v. *habere* 14.

   unam . . . alteram. This is the standard form of enumeration in Latin; *primus . . . secundus* would suggest a ranking.

   utriusque princeps . . . Aristoteles. Boethius and, following him, some modern interpreters take *utriusque* as a reference to Aristotle's *Top.* and *An. pr.* respectively. But it is unlikely that anyone would have described the relationship of the two works in this way in the first century BC, because *An. pr.* attracted little attention and because those interested in Aristotelian syllogistic had little reason to reflect on how it fitted with τοπική systematically. The earliest commentators on *An. pr.* of whom we know are Peripatetic philosophers of the first century BC, Boethus of Sidon

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[18] But compare ὁλόκληρος ὁ ὅρος (§172) to Cicero's *ex toto*.

and Ariston of Alexandria (see Moraux 1973, 143 ff., 181 ff.); their
date cannot be determined independently of that of Andronicus of
Rhodes. Recent studies have placed him later in the first century
than before, i.e. after Cicero, who never mentions him; see Barnes
(1997*b*), 22–3. Nor does Cicero show any knowledge whatsoever
of Aristotelian syllogistic; see Barnes (1997*a*), 145. There are no
grounds for assuming that he is making anything other than a
general reference to invention and judgement in connection with
arguments. *Princeps* seems ambiguous between first in rank and
first in time.

iudicandi . . . vias . . . persecuti   sunt.   Cicero   says   that
διαλεκτική was used by the Stoics to perform judgement, i.e. that
it is the Stoic way of judging arguments.

τοπική. Aristotle himself refers to *Top.* as τὰ Τοπικά, which
corresponds to the neuter plural *Topica* used by Cicero in *Topica*
1 and *Fam.* 7. 21. The feminine noun (or elliptically used adjec-
tive: τοπική sc. τέχνη) to denote the art of finding arguments by
means of τόποι only here and in Quint. *Inst. Or.* 5. 14. 28.

§7 Nos autem quoniam . . . persequi cogitamus. *Quoniam* in-
stead of a concessive conjunction is slightly surprising. Cicero
seems to conflate two thoughts here: (i) 'Since both *invenire*
and *iudicare* are useful, I shall cover both areas', (ii) 'Although
both *invenire* and *iudicare* are useful, I shall for the moment cover
invenire only'. Alternatively, the idea may be that since both arts
are useful and since Cicero intends to cover both, it does not matter
where he begins, and he will therefore begin with what is *prior*; but
as the *prooemium* shows, that is not the reason why Cicero begins
with *invenire* (see also §57 *fin.*).

persequi will refer to literary activity.

Ut igitur . . . promuntur. This is Cicero's standard image for
the function of a *locus*. The argument which may settle a doubtful
issue is compared to a *res abscondita*, the place where it is hidden to
the *locus*. Knowledge of the *locus* is essential for finding the hidden
thing, i.e. the argument. Several features may be added to this
image from elsewhere. The 'place' where the argument is to be
found may be described more precisely as a 'dwelling-place' (*dom-
icilium*: *de Orat.* 2. 162), perhaps implying that every argument has
always inhered in the issue and needs only to be discovered, or,
alluding to the value of a good argument, as a 'treasure-chamber'

(*thesaurus*: *Part. Or.* 109; *Fin.* 4. 10). The hiding place may be located in *regiones, intra quas venere et pervestiges, quod quaeras* and invention compared to a hunt, the argument being the bag (*de Orat.* 2. 147). The guiding function of a *locus* may be underlined by calling it a *nota* (ibid.). It is a different metaphor to compare the *loci* to fountains, which, instead of providing small quantities of water (piecemeal and ready-made arguments like the 'common-places' of school-rhetoric), exude large rivers; but both images are combined in *de Orat.* 2. 146, 162. An exception is *Topica* 25, where the *loci* are abstractly termed *elementum* (for Aristotle and Theophrastus equating τόπος and στοιχεῖον cf. *Rhet. B*22, 1396b20–1 and Alex. *in Top.* 5. 21–2, 126. 14–15; see the commentary on §25). I have translated *locus* as 'Place', because no other translation seems to give satisfactory sense in all passages where the word occurs.

§8 argumentum . . . fidem. Boethius, summing up his remarks about the definition of a *locus* (p. 283. 21–9), takes Cicero's definition of *argumentum* in a characteristically specific sense. According to him, the *res dubia* is a yes–no question, with the two alternatives forming a contradictory pair. The two propositions involved consist of a (logical) predicate and a (logical) subject, and the doubt about the *res dubia* is whether the predicate holds or does not hold of the subject, and therefore whether the affirmative or the negative proposition is true. I have translated *ratio* as 'reasoning' because of its juxtaposition with *argumentum*, but it is of course often used in the narrow sense of 'argument'; cf. e.g. *Luc.* 26: *Itaque argumenti conclusio, quae est Graece* ἀπόδειξις, *ita definitur: 'ratio quae ex rebus perceptis ad id quod non percipiebatur adducit.'*

alii . . . alii . . . Cf. §24; *de Orat.* 2. 163, *Part. Or.* 6; Ar. *Rhet. A*2, 1355[b]35; Anon. Seg. §188. In Themistius the non-technical proofs also appear, but as a consequence of his peculiar division they are no longer a counterpart to all other τόποι. The two groups of proof are quite common in the Greek and Latin tradition of rhetorical handbooks (cf. e.g. Minucian. i. 417. 3–4 Spengel = 340. 2–3 Spengel–Hammer). The agreement of the Anonymus, Themistius, and Cicero suggests that the distinction was in Cicero's primary source.

ducuntur] A[1]B[1]: *dicuntur βα*, Orelli. In itself, as Di Maria 61–2 has pointed out, *dicuntur* is a possible reading in the sense that it is

Latin, because *extrinsecus* can be used like an adjective even in classical authors (though it is nowhere used in this way in Cicero); here, however, Cicero is discussing whence arguments are derived, not what they are called (cf. *adsumuntur* above; also §§24, 72).

§9

The treatment of the *locus ex definitione* in §9 deals with the question how an argument for a certain proposition may be derived from the definition of a term, whereas the second discussion of this *locus* in §§26–34 explains the types of definition there are and how a proper definition may be developed. It should be underlined that for the persuasiveness of an 'argument from definition' it is largely irrelevant whether the definition employed meets the standards of proper defining. Rather, 'definition' should be taken in a very wide sense, including mere descriptions or paraphrases of certain notions too.

Cicero presents this argument *ex definitione*:
- (i) *Ius civile* is (may be defined) as *aequitas constituta iis, qui eiusdem civitatis sunt, ad suas res obtinendas*.
- (ii) It is useful to know *aequitas constituta iis, qui eiusdem civitatis sunt, ad suas res obtinendas*.
- (iii) It is useful to know the *ius civile*.

Two principles make this argument work and make it a convincing argument for the conclusion (iii). The first is the convertibility of definiens and definiendum, i.e. what is true of the definition must be true of the definiendum and *vice versa*; this principle also holds in most cases where the thing 'defined' is a singular term (as is *ius civile* here). The second is that a definition is normally more informative than its definiendum; it is the reason why (ii) may be used as an argument for (iii), i.e. why (ii) has greater persuasive force than (iii).

Cicero's understanding of how a definition may be used for an *inventio* was presumably not more specific than that we can arrive at an argument by defining one of the terms in the proposition we want to prove. In order to be able to argue *ex definitione* in this way it is sufficient to have an intuitive grasp of the first principle mentioned and to set out the steps of the argument in a comprehensible way.

Certain legal arguments are covered by the label 'ex definitione', too. If we have a definition of, say, murder, whether set forth in a law or just expressing common agreement, we shall in most cases be able to determine whether a particular action carried out by a particular individual must count as murder. In either case, after the relevant evaluation has been made, the resulting argument can be described as an instance of 'from definition'.

So in giving a *formula*, a recurrent pattern of an argument from definition, Cicero incidentally provides a description of a form of arguing which was beginning to gain currency among jurists of his day. Here is a paragraph from Frier (1985), 160–1:

Q. Mucius clearly recognized the importance of legal definitions. Cicero, quoting his definition of *gentiles* (*Top*. 29), also suggests that Q. Mucius was renowned for this characteristic; and definition often appears as a basis for argument in other fragments: e.g., D. 9. 2. 31 (Paul), where he uses a definition of *culpa* in order to establish a tree trimmer's liability for dropping a branch on a passing slave, or D. 17. 2. 30 (Paul = Gaius 3. 149), where he uses an implied definition of *societas* to rule out a partnership in which the partners take varying shares in profit and loss. Such definitions, it should be stressed, are highly normative, in that they become a basis for applying or not applying pertinent law to specific cases.

The Aristotelian ancestors of the *locus ex definitione* as presented by Cicero are *Top. B*4, 111ᵇ12–16[1] and *Rhet. B*23, 1398ᵃ15–28. The τόπος in *Top*. shows the characteristics of dialectical τόποι set out in Ch. 2 of the introduction, while that in *Rhet*. has the less clearly defined substructure comparable with Cicero's or the Anonymus' understanding: When Aristotle explains the rationale of this τόπος in 1398ᵃ26–8 (Πάντες γὰρ οὗτοι ὁρισάμενοι καὶ λάβοντες τὸ τί ἐστι, συλλογίζονται περὶ ὧν λέγουσιν), he finds it sufficient to say that it is the point of the τόπος that the essence of something is grasped through a definition (τὸ τί ἐστι) and that an inference is then drawn from it.

The Anon. discusses the τόπος 'definition' in §172 and for illustration applies it to a general question (θέσις) in §183. In his

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[1] Wallies (1878), 13, in his account of the Aristotelian counterparts for the Ciceronian *loci*, erroneously refers to books *Z* and *H* of *Top*.; they deal with the question how propositions of the form 'A is the definition of B' may be refuted or established, which has nothing to do with how a proposition of whatever form can be made plausible or discredited with the help of a definition.

commentary, Boethius gives an interpretation of our passage in the light of his understanding of topical argument, which, despite being anachronistic, sheds light on moves which Cicero made intuitively.[2] Also in Themistius the τόπος 'definition', discussed in *De Top. Diff.* 1187 A ff., occupies a prominent place as the second item of the first main group 'intrinsic topics' (cf. the sketch in 1201–4).[3]

§9 disseritur . . . evolvitur. The standard text is *Sed ad id totum de quo disseritur tum definitio adhibetur quae quasi involutum evolvit id de quo quaeritur*, printed by all modern editors since Orelli (MS evidence for the active *evolvit* comes from ς); I have argued in Reinhardt (2002), 323 n. 11 that it is to be rejected because it shows a major inconsistency. My text is that of A (A¹), with the nonsensical *ad* (*at* A¹) before the second *id* deleted. This text is also to be found in some of the more contaminated α witnesses, e.g. Paris Lat. 7710-i, s. x or Munich Clm 14272-iii, s. xi; very early editions usually read (a version of) the standard text, with the exception of the *editio Veneta* of 1492. A parallel, which, however, does not shed light on the textual problem, is *Fin.* 2. 5: *Atqui haec patefactio quasi rerum opertarum, cum quid quidque sit aperitur, definitio est.*

   formula. A legal term, used figuratively. In a Roman civil trial, following the formulary procedure and not the outmoded forms of action (*legis actiones*), the plaintiff had to agree with a magistrate, usually the *praetor*, and with the defendant on a *formula*, a draft statement of the claim in which the subject of the trial was set out (cf. Ch. 4). Once the *formula* was accepted, it provided the lay judge who had to chair the actual trial with a precise framework for directing the trial and making a judgement. The *formulae* were displayed in public on the *album*. They are characterized by three features (cf. Wenger 1907, 2871 ff.; Kaser–Hackl 1996, 308–322): (i) a relatively fixed sequence of distinct and clearly defined topics, (ii) the fact that they constitute an order given to the judge how the trial is to be held, and (iii) their blanket formulation, i.e. they

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[2] Boethius (288. 33–4) formulates the *maxima propositio* on which the exemplary argument relies as 'What is true of the definition is also true of the definiendum'.

[3] The situation is slightly muddled by Themistius' introduction of the subheading *substantia*, comprising *definitio*, *descriptio*, and *nominis interpretatio*. In 1203–4 Boethius, 'reducing' Cicero's division to Themistius', equates Cicero's *a toto* (= definition) with Themistius' *substantia* in order to heal this divergence.

included variables where the particular details of the case had to be inserted. In *Off*. 3. 19–21 (see Dyck 1996, 520 ff.), Cicero defines a *formula* for situations in life which might involve a conflict between the *honestum* and the *utile*; it is to be applied in corresponding situations as a guideline. Apparently, this alludes to the features (ii) and (iii) of the *formula*, because there is a command how to act and the command has a blanket form to which the details of the ethical problem must be adapted in order to achieve a solution for the dilemma. In our passage, feature (ii) is irrelevant, but the clearly separated steps of the argument seem to recall (i), and the fact that Cicero is demonstrating the use of an argument pattern, into which definienda and definitions of all kinds may be inserted, corresponds to feature (iii) of the legal *formula*. The *TLL* (vi. 1116. 21 ff.) separates the legal meaning of *formula* from the more general *regula*, *praescriptum*, *norma* (vi. 1114. 69 ff.), but in fact the instances given for the latter often seem to show figurative use of the legal notion.

Ius civile est . . . obtinendas. The definition is nowhere else attested and is likely to have been coined by Cicero himself (for instructions on how to generate definitions of this type see §§28–9). This is already suggested by the fact that in *de Orat.* Cicero uses a clearly related, but differently formulated phrase to describe the *finis* of the *ius civile* (1. 188: *Sit ergo in iure civili finis hic: legitimae atque usitatae in rebus causisque civium aequabilitatis conservatio*). The only definition of *ius* in a legal text (*ars boni et aequi*; D. 1. 1. 1. 1 Celsus) is at least 150 years later than the *Topica* (see Wieacker 1988, 508 n. 26 for an interpretation of Celsus' definition). For all we know Republican jurists were not interested in defining *ius civile*; admittedly we do not have a work on private law from that period, but a definition is surely the kind of information which would have made it into the *Digest*. How *ars boni et aequi* helped those who practised law (as opposed to teaching it) is not obvious, which may account for the absence of a definition before Celsus.

The *ius civile* is here defined as equity, which is established (*constituta*) for the benefit of those (*iis*; *dat. commodi*) who belong to the same country (sc. as full citizens), for the purpose of keeping (on *obtinere* see below) what one is entitled to (*suas res*).

Aequitas cannot mean 'equity' in the sense so often found in Cicero's speeches, referring to the interpretation of a legal document according to its 'sense' (*de Orat.* 1. 240 *pro aequitate contra ius*

dicere) instead of a narrow-minded search for the literal meaning (in *Off*. 3. 67 called *ius urgere*, in *de Orat*. 1. 244 *scriptum defendere*). For it is qualified (*ad suas res obtinendas*), and it is evident that arguments from equity in the sense indicated are only one way to look justly after one's own interests. The Roman jurists use the adjective *aequus* (there is no instance of the noun in the fragments of the Republican jurists) almost as an equivalent of *iustus*, sometimes implying an appeal to the principle of treating equal cases equally where the law does not apply in the strict sense (see Watson 1974, 173–4). In our text *aequitas* should be taken as a rough equivalent to *iustitia*, which is compatible with the use of *aequus* in legal texts. A suggestion of Crifò's (1967/68), 140 that Aquilius Gallus might be the author of the definition is based on a passage in *Caec*. (§78: *qui* [sc. *Aquilius*] *iuris civilis rationem numquam ab aequitate seiunxerit*) which rounds off a plea for *aequitas* in the 'rhetorical' sense (cf. Frier 1985, 122), thus forming a sort of *argumentum ab auctoritate*; Aquillius cannot be proved responsible for the definition, and there are no grounds for supposing that he was.

The next component, *constituta iis qui eiusdem civitatis sunt*, implies as counterpart the notion of a *ius gentium*, which applies to all men regardless to which country they belong. The expression *ius gentium* is frequently found in Cicero (e.g. *Off*. 3. 69, where *ius gentium* is glossed as *ius naturale* and set in contrast with *ius civile*), but does not appear in legal texts of the Republican era; it originates from Greek, in particular Stoic philosophy, where as κοινὸν δίκαιον it is the law of the κοσμόπολις (cf. *SVF* iii. 314–26). Only in later times does it occur in the introductions of lawbooks, which admit the intrusion of alien concepts more easily than actual legal thinking does. The occurrence in Gaius (*Inst*. 1. 1. 8) may also partly be due to the peculiar nature of his law-book, which was written for educational purposes. Legal historians have pointed out that the notion of *ius gentium* was useless for the purposes of Republican jurists, because legal actions between foreigners or between Romans and foreigners were treated by a Roman *praetor* according to Roman law. On the question whether the juristic doctrines of the *ius naturale*, *ius gentium*, and *ratio naturalis* were influenced by Stoic thought see also Vander Waerdt (1994), who concludes that this is not the case; the opposite view is held by Wieacker (1988), 643–5. On other senses of the expression

ius gentium (likewise only attested in the Imperial era) which are not at issue here see Weiss (1918), 1218–19.

As to the last part, *ad suas res obtinendas*, we should first compare *Off.* 2. 78: *Qui vero se populares volunt ob eamque causam aut agrariam rem temptant, ut possessores pellantur suis sedibus, aut pecunias creditas debitoribus condonandas putant, ii labefactant fundamenta reipublicae, concordiam primum, quae esse non potest cum aliis adimuntur, aliis condonantur pecuniae, deinde aequitatem, quae tollitur omnis si habere suum cuique non licet. Id enim est proprium, ut supra dixi, civitatis et urbis, ut sit libera et non sollicita suae rei cuiusque custodia.* In the light of this passage, one may assume that in *ad suas res obtinendas* the *ius civile* is narrowed down to an institution whose purpose is to guarantee the established distribution of material values. *Obtinere* should thus not be translated by 'to receive'. *Habere suum cuique* in the passage quoted may be glossed by 2. 73: *In primis autem videndum erit ei qui rempublicam administrabit ut suum quisque teneat neque de bonis privatorum publice deminutio fiat*; cf. also Heumann–Seckel s.v. *obtinere* no. 2. All this clearly reflects views of the *optimates*, shaped by the political developments of the first century; on the whole complex of ideas in Cicero see Behrends (1978), Long (1995*b*), and Nussbaum (2000). On the definition of *iustitia* assigned to Ulpian in D. 1. 1. 10. pr.–1 see Johnston (2000), 622–3.

§10

We are given an argument which may be described as *ex partium enumeratione*; again a descriptive account of the corresponding pattern of argument can only be inferred from the example. The *partium enumeratio* may be either a list of species falling under a genus or a list of a whole's parts; this is so because Cicero may use *partes* to refer to both species and parts (§14). The processes by which we arrive at these two types of enumerations are identified as *divisio* and *partitio* respectively in §§26–34; I refer to the commentary on those sections.

The pattern of argument resting on a *partitio*, i.e. a part–whole division, is quite different from that resting on a species–genus division; I shall not discuss the former here because Cicero provides no example for it (but cf. Boethius 289. 34 ff.).

The origin of the idea of dividing a *genus* into its *species* is the method of διαίρεσις, which is known from Plato's late dialogues (esp. the *Soph.*) and which—in a variety of forms—is ubiquitous in the writings of Aristotle.[1] An example of such a διαίρεσις would be (cf. [Arist.] *Div.* no. 13 Mutschmann):
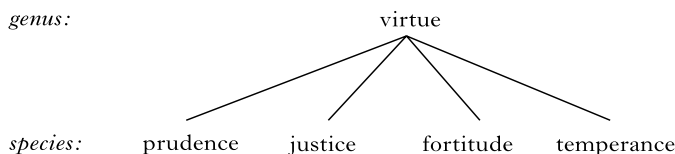
Prudence, justice, fortitude, and temperance may be called a *partium enumeratio*. While Aristotle for various reasons set up rigid requirements as to what may count as a *genus* or a *species*, Cicero uses *genus* and *pars* in a much weaker sense.[2] In the *Topica* it is fair to interpret *genus* as 'general term' and *species* as 'subordinate term'. The only requirement Cicero makes is that it must be possible to predicate the *genus* of the *species* (§13; sc. in a true proposition).

How is it possible to find an argument for a given proposition with the help of a *partium enumeratio*? We need to interpret one of the terms used in this proposition as a *genus* and name all its *partes*. Inevitably, this will make us analyse the proposition in Aristotelian terms, that is, we shall view it as being composed of a logical predicate and a logical subject ('A holds of B' or 'B is A'). In the case of the *locus* at issue, we shall enumerate the *partes* of the predicate A.

Now two rules hold, which may again be interpreted as rules of inference underwriting arguments of the present type:

   (*a*) If none of the *species* of the predicate A holds of the subject B, A does not hold of B.
   (*b*) If the *genus* A holds of the subject B, one of the *species* of A must hold of B.

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[1]   See Falcon (1996), (1997).
[2]   However, this need not mean that Cicero misunderstood the Aristotelian use of the terms. Aristotle himself handles the terms with a certain flexibility depending on whether he is concerned with dialectic, metaphysics, or biology, and it can be shown that the complicated taxonomic considerations of e.g. *Part. an.* cannot be readily transferred to the value terms which often feature in examples in *Top.* On Aristotle's use(s) of γένος and εἶδος see Pellegrin (1987).

To give an illustration of rule (*a*), relying on the διαίρεσις given above: we can argue for

> 'virtue' does not hold of medicine

by showing that

> Neither prudence nor justice nor fortitude nor temperance holds of medicine.

Cicero's example in the *Topica* is this:

> (i) X has been freed neither *censu* nor *vindicta* nor *testamento*.
> (ii) X is not free.

Although it is clear that Cicero's example is in some way or other based on rule (*a*), it is not a straightforward instantiation. There are two main divergences from the abstract account given above: it is not immediately clear what the *genus* is whose *partes* are given, and proposition (i) refers to ways of releasing, while proposition (ii) refers to 'being free' or freedom.

   Boethius observes (288. 35–290. 42) that the situation implied appears to be that the freedom of an alleged *libertinus* has been doubted and that Cicero presents the argument of the plaintiff. Cicero's example is quite close to ordinary language, as the claim made before the *praetor* was surely that the person in question *was not free*, which could then be proved by showing that *he had not been set free*. Thus 'to be free' said with reference to an alleged *libertinus* amounts to 'to have been set free, released', and the various forms of release (*manumissio*) may be called the *partes* of this notion. Here too it is unlikely that Cicero has reflected upon the structure of the argument in terms of inference-rules and propositions consisting of subjects and predicates; things simply fall into place once the *partium enumeratio* is being undertaken.

   The example of the parallel discussion in *de Orat*. 2. 165 may be analysed in terms of rule (*b*). The *locus ex partium enumeratione* has one ancestor in Aristotle's *Top*. (B4, 111^{a}33–^{b}11) and two in *Rhet*., the τόπος ἐκ τῆς διαιρέσεως (B23, 1398^{a}30–2) and the τόπος ἐκ τῶν μερῶν (B23, 1399^{a}7–10). They all rely *mutatis mutandis* on rule (*a*). Since even in the philosophical dialogue for which the *Top*. are a handbook the propositions employed by the speakers according to the playing-rules did not have to be cast in a standardized form but could be formulated in natural everyday

language, Aristotle makes certain concessions concerning the for-
mulation of the proposition which is to be attacked, namely that
the logical predicate of a proposition which is to be refuted may
simply include a γένος term or a word derived from it (111ᵃ34–5).

The corresponding τόπος in the Anonymus is διαίρεσις (§170,
following 'definition' as in Cicero), in Themistius the intermediate
locus 'divisio' (*De Diff. Top.* 1192 C–1194 A).

I come to the *locus ex notatione*. Cicero says in §35 that *notatio* is
his translation of ἐτυμολογία. In the background of the argument
given here, there is a provision from the Twelve Tables (Gellius,
NA 16. 10. 5):[3]

Nam Q. Ennius verbum hoc ex duodecim tabulis vestris accepit, in qui-
bus, si recte commemini, ita scriptum est: Adsiduo vindex adsiduus esto.
Proletario civi quis volet vindex esto.

The contrast of *adsiduus*/*assiduus* and *proletarius* suggests that the
provision is designed to prevent a person having no possessions
from standing surety for a wealthy person.[4] As Watson (1975),
181 points out, 'the provision can scarcely be regarded as discrim-
inating against the lower classes, and it rests on economic desir-
ability'. In this context *assiduus* must have a meaning implying
wealth; 'landowner' satisfies this condition, reflects the social
structure of fifth-century Rome (ibid.), and fits with the etymol-
ogy of the word. *Proletarius* may already be a technical term; at any
rate the crucial aspect of its meaning is sufficiently clear from the
context.[5]

Later *assiduus* was subject to a shift of meaning, and none of
the later meanings bears a close relationship to material wealth.[6] In

[3] See Crawford (1996), 588–90, who is slightly suspicious about the *civi* in the
second part of the quotation (at 589), and earlier Flach (1994), 116.

[4] Whether the word was spelt *adsiduus* or *assiduus*, it was pronounced as *assiduus*
from very early on; cf. Plaut. Poen. 279: *Milphio, heus, Milphio, ubi es?—assum apud
te, eccum.—At ego elixus sis volo.* On variations in the spelling of *accurrere* see Lucil.
375–6 Marx: *…atque accurrere scribas. | Dne an C non est quod quaeras eque labores.*

[5] During the high republic the term came to denote a member of the class of
people who owned less than 1,500 asses and were exempt from tax; see Mommsen
(1887), 238 n. 2 and Skutsch (1985), 338 on Enn. *Ann.* 170. On the development of
its meaning see von Ungern-Sternberg (2002). A collection of pertinent texts is in
Bruns (1909), 18.

[6] Originally, the meaning 'settled on the land' was equivalent to 'wealthy', the
assumption being that one was settled on one's own land; it is not attested outside
the historical sections of lawbooks, antiquarian works, grammarians, and the like
(cf. *TLL* s.v.) and probably ceased to be current very early. Then the connotation of

L. Aelius' time,[7] the old meaning was probably known only to learned users of the language. Aelius does not enquire into the meaning of *assiduus* by etymology, but infers its meaning from the context and then tries to account for it by etymology (*assiduus* from *aes dare*).[8] He implicitly acknowledges the priority of the meaning which the word actually has in the code.

Cicero's example may be viewed as a set-piece from a case. To reconstruct the process of invention, the argumentative aim was to establish that in a particular case only a rich man can be guarantor for a rich man, in order to decline an inappropriate guarantor. The next step was to turn to a statute which is relevant to questions of surety; it included the provision that only an *assiduus* can stand in for an *assiduus*. Reversing L. Aelius' thought-process, Cicero elicits from the 'true', etymological meaning of *assiduus* ('giving money') the sense, obsolete in his own day, that it bears in the law (*locuples*): properly interpreted, the statute lays down that only a *locuples* may stand in for a *locuples*. A possible wider context for an argument like this would be that rich men were forcing their dependants to stand surety and then defaulting (see Flach 1994, 116). As it stands, the argument could well have found the approval of a Roman jurist. Wieacker (1988), 656 regards it as possible that some explanations of legal terms in L. Aelius' works were taken from the jurist Sex. Aelius' commentary on the Twelve Tables (cf. the commentary).

I add some more general remarks on ancient etymology, to put the etymological explanations used by Roman antiquarians and jurists into context.

The way in which one employs the technique of etymological explanation in an argument may be determined by one's—not

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wealth disappeared, so later writers can use the word in the sense of 'constantly present, regularly in attendance' (cf. OLD 2a). Secondary to that are then the meanings 'assiduous' and 'constant' (OLD 3 and 4). Because the connection of being settled on the land and wealth was not seen, the correct etymology of *assiduus* was explicitly dismissed by the grammarians; cf. Char. *Gramm.* 1. 75. 11 ff. Barwick: *assiduus quidam per d scribunt, quasi sit a sedendum figuratum, sed errant. Nam cum a Servio Tullius populus in quinque classes esset divisus, ut tributum prout quisque possideret inferret, ditiores, qui asses dabant, assidui dicti sunt. Et quoniam soli in negotiis publicis frequentes aderant . . . assiduos ab assibus dixerunt.* For the division of classes assigned to Servius Tullius see also Cic. *Rep.* 2. 40.

[7] For the identification see the commentary.

[8] For the equation of *as* and *aes*, which was apparently common ground, cf. Varro, *LL* 5. 169 and André (1976).

necessarily conscious—conception of language. The two main ap-
proaches towards etymology are intimately linked to the naturalist
and the conventionalist view of language. The naturalist believes
that there is a natural relationship between a word and the thing it
denotes, while the conventionalist takes this relationship to be
conventional and arbitrary. The naturalist will assume that by
enquiring into the etymology of a word he can learn something
about the reality designated by this word and hence about the 'true
meaning' of the word, while the conventionalist will infer from an
etymology at best historical data, i.e. a previous, original meaning
of the word analysed.

However, in certain situations one can propose an etymology
without committing oneself to either of the two positions, e.g.
where the meaning of an obscure word is inferred from a context
(in the broadest sense) and in a second step an etymology is offered
as a supporting argument. Whether or not others accept the ety-
mology then depends on its plausibility alone. Aelius' etymology is
a slightly different case again in that the word analysed actually had
a meaning in contemporary Latin, but one that was different from
that in the law. Whether Aelius thought that by retrieving this
original meaning of *assiduus* he was providing historical informa-
tion only or that he had recovered the 'true' meaning of the word is
impossible to tell; normally a Roman might have tended to the
former, but an antiquarian like Aelius may have held more sophis-
ticated views. On antiquarianism in late Republican Rome see
Rawson (1985), 233–49.

Aristotle held a conventionalist position, and it could be shown
how this shaped his treatment of etymology at least in *Top. B*6,
112^{a}32–6 (see also *Rhet. B*23, 1400^{b}16–25). In the Hellenistic era,
etymology was used by grammarians—mostly for the same pur-
pose as by Aelius—and by the Stoics, who held a sophisticated
naturalist position.[9] In book-titles of Chrysippus, we encounter
the word itself for the first time (D.L. 7. 200).

There are several etymologies by Republican and later jurists
extant, which have often been credited to Stoic influences.[10] But in

[9] On the theoretical background of Stoic etymology see Blank (1982), 21–2 and
Frede (1987), 333–4; on Varro's account of Stoic etymology see Pfaffel (1981), 18 ff.

[10] Schulz (1946), 67 and 130: '. . . etymology at times played a sorry part', Coing
(1953), 373–4, Wieacker (1988), 654–9 with literature and examples; the relevant
title on the explanation of words in the Digest is 50. 16.

particular in the Republican era the jurists and the grammarians
frequently had to interpret legal documents containing obscure
words; this can, as argued above, be done without a commitment
to a particular linguistic theory. Certain naturalist views of lan-
guage come in implicitly, when a word of everyday language had to
be given a precise legal sense, which was justified with an etymol-
ogy. However, the jurists' pragmatic interest in meaning, which
guided their etymological efforts, is in itself unlikely to derive from
or to be informed by a coherent doctrine. And Stoic linguistics is
unlikely to be the kind of theory a jurist of the Republican era
would find appealing.

   The methods of etymological analysis were common intellectual
property; therefore a particular etymology cannot in itself be
credited to a certain origin on the basis of its formal structure.
Apart from derivation and separation of constituent parts, the pre-
vailing analytical principles were similarity (in various senses) and
contrariety (of a thing and its designation; e.g. *lucus a non lucendo*).[11]

§10 partium enumeratio. Cf. Anon. Seg. §173: ἡ δὲ διαίρεσις
τριχῇ καὶ αὐτὴ τέμνεται, εἴς τε τὴν καταρίθμησιν καὶ εἰς τὸν μερισ-
μὸν καὶ εἰς τὴν εἰδικὴν διαίρεσιν. There is a similar argumentative
pattern in *Inv.* 1. 45, but the term καταρίθμησις itself is very rare (I
have found no parallel in the Greek rhetorical tradition). Unlike
μερισμός and εἰδικὴ διαίρεσις, the word clearly denotes a mode of
presentation, not a type of analysis.

   censu. C. refers to the *manumissio censu*; the future *libertinus*
asked—with the permission of his *dominus*—to be accepted into the
list of free citizens at the quinquennial *census*. See Daube (1946),
Kaser (1971), 117.

   vindicta. The *manumissio vindicta* was held formally before the
praetor. The master, the slave, and a third citizen performed a
ceremony in which the third person (*adsertor in libertatem*) claimed
the slave to be free and the master ostentatiously refrained from
claiming his right; this was confirmed by the *praetor*. All this
is apparently a fictitious suit about the slave's freedom (see
Kaser–Hackl 1996, 102). It was a part of the procedure that the
adsertor touched the slave with a switch (*festuca*), and because this
was called *vindictam imponere* in legal terminology, *vindicta*

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[11] Cf. Aug. *de Dial.* 6; Dahlmann (1932), 7, Lloyd (1971), 59.

became a synonym of *festuca* (cf. Hor. *Sat.* 2. 7. 76; Pers. 5. 75–82; Boethius 288. 43). In fact, *vindicta* originates from *vim dictam*, 'force (or ownership) announced' by the *adsertor* in the course of the procedure; see Leumann (1977), 267. On the details of the procedure see Kaser (1971), 116.

testamento. Manumission by testament must have been the commonest of all three types; it is very likely that it was already in the Twelve Tables (tab. VI. 1–2 in Crawford 1996, 657–8 = tab. VII. 12 Bruns 1909, 28). Cf. Kaser (1971), 116, 294–5.

notatio. Cf. the commentary on §§35–7.

lex. Many MSS read *Aelia Sentia* or variants of it after *lex*, yet notably not *β*. In B it has been added by the person who adjusted B$_A$ to B (rather than the main corrector of B, B^1; see Reinhardt 2002, 327); this, and the situation in a, suggest that *Aelia Sentia* was in the common source of B$_A$ and a (ϵ). It will have been in α too, either in the margin or inserted between lines (*Aelia Sentia* is not in L, before *lex* in d, after *lex* in ζ and P$_1$, after *lex* but underlined as to be deleted in V). The gloss need not originate from Boethian contamination, at least not universally, because Boethius makes it a part of his *subiectus* when he analyses Cicero's intended conclusion into a (logical) subject and a (logical) predicate (291. 10–11), which he would not do if it were *his* proposal to specify the *lex*. So Di Maria 62 is right in assuming that it must have crept into a branch of the tradition before Boethius, who read it in his text. The *lex Aelia Sentia* of AD 4, which regulated the manumission of slaves, has nothing to do with suretyship (cf. Kaser 1971, 297), and I do not understand why someone has inserted it.

L. Aelius] *laelius* vel *lelius* βadL: *aelius* ς. Two different Aelii have been credited with the etymology, the jurist Sex. Aelius Paetus Catus (*RE* Aelius 105; cos. 198, cens. 194) and the scholar L. Aelius Stilo Praeconinus (*RE* 144; app. 154–90), whom Cicero knew personally (*Brut.* 207). Since *Laelius* is how L. Aelius would be represented in manuscripts (cf. e.g. Kumaniecki's app. crit. on *de Orat.* 1. 265), the reference must be taken to be to him unless there is evidence to the contrary. For L. Aelius, a professed Stoic (*Brut.* 205), four works are securely attested: an interpretation of the *carmina Saliorum*, a list of genuine plays of Plautus, a book on propositions (ἀξιώματα; *commentarius de proloquiis* Gell. *NA* 16. 8. 2–3), and a book on semasiological and etymological matters, from

which frr. 5–46 Funaioli will derive, which reveal a strong interest
in the Twelve Tables; see Kaster (1995), 68–80 on Suet. *Gramm.*
3. 1 ff. In *Leg.* 2. 59 a further etymology (*lessus*; Ernout–Meillet
s.v.: 'sans étymologie') is attributed to L. Aelius (= fr. 13
Funaioli), and an *antiquarian*'s interest in the *pontificum libri* and
the Twelve Tables is in *de Orat.* 1. 193 called *Aeliana studia* (=
test. 12 Funaioli). Moreover, as Di Maria 63–4 points out, Cicero
always refers to Sex. Aelius with the *praenomen* and the *nomen
gentile*, while the scholar appears either as L. Aelius or as Aelius.
All this puts the identification beyond reasonable doubt. Sextus
Aelius wrote the earliest known commentary on the Twelve
Tables, the so-called *Tripertita*. Cicero's references to the jurist
never entail a primary knowledge of his work, but are general
characterizations of his helpfulness as a respondent or of his reser-
vations about philosophy (*Rep.* 1. 30); Schulz's description of Sex.
Aelius (1946, 36) as 'among the last of the old school' is deduced
from Cicero's statements about him.

§§ 11–12

§11 is a transitional passage, listing the *loci ex rebus affectis*. In
itself, the passage requires no explanation, but two remarks may be
made.

It is likely that this list reflects the way in which the τόποι were
presented in Cicero's source. This is suggested by the divergences
between the treatments of one and the same *locus* in the *Topica* and
de Orat. and by the comparison with the *Anon. Seg.*

Among the '*loci* of the person and of the act' in *Inv.* 1. 34–43,
discussed in the introduction (Ch. 3), we find a strangely erratic
group of *loci* dubbed *adiuncta negotio* (1. 41), which, unlike the other
loci discussed there, do not refer to material aspects of the case but to
logical categories and which strongly resemble the cluster of *loci*
introduced in §11.[1] It is possible that Cicero was already in posses-
sion of the source for the *Topica* in the late 80s and that the *adiuncta
negotio* in *Inv.* are identical with the *loci ex rebus affectis* here. One
would have to assume that Cicero took them from the source for the
Topica and added them to the material discussed in *Inv.* This would

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[1] Cf. *Inv.* 1. 42: *Adiunctum negotio autem id intellegitur quod maius et quod minus et
quod aeque magnum et quod simile erit ei negotio de quo agitur, et quod contrarium et
quod disparatum, et genus et pars et eventus.* At *de Orat.* 2. 163, 166 Cicero discusses
the main group of *loci ex rebus affectis* under *quippiam rem illam quod attingat.*

be consistent with our assumption that Philo of Larissa was the mediator of the doctrine of τόποι (Cicero's acquaintance with him predates *Inv*.).

Let us turn to §12. The derivations of the same verbal stem like 'health', 'healthy' etc., show a relatedness in meaning which is due to their common constituent part; but obviously there is no identity in meaning, as these words denote different things. Clearly the rules of word-formation are such as to create these semantic relations.

Many arguments are based on such a difference of meaning of words of common origin, and Aristotle formulated τόποι according to this pattern in his *Top.* (B9, 114^{a}26–7) and *Rhet.*; cf. *Rhet. B*23, 1397^{a}20–3:

ἄλλος ἐκ τῶν ὁμοίων πτώσεων· ὁμοίως γὰρ δεῖ ὑπάρχειν ἢ μὴ ὑπάρχειν, οἷον ὅτι τὸ δίκαιον οὐ πᾶν ἀγαθόν· καὶ γὰρ ἂν τὸ δικαίως · νῦν δ' οὐχ αἱρετὸν τὸ δικαίως ἀποθανεῖν.

Another line of argument is got by considering derivations, and arguing that what can or cannot be said of the one can or cannot be said of the other: e.g. of 'the just' 'beneficial' does not always hold; for 'beneficially' would then always hold of 'justly'. And it is not desirable to be justly put to death.

In this τόπος, which has the developed logical substructure known from the *Top.* (cf. Ch. 2), it is stated that the same predicates must hold or not hold (ὑπάρχειν ἢ μὴ ὑπάρχειν) of derivations (here termed πτώσεις) of the same stem or head-term (δικαιοσύνη). The argument is this:

    (i) Not everything which is just is good.
   (ii) For 'to die in a just way', i.e. deservedly, is not good.
  (iii) Therefore 'the just' is not universally good.

While a similar rule—'If the predicate holds of the subject, it will also hold of a derivation of the subject'—seems to underlie Cicero's example for the *locus ex coniugatione* in *de Orat.*,[2] this is no longer the case in the *Topica*; one can only say that an argument for something may be constructed with the help of a *coniugatum* of one of the words in the reasoner's position, suitably embedded in a proposition.[3] In this case too—*Si compascuus ager est, ius est*

[2] *De Orat.* 2. 167: *Si pietati summa tribuenda laus est, debetis moveri, cum Q. Metellum tam pie lugere videatis. Pietas* and *pietas*-related actions both deserve praise.
[3] Cf. the explanatory remarks in Martianus Capella, *Nup.* 5. 484: *primum a coniugatis, cum uno nomine proposito principali per eius derivationem casu aut tempore*

compascere—the two words of the same stem seem not to produce a tautology (see the commentary).[4] Apparently a claim for a *ius compascendi* is based on the ground that a particular individual is entitled to use the common land. That the example as given is not a complete argument does not present a problem; clearly, the reader is expected to supply minor premiss and conclusion.

The corresponding τόπος in the Anonymus Seguerianus is συστοιχία (§175). The corresponding *loci* in Themistius *De Diff. Top.* 1192 B–C are *casus* and *coniugata* (on terminological matters see the commentary).

§11 coniunctis. The editors print here *adiunctis* (the reading of ς), because Cicero calls the *locus* 'ex adiunctis' in §§18 and 50–2. However, Cicero himself was inconsistent about the matter (see §53; §87)

§12 coniugatio συζυγία **dicitur.** Different derivations of the same word are called πτώσεις in the τόπος cited from *Rhet*. Cicero has *coniugatio* (συζυγία) and *coniugata* (probably σύζυγα), while in Aristotle's *Top*. we find συστοιχία and σύστοιχα (*B*9, 114ᵃ26–ᵇ5). The Anon. Seg. also has συστοιχία. This variety of technical terms needs to be explained. συστοιχία is the name for a group of derivations from the same root-word, and σύστοιχα that of the individual derivations (Professor Russell suggests the idea is that of things in the same row or column, with the underlying image of a written text). συζυγία in Aristotle means 'combination' or 'conjunction' in various senses, σύζυγα is not in evidence; elsewhere συζυγία has other technical meanings, e.g. 'declension' in Apollonius Dyscolus (*Adv*. 161. 28; *Synt*. 271. 16), which comes relatively close to the meaning it has in Cicero. In fact, as was long ago pointed out by Wallies (1878), 14, our text is the only one where a group of derivations from the same verbal stem, which are not merely different cases of the same noun, is called συζυγία; there was either a shift of terminology not elsewhere attested or a corruption (from

commutato aliquid approbamus ('First the argument from conjoints, which comes about when, after a head-term has been introduced, we prove something by using its derivation, generated by a change of case or tense'). In view of Cicero's rather loose requirements for an *argumentum ex coniugatione*, it is not surprising that Boethius' more rigorous approach to topical argument leads into trouble; he feels forced to give two different proposals for a *maxima propositio* (297. 25–8).

[4] Quintilian had doubts about this (*Inst. Or.* 5. 10. 85).

συστοιχία to συζυγία) in Cicero's source. In Cicero, as in ancient works on grammar, there is no sharp distinction between derivation and etymology; the example of etymology in *de Orat.* is *consulere* as *notatio* of *consul* (2. 165), apparently because the notions of care or welfare were no longer (or not consistently) associated with *consul*, so that the term was used as a title. That *consul* was derived from *consulere* was the ancient view, cf. Maltby (1991), 152 s.v. *consul*; whether the etymology is accurate is a different and contentious matter, cf. Ernout–Meillet s.v. *consul*, who doubt whether the similarity of *consul* and *praesul* is more than coincidence, but point out that a verb derived from *consul* would have to be **cōnsulō, -ās*, not *cōnsulō, -is*.

est. The principle *utrum in alterum* may seem to favour *fit* here (which could be misread as *sit* and then corrected to *est*), but *argumentum fit* is not to be found elsewhere in Cicero, *Rhet. Her.*, or Quintilian. However, it does occur five times in Boethius' commentary (e.g. 290. 18 on §10, 298. 45–6 on §14, though not in the section on our passage), which may account for the presence of *fit* in α.

compascuus ager. Our knowledge about the details of 'common pasture' comes almost exclusively from the texts of the *agrimensores*; the edition with explanatory notes by Lachmann–Blume–Rudorff (1848–52) is still in use, though Thulin (1913) has re-edited several of the texts included in Lachmann (ref. will be made by page and line to Thulin's edition). An excellent account of the role of *agrimensores* is given by Campbell (1996); a comprehensive study of the *ager compascuus* with full references to primary texts and secondary literature is provided by Laffi (1998). What distinguishes the *compascuus ager* from other kinds of public land is that it was pasture whose use was restricted to a particular group of people within a community (e.g. Frontin. 6. 7–12; Sic. Flacc. 116. 6–18), typically (e.g. Hygin. 80. 3–4; Sic. Flacc. 121. 16–18), though not exclusively (Sic. Flacc. 116. 13–18), those who owned land adjacent to the *compascuus ager*; that this has been so since Republican times emerges from the *Lex Agraria* of 111 BC (ll. 14–15; see Crawford 1996, 161). The *ius compascendi* was not granted to particular individuals (Frontin. 6. 6–7, cf. *comm.* 63. 7–8), but technically belonged to a certain piece of land (it thus resembles a *servitus* in some respects). It was at the discretion of the *colonia* or the state, not of those who had the right to common pasture, to determine who should be entitled to use the *ager*. We

have little knowledge of how exactly the *ius* was administered, but from what has been said above it is clear that Cicero's example need not be tautological: for instance, it may be doubtful whether ownership of a particular piece of land which is not adjacent to the common pasture entails the *ius compascendi*. The translation assumes that we are supposed to understand a dative pronoun with *ius est*, which would not be unusual in Latin and would avoid a tautology.

§§13–14

Like the *locus ex partium enumeratione*, the locus *a genere* involves a division of a genus into its species, each species being distinguished from other co-ordinate species by a specific difference. I reproduce the example used in §10:

Here the genus A is divided into its species B–E. The following principles hold:

- (*a*)　If an essential predicate G holds of A, it will also hold of B–E.
- (*b*)　The term A can be predicated of all species of A.
- (*c*)　What marks out one species will not hold of another species.

In one form or other, these principles are used in Aristotle's *Top.* They are also in the background of Cicero's discussion of the *loci a genere* and *a forma generis*, again with the relaxations in the understanding of the terms *genus* and *species*. Further principles may be derived from the division above, which are associated with these two *loci* in works on rhetorical theory, but not in Cicero, for example:

- (*d*)　If the predicate A does not hold of a subject G, neither will B–F hold of G.[1]
- (*e*)　If B holds as a predicate of a subject I, A will also hold of I.[2]

genus:　　　　　　　　　　　　　　　A: virtue

species:　　B: prudence　　C: justice　　D: fortitude　　E: temperance

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[1]　Quint. *Inst. Or.* 5. 10. 56: *At quod non est arbor, utique platanus non est*. Here the γένος-term is used as a *predicate*.

[2]　Quint. *Inst. Or.* 5. 10. 57: *Nam quod iustitia est, utique virtus est*.

In §13 Cicero argues that a legacy of *omne argentum* to a certain *mulier* includes the legacy of coined silver, because coined silver is a species of *argentum* and is therefore covered by *argentum*; so he uses principle (*a*) for the argument ('What is true of the *genus* is true of the *species*') and gives (*b*) as a justification.

Since the argument seems plausible, it might be surprising that legal texts on *legata* explicitly exclude the coined money from *argentum*.[3] These texts are considerably later than Cicero, and we should probably rule out the possibilty that they reflect a legal situation that already applied in Cicero's time. For otherwise we should have to assume that Cicero was advancing an argument on a straightforward issue which must have appeared to Trebatius as flatly at variance with the law of the time. That would be different from a rhetorical argument on a contested issue where one can legitimately take one side or the other.

It is clear that jurists would not necessarily have accepted the argument. This is remarkable, because it can tell us something about the limits of applying the doctrine of τόποι to legal cases. In principle (*a*) above, if the essential predicate 'to have percep-tion' holds of 'animal', it must also hold of the species of 'animal', and it would be absurd to exclude one species of 'animal' from this by convention. In Cicero's example, with its vague understanding of the notions species/genus, the decision is not simply a matter of clarifying the range of *argentum* in ordinary language and of dedu-cing from the relevant sentence in the will what is to be done about coined money, but also of considering which interests are compet-ing and whose interests are to be protected. To have regard to such

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[3] D. 34. 2. 19. pr *Ulpianus libro vicensimo ad Sabinum*: *Cum aurum vel argentum legatum est, quidquid auri argentique relictum sit, legato continetur sive factum sive infectum: pecuniam autem signatam placet eo legato non contineri* ('When gold or silver has been left as a legacy, whatever gold or silver has been left forms part of the legacy, whether it has been worked or remains in its raw state; but it is resolved that what has been coined as money does not form part of the legacy'); D. 34. 2. 27. pr–1 *Ulpianus libro quadragesimo quarto ad Sabinum*: *Quintus Mucius libro secundo iuris civilis ita definit argentum vas argenteum videri esse. An cui argentum omne legatum est, ei nummi quoque legati esse videantur, quaeritur. Et ego puto non contineri: non facile enim quisquam argenti numero nummos computat* ('Q. Mucius, in the second book of his *Civil Law*, gives the following definition, that worked silver is regarded as constitut-ing a silver vessel. It is asked whether, in the case where a person has been left all the silver, coins too are regarded as part of his legacy. And for my part I submit that they are not included; for cash is not readily reckoned as part of the silver'). Cicero's view is also implied in §16. On the range of *argentum* and similar terms like *aurum*, *factum*, *lignum* etc. see Watson (1971), 147 ff., in particular 148 n. 1.

aspects does not come within the sphere of the doctrine of τόποι; this, however, does not affect its usefulness for *describing* legal arguments.[4] Legal decision-making refers to values and value-hierarchies, and corresponding considerations may affect or determine the scope of a legally relevant term; it is partly for this reason that legal argument resists to some extent a 'logical' treatment.

What could have been the (later?) jurists' reason for not including *pecunia numerata* in *omne argentum*? A *legatum* is a legacy of a certain value to a person or a group of persons who are not identical with the proper heir.[5] The overall policy appears to have been to protect in cases of doubt the rights of the heir rather than those of the person who received the *legatum*;[6] similarly the rights of an owner of something are protected by the restrictions imposed on *usus fructus*, which must never lead to an essential damage or reduction of value of the good to which it refers.[7]

The example for the *locus a forma generis* in §14 also starts from a provision made in a will. Fabia, the *uxor* of the heir, is to receive a legacy provided she is his *mater familias*. But if she is not in her husband's *manus* ('power'), she receives nothing. As there are two *formae* of the *genus* 'uxor', i.e. the *mater familias* who is in the husband's *manus* and the ordinary *uxor* who is not, and Fabia has not the distinctive feature of being in her husband's *manus*, she will receive nothing. The argument is based on (*c*), as a legacy is granted only to one *forma* of *uxor*. This is perhaps not the best example for the *locus*, as it will be difficult to specify how it is to be distinguished from the *locus a differentia*.[8]

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[4] Coing (1953), 387 with reference to late Republican jurisprudence: 'Die *argumentatio a genere* entwickelt sich. Aquilius Gallus leugnet die Herstellungspflicht des Eigentümers des dienenden Grundstücks bei der *servitus oneris ferendi*, weil *non posse ita servitutem imponi ut quis facere aliquid cogeretur* (D. 8. 5. 6. 2). Servius erklärt das Vermächtnis einer Forderung gegen einen Sklaven an diesen für nichtig *quia dominus servo nihil debere potuisset* (D. 35. 1. 40. 3). Und testamentarische Freilassungen nur für gültig, wenn die Sklaven *utroque tempore et quo testamentum fit et quo moritur, testatoris fuerunt* (D. 40. 4. 35).'

[5] Berger (1953), 539–40 s.v. *legatum*: 'It is a "deduction from the inheritance" (D. 30. 116. pr) which according to the testator's wish is given to some person other than the heir . . . it was the heir who was charged with the payment of the legacy.'

[6] See Watson (1971), 134–54 'extent of legacies' and 155–74 'legislation on legacies.'

[7] See Kaser (1971), 450–1.

[8] The example illustrating the corresponding *locus* at *de Orat.* 2. 168 *ex parte autem ea, quae est subiecta generi* is in fact *a genere*.

The example poses a problem. The crucial point is the condition *si ei viro mater familias esset*. Boethius explains (299. 8–18) that there were three forms of marriage (*usus, confarreatio, coemptio*),[9] but that only one of them—*coemptio*, a fictitious purchase of the woman—made her an *uxor in manu* and that only *an uxor in manu* was called a *mater familias*. If Boethius' account were correct, the stipulation *si ei viro mater familias esset* would be difficult to understand. For it is implausible that the testator was confused enough to have forgotten whether the heir married his wife by *coemptio* or not (if he had not, the whole clause would be pointless). So the stipulation could in Boethius' interpretation only mean that the will was formulated at a time when the heir was still a bachelor, with respect to a possible future marriage. This seems unconvincing, too, and it can be shown that *coemptio* was not the only way to become a *mater familias* in the late Republic.[10]

In fact, an alternative way to become an *uxor in manu* (and, *pace* Boethius, *mater familias*) was *usus*, i.e. that a woman married a man and came into his *manus* after a year of uninterrupted presence in the husband's house. If the woman wished to remain formally a member of her father's household, she could leave her husband's house for three days before a year since their marriage had passed (this interval of three nights was called *trinoctium*). So in Cicero's example the question would be whether Fabia had come into her husband's *manus* by *usus*; one can imagine that this could be very difficult to prove.

The corresponding *loci* are in An. Seg. γένος/εἶδος (§172) and *a toto vel genere/a partibus vel specie* in Themistius/Boethius *De Top. Diff.* 1188 B ff.

§13 argentum omne. The jurists distinguished various types of *argentum*, one of which was *arg. signatum* (Cicero's *pecunia numerata*, an expression which was also used; D. 14. 6. 7. 3); see Heumann–Seckel s.v.

forma enim … seiungitur. The formulation shows that Cicero did not think about the problem in terms of predication, which is fundamental for Boethius' account of the work. What Cicero calls *seiungere* of *genus* and *forma* is the impossible situation

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[9] On the forms of marriage see Treggiari (1991), 17–28.
[10] Ibid. 28. There was also a non-technical use of *mater familias* in the sense of 'reputable woman'; see Kunkel (1930).

that an essential predicate which holds of the *genus* should not also
hold of the *formae* of this *genus*.

§14 partem licet nominare. The contrary statement in §31
might be taken as an attempt to establish terminological precision,
while here practical purposes prevail.

   ita. On this correlative use of *ita* before *si* cf. K.–St. ii. 387.

   Fabiae. In a number of fragments of Q. Mucius, 'John Doe'
nomenclature is used, a practice which was widely adopted by later
jurists; Cicero might be imitating this practice. Cf. Frier (1985),
166 with n. 112.

   a viro. One might be tempted to read *a viro* as an indication of
the agent, i.e. of the person who made the legacy in his will. But
this would make it difficult to understand why Cicero wrote *ei viro*,
not *sibi*, in the following *si* clause. Therefore I take *legare ab aliquo*
in the sense of 'give directions to the heir to pay a legacy'; cf. §21 *Si
paterfamilias uxori ancillarum usum fructum legavit a filio neque a
secundo herede legavit*.

   in manum. On *manus* with reference to marriage see Kaser
(1971), 76–81, Treggiari (1991), 16–17.

§15

Not only philosophers and orators but also jurists often argue
that something holds because in a similar case the same (or,
again, something similar) holds (§41), i.e. in a way which rhetorical
theory calls *ex similitudine*. Although trivial to us, this insight is in
itself true and original.

   Characteristically, Aristotle (*Top. B*10, 114ᵇ25–8) and Boethius
in his commentary analyse arguments of this type in such a way
that from a proposition 'B is A' it is inferred either that A also holds
of a term C which is similar to B or that a term D similar to A
holds of a term C which is similar to B. Cicero's example here is
open to an interpretation along Aristotle's lines, but is unlikely to
have been analysed by Cicero himself in this way. The second
discussion of this *locus* will provide an opportunity to expand on
Cicero's understanding of arguments *ex similitudine*.

   The Anon. introduces the corresponding τόπος as follows
(§177):   ὁ δὲ ἐκ τῶν ὁμοίων τόπος καὶ αὐτὸς διπλοῦς· τὸ μὲν γὰρ
κατὰ τὴν ποιότητα ὅμοιόν ἐστι, τὸ δὲ κατὰ τὴν ἀναλογίαν, ὅπερ εἰς τὰς

ἀποδείξεις μᾶλλον ἁρμόττει ('The topic from likeness is also two-fold: one is likeness in terms of quality, the other by analogy, of which the latter is more suitable for scientific proof').

Comparison with Themistius, who treats ἀναλογία and ὅμοιον as different τόποι,[1] and with Quintilian, who in this point clearly draws on a tradition similar to the Anon./Themistius,[2] suggests that ἀναλογία in the Anon. has the Aristotelian sense of 'proportion' (*Poet*. 21, 1457^{b}16–19: τὸ δὲ ἀνάλογον λέγω, ὅταν ὁμοίως ἔχῃ τὸ δεύτερον πρὸς τὸ πρῶτον καὶ τὸ τέταρτον πρὸς τὸ τρίτον, 'By analogy I mean when the second is to the first as the fourth is to the third'). Aristotle himself classifies arguments based on a proportion as a particular type of ἐκ τῶν ὁμοίων in *Top*. *E*7, 136^{b}33–137^{a}7.

Cicero's example reflects in all likelihood what was actually the law in his time. And an argument concerning restrictions of *usus fructus*[3] could well have been defended by a jurist *ex similitudine*.

A definition of *usus fructus* dating from the Imperial era runs *ius alienis rebus utendi fruendi salva rerum substantia* (D. 7. 1. 1. Paulus). The right to *usus fructus* was normally acquired by way of a legacy in a will.

The requirement that the substance of the object of the usufruct be unimpaired had three important implications. First, the usufructuary's rights to make alterations in the object of the usufruct were restricted. There is no information on this proposition for the Republic. Secondly, there could be no usufruct in respect of things which were consumed by use. Thirdly, if the object of the usufruct perished, or if its character altered radically, no matter how this occurred, the usufruct would end. (Watson 1968, 207.)

The title in the Digest relating to loss of *usus fructus* (7. 4. 1) contains extensive casuistry, and inevitably the argumentation often proceeds in the form of arguments *ex similitudine*, as there

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[1] *Proportio*: *De Top*. *Diff*. 1191 B; *similitudo*: 1190 C; difference between the two: 1191 A–B.

[2] *Inst*. *Or*. 5. 11. 34: *Analogiam quidam a simili separaverunt, nos eam subiectam huic generi putamus. nam, ut unum ad decem, et ad decem centum simile certe est; et, ut hostis, sic malus civis. quamquam haec ulterius quoque procedere solent: si turpis dominae consuetudo cum servo, turpis domino cum ancilla*. The *analogia* underlying the example is *dominus*: *domina*:: *turpis consuetudo cum servo*: *turpis consuetudo cum ancilla*.

[3] Watson (1968), 203–21, Kaser (1971), 447–56.

could be *usus fructus* of several similar things. There is no independent material dating from the Republican era, but later evidence to the effect that the *heres* was not bound to repair or rebuild a house.[4] And since *usus fructus* of slaves was as familiar as that of buildings, there is no need to assume that the two similar cases could not be connected.

The cases related to one another in the argument here, where the heir is not responsible for restitution, are similar in that they refer to (i) goods whose (ii) *usus fructus* was granted to someone by legacy. But there seems to be more to this *locus*. The example here has three parts:

- (*a*) Si aedes eae corruerunt vitiumve faciunt quarum usus fructus legatus est
- (*b*) heres restituere non debet nec reficere
- (*c*) non magis quam servum restituere si is cuius usus fructus legatus esset deperisset.

The similarity relation is between (*a*) and (*c*), and it is said that in both cases (*b*) applies; (*a*) as modified by (*c*) is the proposition to be argued of (cf. Boethius), the loosely attached and hypothetical (*c*) is the similar case to support the statement about (*a*). Although no confusion arises, because similarity is a symmetrical relation, the lack of uniformity in structure with other examples which show the position to be argued for in the apodosis or else clearly marked is striking. Perhaps the example is taken from a legal source, which would imply that Cicero not only transformed legal material into examples for his *loci*, but also adopted complete arguments if they had an appropriate structure.

§15 vitiumve faciunt. Some of the less sincere MSS read *fecerunt*, which restores the same tense in the two verbs of the *si*-clause, but *corruerunt* has the force of a present tense (or more strictly of a Greek perfect), stressing the result of the house's collapsing, and is therefore on one level with *vitium faciunt*. For *vitium facere* 'to suffer damage' see OLD s.v. *vitium* 2c.

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[4] D. 7. 4. 5. 2 (Ulpianus): *Rei mutatione interire usum fructum placet: veluti usus fructus mihi aedium legatus est, aedes corruerunt vel exustae sunt: sine dubio extinguitur* ('It is generally held that a usufruct comes to an end in the event of a radical change in the thing subject to it; for example, if the usufruct of a house has been left to me as a legacy, and the house collapses or is destroyed by fire, then without doubt the usufruct of the house is extinguished').

usus fructus comprises two different rights, and *usus* could be granted alone (see Watson 1968, 219–20).

restituere . . . reficere. The former answers to *corruerunt* and hence means 'to build newly', the latter answers to *vitium faciunt* and means refurbishment of a merely damaged house; this difference in meaning of the two verbs in juxtaposition also in D. 7. 4. 10. 1 and Nep. *Timoth*. 4. 1. 5.

non magis quam introduces an abbreviated comparison. From the main clause (*debere*) the hypothetical *deberet* must be supplied; *deberet* necessitates the pluperfect subjunctive in the *si*-clause, which refers to a relatively earlier event.

§§16–17

In the case of the *locus a differentia*, it is difficult to pin down a logical substructure of the example given. On a general level, Ciceronian arguments *a differentia* may be described as directed against a given or merely anticipated argument which infers a conclusion from a premiss either *a genere* or *per analogiam*. With reference to a distinction allegedly not observed in the argument challenged, it is denied that the conclusion of the argument may be inferred from the premiss in question. Where an argument from analogy is rejected, it is denied that the two cases compared are actually analogous; arguments *a genere* are opposed on the grounds that the *species* subsumed under a *genus* is in fact not a *species* of this *genus*.

In the example here, the question is whether the legacy of *omne argentum quod meum est* given to the testator's *uxor* includes money out on loan which is registered in the account book. The argument rejected is this:

(i) '*omne argentum quod meum est* should belong to X'[1]
(ii) *omne arg. qu. m. e.* includes money out on loan.
(iii) Therefore, money out on loan should (according to the will) belong to X.

It is argued that (ii) is false and that therefore (iii) does not apply, because it makes a great difference whether *argentum* is listed *in tabulis* or is kept in the strongbox. The argument may be viewed as a rejection of an argument *a genere* like the one in §13; money on loan, despite being money, is not included in a legacy of *argentum*

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[1] This is the *legatum* in the will under consideration.

omne quod meum est (the example clearly implies that *argentum* in a will covers coined money—cf. §13—and shows that in the *Topica* Cicero takes a consistent view on that matter).[2]

Cicero takes it for granted that in order to warrant his argument it suffices to bring to the reader's attention the apparently evident difference between money out on loan and money in the strongbox. The example in §46 is a rejection of an inference from analogy.

The redundant-sounding phrase *argentum omne quod suum esset* might invite us to attach special weight to the clause *quod suum esset* and to take it as the qualification on which the distinction depends. The author of the will would have intended it in its usual sense of 'money of which I am the owner' (on *meum* cf. Verg. *Ecl*. 9. 2–4 with Coleman ad loc., where the *possessor*, in saying *haec mea sunt*, claims to be the *dominus*). *Quod meum est* is a set phrase of the language of wills, not an *ad hoc* invention of Cicero's (cf. e.g. D. 32. 1. 85. pr.). *argentum quod meum est* would include money out on loan, and it is clear that later in the case of legacies of *aurum omne quod meum est* all money which could be claimed by *vindicatio* was understood to be included (D. 34. 2. 27. 4). So on what grounds could the argument be rejected here? It was noted above (comm. on §§13–14) that in the law of succession there was a tendency to give the rights of the heir priority over those of the recipients of legacies. This consideration would explain why either in Cicero's time the law was different concerning the scope of *argumentum omne quod meum est* or why an orator may have wanted to at least try this line of argument. In any case, we should note that the passage does not readily reveal what was the law in Cicero's time.

The comparison with the Anon. Seg. (§172) suggests that Cicero's *locus ex differentia* corresponds to διαφορά in his source; the *locus* is not in Themistius.[3] Both in Cicero and in the Anon. 'difference' is juxtaposed with definition, division, genus, and species; so it is likely that *differentia* originally meant *differentia*

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[2] Di Maria 10 quotes D. 35. 1. 40. 3, which refers to the question whether, if a *dominus* owes his slave a certain amount of money *in tabulis*, he can bequeath this sum to his slave. The decision is negative, because a master could never owe anything to his slave. The passage has, thus, nothing to do with the case here; see Horak (1969), 105–6.

[3] A possible reason for this divergence is, apart from the simple assumption that Themistius' source differed in that respect, the role διαφοραί play in his conception of topical argument, which might have led to confusion, if διαφορά had appeared also as a τόπος.

specifica, that particular property of an εἶδος which marks it out from all other εἴδη of the same γένος. Although Cicero seems to demonstrate familiarity with the concept of the specific difference in §31, I should, as suggested above, prefer an interpretation of Ciceronian arguments *a differentia* which does not involve interpreting 'difference' in this 'specific' way.

Διαφοραί play a role in Aristotle's *Top.*, but διαφορά is not among the τόποι in *Rhet*. B23–4.[4] There is, however, in Aristotle's *Rhet*. a pattern of argument comparable to the *locus a differentia* in Cicero's understanding; it is to be found among the instructions for refuting the opponent's arguments (λύσεις; B25, 1403ᵃ5–10). Aristotle makes the example (παράδειγμα) parallel to induction (ἐπαγωγή). He says that the introduction of an example may constitute an inference 'from the similar to the similar' (*Rhet*. A2, 1357ᵇ28–9). And such inferences may be opposed by objecting that the two cases involved are in fact different. Arguments *a differentia* in this sense also found their way into the Anon. (§186).

The *locus ex contrario* has Aristotelian predecessors in *Top*. and *Rhet*.; Cicero's *contrarium* corresponds to Aristotle's ἀντικείμενον in *Top*., a general term meant to cover four types of opposites: contradictorily opposed terms, possession and privation, relatives, and contraries (see the commentary on §§47–9). All four types of opposites may be used for the construction of an argument. Contraries like *usus* and *abusus* are called *diversa* in §47,[5] and correspond to ἐναντία in Aristotle; the τόπος ἐκ τῶν ἐναντίων is the only τόπος concerned with opposites in the *Rhet*. (B23, 1397ᵃ7–11). According to this τόπος, a proposition 'B is A' may be refuted by showing that the contrary of A does not hold of the contrary of B, while it can be proved by showing that the contrary of A does hold of the contrary of B.

Like *genus* and *forma*, *contraria* and *diversa* are terms, and even someone who is not aware of the possibility of a term-logical understanding of topical argument inevitably produces an argument which is open to a term-logical interpretation. Therefore it is not surprising that Boethius' interpretation of Cicero yields particularly sound results when applied to this group of *loci*.

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[4] Quintilian underlines the importance of *differentiae* in definitions, but credits them with no major role for the finding of arguments (*Inst. Or*. 5. 10. 61).

[5] There is a textual problem here; see the commentary on §47.

   The argumentative aim is here to establish that the *mulier* must not use the wine and oil stored in the cellars of an estate of which *usus fructus* was granted to her by legacy. The notion of contrariety yields the terminological contrast of *usus* and *abusus*, and by means of a rule like Boethius' *maxima propositio*: 'Quod de aliqua re dicitur, id in eius contrarium non potest convenire' (301. 14–15) and the additional assumption that any use of wine and oil is necessarily *abusus*, as both goods are consumables, it is inferred that the *usus fructus* of *bona* does not include the right to consume wine and oil.

   It is not possible to say with certainty whether Cicero's argument corresponds to what was the law in his day. Initially, *usus fructus* of things that are consumed by use probably did not exist,[6] and *usus fructus* of *omnes res*, as mentioned in our passage and already in *Caec*. §11, seems not to have included it. The restrictions imposed on usufruct were probably relaxed by a *senatus consultum*, which, however, cannot be properly dated; further, the report we have on it is too vague in its wording to allow for a clear picture what rules held before and in how far these were modified through it.[7] But because there are texts which allow usufruct of consumables, though under particular circumstances,[8] it is plausible that this was due to the *SC*. So two assessments of the example are possible, depending on the overall status we wish to give the examples in the *Topica*: either Cicero's example reflects the legal situation of 44 BC (if the *SC* had not been passed by the time of the writing of the *Topica*) or of an earlier time (if the *SC* had already been passed); or we are dealing with a rhetorical argument of the kind an orator would use in a speech (see Ch. 4). In this second case we should have to acknowledge that the argument does not appear obviously implausible, but does not allow an inference as to what was the legal situation in Cicero's day. It certainly seems unlikely that Cicero would have included arguments which would have appeared to Trebatius as complete nonsense.

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   [6] Watson (1968), 207–11; Kaser (1971), 453–4.
   [7] D. 7. 5. 1 (Ulp.): *Senatus censuit, ut omnium rerum, quas in cuiusque patrimonio esse constaret, usus fructus legari possit* ('The senate has decreed that it is possible to leave as a legacy a usufruct of any kind of property whatever that has been established to admit of private ownership'). See Watson (1968), 209–10; Kaser (1971), 449.
   [8] *Epit. Ulp.* 24. 2, on which see Watson (1968), 210; Kaser (1971), 454 with n. 68.

§16 in nominibus. *in nominibus esse*, of money, means 'to be out on loan'. The Roman citizen kept an account-book in his house, where all income and expenditure was listed, the *codex accepti et expensi*. Money that was out on loan was noted there together with the name of the debtor (see *Or.* 158 for the abbreviations used in the account book). In *S. Rosc.* §2 Cicero refers to the *tabula accepti et expensi*; in §7 he says that the plaintiff in a trial related to loans had to produce his *codex* and to read out the relevant entries (*tabulas recitare*). On the keeping of the account book and a particular form of obligation related to it (the contract *litteris*) see Watson (1965), 18–39.

in tabulis. The *codex accepti et expensi* consisted of *tabulae*, i.e. tablets made from wood, painted white, or covered with wax, which were tied together to form a *codex*; see Sachers (1932), 1883. Hotomanus 24 took *debeatur* to be an interpolation; Orelli kept it, but all later editors until Di Maria put it in brackets. The latter states correctly (pp. 68 ff.) that *in tabulis deberi* is legal terminology and that the phrase is elsewhere used by Cicero (*Quinct.* §17). One might add that the text without *debeatur* would show a zeugmatic use of *ponere*.

§17 cellis vinariis et oleariis plenis. Every small room in a house may be called *cella*; the two storage rooms mentioned here play a prominent rule in juridical and agricultural/architectural literature; see Flach (1990), 223–4.

abusus. An existing legal term, used in relation to matters of usufruct either in the sense of '(complete) consumption' of a consumable good (D. 7. 8. 12. 1) or of the property of being consumable, which rules out that something may be an object of usufruct (D. 12. 2. 11. 2; cf. also Don. *Ter. Andr. prol.* 5 Wessner); see Leonhard (1894).

ea . . . contraria] *secl.* Hammer. The sentence either states the entirely obvious (in which case it would most naturally be taken as a gloss), or asserts that *usus* and *abusus*, while they may be compatible (which would be the case if there was *usus* of consumable goods), are *contraria* in the present case. On this second interpretation the writer would show an awareness that there was a *SC* which introduced the possibility of *usus* of consumables. If that well-informed individual was Cicero, he would be hinting that he knew that the example did not reflect the law of his day. Since this second case is a possibility, I refrain from bracketing.

§18

Cicero himself gives an explanation of the *locus ex adiunctis* in §50:

Ab adiunctis autem posui equidem exemplum paulo ante, multa adiungi, quae suscipienda essent, si statuissemus ex edicto secundum eas tabulas possessionem dari, quas is instituisset, cui testamenti factio nulla esset.

In the light of the example given in §18 and of this explanation, it is clear why Bornecque translated *ex adiunctis* with 'argument tiré de l'analogie'. Apparently the wills of women who have not suffered *capitis deminutio* and those of slaves, *exsules*, and *pueri* represent analogous cases, as all four groups of people share the feature of having no right to testate (*testamenti factio*), which causes wills made by them to be void. But Cicero's understanding of the argument here appears not to be that of an inference from analogy; his explanation (see above) is rather that a decision different from, i.e. contradictorily opposed to, the one proposed by him would entail unwanted consequences. This sounds more like a *reductio ad absurdum*,[1] though without all steps being fully developed. *Adiunctum*, on the basis of the example here and the explanation, could be taken as a consequence which is 'attached' to (rather than necessarily connected with) a certain state of affairs;[2] one would have to accept it as well, if one opted for the position in question.

In §§50–2, however, after 'defining' arguments *ex adiunctis* as quoted above, Cicero restricts the use of this *locus* to forensic rhetoric and to cases falling under the *status coniecturalis* in particular, which strangely conflicts with the example in our passage and Cicero's explanation of it. As this restriction has no bearing on the understanding of our passage here, I refer to the commentary on those sections.

§18 testamentum fecit. In late Republican Rome, to make one's will was a formalized legal procedure. As two older legal forms of the will had gradually vanished (the *testamenta calatis comitiis* and *in procinctu*; see Watson 1971, 8–9), the usual form was the *testamentum per aes et libram*, which apparently had developed out

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[1] Striker (1998), 216: 'An argument in which one derives falsehood or absurdity from the contradictory of the demonstrandum, and then concludes that the demonstrandum must be true because its contradictory has been shown to be false.'

[2] On the evidence of Anon. Seg. §178, the Greek corresponding to *adiunctum* is likely to be παρεπόμενον; for a discussion of both terms see the commentary on §§50–2.

of the *mancipatio* (Watson 1971, 11–12; Kaser 1971, 107–8); the two older forms could have applied only to men anyway. *Testamentum facere* in Cicero's text is unlikely to mean an informal provision in written form (this kind of will is called *codicilli* in legal language and was according to *Inst*. 2. 25. pr. acknowledged by Augustus for the first time; see Kaser 1971, 693–4), but will refer to a standardized legal procedure, in the course of which a sealed set of *tabulae* was produced.

   se...deminuit. *Capitis deminutio* (henceforward *c.d.*) is a change of legal status (*OLD* s.v. *caput* 6a 'deprivation of civil rights' is too narrow). The legal status of a person in Roman law was determined by his or her *status libertatis*, *status civitatis*, and *status familiae*; accordingly, Gaius (*Inst*. 1. 159 ff.) distinguishes between three degrees of *c.d.* (*maxima, media, minima*), which lead to loss of freedom, of the citizenship, or to a change of the family affiliation respectively (Gaius' terminological distinction is probably a didactic one). When a woman left her father's *patria potestas* owing to marriage *cum manu*, she underwent a *c.d. minima*; although there were other situations when this particular form of *c.d.* took place (see Leonhard 1899, 1524), this was no doubt the most important. *C.d.* was, however, only a necessary, not a sufficient condition for a woman's making a valid will; Gaius (*Inst*. 2. 112) says that a woman's will required the consent of her *tutor* (if she was *in tutela*) in order not to be void, and as it is unlikely that this is a later restriction, the legal situation in Cicero's time will have been the same (see Kaser 1971, 683, Watson 1971, 23). One might ask why *c.d.* played such an important role in determining the validity of a woman's will, as her legal situation, i.e. her being in someone's *manus*, was the same before and after *c.d.* Watson (1967), 153–4 suggests that in cases where the heirs on intestacy of a woman were not her natural relations, i.e. if she had become an *uxor in manu*, it was felt that she should be able to make a will. The text's wording *numquam* instead of *non* might stress that the woman, having *never* undergone *c.d.*, was still in the *potestas* of her father and that hence there was certainty as to her inability to make a will. The origin of the expression *c.d.*, which is attested here for the first time, is unclear; one suggestion is that it means a reduction of a group of people by one *caput*, corresponding to the three kinds of *status*; see Kaser (1971), 271 n. 3 on *caput*, n. 10 on *capitis deminutio*. In this case the ordinary constructions like *capite*

deminuere aliquem or *se capite deminuere* involve a secondary shift of the logical subject of the 'diminution', as they all refer to the person who is deprived of his or her former status.

   videtur. In legal contexts, *videri* has the same range of meanings as it has in other discourse; see Heumann–Seckel s.v. *videre* 4. In addition, it is used in particular situations, for instance to mark a view as a jurist's assessment of a given issue (see ibid. 5); a logical subject to *videtur* is then often given or can be supplied from the context. Daube (1956), 73–7, in a discussion of the phrase *fecisse videtur*, which was used in sentencing an offender (cf. e.g. Cic. *Verr.* 2. 93; Plin. *NH* 14. 90), suggests that it was preferred to *fecit*, because it implied an admission of fallibility and because it conveyed the thoroughness of the investigation and the impartiality of the judge. Given that the view expressed here was, for all we know, universally accepted, it seems reasonable to assume that in the present case *videtur* just mimics the linguistic form of a report of an expert's appraisal.

   ex edicto praetoris. The reading of the will was supervised by the *praetor*, and the corresponding regulations were put down in the praetor's edict (see Ch. 4). The praetor did not, however, act as an executor of the testament, an institution that was not known to Roman law; see Kaser (1971), 692–3.

   secundum eas tabulas possessio dari. Legal terminology. *Bonorum possessio secundum tabulas*, granted by the praetor, means acknowledging the heir named in the will; see Kaser (1971), 676. On *possessio* see Watson (1968), 81: 'One might describe possession non-technically as physical control over a thing, which one exercises either directly or through another person. More technically, *possessio* is that kind of control over a thing for the benefit of which the possessory interdicts were intended.'

   adiungetur] *β* (A^pc) : *adiungitur α*; *adiungeretur* A^ac. Any of these readings would make sense. The hypothetical phrasing in § 50 (*multa adiungi quae suscipienda essent si statuissemus*) could support *adiungeretur*. But the future indicative can express a hypothetical action (K.–St. i. 142), and is a natural means of expression in a *reductio*-type argument (cf. the future of consequence in *rem tene verba sequentur*). *Adiungetur* appears to be a correction by the scribe of A, and is likely to have been in his exemplar. It is possible that Boethius' *adiungitur* in p. 302. 28 is responsible for the agreement of the *integri* on *adiungitur*.

servorum. Only the *servi publici populi Romani* could make a will (concerning 50% of their *peculium*); see Kaser (1971), 37.

exsulum. Although the terminology is not consistent, *exsilium* (unlike *relegatio*) normally involved the loss of citizenship, which was a presupposition of the right to make a will under the *ius civile*; see Mommsen (1899), 964 ff.

puerorum. Cf. Gaius, *Inst.* 2. 113: *masculus minor annorum xiiii testamentum facere non potest, etiamsi tutore auctore testamentum facere velit* ('For a male under the age of fourteen cannot make a will, even if he wants to and has his guardian's authorisation'; trans. Gordon–Robinson).

§§19–21

The following group of three *loci* (*ex antecedentibus*, *ex consequentibus*, *ex repugnantibus*) is—at least as a group of three—without parallel in Themistius and the Anon. Seg. It has often been taken as evidence for a 'Stoic influence' in Cicero's primary source and for Antiochus of Ascalon as the mediator of it.[1] Cicero himself (in §§53–7) links these three *loci*, in a way to be clarified, to the *septem modi conclusionis*, which clearly represent an outline of Stoic syllogistic.[2]

It is plausible enough, *prima facie* and in the light of evidence to be presented below, that behind the phrases *ex consequentibus* and *ex repugnantibus* stand the Greek terms ἀκολουθία and μάχη. The nouns ἀκολουθία ('consequence') and μάχη ('conflict') were brought to prominence in Stoic logic by Chrysippus.

Chrysippus designed an alternative (non-truthfunctional) concept of consequence (ἀκολουθία) or implication . . . It was to serve both for logical consequence in arguments and for the truth of conditionals; in the latter case it would be expressed with the help of the propositional connective 'if'. Chrysippus' truth conditions for the conditional were said to involve a connection (συνάρτησις; S.E. *P.H.* 2. 111), which must have been that which holds between the antecedent and the consequent. This connection was determined indirectly, based on the concept of conflict . . . [Bobzien (1996), 185].

And two propositions *p* and *q* are 'conflicting' (μαχόμενα) if one of them cannot hold when the other does (S.E. *PH* 2. 189; Alex.

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[1] See e.g. Dillon (1977), 103–4.   [2] See the commentary on §§53–7.

Aphr. *in Top*. 93. 10; see Frede 1974, 82 ff.). After Chrysippus the terms are used in a less specific way to characterize the relationship of the constituent propositions in an implication and a disjunction respectively (for instance in Galen, *Inst*. *log*. 14; cf. Kieffer 1964, 76–82). Cicero was familiar with both the Chrysippean usage (*Fat*. 12) and the more general later usage (he can characterize logic as being in general about consequence and conflict; cf. *Ac*. 19).

For our passage, a survey of the evidence from Cicero and of other texts, both rhetorical and philosophical, suggests the following picture: the source for the *loci* included ἀκολουθία (or ἀκόλουθον) and μάχη as the names of two *rhetorical τόποι*, a claim which can be supported through comparison with a later Greek rhetorical handbook.[3]

In the τέχνη of the third-century rhetor Apsines, there is a list of τόποι which, though it is very different from the one used in the *Topica*, also betrays a strong philosophical influence. The τόποι No. 12 and 13 are ἐξ ἀκολούθου συλλογιστικῶς and ἐκ μάχης (pp. 176. 2 Dilts–Kennedy; 180. 2–4; 182. 1–8), terms standing in obvious correspondence to *consequens* and *repugnans* (note that the adjective ἀκόλουθος denotes that which follows, not the abstract notion of consequence). *Antecedens* in Cicero has no counterpart in Apsines, and considering the terminological variation elsewhere (*de Orat*. 2. 170 *praecurrens*), no Greek complement immediately suggests itself. Suffice it to say that Cicero's source is likely to have included a third *locus*.

I assume further that Cicero, familiar with the use of the terms 'consequence' and 'conflict' in *logical* contexts and in connection with Stoic syllogistic in particular, added the detailed treatment of the *modi conclusionis* in §§53–7 from elsewhere. This move was clearly motivated by the view that arguments of the type to be 'found' with the help of the three rhetorical τόποι are reducible to Stoic indemonstrable syllogisms of the first three types.[4] Cicero makes this claim explicitly for the *locus ex repugnantibus* and the third indemonstrable in §55 *init*. and §56 *init*. (cf. Gal., *Inst*.

[3] Frede (1974), 159–60 has pointed out already that Cicero in relating the three *loci* to the first three *modi* does not identify them with one another and that the three *loci*, with terminological variations but without any explicit link to logic, occur in the *de Orat*. and the *Part*. *Or*. as well.

[4] An indemonstrable argument is called thus because it does not need proof (D.L. 7. 79), since its validity is self-evident (S.E. *Adv*. *Math*. 2. 223).

log. p. 33. 4–5 and Burnyeat 1994, 44), and by implication for the other two *loci* (*ex antecedentibus* matching the first indemonstrable, and *ex consequentibus* the second). We may compare *ND* 2. 20, where Cicero has Balbus in a defence of Stoic theology say that his arguments are more convincing and less open to objections by Academic philosophers if they are put forward in an expansive, rhetorical style rather than in the concisely phrased syllogistic form in which Stoic philosophers tend to express themselves. This view rests on the assumption that essentially the same thing which may be said in a 'syllogistic' way may be said in a 'rhetorical' way.[5] Cicero's remarks in §55 and §56 seem to represent a more specific version of this idea.

In §54, Cicero lays out the first three indemonstrables as follows:

1. If *p*, then *q*; *p*; so *q*.
2. If *p*, then *q*; not *q*; so not-*p*.
3. Not (*p* and *q*); *p*; so not-*q*.

The question how ἀκολουθία and μάχη got into a list of Aristotelian τόποι in the first place will be considered in the commentary on §§53–7; here I shall examine the examples and try to expose the syllogistic structure that, according to Cicero, underlies them.

The example for the *locus ex antecedentibus* (§19) deals with a situation after a divorce which occurred in consequence of the initiative of the woman. It is argued that the man, in whose power the children of the couple normally remain, is not allowed to retain the dowry (partially) for the maintenance of the children—contrary to what would normally be the law—if the woman merely reacted to a *culpa* of the man.

It must be clarified why Cicero can call this argument an instance of *ex antecedentibus* and in what sense, if any, it illustrates or warrants his claim that behind such arguments lie indemonstrables of the first type. We should also try to describe in general terms the heuristic principle Cicero associates with this *locus*.

Intuitively, one would take the *antecedens* to be the *culpa* of the husband which preceded the sending of the *nuntius*. Yet it would be unwise to assume that—in terms of Cicero's understanding of this *locus*—*antecedentia* are necessarily events or facts which precede other events or facts in a temporal sense. Rather, one should

[5] See Schofield (1983).

say more broadly that an *antecedens* is the sort of datum which provides some relevant reason for accepting that the corresponding *consequens* is true. Otherwise it would be difficult to see why Cicero links rhetorical arguments to indemonstrables in the first place; moreover, it would become difficult to distinguish between *adiuncta ante rem/adiuncta post rem* (§§18, 50–2) and *antecedentia/consequentia*.

The first indemonstrable structure underlying the example would be relatively easy to see then, given that the *antecedens* identified above (the *culpa* of the husband) appears in the protasis of the conditional which is Cicero's example. The *locus ex antecedentibus*, viewed as a heuristic device, would instruct one to examine whether a sufficient condition for one's argumentative position is fulfilled. The underlying indemonstrable would look like this:

> (i) *Si viri culpa factum est divortium, pro liberis manere nihil oportet.*
> (ii) *Viri autem culpa factum est divortium.*
> (iii) *Pro liberis igitur nihil manere oportet.*

Or alternatively, sticking closer to the Latin text:

> (i) *Si mulier nuntium remisit sed viri culpa factum est divortium, pro liberis nihil manere oportet.*
> (ii) *Mulier autem nuntium remisit sed viri culpa factum est divortium.*
> (iii) *Pro liberis igitur manere nihil oportet.*

The *antecedens* is the husband's *culpa*, mentioned in the antecedent of (i).

The example of the *locus ex consequentibus* in §20 deals with a further case in which after a divorce on the initiative of the woman the man must not retain the dowry, that is, if the relationship was 'without *conubium*' (see the commentary) and thus did not entail that children come into the power of the father. Cicero's idea appears to be that the usual regulation of *retentio* of dowry after a divorce caused by the woman does not apply *as a consequence* of the marriage being 'without *conubium*'.

It is not immediately obvious why this is an example of *ex consequentibus* (cf. Boethius ad loc. who takes it to be *ab antecedentibus*). Since it seems desirable to clear Cicero from the charge of being confused about his own examples, I offer an argument for the view that we are actually dealing with an argument *a consequentibus*.

Arguing *a consequentibus* in an understanding along the lines of *ab antecedentibus* above would mean to argue against a certain proposition by showing that a necessary condition for it does in fact not apply. This is the argument structure we are looking for. Now when Cicero says that Stoic syllogisms lie behind rhetorical arguments, we should not look for too close a correspondence in formulation between the syllogism and the corresponding rhetorical argument; after all, it was the point of *ND 2. 20* (discussed above) that a given syllogistic argument looks completely different in rhetorical guise. Moreover, it has turned out that the examples illustrating the *loci* in the *Topica* tend to come from a larger argumentative context, which the readership is expected to reconstruct at least to the extent to which this is necessary in order to make sense of the example; and the analysis of the example itself should be plausible in terms of the larger argumentative context we presume the example to come from. On this background, my suggestion is that we are dealing with a more complex structure and that we have to start from the argument of the husband (an indemonstrable of the first type):

  (i) *Si nuptiae factae sunt et mulier nuntium remisit, aliquid pro liberis manere oportet.*
 (ii) *Nuptiae autem factae sunt et mulier nuntium remisit.*
(iii) *Aliquid igitur pro liberis manere oportet.*

The woman would now offer a counterargument against premiss (i) of the husband's argument; she would identify a necessary condition of it and then show that it does not apply. Her argument would look like this:

  (i′) *Si ita se res habet ut, si mulier et nupta fuerit et nuntium remiserit, aliquid pro liberis manere oporteat, nupta fuit cum eo quicum conubium erat.*
 (ii′) *Non autem nupta fuit cum eo quicum conubium esset.*
(iii′) *Quamquam igitur et nupta fuit et nuntium remisit, nihil pro liberis manere oportet.*

What makes this solution attractive is that it represents a second indemonstrable and that it is more in keeping with the rationale of the example: the man would evidently take a line of argument which makes his case look as strong as possible. He would stress the—in other cases relevant—facts that there was a marriage and

that he was not the one who broke it up, and he would choose to leave aside the question of *conubium*. It is the *woman* alone who would be interested in bringing the question of *conubium* into play. The *consequens* is the marriage with *conubium* mentioned in the consequent of (i').

In §21, the *locus a repugnantibus*, the argument is that usufruct which was bequeathed by someone as to be granted by his heir will not cease if the primary heir dies and his successor, who was not explicitly mentioned in the first will as having to grant usufruct as well, receives possession of the goods whose usufruct is granted. The legatee must not lose her usufruct against her will, because it was granted to her legitimately, *recte accipere* and *invitum reddere* being incompatible or 'conflicting'. Here it is obvious that an argument of the form of a third indemonstrable lies behind Cicero's example.[6] It is clear, however, that Cicero makes no effort to set up the argument in the standardized formulation of a Stoic syllogism, namely:

  (i)   *Non et paterfamilias uxori ancillarum a filio usum legavit et mortuo filio mulier usum fructum amittet.*
  (ii) *Paterfamilias autem uxori ancillarum usum legavit a filio.*
  (iii) *Mortuo igitur filio mulier usum fructum non amittet.*

§19 viri culpa. On the legal concept of *culpa* see Kaser (1971), 504–13; on allocation of responsibility in cases of divorce see e.g. D. 24. 3. 38 with Treggiari (1991), 436. *viri culpa* could include sexual misconduct, e.g. bringing mistresses into the matrimonial home (Plaut. *Merc*. 785–8, 923–6, *Rud*. 1046–7), or unwanted political activity (in the case of Cicero's son-in-law Dolabella; cf. *Clu*. 14), but apparently this was commonly agreed rather than fixed law; on causes of divorce in general see Treggiari (1991), 461–5.

   factum est divortium. For the phrase cf. D. 23. 4. 22. pr.; 23. 4. 30. pr.; *divortium intercedit* is an alternative formulation (24. 1. 62. 1).

   nuntium remisit. It was common, though not compulsory, to declare the intention to divorce formally by sending a *nuntius* (*remittere* does not here mean 'to send *back*', *OLD* s.v. 2c); cf. e.g. D. 23. 2. 45. 4. Normally this did not involve the exchange

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[6] That the propositions in a negated conjunction are conflicting is not Chrysippean doctrine; I shall discuss this problem in the commentary on §§53–7.

of written declarations. *Repudium* is the noun which denotes either
the announcement of divorce or the breaking of an engagement. It
could be undertaken by the two persons directly involved or by
their *patres familias*; see Treggiari (1991), 452. What matters here
in particular is who actually caused the divorce. In classical law,
retentio was firmly established, i.e. the keeping of the dowry after
divorce, if the responsibility was on the woman's side, either
propter liberos as here or *propter mores*, that is, in the case of
misconduct of the woman (see Kaser 1971, 338). In general,
responsibility was normally attributed to the party which actually
took the initiative (divorce was unilateral, a marriage ending when
one part ended it; see Kaser 1971, 81). Our passage suggests that
retentio propter liberos occurred already in the late Republic, if the
woman took the initiative; apparently no misconduct was required
to establish this. Cic. *ad Att.* 11. 23. 4 proves that *retentio* applied
also if there were no children, if it was the woman who took the
initiative in a divorce. There Cicero considers whether he should
pay the third instalment of the dowry to his son-in-law Dolabella,
whom he wanted to have divorced from his daughter Tullia. Re-
fusal to pay and divorce on Cicero's initiative would entail that the
first two instalments of the dowry were lost, unless fault on Dola-
bella's side could be proved; if, however, he paid the third instal-
ment, he would have to wait until Dolabella took the initiative,
which would provide him with a justified claim on the whole
dowry, though it would nevertheless be uncertain whether he got
it back (see Watson 1967, 71–2).

§20 fuisset nupta. *Nupta* and similar participles (e.g. *indutus*) can
be perceived as having the force of an adjective and would then
produce forms like the one under discussion (cf. *indutus eram*
'I wore'); they are, however, not entirely adjectival, and their re-
sidual verbal force consists in their denoting the lasting result of an
action. Other adjectival participles which admit of the combination
with the perfect stem of *esse* (like *amatus*) denote a state rather than a
state *qua* result of an action. In both cases, the combination of
perfect participle and perfect auxiliary normally means that the
state itself is over. *Amatus fueram* would then mean 'I had been
loved but had ceased to be loved by the time we are speaking of'; cf.
K.–St. i. 164: '. . . erscheint dasselbe Partizip [sc. perfect passive]
auch in Verbindung mit *fui*, *fueram*, *fuero*, um das Aufhören eines

erreichten Zustandes zu bezeichnen'; this phenomenon has been studied with respect to Cicero by Lebreton (1901), 203–7, with respect to Livy by Riemann (1885), 213–26. The problem here is that the marriage technically still exists when the messenger is sent, so that the marriage cannot be referred to as a state which ended in the past (it is irrelevant to this issue that the marriage is a non-marriage at law). Unless one wished to assume that there was a notion in play that, when one party declares the marriage to be over, it has actually been over for some time (perhaps not completely absurd, given that a formal announcement of divorce was not legally required and that divorce was unilateral), the only solution is to assign true pluperfect meaning to *nupta fuisset* and to assume that the perfect stem is chosen to exclude the stative or resultative meaning of *nupta*; the woman had married the man some time prior to her sending notice of divorce. This would also account for *Topica* 48 *praepositum fuisset* (the action of prefixing *in* had taken place in the past), and for similar instances in legal texts: e.g. Gai. *Inst.* 1.137: *Sed filia quidem nullo modo patrem potest cogere, etiam si adoptiva sit: haec autem <virum> repudio misso proinde compellere potest, atque si ei numquam nupta fuisset.* (I am indebted to Dr Leofranc Holford-Strevens for suggesting this solution.) As to *nupta cum eo*, only the perfect participle allows for this construction instead of the usual dative.

conubium. The word denotes the legal capacity of a couple to marriage, which depended on the age of the individuals involved, on their citizen status and on whether they were relatives (Gaius, *Inst.* 1.55–6). *Conubium* (in the late Republic) was secure if the couple were both Roman or if the man was Roman and his wife Latin. After the Social War 91–89 BC most citizens of Latin cities south of the Po became Roman; the case is different for the provinces (see Treggiari 1991, 45). To peregrines, the *conubium* could be awarded individually, which would normally have entailed that children received the father's citizenship as under the *ius civile*. But the Minician Law (app. 90 BC; cf. Gaius, *Inst.* 1.78 with Treggiari 1991, 45–6) required children to follow the 'inferior' parent, i.e. the one who was not Roman. In a marriage of a peregrine mother and a Roman father without *conubium*, the children followed the mother; it may be this case that Cicero has in mind (see also Watson 1967, 27).

sequuntur. Cf. e.g. D. 1.5.19. pr. (Celsus): *Cum legitimae nuptiae factae sint, patrem liberi sequuntur.*

§21 a filio legavit. A legacy required the heir (here: the *filius*) to grant, in this case, usufruct of his possession (here: the *ancillae*) to a third person; hence *a filio*. Roman law did not admit wills made on behalf of someone else; an exception was the *substitutio pupillaris*, i.e. the appointment of a second heir (*substitutus*), if the proper heir (*institutus*) was under age (*pupillus institutus*; cf. Kaser 1971, 689). His death before majority would otherwise, i.e. without pupillary substitution, have entailed succession under intestacy, as the underaged could not themselves testate; this would have deprived the *mulier* of her right of usufruct. Yet in the case here it is argued that also if no second heir was appointed, the usufruct of the woman would continue; see Watson (1968), 219; (1971), 57.

   a secundo herede. Usual legal terminology. Apart from the case of *substitutio pupillaris*, which is clearly at issue here, as usufruct is meant to have been established already (*invitum reddere*), a 'second heir' could of course be appointed to cover the case of the first heir dying before the testator or declining the inheritance (*substitutio vulgaris*).

   mortuo filio. For this absolute ablative cf. D. 4. 3. 9. 2, 28. 2. 29. 7, 37. 4. 13. 3, etc.

   Quod ... potest. Introducing Cicero's explanation how far the example is *a repugnantibus*; if he used a particular legal source for his examples, this sentence was probably not in it. Watson (1971), 57 cites evidence from the Imperial era showing that under certain circumstances usufruct to be granted by the *institutus* could cease or at least be restricted under the *substitutus*, e.g. if the *institutus* had made provisions in his will which were incompatible with the initial ones (D. 28. 6. 16. pr.; 30. 34. 10). Although it cannot be ruled out that the law in the Republican era was different, the later texts, together with the fact that the sentence here evidently prepares for the next one, suggest that Cicero, keen to expose the *a repugnantibus* structure of the example, inferred too general a rule from the case envisaged.

   cui datum est[1]] *β*a : *alicui* a[vl]dL. That is, α read *alicui*, and the *varia lectio* brings a back in line. Winterbottom (1996), 408: '*cui* does not seem impossible as an indefinite in a relative clause (Kühner–Stegmann i. 634), though its position is not idiomatic. But we should probably delete it as an anticipation of *cui* below (also before *datum est*).'

Pugnat. One might expect a plural verb, but when there are two subjects, the position of the verb at the beginning of the sentence and non-personal subjects tend to favour a verb in the singular; see Hofmann–Szantyr 433.

§§22–3a

The *loci ab efficientibus rebus* and *ab effectis rebus* deal with the relationship of cause and effect; both notions may be used as a guideline for devising an argument for or against a certain proposition.

Usually, it would be inferred from an observed effect that its cause applies or has applied. For instance, given that there is a causal relationship between thaw in the mountains and flooding in the valley, one can argue—'from the effect'—that there must be thaw, since (it can be observed that) there is flooding. Because Cicero's example for arguments 'from the effect' is problematic, I give an example from the later Latin tradition based on Cicero's *Topica* (Mart. Cap. 5. 494), which tended to replace the obscure legal examples by arguments taken from poets (preferably Vergil) or Cicero's speeches: *Cicero hinc* [sc. *ab effectis*] *probat Auli Hirtii vitam, quae populo cara est, quod ei populus plaudit* (*Phil.* 1. 37). The cause for the audience's clapping is their affection for Hirtius, and one can infer from the applause that the audience likes him.

I shall give a general account of Cicero's argument 'from the cause' in the course of the analysis of his example (section (i) below).

The relationship between the first and the second discussion of the *locus ab efficientibus rebus* is comparable to that of the two discussions of the *locus ex definitione*. Just as how a definition may be used to devise an argument is one question and what has to be counted as a proper definition another, so the first discussion of the *locus ab efficientibus rebus* shows how 'cause' may be a guiding principle for the invention of an argument (or for the description of a given argument as 'from the cause'), while the second discussion of this *locus* illustrates the notion of cause itself. The discussion of what is a cause, being separable from the *locus*, is likely to derive from a different source from the main body of the material in the *Topica*, as will be demonstrated in the commentary

on §§58–67. I shall discuss the *locus ab efficientibus rebus* under (i) and the *locus ab effectis rebus* under (ii).

(i) All linguistic and legal problems of §22 will be treated in the commentary; here I wish to indicate only why this is an instance of *ab efficientibus rebus*. Let us call A the person who undertook the building work on the *paries communis*, and B his neighbour who had built a *paries fornicatus* to the party wall in a right angle. The position which is defended in the example is that A, who undertook his work of 'demolishing' the party wall, need not make good the loss arising from the deficiency of the wall which touches the party wall at a right angle (sc. from B's side of the wall), although he guaranteed to make good loss arising from his work on the party wall. For, he argues, the loss did not occur because of his building actions, but because of the inappropriate statics (the *res efficiens*) of the second wall. The objection that in view of his guarantee any manipulation which led to damage of the second wall made him liable to pay compensation is impossible, because Roman law did not allow constructions touching a party wall which could not stand without support.

An argument like 'you caused my wall to collapse; therefore you must pay' would no doubt be called *ab efficientibus rebus*, and so would the retort 'Had your wall been soundly constructed, it would not have collapsed; therefore I need not pay', citing an actual reason. I should envisage the latter to be the primary application of arguments *ab efficientibus rebus*.

The level of analysis in Cicero's rhetorical argument 'from causes' is basic. However, the process of finding an argument may be eased by this sort of vagueness. Moreover, to show that the argument 'from causes' is a typical pattern of legal argument is an achievement in itself; again, we have to bear in mind that theoretical reflection on legal arguments and, in particular, on how problems of causality enter into legal arguments was, at least so far as our record goes, not done by jurists in Cicero's day.

(ii) The example given for the *locus ab effectis rebus* is in itself clear enough. But it merely seems to describe a cause–effect relationship and not to be a complete argument: The *conventio in manum* must be the cause of the dowry's becoming the property of the husband. The only way to solve this problem seems to be to assume that Cicero's argument is elliptical and that an argument 'from the

effect' should be based on this cause–effect relationship. This is not an extravagant hypothesis, given that Cicero is addressing a lawyer and clearly expects a nodding acquaintance with the legal issues he touches upon.

Here is a paragraph from Treggiari (1991), 326:

Literary sources as early as the second century BC show that the dowry could be thought of by non-jurists as belonging to the wife. The whole concept of the *dotata uxor* would be empty if the woman were not seen as, in a sense, having control over her dowry. This point can be illustrated from Cicero's administration of Terentia's dowry. In April 59 he (and apparently Terentia) had inspected a forest belonging to her. But this was probably dotal, for he tells Atticus that only the oak of Dodona was missing to 'make us feel we own Epirus itself'. In the crisis of 58, when Cicero was at least thinking of manumitting slaves in case his property was confiscated, he assures Terentia that he had only told her slaves that she would act in accordance with the deserts of each of them. Since he could not manumit slaves who were her private property, it sounds very much as if he must mean dotal slaves.

Given that the dowry could be viewed as belonging to the wife, a husband could feel the need to justify e.g. the manumission of a dotal slave or the sale of a house belonging to the dowry with a legalistic argument 'from the effect', namely that strictly speaking the dowry was his.

The two *loci* have their counterparts in Themistius' list of *loci*, where they appear as *locus ab efficientibus* and *ab effectibus* respectively (cf. *De Top. Diff.* 1189 C, 1190 A); they are not in the Anonymus. In Aristotle's *Top.*, there is no parallel, but there is a rhetorical τόπος in *Rhet.* B23, 1400ᵃ29–35. It belongs to those κοινοὶ τόποι in *Rhet.* which do not resemble the dialectical τόποι of *Top.*, that is, it is not phrased in a way which makes it clear that the τόπος is supposed to give guidance on how to infer subject–predicate propositions of one type from subject–predicate propositions of another type. A τόπος ἀπὸ τῆς αἰτίας (together with a τόπος ἀπὸ τοῦ τίνος ἕνεκα) appears also in the list of τόποι given in Minucianus (i. 420. 12–20 Spengel = 344. 12–20 Spengel–Hammer).

§22 rebus. Cicero equates *res efficientes* with *causae* in §58 and introduces this *locus* in §11 as *ex causis*, but there is no obvious reason why a scribe should change *causis* (to be found in many of

the less sincere MSS) into *rebus* (see Di Maria 72), which makes *rebus* the (better attested) *lectio difficilior*; *causis* may come from Boethius (p. 306. 6–7; see Winterbottom 1996, 404). However, one may not wish completely to ignore the possibility that a classicizing scribe who was copying the *Topica* at a time when *causa* was already being used like *res* changed *causis* to *rebus* (cf. Old French *chose* and *ODML* s.v. *causa* 2a).

Omnibus . . . fornicatum. Compared with the great detail of pertinent provisions in classical law (parallels dating from the Republican era are not extant), this is a rather general statement, as neither *adiungere* nor the two qualifications of the second wall are particularly precise. Yet what follows is compatible with or even requires the provisions of classical law (see Nörr 1982, 277).

parietem directum. For the meaning 'standing at right angles' (OLD 2a) cf. Apul. *Mun.* 18: *qui* (sc. *spiritus*) *subsiliunt . . . directis angulis*.

parietem communem. Berger (1953), 618 s.v.: 'A party wall which separates two adjoining buildings. It is held in common ownership by the owners of the two buildings. . . .'. In a slightly broader sense, the *paries communis* is a wall shared by two parties, i.e. not necessarily the wall separating two *buildings* as opposed to, e.g., two gardens (D. 10. 3. 22. pr., for instance, makes only sense if the *paries communis* referred to is *not* that between two adjoining buildings). Similarly, in Cicero's example here it would be difficult to imagine that the *fornix* was erected *inside* one of the two buildings sharing the wall. Not surprisingly, the party wall raised numerous legal problems; see the references in Nörr (1982), 270 n. 5. In Cicero, it appears elsewhere as an example of lawyerly pernicketiness (*Leg.* 1. 14, 2. 47; *de Orat.* 1. 173). And for illustration see Ov. *Met.* 4. 66.

adiungere. Classical law admitted that without prior consent of the neighbour the party wall might be painted or that a *camera ex figlino opere facta* (D. 8. 2. 19. 1) which could stand alone might be built next to it; however, the erection of a second wall on top of the party wall or the insertion of props or tubes required the consent of the neighbour (D. 8. 2. 13. pr., 8. 2. 19. pr.). In view of the *causa* given below (*sed . . . ut suspendi non posset*), *adiungere* must be the mere attachment of a wall which can stand alone; this corresponds to the situation in D. 8. 2. 19. 1.

vel solidum vel fornicatum. This qualifies the *paries directus*, not the party wall (and not both walls in an ἀπὸ κοινοῦ construction; *pace* Boethius 306. 5–37). The contrast with the following sentence (*sed*) is this: *In principle*, one is allowed to build a *paries solidus* or a *paries fornicatus* to touch the party wall, the implication being that this sort of wall is treated like an approved building. *However*, a wall with arch-like elements (a *fornix*) which is damaged in the course of the demolition of the party wall clearly emerges—at least this is the argument here—as having leant against or rested on the party wall, and therefore in this case the guarantee of compensation given for possible damage does not become due. This interpretation would also offer an explanation for the very general '*Omnibus* est ius . . .', inasmuch as the *omnes* who are (within the margin indicated above) *allowed* to build a second wall to touch a party wall come to stand in contrast to those who *actually get* compensation for their loss in case of damage to this building. The *paries solidus* is a wall without openings for windows or doors, while the *paries fornicatus* is a wall which has just these openings (see Degering 1912, 9); here the problem of support may arise. *Paries fornicatus* is taken up by *fornix* below. The clumsy word-order may suggest that Cicero is (partially) reproducing a legal source here.

demoliendo. Texts like D. 43. 24. 7. 9 (*Si quis aedificium demolitus fuerit, quamvis non usque ad solum, quin interdicto teneatur, dubitari desiit*, 'If anyone pulls down a building, even if not down to the ground, there is no longer any room for doubt that he is liable under the interdict') suggest that *demoliri* need not imply complete demolition, but can simply denote major damage.

damni infecti promiserit. *d.i. promittere* means 'to guarantee indemnification against damages' (cf. D. 41. 2. 30. 2), *damni infecti* being a *genitivus respectus*; cf. K.–St. i. 64 (cf. *d.i. satis dare*, Cic. *Ver.* 1. 146; *d.i. stipulari*, D. 39. 2. 9). *promittere* refers to the *cautio damni infecti* (see Kaser 1971, 407–8; Nörr 1982, 269–75; Watson 1968, 126 ff., 131 ff., 146 ff.), an undertaking in the form of a *stipulatio* ('a formal contract concluded orally in the form of question and answer'; OCD s.v.); its purpose is primarily the protection of an owner of a house or a piece of land against damage actively or passively caused by the neighbour (see Lenel 1927, 551–2 for a reconstruction of the standard formulation). In

Cicero's example, this guarantee was given by the neighbour who planned the demolition of the party wall.

praestare...fecerit. *viti* is a partitive genitive depending on *quod*, *fecerit* is future perfect. *vitium facere* can in principle mean either 'to cause damage' or 'to receive damage' (cf. §15), but the solution that the *fornix* itself is damaged is clearly preferable in view of the next sentence. *fornix* cannot mean 'arch' in the narrow sense, as the equation of *paries fornicatus* and *fornix* shows.

eius...demolitus est. It has been argued that *demolitus est* is an instance of the passive use of *demoliri* (Daube 1950) rather than the deponent; in this case *eius* could only refer to the demolished wall (this interpretation led to the insertion of *parietis* in α). The suggestion is not obviously implausible. In principle, *vitium* may denote the damage to the wall *and* the action that leads to damage in legal language. And *demoliri* occurs in both uses in legal and non-legal texts. But Daube cannot be right for the following reason (see Nörr 1982: 286–7): the *cautio* had clearly to be given in this case for the *action* of demolishing the party wall, which makes it natural that an *acting person* should be mentioned in the course of the argument. And it is the very point of this example *ab efficientibus rebus* that the reason for the collapsing of the second wall given by the opposite party, i.e. the *act* of demolishing the party wall, is contrasted with the 'real' cause; this is a second reason why we should expect an acting person to appear in the first part of the sentence. And since the subject (and the main issue) of the last sentence was the *person* who demolished the party wall, *eius* would be too weak to refer to the party wall without further specification (cf. again the reading *eius parietis* in α).

suspendi. *OLD* s.v. *suspendo* 5b: 'to leave (buildings, ground, etc.) "hanging", i.e. without support or solid substructure.'

posset] *possit β*. Present subjunctive after secondary tense in a consecutive would seem unmotivated here.

§23 in manum convenit. Cf. the commentary on §23b.

omnia quae mulieris fuerunt. A woman who moved from her father's *potestas* into the *manus* of her husband as a consequence of marriage strictly speaking owned private property neither before nor after the *conventio in manum*, which only persons *sui iuris* could have. So one explanation for the phrase given here is that Cicero has a marriage in mind where the woman had private property

because she actually was *sui iuris*. Alternatively, *quae mulieris fuerunt* is short for 'what belonged to the party of the bride'.

dotis nomine. *Dotis* is not, as one might suspect, an epexegetic genitive depending on *nomine*; it is better explained as an old 'genitive of rubric' (see Löfstedt 1942, 126 ff. and Hofmann–Szantyr 71–2). When these genitives were no longer understood, *nomine* was often supplied, which has the force of a preposition here. Cf. phrases like D. 12. 1. 4. pr. *crediti nomine obligari* or D. 39. 1. 9 *pignoris nomine teneri*; Cic. *Sest.* 64 *patriae nomine laborantem* (= *pro patria*); see Adams (1990), 244–5. On *dos* in general see Treggiari (1991), 323–64.

§23b

The Ciceronian *locus ex comparatione* ultimately derives from the Aristotelian τόπος ἐκ τοῦ μᾶλλον καὶ τοῦ ἧττον καὶ τοῦ ὁμοίως; a well-known pattern of argument covered by this *locus* is the *argumentum a fortiori*.

However, Aristotle and Cicero differ in their understanding of this *locus* in several respects. Here is an example from Aristotle's *Rhet.* ($B23$, $1397^{b}12$–13):

[(i) If human beings are omniscient, the gods will be omniscient too.]
(ii) The gods are not omniscient.
(iii) Therefore, human beings are not omniscient.

In Aristotle's view, this argument involves two simple propositions which may be compared in terms of plausibility, 'the gods are omniscient' and 'human beings are omniscient'. For gods and human beings share the feature of being capable of knowing something, and because gods may be expected to know more than human beings, it is more plausible that the gods are omniscient than that human beings are. However, since as a matter of fact not even the gods are omniscient, it is reasonable to assume that human beings are not omniscient, too. So we infer the falsehood of the less plausible proposition from the falsehood of the more plausible.

The discussion in Aristotle is elaborate, because his analysis is set up with reference to propositions as analysed into a logical subject and a logical predicate, and because he distinguishes more argumentative patterns than Cicero. A further point to note

is that a full picture of Aristotle's view of *a fortiori* arguments can only be gained by bringing together the treatment of this τόπος in *Top.* and *Rhet.*, as only *Rhet.* has examples (*B*23, 1397^{b}12–27), while only *Top.* explicitly mentions the notion of εἰκός or δοκοῦν (*B*10, 115^{a}6–24), which is the criterion according to which propositions may be compared with one another. Thus from the discussion of this τόπος in *Rhet.* alone it is not plain what exactly Aristotle has in mind when he talks about μᾶλλον and ἧττον.[1] And this in turn might have influenced the way in which this τόπος was interpreted in the rhetorical tradition, inasmuch as in later works on rhetoric the terms μᾶλλον and ἧττον are no longer interpreted as referring to degrees of plausibility.

I turn to §23 of the *Topica*. The first thing to note is the sentence *Quod in re maiore valet, valeat in minore*. This is the principle on which arguments *a maiore* are based. It is exceptional that such a principle is made explicit here by Cicero himself (cf. the other instances in this paragraph and §49 *fin.*). This shows that analysing the examples of the other *loci* in terms of underlying principles or rules of inference at least to some degree corresponds to the way in which Cicero himself viewed such arguments. Boethius notes that this time Cicero includes the *maxima propositio* in the argument rather than making it merely lend *vires* to it (308. 3 ff.). Cicero, unlike Aristotle, does not interpret *a fortiori* arguments as involving propositions which may be compared in terms of plausibility, but uses the notions in a vaguer sense, with *res maior/minor* being the more/less important or wide-ranging issue. This is clear from the catalogue-like second treatment of this *locus* in §§68–71, where Cicero introduces several patterns of comparison like *proclivia laboriosis* (sc. *comparantur*), *rara vulgaribus* or *perfecta incohatis* (§ 69); Quintilian's discussion of this *locus* is very similar (*Inst. Or.* 5. 10. 87 ff.). What Cicero says about the *argumentum ex minore*, that one gets an instance of it by 'converting' (see the commentary) the *ex maiore* example, would not be acceptable for Aristotle, if 'converting' meant that protasis and apodosis of the example simply changed place; to reuse Aristotle's example above, one could not reasonably infer that men are omniscient from the fact that gods are omniscient (the truth of the less plausible

[1] Detailed studies of this τόπος are Coenen (1987) and Primavesi (1996), 252–66.

proposition from the truth of the more plausible). The example of *a re pari* poses no particular problems.

Needless to say, Republican jurists like everyone else often argued *a fortiori*, and Cicero, in recommending the *locus ex comparatione* to Trebatius, isolated a further recurrent pattern of legal argument. It is more remarkable that Roman jurists used the very phrase *in maiore minus inest* to back up a particular type of legal arguments which rhetoric would classify as *a comparatione*.[2] In the Imperial era, the phrase was reckoned among the *regulae iuris*;[3] however, it is already attested in a passage relating an argument of a Republican jurist (Q. Mucius; D. 32. 29. 1).

   Themistius' list of τόπος apparently contained no τόπος ἐκ τοῦ ὁμοίως (Boeth. *De Top. Diff.* 1190 D–E); although Boethius refers to the various sub-types of the *loci ab eo quod est magis* and *a minoribus* in Aristotle's *Top.*, which he had discussed in his commentary on it, there is no hint that he enquired into exactly what *magis* could mean. The Anonymus devides the τόπος of παράθεσις into μᾶλλον, ἧττον and ἴσον (§174). Of those discussed in the *Topica*, this particular argumentative pattern has by far the most widespread distribution in the rhetorical tradition.

ex comparatione. Cf. Quint. *Inst. Or.* 5. 10. 86; in Greek works on rhetorical theory, instead of the Anonymus' παράθεσις (cf. Quint. *Inst. Or.* 5. 10. 87 *adposita*) there is frequently σύγκρισις (cf. Theon at Spengel ii. 108. 3, Nicolaus ibid. iii. 474. 31, Doxopatres at Walz ii. 387. 1).

   eius modi. Many of the less sincere MSS read *huius* here, the reading usually printed by the editors; but cf. e.g. *Ver.* 2. 2. 31: *Decreta eius modi: . . .*

   in urbe. As opposed to the country.

   fines . . . reguntur] *regantur βα.* Di Maria (1994), 73: 'In urbe fines minime regi dubium non est; indicativus ergo modus, cum aptior sit, tum proximo ''biennium est'' melius congruit. Putamus hac de causa eos qui in protasi coniunctivum scripserunt condicionalem ambitum ad regulam dirigere frustra conatos esse, cum non

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[2] The textual evidence is collected and interpreted in Backhaus (1983).

[3] A *regula iuris* is an abstract juridical principle which has been deduced from a variety of comparable cases; see Stein (1966), 153–79, who also calls *in maiore minus inest* 'a canon derived from rhetoric' (p. 123).

intellexissent coniunctivum apodosis exhortandi causa, non dubi-
tandi, positum esse.' On the subject cf. §43. *fines regere* means 'to
direct boundaries' (cf. Tib. 1. 3. 43–4: *fixus in agris | qui regeret
certis finibus arva*, *lapis*), boundaries being a frequent subject of
dispute. Indeed, the *actio finium regendorum* applied only in the
country (cf. D. 10. 1. 4. 9 ff., Watson 1974, 115). A possible
reason for this restriction is suggested by Watson (1972), 220–1.

aqua . . . arceatur. The *actio aquae pluviae arcendae* was also
restricted to the country, as emerges from D. 39. 3. 1. 17 (includ-
ing a statement of Labeo, late first century BC). Watson (1968),
172–3 points out that although this was commonly agreed, it is not
explicitly stated in any extant legal statute, and that the inference
from one *actio* to the other given here is in itself not very convin-
cing, as both *actiones* apply to very different situations; see also
Horak (1969), 242–61 on the use of the argument from analogy in
fragments of Republican jurists. Cicero himself may have linked
the two *actiones* just because the restrictions imposed on them are
similar.

convertere. Given the context, *convertere* probably means that
the simple proposition forming the protasis of the example
becomes the apodosis and *vice versa* (cf. Boethius 308. 10–11).
Alternatively, Cicero may have contraposition in mind ('If *p*, then
q' is turned into 'If not-*q*, then not-*p*' by contraposition).

usus auctoritas. That the two nouns are in the same case is
suggested by *Caec*. 54: *lex usum et auctoritatem fundi iubet esse
biennium*, which passage, incidentally, supports the reading of α
(*usus et auctoritas* and *usus auctoritasque* can be seen as two different
trivializations of the asyndetic *usus auctoritas*). Further, there are a
number of similar asyndetic usages in legal contexts (*usus fructus*,
cura potestas; cf. Noailles 1948, 239–40 and Preuss 1881, *passim*).
Given that *usus auctoritas* seems the better reading on independent
grounds, Boethius 308. 32 can be seen as providing additional
evidence for the asyndeton. The example originates from the
Twelve Tables (see below on *in lege*) and deals with an early
form of *usucapio* (Watson 1968, 21: 'the acquisition of ownership
of a thing through possessing it without interruption for a certain
period of time'). Given that the Latin text clearly indicates that
usus auctoritas continues over a period of two years (not that it
comes into being *after* two years), *usus auctoritas* must refer to the
situation *during* the two-year-period. There is disagreement as to

what the phrase means. Watson (1975), 150–1 assumes that *auctoritas* and *usus* refer to different persons, *auctoritas* being 'right of ownership' or 'title' (cf. *OLD* s.v. 1a), indicating that the 'right or title of the owner of the fundus remains for two years', while *usus* has the literal meaning, as taking possession of a piece of land according to this statute is supposed to involve 'actual, reasonable, suitable use of the land' (loc. cit.); contrast Kaser (1971), 140. Crawford (1996), ii. 658–9 suggests that the original wording of the law was just *auctoritas* and that Cicero himself added the word of his own day, *usus*; if this was correct, it would weaken the case for an asyndeton here.

sit etiam aedium. The extension of the law to *aedes* is attested elsewhere (Gai. 2. 42: <*usucapio autem* add. Lachmann> *mobilium quidem rerum anno completur, fundi vero et aedium biennio*) and probably due to early legal exegesis; see Wieacker (1988), 331 and Flach (1994), 150–1.

At. Strictly speaking, the *quoniam*-sentence was sufficient illustration for the *locus a pari*. The following *anticipatio* introduced by *at* and the proverbially sounding phrase recall the cordial but somewhat stilted tone of the *prooemium*.

in lege. On the basis of the content of the law, the clause is assigned to table No. 6 of the Twelve Tables (Gai 2. 42, cited above, ends with: . . . *et ita lege XII tabularum cautum est*); see Crawford (1996), ii. 658–60. The exact wording was probably: *Usus auctoritas fundi biennium est* [or *esto*], *ceterarum rerum omnium annuus est usus* (so Watson 1975, 150); but see Crawford (1996), ii. 659.

ceterarum <rerum> . . . usus est. See Watson (1975), 150. The word *rerum* is not in Vat. Ottobonianus Lat. 1406, Vat. Reg. Lat. 1511, or Erlangen 191, *pace* Riccio Coletti.

aequitas. The word had a broad range of meanings, which are usefully surveyed by Aust (1893) and—with special reference to the legal practice of the late Republic—by Watson (1974), 173 ff.; cf. also the commentary on §9. The meaning employed here may be compared with evidence from legal texts, where, however, only the adjective *aequus* (the noun is in evidence only much later) is used to justify the extension of a law on cases which where not explicitly covered by it; see Watson (1974), 173–4.

paribus . . . iura. On the various uses of *ius* see Wieacker (1988), 267 ff.

§24

The series of *loci* is rounded off with the non-technical proof; in most cases, Cicero talks as if he took this as a further *locus*.[1] The distinction of technical and non-technical proofs is in substance pre-Aristotelian,[2] and it is to be found widely in Greek and Latin works on rhetoric.[3] Aristotle's adoption of it is probably the reason for its becoming one fundamental division in rhetorical invention.[4] When Cicero calls non-technical proofs *extrinsecus*, he is relying on the idea that argumentation centres around the *res*, the subject at issue, and that all means of rational argument stand in a certain relationship to the *res*.[5] Aristotle's notion of πίστεις ἄτεχνοι is based on the assumption that no τέχνη is required to 'find' such an argument, while the orator must use his mind to derive a rational argument or one relying on ἦθος and πάθος from his subject.

Here the authority of a well-known jurist is employed to back up an opinion on a certain legal issue. Roman *iurisconsulti* tended to give no justification for their *responsa*, and someone following their views had to refer to the issuing person's authority.[6] In the second discussion, Cicero has much miscellanous material which all relates to why and when an utterance receives its weight from the person who made it.

   In the background of the example given, there is a provision of the Twelve Tables which required an *ambitus*, a free space of at least two and a half feet, at the boundaries of a piece of land, probably to guarantee access to land used for agriculture. Later on, when densely populated cities emerged, this provision caused a problem, because there houses were usually erected closer to one

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[1] *Topica* §8: *Sed ex his locis, in quibus argumenta sunt inclusa, alii in eo ipso, de quo agitur, haerent, alii adsumuntur extrinsecus.* See also §72.

[2] *Rhet. ad Alex.* p. 30. 12–14 Fuhrmann (= 1428ᵃ16–19): γίγνονται γὰρ αἱ μὲν [sc. πίστεις] ἐξ αὐτῶν λόγων καὶ τῶν πράξεων καὶ τῶν ἀνθρώπων, αἱ δὲ ἐπίθετοι τοῖς λεγομένοις καὶ πραττομένοις..

[3] See the survey in Martin (1974), 97–101.

[4] *Rhet. A*2, 1355ᵇ35 ff.; *A*14, 1375ᵇ22 ff. But Wisse (1989), 130 ff. correctly points out that the division between technical and non-technical proofs is incompatible with στάσις doctrine in its original Hermagorean outline.

[5] But Cicero is not entirely consistent in this respect; cf. *de Orat.* 2. 173: *Foris autem adsumuntur ea, quae non sua vi, sed extranea sublevantur.*

[6] On this point see Horak (1969), 70 ff.

another or even with party walls.[7] In this situation there could clearly be no *ambitus*.

It is very difficult to make sense out of the example itself, because we lack additional data from elsewhere. Scaevola presumably intended partially to neutralize the provisions of the law about *ambitus*. And although it is likely that the explanation of *ambitus* given here must have appeared forced to contemporaries too, even the *auctoritas* of a Scaevola could not have supported sheer nonsense. I propose that Scaevola's idea was the following:
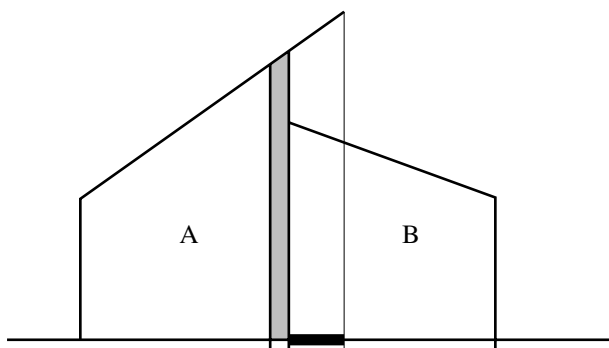
There are two houses, sharing a party wall. The roof of one projects over the other and protects the party wall in such a way that rain-water flows on to house A. The imaginary space covered by the projecting roof, indicated by the bold stroke, may roughly correspond to the two and a half feet of *ambitus*.

To protect a wall against the weather by a projecting roof is desirable. In the country or in the city where there is actually *ambitus*, it was probably allowed to let a roof project over the *ambitus*, as this did not interfere with the access. But where there is a party wall between two houses, a roof which can protect the party wall projects over the property of the neighbour. What Scaevola appears to have done is to define the virtual space covered by the projecting roof as *ambitus*. Although this is an absurd explanation of the word *ambitus*, it is practical and for the benefit

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[7] The reference to the party wall in §24 makes it reasonable to assume that Scaevola is talking about a town or city, though in principle problems centring on party walls could occur in the country as well.

of both neighbours. The party wall is protected, and rain-water is diverted to the *atrium* or *impluvium* of house A.[8]

Κρίσις in the Anonymus is the judgement of an authority quoted (§181: *Κρίσις δὲ ληφθήσεται ἀπὸ θεῶν, ἀπὸ ἡρώων, ἀπὸ συγγραφέων, ἀπὸ φιλοσόφων, ἀπὸ ποιητῶν*.). In Themistius (1190 C), *rei iudicium* becomes one of several 'extrinsic topics' in the context of his three groups of *loci*.[9]

§24 respondeas. At the end of the first discussion of the *loci*, Cicero returns to the personal tone of the prooemium and has Trebatius give a legal *responsum*. *Respondeas*, as a word of saying in a primary tense, introducing the accusative with infinitive *id tibi videri*, governs what follows; therefore *dixerit* is perfect subjunctive, which causes the tenses to remain secondary as they would have been in *oratio recta* when subordinate to *dixit* (*proiceretur*, *protexisset*, *deflueret*).

P. Scaevola. The eminent jurist (cos. 133, pontifex max. 130, died app. 113 BC), *RE* 16. On his place in the family of the Mucii Scaevolae see Wieacker (1988), 545–51.

solum. Boethius took this as the noun, most modern translators read it as the adverb (or the neuter singular accusative agreeing with *id*), because there is no ground in the proper sense between two houses which share a party wall. But *ambitus* in its normal legal sense denotes a particular sort of ground, and therefore (as argued above) it is better to assume that *solum* has a related meaning here, i.e. the virtual ground which is covered by the projecting roof. And it is hard to believe that Scaevola wanted to dismiss completely the known and in other cases required meaning of *ambitus*; rather, he

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[8] Although the *actio finium regundorum*, which probably included a provision on *ambitus*, was at some point of time—before the writing of the *Topica*, cf. §23— restricted to the country, *ambitus* continued to be a problem of the city, too (this emerges from Vitruvius 1. 1. 10, who discusses legal knowledge which an architect in Rome must have, and includes knowledge 'about walls with reference to the *ambitus*'). It seems problematic, therefore, when Watson (1968), 115–16 assumes with respect to our passage that Scaevola's *responsum* must predate the restriction of the *actio*. Hotomanus 27–8, quoted with approval in Di Maria's app. crit., implausibly believed that the insertion of bars into the party wall could play a role here.

[9] Themistius—if Boethius is actually translating here—borrows once more from Aristotle's *Top*. Cf. *ut si dicamus id esse quod vel omnes iudicant vel plures. Et hi vel sapientes, vel secundum unamquamque artium penitus eruditi* with the description of the dialectical premiss (104ᵃ8–10): *ἔστι δὲ πρότασις διαλεκτικὴ ἐρώτησις ἔνδοξος ἢ πᾶσιν ἢ τοῖς πλείστοις ἢ τοῖς σοφοῖς, καὶ τούτοις ἢ πᾶσιν ἢ τοῖς πλείστοις ἢ τοῖς μάλιστα γνωρίμοις*.

proposed a different interpretation to be applied in particular cases. Alternatively, if *solum* were the adverb, it would mean that (assuming a town house with a party wall) the individual owner could claim his 2 1/2 feet of surround only if he was doing something for his neighbour with it, namely keeping the rain off the latter's roof. That Cicero wrote *id solum* not *id soli* is not decisive; cf. K.–St. i. 429 bottom ('zuweilen auch *hoc, illud, id*', sc. with a partitive genitive).

ambitus. That *ambitus* was treated in the Twelve Tables is attested by Var. *LL* 5. 22: . . . *duodecim tabularum interpretes ambitus parietis circuitum esse describunt*; the plurals here and in Cicero support each other. This meaning is explained in Paul. Fest. p. 5. 6–8: *Ambitus proprie dicitur circuitus aedificiorum patens in latitudinem pedes duos et semissem, in longitudinem idem quod aedificium.* See Crawford (1996), ii. 666–7.

quod. *Quōd = quoad* is attested in inscriptions, e.g. in *CIL* iii. 6593, and in MSS, e.g. of Varro and Lucretius (Hofmann–Szantyr 655). But *quod* may also be the neuter relative pronoun in the internal accusative (Cicero may be partially reproducing a legal source here or may be imitating legal language; Hofmann–Szantyr 38 on the frequency of the internal accusative in legal language). On both readings *quod* would be choicer than *quantum*, and it has MS support. *Quoad* used to be attributed to Valla.

parietis communis. On the *paries communis* see the commentary on §22 and Crawford (1996), ii. 667.

proiceretur. Cf. *OLD* s.v. *proicio* 3b.

tecto in] *in tectum* α. Cicero certainly does not mean that the water flows from the roof to the (same) roof. The repetition of the antecedent in relative clauses (*tectum . . . tecto*) has Indo-European origins (see Watkins 1995, 541); it is frequent in archaic Latin (see the examples collected by Kroll 1912, 8), which again suggests that Cicero is incorporating actual source material here or is at least trying to create a linguistic form congenial to the content of the sentence. In Caesar, where repetition of the antecedent is frequent, it is usually perceived not as an archaism but as a device that signals a striving for clarity (see Hofmann–Szantyr 563).

§25

elementis. Cf. the commentary on §7 for Cicero's other ways of describing *loci*. Στοιχεῖον appears in Aristotle's definition of the

τόπος in *Rhet.* (*B*25, 1403ᵃ27–8) as well as in Theophrastus' def-
inition (fr. 122A–B Fortenbaugh *et al.* = Alex. Aphr. *in Top.* 5.
21–2), which derives from his *Top.* So it might be tempting to
presume a direct influence of Cicero's source. However, it is
equally possible that this use of *elementum* to refer to the *loci* is
due to Cicero himself. One of the meanings of *elementa* is 'the
basics', and in the *de Orat.* Cicero emphasizes that the superiority
of Aristotelian *loci* over ordinary methods of rhetorical invention is
due to their replacing a vast variety of ways to look at a case with a
few fundamental categories (2. 132 ff.; 2. 162).

   [ad reperiendum] *βα* : transp. post *argumentum* ς. These
two words seem superfluous (a parallel for the construction *signifi-
catio ad* is in *de Orat.* 3. 202: *plus ad intellegendum, quam dixeris,
significatio*) and make the sentence with its two *ad*-phrases inelegant;
editors have often put *ad reperiendum* in brackets. Influence from
Boethius was first suggested by Friedrich (1889), 287. This would
be the second instance of a Boethian contamination which must have
been in the archetype from which all *Topica* MSS derive (*earum
autem rerum quae non sunt* in §27 being the first instance).

   Utrum. *Utrum* appears here without *an* because the second half
of the question is suppressed; it is only in later Latin that *utrum* is
used (in an indirect question) in the sense of *num* (cf. e.g. Aug. *Civ.*
2. 9: *non evidenter dicitur, utrum vel quo ordine creati sunt angeli*).
See Hofmann–Szantyr 466.

§§26–34

For this important passage it may be helpful to separate the general
survey of the content (i) from the discussion of the sources (ii).

(i) In these paragraphs, Cicero sets out his views about the meth-
odology of definition. So while the first treatment of this *locus* (§9)
was supposed to show how a definition may be used in an argu-
ment, this second treatment explains how to arrive at a definition
of something. After defining definition itself at the end of §26,
Cicero distinguishes two main groups of definitions with reference
to the nature of the thing defined, which may either be an abstract
notion or a materially existing entity. He proceeds by introducing
what he takes to be two important types of definition, enumeration
of the parts of the definiendum (*partitio*) or conceptual analysis
(*divisio*); in the second case the definiendum is treated as a genus

which is analysed into its species. The line between these two methods is sometimes difficult to draw, in particular when the parts of an abstract concept are to be listed.

Cicero then moves on to what he calls *definitionis modus* (§29), a method of defining where additional qualifications are attached to a general determination of the definiendum, until the definitory phrase is peculiar to the thing defined. It is not quite clear from Cicero's text alone why he can introduce partition and division as the only types of definition relevant for the purpose of the *Topica*, and then expand on a distinct third type of definition which is brought about with the help of the *definitionis modus*. In §30 the difference between partition and division is explained in more detail, and Cicero justifies his Latin rendering of εἶδος. In §31 the notions of *genus* and *forma* are defined, and because both *genera* and *formae* are general terms rather than individual names, Cicero adds an explanation of what a concept is. Two rules for division follow, correct but difficult to observe. §32 deals with quasi-definitions, i.e. metaphorical explanations of concepts which have roughly definitory character, but do not meet the standards of proper defining which Cicero establishes in the first part of the section.

§§33 ff. return to the topic of partition and division, but because the discussion of definition is said to be complete at the end of §32, we shall have to regard these two paragraphs as the second discussion of the *locus ex partium enumeratione* in §10, rather than as a supplement to §28.

Throughout these paragraphs Cicero exemplifies the theories he expounds with legal examples, such as definitions taken from legal sources. Because our legal sources are in this respect very few and far between and never contain explanations of how or on what principles a particular definition was developed, it is often difficult to assess how far Cicero is trying to make Trebatius familiar with a non-legal methodology which in his view might fruitfully be employed by jurists, and how far he is merely objectifying or even naming methods already used by the jurists. At any rate the continued scholarly dispute about these questions[1] shows that Cicero's discussion of definition is congenial to contemporary jurisprudence. I shall list points of contact (and refer to the commentary for details).

[1] For a summary see Wieacker (1988), 618 ff.

The distinction between corporeal and non-corporeal things is to be found in later legal texts, but there are obviously philosophical counterparts. So do the legal texts depend on Cicero or on Greek philosophical sources? Or has Cicero merely pointed to similar, but historically unconnected items of legal and philosophical doctrine?

Another point: as explained in Ch. 4, the late second and early first century BC saw Roman jurists starting to classify legal institutions. This process may have been triggered by Greek science, but need not have involved attempts to use the corresponding methods consistently. The extant evidence does not allow a clear judgement as to whether particular methods of classification have been employed, nor are these methods set out clearly enough on the philosophical side to have sufficiently exact guidelines for analysis.

Roman jurists sometimes defined by narrowing down the scope of a general term, adding further qualifications until the definiendum was singled out; this procedure has been linked to a rather elaborate method of defining used by Aristotle. Yet the opponents of Socrates in Plato's early dialogues do similar things, without relying on a particular methodology. We see thus that instruction on methods of defining—which will have been available in Rome in the second and first centuries BC[2]—was not a necessary condition for defining in the sense indicated. And a good number of the extant legal definitions dating from this era could not have been brought about with methods of defining like those advertised in §§26–31 and are hence 'unmethodical' in the sense of §32;[3] so Cicero is perfectly right in including such quasi-definitions in his discussion.

Despite all uncertainties about causes and effects, it can safely be said that the philosophical material which is in the background of this paragraph has been chosen very sensibly. That the whole section is not without parallels in Cicero has been shown in the introduction (Ch. 4).

(ii) For those who believe that the *Topica* are based on material originating with Antiochus of Ascalon,[4] these paragraphs have always been a crucial section, the argument being that Antiochus' trademark was to blend Academic, Peripatetic, and Stoic doctrines,

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[2] Secondary literature on the *Topica* usually refers to Aristotle's *Posterior Analytics*, a text very unlikely to have been available in Rome in this time.

[3] For the late Republic see Watson (1974), 179 ff.

[4] Wallies (1878), Kroll (1940), 1089, Dillon (1977), 103–4.

and since traces of all these schools may be detected in this section, he must be in the background. Indeed, the mixture of ideas of different origin in this section strongly resembles that of texts like Alcinous' *Handbook of Platonism*, which is regarded as a character-istic product of Middle Platonism;[5] and the syncretistic strain of Middle Platonism is usually put down to Antiochus. Quotations from Alcinous in the commentary are meant to demonstrate the similarity of his treatment of partition, division, and definition to Cicero's.

Yet although §§26–34 fit the legal aspect of the book naturally, they are not an original part of the main structure, which consists of the refined theory of *status* and the *loci*. And we have independ-ent reason to assume that Cicero in this second treatment of the *loci* has inserted material which was clearly not part of the main source, e.g. the discussion of the Indemonstrables (§§53–7) or that of the concept of cause (§§58–67). So whatever the origin of the source-material for this section, an inference from it to the origin of the whole is unwarranted. Morever, while for some parts in Cicero's treatment of definition it is possible to point to parallels in Greek philosophical texts, it seems implausible—also in the light of some minor inconsistencies in our passage—to assume that Cicero's treatment of definition is based on *one* uniform source. Rather, I believe that Cicero has sensibly amalgamated pertinent material from different sources.

Let us go through the text again. The very general distinction between corporeal and non-corporeal subjects and, correspond-ingly, two different types of definition can hardly be traced to a particular philosophical origin and might even be legal itself; in particular, nowhere do philosophers distinguish types of definition with reference to these two types of objects.[6] The juxtaposition of

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[5] Cf. in particular the passage 156. 34–157. 10 Whittaker.

[6] *Pace* Wallies (1878), 30 ff., who assumes that the two types of definitions correspond to the distinction between ὅροι οὐσιώδεις and ἐννοηματικοί, which he regards as Stoic because of an alleged link to Stoic ontology, for which only bodies are beings, and everything else is not-being. This contradicts the textual evidence given by Wallies in support of his opinion. In particular, in Boethius' *de Divisione* the distinction used by Cicero is clearly separated from the ὅροι οὐσιώδεις and ἐννοηματικοί (900 C–D Migne; his pagination is adopted by Magee 1998). And in 902 B it emerges that the ὅροι οὐσιώδεις—in Wallies's view those of materially existing things—are those of universals by *genus proximum* and *differentia specifica*, so called because they indicate the 'essence' of the subject, while the ὅροι ἐννοηματικοί are rather paraphrases (902 B), not, however, to be confused with the Stoic ὑπογραφαί (901 D).

$ζ\tilde{ῷ}ον$ ('living being')

ἔνυδρον ('water-dwelling')   πτηνόν ('winged')   πεζόν ('land-dwelling')

× × × × × δίπουν ('two-footed')
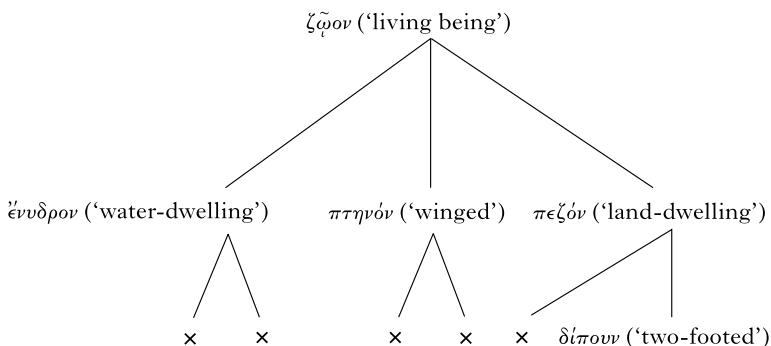
partition and division is, however, Stoic in origin.[7] Division originates of course from the Academy, as Plato's late dialogues show, and was further developed by Aristotle both in his logical and biological writings, but partition *in juxtaposition with* division plays an important role in Stoic dialectic and ethics, where they are used to systematize subject-areas.[8] Neither partition nor division appears as a method of definition in the philosophical sources, but there is a close relationship between division and definition.

An analysis of a γένος into its εἴδη, as shown in the accompanying diagram,[9] may be used for developing definitions inasmuch as every εἶδος may be defined by naming its γένος and then listing the διαφοραί of all the εἴδη superordinate to it (in the example, the species 'man' may be defined by its γένος, by the διαφορά marking off the immediately superordinate class of animals—πεζόν—and by the διαφορά, that of δίπουν, which distinguishes it from other land-dwelling animals). This view of definition is attested for Aristotle,[10] but it was apparently less familiar among the Stoics.[11] Although it must be admitted that with respect to terminology the *definitionis modus* in §29 has no particularly Aristotelian

[7] Although Aristotle uses μερισμός and διαίρεσις in *Rhet.*, he does not distinguish between them, nor is a distinction deducible from his examples. For Stoic accounts of διαίρεσις and μερισμός see D.L. 7. 61–2 and S.E. *PH* 2. 213 ff.

[8] See Hahm (1983); Long–Sedley (1987), i. 193 ff.; Long (1996), 107–33.

[9] The diagram gives dichotomies on the lowest division level purely for reasons of space; in fact, Aristotle strongly argues against dichotomy as a viable principle for division (cf. Ar., *Part. anim. A*3).

[10] Cf. *Met. Z*12 with Frede–Patzig (1988) ad loc.

[11] See Long–Sedley (1987), i. 193 and the texts cited.

ring[12]—a fact which may have obscured the relationship between division and definition for Cicero—the definition of the definition in §26 and the definitions of *genus* and *forma* are phrased in a way that sounds Aristotelian (§31).[13] All this taken together with the other material represents the blend of Stoic, Academic, and Peripatetic thought mentioned above. As to the legal definitions which follow similar patterns, it is clear that the Aristotelian method of defining, though operating on a higher level of abstraction, resembles that of narrowing down a general determination by adding further qualifications; but, to the best of my knowledge, there is no legal text where the crucial link between classification and defining is in evidence.[14]

Apparently Cicero was not fully aware of this relationship between division and definition; at least this is suggested by his separation of the *definitionis modus* at the beginning of §29 from partition and division. Yet that both partition and division themselves figure as methods of defining in the text should not be credited to a misunderstanding of the source, but rather appears to be due to Cicero's attempt to take legal practice into account. It should be assigned to this level of the discussion, because a thing is, in a way, marked off when its parts or species are named and because legal 'definitions' or, more cautiously, explanations of terms of both types do exist.[15]

In §31 *genus* and *forma* are correctly introduced as universals, and universals are then made parallel to ἔννοια and πρόληψις, technical terms originating from Stoic (and Epicurean) epistemology which Cicero mentions frequently elsewhere. Stoic sources call concepts like man or horse ἐννοήματα, when the reference is made to them *qua* abstract figments of the mind (φαντάσματα; cf. Stob. 1. 136. 21 ff. = *SVF* i. 65 = text 30A Long–Sedley, where they are likened to Platonic ideas), whereas they are called conceptions (ἔννοιαι) when they are considered as the product of acts of percep-

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[12] It is striking that neither *genus* nor *species/forma* nor *differentia* occurs. Instead, Cicero uses *commune* where one would expect *genus*, and the notion of *proprium*. Cf. the parallel passage from Alcinous' *Intr.* quoted in the commentary, which corresponds to Cicero's text, but has all the technical terms given above.

[13] Cf. the commentary.

[14] But see Behrends (1976), 275–6 on Ser. Sulpicius Rufus' definition of *tutela*.

[15] As pointed out already, most of the examples in this section are themselves taken from legal sources.

tion.[16] Cicero may or may not here be supplementing his philosophical source by drawing on his own knowledge.

§26 de ipsa definitione. *Ipsa* emphasizes that definition (and defining) now is itself discussed, and that in §9 it was shown only how a given definition may be used in an argument.

oratio . . . quid sit. *oratio* probably corresponds to λόγος in Cicero's source for this section. Aristotle names as one feature which distinguishes definitions from other predicates that they are phrases (λόγοι) rather than words (ὀνόματα); see Whitaker (1996), 204–8. Of course λόγος can have many other meanings in Aristotle and elsewhere, but in the sense of 'phrase' it seems to be peculiar to the Aristotelian tradition. *quid sit* might correspond to τὸ τί ἦν εἶναι ('the what-being-is' or 'the what-it-is-to-be'), but Aristotle also uses τὸ τί ἐστι to refer to the definition. For the whole sentence cf. *Top. A*5, 101$^{\mathrm{b}}$37–102$^{\mathrm{a}}$17: Ἔστι δ' ὅρος μὲν λόγος ὁ τὸ τί ἦν εἶναι σημαίνων, ἀποδίδοται δὲ ἢ λόγος ἀντ' ὀνόματος ἢ λόγος ἀντὶ λόγου ('A definition is a phrase which signifies the what-it-is-to-be. It is given either as a phrase in place of a word or as a phrase in place of a phrase'; trans. Smith). Contrast Chrysippus' definition of the definition (e.g. D.L. 7. 60): ὡς Χρύσιππος ἐν τῷ Περὶ ὅρων, ἰδίου ἀπόδοσις 'As Chrysippus says in his book *On Definitions*, [a definition is] what names a peculiar feature'; although Aristotle also requires the definition, among other things, to be peculiar to its subject, i.e. coextensive with it, coextensivity of a definition with its definiendum is the only criterion explicitly mentioned by Chrysippus. This led the Peripatetics to criticize him (Alex. *in Top.* 42. 27–43. 2).

Definitionum . . . genera prima. This sentence gives two main groups of definitions, but with reference to two types of *definienda*. *Genera prima* means 'highest *genera*', as all further remarks about methods of defining apply to definienda of one of the two types (alternatively, the two types are the first ones as opposed to those in §28).

unum . . . intelleguntur. Later jurists actually distinguished between *res corporales* and *res incorporales*; cf. D. 1. 8. 1. 1, which corresponds to our text very closely. For an instance of application

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[16] On concepts and conceptions in Stoic epistemology see Long–Sedley (1987), i. 241.

of the distinction see D. 8. 1. 14. pr.: *Servitutes praediorum rusti-corum etiamsi corporibus accedunt, incorporales tamen sunt et ideo usu non capiuntur* 'Rustic praedial servitudes, even though attached to corporeal property, are nevertheless incorporeal and so are never acquired by usucapion'. On servitudes see OLD s.v. *servitus* 3: 'A servitude (a liability resting on a property by which the owner is bound to give certain defined facilities to a neighbour, e.g. the right of way, or to refrain from carrying out works that may affect a neighbouring property.' See also Watson (1968), 14–15. Notably, however, it is only in Cicero that this distinction is used to distin-guish types of definienda and hence of definitions. Note also that the rationale of the Stoic distinction between σώματα and ἀσώματα is hardly similar to Cicero's (cf. S.E. *Adv. Math.* 10. 218 = *SVF* ii. 331).

§ 27 fundum. See the commentary on §23.

stillicidium. Deriving from *stilla* and *cado*, meaning either 'the drip of rain from the eaves of a house' or a construction related to that. Rainwater of this kind is clearly a potential cause of damage and hence a subject of dispute. Cf. also *de Orat.* 1. 173.

mancipium. From *manus* and the root *cap-*, meaning either actively 'the laying hold of a thing in the presence of a witness as a formal method of conveyance of property' (*OLD* s.v. 1) or pas-sively the thing whose ownership is transferred, hence 'slave, servant' (ibid. 3); see also Ernout–Meillet s.v. *manceps*.

supellectilem. Of unclear etymology, denoting certain items of furniture. On disagreements among jurists about this word see D. 33. 10 and Wieacker (1988), 653–4.

penus. A further old legal term, whose meaning or, rather, scope was extensively discussed (see Wieacker 1988, 578–9); *OLD* s.v. 1a gives 'food, provisions (esp. as the stock of a house-hold)'. Cf. Quint. *Inst. Or.* 7. 3. 13; Gell. *NA* 4. 1. 16–18.

[Earum autem rerum quae non sunt] As Di Maria 75 con-vincingly argues, this nonsensical phrase, which is in all manu-scripts, is unlikely to derive from §26 *unum earum rerum quae sunt*, but rather comes from Boethius' commentary. The writing of the archetype must therefore postdate Boethius.

usus capionem. For the meaning see the commentary on §23. Legal texts explain the phrase either as *capere* by *usus* or take *capio* as the noun with *usus* in the genitive; see Kaser (1971), 134 n. 2. One should not read *usucapio* with some of the less sincere MSS.

tutelam. *OLD* s.v. 3a: '(spec.) Guardianship of a minor or other person not legally qualified to manage his own affairs.' On this institution see Watson (1967), 102 ff.

agnationem. *agnatio* is kinship constituted by being in the power of the same *paterfamilias*; it continues after the death of the *paterfamilias*, but terminates if one becomes *sui iuris* or comes into the power of someone else.

qualium. Friedrich (1889), 287: 'Unrichtig ist ferner in A B m [Florence, Bibl. Med. Laur., S. Marco 257, s. ix; *eliminandus* as a copy of A] *qualium* statt *quarum* überliefert, denn der relativsatz musz das wesen der eben aufgezählten begriffe erörtern, während *qualium* alle ähnlich beschaffenen in einem schluszsatz zusammen-fassen würde.' But the latter is surely what Cicero has in mind, i.e. he is referring to non-corporeal things in general.

quasi. The word is well in place here and should not be bracketed (*pace* Friedrich, Wilkins, Bornecque). Cicero distinguishes be-tween definitions of materially existing things and of concepts; the former include a collection of goods such as *penus*. In this case it exists materially and yet has no 'body' in the strict sense.

conformatio . . . insignita. The underlying picture, which we find in Plato's *Theaet.* for the first time, is that of the soul as a wax tablet. *Conformatio* is normally Cicero's rendering of τύπωσις, used in Stoic sources primarily in connection with impressions (D.L. 7. 50 = fr. 39A3 Long–Sedley: . . . φαντασία δέ ἐστι τύπωσις ἐν ψυχῇ . . . 'an impression is a printing in the soul'), but also applic-able to conceptions as here (Plut. *Comm. not.* 1084 F–1085 A = fr. 39F L.–S.).

impressa intellegentia. Winterbottom (1996), 408 points out that *notiones* (ἔννοιαι) are imprinted on the *animus*; cf. *Leg.* 1. 30: *quaeque in animis inprimuntur . . . inchoatae intellegentiae*; *Acad.* 1. 42: *unde postea notiones rerum in animis imprimerentur*; Aetius 4. 11. 1 = fr. 39E1 L.–S.: οἱ Στωικοί φασιν· ὅταν γεννηθῇ ὁ ἄνθρωπος, ἔχει τὸ ἡγεμονικὸν μέρος τῆς ψυχῆς ὥσπερ χάρτην εὐεργον εἰς ἀπογραφήν· εἰς τοῦτο μίαν ἑκάστην τῶν ἐννοιῶν ἐναπογράφεται ('When a man is born, the Stoics say, he has the commanding part of his soul like a sheet of paper ready for writing upon. On this he inscribes each one of his conceptions'). *Intelligentia* and *notio* are synonymous in contexts like this, meaning 'conception' (*Fin.* 3.21: . . . *simul autem cepit intellegentiam vel notionem potius, quam appellant* ἔννοιαν *illi* . . .). And *intellegentia* itself cannot possibly

mean 'mind' here. Winterbottom's assumption of a lacuna is persuasive.

notionem. Cf. §31.

Ea . . . explicanda est. Cicero's example of the *locus ex definitione* (§9) required the *notio* of *ius civile* to be explained.

§28 sunt partitionum. 'Consist of partitions'.

proposita est. 'Which is at issue.'

in membra discerpitur. *discerpere* means 'to tear into pieces', often with a connotation of violence; combined with *membra*, the constituent parts of something, the phrase yields a powerful image (softened by *quasi*).

ius civile. Cf. *Rhet. Her.* 2. 19: *Constat igitur* [sc. *ius*] *ex his partibus: natura, lege, consuetudine, iudicato, aequo et bono, pacto*. It is hard to say exactly what these two passages mean by talking about the 'parts' of law. The similarity with *Rhet. Her.* in essential respects (cf. also *de Orat.* 2. 116), together with the fact that Roman jurists were notoriously reluctant to state on a general level what *ius* (*civile*) is, suggests that Cicero is not drawing on any legal material here.

iuris. See Friedrich (1889), 287, Di Maria 76–7. *Peritus* without *iuris* in the sense required here is in evidence in Cicero only for the adjectival use of the word (e.g. *Fam.* 7. 10. 1).

complectitur. Aristotle used περιέχειν for the relationship of a γένος to its εἴδη, and περιέχεσθαι for the reverse. But γένος, εἶδος and, one might assume, also the terminology relating to these notions are of Academic origin already and were adopted by the Stoics as well.

sub eo genere. In divisions, the picture of the tree is often present; the Aristotelian *genus proximum* may be τὸ ἐπάνω γένος as well as ἐγγυτάτω (*Top. Z*5, 143ᵃ18–25).

Abalienatio. There is a book on this sentence by Sturm (1957), reviewed by Kaser (1958); Watson (1968), 19–20 has a brief account of the passage. The sentence consists of three parts: (i) the *definiendum*, (ii) the range of *abalienatio*, and (iii) two *formae* of it. (ii) is apparently meant to apply to both *formae*. *Abalienatio* or *alienatio* (Sturm 1957, 135 ff., 142 ff.) means 'alienation' (see also Schanbacher 1996, 490). A third form of alienation—*traditio*—is strangely missing as a *forma* (see Kaser 1958, 410); *traditio*, however, also (and primarily: Kaser 1971, 416) applies to *res nec*

mancipi (see next lemma). *Alienatio* itself was not normally restricted to *res mancipi*, which led Kaser (1958), 411 to the assumption that the 'definition' is taken from a commentary on the word *abalienatio* in a statute or the like which concerned only *res mancipi* (for which reason *traditio* would be missing). This view may be supported by a reference to other examples which appear to come from commentaries on legal statutes (§§10, 23).

eius rei quae mancipi est. A later list of *res mancipi* is in Gaius, *Inst*. 1. 120: ... *boves, equi, muli, asini; item praedia tam urbana quam rustica, quae et ipsa mancipi sunt, qualia sunt Italica, eodem modo solent mancipari*. See Watson (1968), 17. *mancipi* is the genitive of *mancipium*, possession by *mancipatio* (see below).

traditio alteri nexu. Cf. *OLD* s.v. *nexus, -us* 3 = ibid., s.v. *nexum, -i*: '[participle of *necto*] A form of binding obligation created *per aes et libram* between creditor and debtor; until *c*.300 BC., the debtor automatically became his creditor's bondman in the event of non-payment.' On the relationship between *nexum* and *mancipatio* in the Twelve Tables see Crawford (1996), ii. 654–6. Although there was more than one obligation *per aes et libram*, Cicero uses *nexum/-us* for *mancipatio* only. *Traditio alteri nexu* is an ἅπαξ λεγόμενον which equally can only denote *mancipatio* (Sturm 1957, 158 ff.). On *mancipatio* see Watson (1968), 16 ff. Because *nexu* is used also in *Mur*. 3, it seems preferable to *nexo* (Boethius reads it too).

in iure cessio. On this mode of transferring property see Watson (1968), 20.

alia genera definitionum. So Cicero takes the immediately following *definitionis modus* not as a kind of definition, and the metaphorical definition of §32 not as a definition in the proper sense. What he has in mind when talking about *alia genera* emerges from *Part. Or.* 41: '[Because ordinary ways of defining often lead to confusion] *definiendum saepe est ex contrariis, saepe etiam ex dissimilibus, saepe ex paribus. Quam ob rem descriptiones* [cf. the Stoic ὑπογραφαί] *quoque sunt in hoc genere saepe aptae et enumeratio consequentium, in primisque commovet explicatio vocabuli ac nominis* (cf. L. Aelius' use of etymology in §10].'

§29 veteres. Referring to philosophers rather than to jurists.
cum sumpseris ... possit. Cf. Arist. *Met*. Z12, 1037ᵇ27– 1038ᵃ9 and Alcinous, *Intr*. 157. 4–10 Whittaker, following a

discussion of partition and division: Ὁ δὲ ὅρος ἐκ διαιρέσεως γεννᾶται τοῦτον τὸν τρόπον· τοῦ μέλλοντος ὅρῳ ὑποπίπτειν πράγματος δεῖ τὸ γένος λαβεῖν, ὡς τοῦ ἀνθρώπου τὸ ζῷον, ἔπειτα τοῦτο τέμνειν κατὰ τὰς προσεχεῖς διαφορὰς κατιόντας μέχρι τῶν εἰδῶν, οἷον εἰς λογικὸν καὶ ἄλογον καὶ θνητὸν καὶ ἀθάνατον, ὥστε εἰ συντεθεῖεν αἱ προσεχεῖς διαφοραὶ τῷ γένει τὸ ἐξ αὐτῶν ὅρον ἀνθρώπου γίνεσθαι ('Definition arises from division in the following manner: when one wants to subject a thing to definition, one must first of all grasp the genus, as for instance in the case of man, "living thing"; then one must divide this according to its proximate differentiae until one arrives at the species, as for instance into rational and irrational, and mortal and immortal, with the result that if the proximate differentiae are added to the genus which is composed of them, the definition of man results'; trans. Dillon). This text makes plain what the relationship between definition and division is; Cicero, however, does not link *divisio* to the *definitionis modus*.

Hereditas. On the definition as a whole see Watson (1971), 1 ff.; on this meaning of *hereditas* cf. *OLD* s.v. 2b. Apparently *hereditas* is taken to be only the fortune which the proper heir receives in the end (i.e. it does not include *legata* which he has to grant to others). Later definitions differ from that given here; cf. D. 50. 16. 24, 50. 17. 62.

multis enim modis...possunt. By attaching *iure* Cicero restricts the range of the definition to succession; cf. Boethius 328. 33–5: *...et pecuniae mortuorum pluribus teneri modis possunt, velut si bello quis victus est ac spoliatus.*

nec ea...retenta. Legacies and *possessiones* (see Kaser 1971. 140–1) are of course destined for persons other than the heir.

gentiles. The members of one *gens*, who share the *nomen gentile*.

ab ingenuis oriundi. On the different legal status of *ingenui* and *liberti* see Kaser (1971), 118. *oriundus* has participial force; see Leumann (1977), 331.

qui...deminuti. There are (cf. the commentary on §18) three grades of *capitis deminutio* (*c.d.*), the mildest form of which (*c.d. minima*) is a change of *status familiae*. If this form of *c.d.* were at issue here, there would be undesired consequences; in an adoption, for instance, the adoptee could be a member neither of his previous *gens* nor that of his adopter. Therefore Watson (1967), 100–1 proposes that Scaevola had only the *c.d. media* and *maxima* in mind.

Scaevolam. Q. Mucius Scaevola (*RE* Mucius 16; cos. 95; d. 82); see Watson (1974), 143 ff., Wieacker (1988), 596 ff. See Ch. 4 on his *ius civile*, in which he attempted to classify most but not all of the central legal concepts according to *genera*. The definition for *gentiles* is probably taken from this work and not from a possible second work—the *liber singularis* ὅρων—about which even less is known (see Ch. 4 on this too).

addidisse. 'to have attached a further qualification', which in terms of a διαίρεσις would mean 'to have attached a further *differentia*'.

in utroque genere. Cf. §27 init.

§30 εἴδη**.** The textual problem posed by this word raises some interesting general questions. Schütz's decision to read εἴδη, followed by all editors until Di Maria, seems at first sight unimpeachable. The only problem is to make it square with the manuscript evidence. In addition to the MSS cited in the app. crit., MVP₁ read *ideas*, and bc read *IDEAS*; so that *ideas* must have been the reading of α, and εἴδη in ε a conjecture. Other MSS read εἰδέας, which is how ἰδέας was spelt in later Greek (cf. LSJ s.v. ἰδέα and Pap. Gen. 16. 17, s. iii AD); the two different spellings were pronounced in the same way owing to iotacism. The spelling change would make it easier to understand how εἴδη could be corrupted to ἰδέας. Boethius very probably read ἰδέας, not εἴδη; cf. 332. 16–21: *Haec vero definitio hinc tracta est, quod Plato ideas quasdam esse ponebat, id est, species incorporeas substantiasque constantes* etc. However, two considerations seem to favour ἰδέας. First, Cicero's occasional conflation of Stoic ἔννοιαι and Platonic ideas; as Sandbach (1971), 30 shows, there are several places in Cicero's writings where he conflates Platonic ideas with Stoic ἔννοιαι ('conceptions'; see §31 below on ἔννοιαν) or where he gives ἔννοιαι features of Platonic ideas (perhaps we should ascribe this to the influence of Antiochus; see Barnes (1989), 95–6). And since Cicero takes *species* to be 'conceptions' (= ἔννοιαι; §31 *forma est notio . . .*), it seems understandable that he could refer to *species* by ἰδέαι. Second, there are passages where Cicero makes plain that he wishes to render ἰδέα (= 'Platonic idea') by *species* (e.g. *Tusc.* 1. 58). Neither consideration is sufficient to support the reading ἰδέας here. First, it would be very difficult to show that in §§26–34 ἔννοιαι and Platonic ideas *are* actually conflated (unless, of course,

we beg the question and take ἰδέας to be the correct reading). Second, it is one thing for Cicero to say that he wishes to translate ἰδέα by *species*, and quite another to tell us that what he calls *formae* (he rejects *species* here!) are what the Greeks call ἰδέας. Unless we take 'the Greeks' as referring to a particular sect of philosophers, we should have to assume that the Greeks in general call *species* ἰδέαι—which is plainly absurd. So why should someone have changed εἴδη to ἰδέας? Was he inspired by a passage like *Or.* 10 *Has rerum formas appellat* ἰδέας . . . *Plato* or *Tusc.* 1. 58 [*Plato*] . . . *nihil enim putat esse, quod oriatur et intereat, idque solum esse, quod semper tale sit quale est* (ἰδέαν *appellat ille, nos speciem*) . . . ?

inutiliter ad mutandos casus. This is accurate for classical (not medieval) Latin, cf. Neue–Wagener (1902), 577 on the fifth declension: 'Wir finden nirgends einen Gen. Plur. auf -*eum*. Aber auch der Gen. auf -*erum*, desgleichen der Dat. und Abl. auf -*ebus*, ist von den meisten Nomina ungebräuchlich, und nur von *dies* und *res* gewöhnlich.' Cf. Quint. *Inst. Or.* 1. 6. 26: *Quid progenies genetivo singulari, quid plurali spes faciet*? Boethius uses *specierum* and *speciebus* frequently, but gives no indication that his usage is in disagreement with Cicero's stipulation when he discusses the passage (331. 32–9).

§31 notio . . . pertinens. A *genus* is a concept which extends to or covers a number of different concepts (rather than things, because both the *genus* and the *forma* are *notiones*). Aristotle's definition of *genus* looks similar (*Top. A*5, 102ᵃ31–2: Γένος δ' ἐστὶ κατὰ πλειόνων καὶ διαφερόντων τῷ εἴδει ἐν τῷ τί ἐστι κατηγορούμενον, 'A genus is what is predicated in the what-it-is of many things which are different in species'), but is different in some crucial respects; Aristotle makes it clear that the γένος may be *predicated* of its εἴδη (κατηγορούμενον) and that it represents an answer to the question 'What is *x*?', *x* being an εἶδος. *Differentia* in Cicero, like Aristotle's διαφορά, can mean the specific difference which marks out the *forma*/εἶδος as well as the various *formae*/εἴδη which are distinguished by their 'specific differences.' Contrast a Stoic explanation of γένος (D.L. 7. 60): γένος δέ ἐστι πλειόνων καὶ ἀναφαιρέτων ἐννοημάτων σύλληψις, οἷον ζῷον ('Genus is the comprehensive notion of a number of inseparable concepts').

ad caput generis. *generis* is to be taken as an epexegetic genitive which goes ἀπὸ κοινοῦ with *fontem*.

ἔννοιαν . . . πρόλημψιν. These are two terms of Stoic episte-
mology (but πρо. is Epicurean in origin and was only adopted by the
Stoics; see Sandbach 1971). Ἔννοιαι are 'conceptions', which are
formed after birth either naturally or through instruction; ἔννοιαι of
the first type, which are said to be developed in the first seven years
of life, are also called προλήψεις (cf. Aetius 4. 11. 1–4 = fr. 39E
Long–Sedley), i.e. 'anticipations'. According to the Stoics, these
'anticipations' are the presupposition for impressions to provide a
grasp of the things conceived (καταλήψεις), in that impressions rely
on these already existing conceptions; cf. Frede (1983), 69 and
Brunschwig (1994), 101–4. On the spelling πρόλημψιν used by
Cicero see Schulze (1958), 13–14, and Gignac (1981), 269 with n.
4 on the insertion of -μ-in the tense stems of λαμβάνω (which must
then have influenced the noun).

Ea . . . indigens. Di Maria 81–2 argues the case for the text as
printed here. Note in particular that *insita cognitio* renders ἔννοια,
and *ante percepta* (*cognitio*) πρόληψις. *Insita* need not have an
implication of *a priori*; the same holds for *ante percepta*. Because
one needs *cognitio* in the nominative, it is correct not to follow ed,
in which *enodationis* is missing. To pick up a question from above
(s.v. εἴδη): is there any hint that Cicero appropriates ἔννοιαι and
Platonic ideas *here*? *Enodationis indigens* need not convey such an
idea; it may mean only that the *notio* itself must be 'articulated', if
there is to be an accurate account of a thing. And the analysis of
certain *notiones* may, for instance, require familiarity with a certain
τέχνη pertinent to the subject area to which the *notio* belongs.
Enodare means 'to prune surplus nodes from (vines, olives, etc.)'
or 'to loosen, untie' (*OLD*), the noun is only used figuratively in
the sense of 'clarification' or 'elucidation'. The idea that defin-
itions elucidate προλήψεις is attested also in Greek sources; the
counterpart to *enodare/enodatio* is διαρθρόω (Plut. *Comm. not.* 1059
c) and διάρθρωσις 'articulation' (D.L. 7. 199). Articulating con-
cepts involves, as Brittain (2001), 122 explains, working out 'the
relations which hold between them. This process of articulation
(διάρθρωσις), if completed, would reveal a unique hierarchy of
ordered concepts mirroring the essential structure of reality.'

dividitur. In a διαίρεσις into γένος and εἶδος, the number of εἴδη
the level of διαίρεσις directly 'under' the notion which is divided is
limited, and accordingly a proper division must be 'complete', i.e.
cover all εἴδη.

legem . . . aequitatem. Because Cicero gives in §28 a *partitio* of the *ius civile*, i.e. of the law which applies to Roman citizens, it must mean something that here only *ius* is under discussion. Nevertheless it is odd that Cicero gives three items as *formae* of *ius*, which appear as *partes* in the earlier passage (although one will admit that these abstract concepts are more appropriately described as *formae*). But, despite declarations to the contrary, the somewhat blurred distinction between *forma* and *pars* is not restricted to Cicero; in fact, although division plays such an important role in the technical apparatus of the Hellenistic τέχνη, nonphilosophers do not usually make it the subject of deeper methodological reflection. Alcinous pp. 156. 34–157. 10 Whittaker names types of διαίρεσις, with division into species and partition into parts figuring as the first and second type respectively; but he too does not provide a clear account of partition and gives only an example.

§32 per translationem. *Translatio* renders μεταφορά (the first instance of this calque is *Rhet. Her.* 4. 45). It is used by Cicero absolutely or with an objective genitive as here (cf. *de Orat.* 3. 155). The rhetorical handbooks of Cicero's time included accounts of metaphor like that given by Cicero at the end of this paragraph. See also Dem. *Eloc.* 78 ff. Cicero conceives of metaphor as we use the term today; contrast Arist. *Poet.* 21, 1457^{b}6 ff. I restore the prepositional construction from Boethius rather than print the ablative, because there is a reasonable possibility that α read *translationem*, which seems more readily explained by the assumption that *per* has dropped out. Incidentally, the spread of the variant readings in the most sincere MSS may serve to illustrate the point that citing more MSS in the app. crit. would not have yielded a clearer picture of α (*translationem* P₁M; V illegible; *-ione* bc).

ex similitudine. Cicero might have a semiotic or a semantic similarity of the words in mind.

Aquilius. *RE* 11, a pupil of Q. Scaevola Pontifex (D. 1. 2. 2. 42) and praetor together with Cicero in 66 BC; he died before 44. He was the judge in the trial in which Cicero defeated Hortensius with his first extant speech *pro Quinctio*. See also Giaro (1996) and Frier (1985), 145 ff.

publica. The sea and its shores were public property. However, buildings on the shore were private property; hence permission to

erect them there was required, which in turn necessitates a definition of the 'shore'. See Berger (1953), 567 and Kaser (1971), 380–1.

quaerentibus iis. That *quaerentique*, the reading of α (MbcP$_1$, V illegible), cannot be correct is clear from the following relative clause (MbP$_1$ correct to *quaerentibusque* in the second hand). Both *quaerentibus* and *quaerentibusque* are conjectures.

quos ad id. For the word-order cf. Housman (1937) on Manilius 1. 245.

qua fluctus eluderet. The point appears to be that *eludere* is a *verbum fictum* in a definition of *litus*. Cf. Quint. *Inst. Or.* 5. 14. 34 and 7. 3. 13. For the relative *qua* see *OLD* s.v. 4a. Cf. D. 50. 16. 96. pr. (Celsus) *Litus est, quousque maximus fluctus a mari pervenit*; but Gallus' *fluctus* is a collective singular.

quasi qui. *Qui* as a relative answers to an *is*, with *quasi* meaning 'like'; cf. Cic. *Planc.* 65: *Tum quidam, quasi qui omnia sciret . . .*

florem aetatis. Cf. *Cael.* 9: *. . . hunc M. Caelium in illo aetatis flore vidit*. *Flos* alone is a metaphor for youth, as is *occasus* for old age, but the combination with the second word preserves the metaphorical effect.

ad definitiones . . . hactenus. If the discussion of definitions is finished here, Cicero must regard §33–4 as a more detailed explanation of the *locus ex partium enumeratione*.

§33 partiri velis tutelas. Distinguishing various types of *tutela* goes back to Q. Mucius *Ius civile*; see Ch. 4 and §29 above. The different types of *tutela* and the correspondingly different types of *tutores* are explained in Watson (1967), 114 ff., who discusses the *tutor testamentarius*, the *tutor legitimus*, the *tutor* 'appointed by the magistrates', and the *tutor praetorius*; in the late Republic and the early Empire there was a dispute among jurists as to how many types of *tutela* there were (see Gaius, *Inst.* 1. 188). In the light of Cicero's own terminological distinctions it is surprising that *tutela* is not introduced as a possible instance of *divisio*.

stipulationum . . . formulas. Cicero mentions collections of forms of *stipulationes* and actions in *Leg.* 1. 14; for *formula* see the commentary on §9, and Ch. 4 on the growth of the praetor's edict in the course of the first century BC.

certus est numerus. Cf. *sine ullius praetermissione dividitur* in §31.

quaestionis genere . . . subiungitur. On the notion of *quaestio* (ζήτημα) cf. §79. The division of the *status* (στάσεις) may be viewed

as *formae* of the *causa* (ὑπόθεσις), in the sense that it classifies types of ὑποθέσεις falling under the various *status*; cf. Cic. *Inv.* 1. 10 ff.

    ornamentis verborum sententiarumve. Cf. Cic. *de Orat.* 3. 200, *Brut.* 141. It is less likely that Cicero has here in mind the distinction between *ornatus in verbis singulis* and *in verbis coniunctis* (on which cf. e.g. *Rhet. Her.* 4. 17 ff.; Quint. *Inst. Or.*, books 8–9; Lausberg 1998, 272).

§§35–7

After explaining his choice of *notatio* for rendering ἐτυμολογία, Cicero distinguishes etymological explanation of a legal term (*postliminium*) from what he calls a *divisio* of the term: an enumeration of all the things *postliminium* applies to. Cicero then introduces two etymologies of *postliminium*, and finally tries to show how an argument for a certain view of a particular case may be derived from the second etymology.

§35 ex vi nominis. As pointed out in the commentary on §10, the *vis* Cicero has in mind is the meaning of the word *qua* analysable sign, considered in itself and analysed etymologically. This meaning is supposed to be related to what is designated by the word; cf. *Acad.* 1. 32: *verborum etiam explicatio probabatur, id est qua de causa quaeque essent ita nominata, quam* ἐτυμολογίαν *appellabant.* Obscure legal terms pose a particular problem, as their reference is often unclear. Cf. also Quint. *Inst. Or.* 1. 6. 28: *Sunt qui vim* [sc. *etymologiae*] *potius intuiti originationem vocant.*

    verbum ex verbo. A range of possibilities is available to Cicero, when a Greek technical term is to be rendered: (i) Cicero could just transliterate the word and inflect it like a Latin word of a suitable declension (e.g. *dialectica*, *atomus*); he would make use of this possibility of a Greek loanword only when there is already an established practice. Otherwise linguistic purism would make this an unattractive option (*a fortiori* this holds for just using the Greek word); cf. *Tusc.* 1. 15. (ii) He could give a semantic loan-translation, in which a Latin word whose ordinary meaning is in some crucial respect related to that of the Greek term is used in a new, technical sense (*officium* = καθῆκον, *imago* εἴδωλον). Given that very rarely (perhaps never) is there exact semantic correspondence between a Greek and a Latin word, the majority of Cicero's renderings must be classed under this category. (iii) He could use a loan-formation

(*qualitas* = ποιότης; *praesensio, praenotio, informatio* = πρόληψις; cf. Lucretius' famous *naturae species ratioque* for φυσιολογία); see Bader (1962), 397–412 on the principles according to which such calques are formed in Latin, as well as Nicolas (1996), 11–89. As is clear from the examples, calques may involve coining a new word or using existing ones in a complex phrase. There may be several translations for one term (cf. πρόληψις, for which I have given only those translations which are neologisms), all slightly different in meaning and used in suitable contexts to bring out particular points. Further, calques may turn out to be sufficiently alien to the Roman ear to cause offence (like Greek words or loanwords), as is the case in our passage. When the phrase *verbum ex verbo* is used with reference to linguistic calques, *verbum* could in the light of Cicero's translation practice almost be translated as our 'morpheme'; cf. *Luc*. 17, 31; *Fin*. 3. 52; and our passage. Which leaves the question why Cicero opts for *notatio*. Half the answer is given by *quia sunt verba rerum notae*: *nota* 'sign' had been used before by Cicero to denote letters, which represent sounds (*Rep*. 3. 3: *vocis . . . infiniti soni paucis notis inventis sunt omnes signati et expressi*). For the noun *notatio* in the sense of 'the action of analysing a sign' cf. *Div*. 2. 87: *Chaldaeis . . . in notatione cuiusque vitae ex natali die minime esse credendum*, where *notatio* must mean 'the action of defining or delimiting' (cf. *OLD* s.v. 5). For a survey of the passages where Cicero comments on his method in translating Greek technical terms see Hartung (1970), 17–25; on his translations from Greek in general see Moreschini (1979) and Powell (1995*a*), who provides a very illuminating discussion of the complex set of parameters which determine whether a rendering is deemed suitable or successful.

σύμβολον. Cf. Arist. *SE* 1, 165ᵃ6–10: Ἐπεὶ γὰρ οὐκ ἔστιν αὐτὰ τὰ πράγματα διαλέγεσθαι φέροντας, ἀλλὰ τοῖς ὀνόμασιν ἀντὶ τῶν πραγμάτων χρώμεθα ὡς συμβόλοις, τὸ συμβαῖνον ἐπὶ τῶν ὀνομάτων καὶ ἐπὶ τῶν πραγμάτων ἡγούμεθα συμβαίνειν, καθάπερ ἐπὶ τῶν ψήφων τοῖς λογιζομένοις. ('It is impossible in a discussion to carry the actual things discussed: we use their names as symbols instead of them; and we suppose that what follows in the names, follows in the things as well, just as people who calculate suppose in regard to their counters'; trans. Pickard-Cambridge, revised). The passage has some bearing on the matters discussed in the commentary on §§1–5, and on the question whether Cicero had a copy of Aristotle's *Top*. in his possession. The reference to the passage quoted above, which

comes from the very beginning of the *SE*, may suggest that Cicero actually owned a copy of Aristotle's *Top.* and took a more or less superficial look at it (the *SE* are transmitted together with the *Top.*).

§36 postliminium. There are detailed discussions of *p*. by Kornhardt (1953), Maffi (1992), and Cursi (1996). Two types of *p*. are to be distinguished, *p. in bello* and *p. in pace* (cf. D. 49. 15. 5. pr.–3). The exact nature of the latter is contested; either it is concerned with the legal position of a Roman citizen who was captured in times of peace and then returned to Rome (see Maffi 1992, 121–65) or it is the provision by which a former Roman citizen who abandoned his citizenship in favour of that of another state is reinstated (see Kornhardt 1953, 11; cf. below the beginning of the fragment from Aelius Gallus preserved in Festus). Cicero is talking about *p. in bello* here, which is the right by which persons or certain things (including animals), which had come into the power of the enemy at a time of war, regain their previous legal status after their return. *P. in bello* is likely to have been subject to particular restrictions during the third and second century BC, when Rome faced major external enemies; these restrictions were supposed to create an added disincentive against capture through the enemy. This follows from D. 49. 15. 12 (Tryphoninus), if we take Servius to refer to this period (see below): *In bello postliminium est, in pace autem his, qui bello capti erant, de quibus nihil in pactis erat comprehensum. quod ideo placuisse Servius scribit, quia spem revertendi civibus in virtute bellica magis quam in pace Romani esse voluerunt* ('In wartime *postliminium* exists, as also in peacetime for persons captured in war for whom no provision was made in the negotiations. Servius writes that this was agreed because the Romans wished their citizens' hope of returning to lie in their military courage rather than in peace'). That Servius is referring to the period suggested above emerges from the following passages, which give us a date for the kind of restriction mentioned by Servius as well as name the senate as the driving force behind this policy: Cic. *Off.* 3. 114: *Eos senatus non censuit redimendos, cum id parva pecunia fieri possit, ut esset insitum militibus nostris aut vincere aut emori. Qua quidem re audita fractum animum Hannibalis scribit idem, quod senatus populusque Romanus rebus adflictis tam excelso animo fuisset* (cf. Polyb. 6. 58. 11) and Val. Max. 2. 7. 15, who describes the senate as *memor tantam multitudinem armatorum iuvenum, si honeste mori voluisset, turpiter capi*

non potuisse. Cicero must have been aware that the scope of the *ius postliminii* had been subject to changes for political reasons, and there may be a hint at this flexibility of the law in *defendi potest* below. [Dr Matthew Leigh of St Anne's College, Oxford, kindly allowed me to read a draft chapter on Plautus' *Captivi*, which clarified my mind about the confusing institution of *postliminium* and to which I owe the suggestion to connect D. 49. 15. 12 with Cic. *Off*. 3. 114 and Val. Max. 2. 7. 15.]

divisionem] *partitionem* coni. Bornecque p. 78, who apparently took *homo, navis* etc. to be an enumeration of parts, as does Huby (1989), 66. But the items listed are not the 'parts' of *postliminium*. Equally, they are not its 'species', although it makes some sense to distinguish different kinds of *postliminium* with reference to different things it applies to; by the same token, various *genera* or *species*—terminology is inconsistent here—of *tutela* are distinguished, by Q. Mucius and others, in Gai. *Inst*. 1. 188. This illustrates why Cicero tells us that he is giving a division rather than a partition; yet such a division of *postliminium* shows only remote similarities to a division of a γένος into its εἴδη. Moreover, it would be impossible to give a division of *postliminium* that takes regard of all debatable aspects of this legal institution. All this might suggest that division is not the best pattern by which to classify legal material (and it could explain why such methods of classification were primarily used in didactic legal works like Gaius' *Inst*.).

homo...solet. This list is largely confirmed by the parallel in Festus p. 244. 9–21 s.v. *postliminium*: *Postliminium receptum, Gallus Aelius in libro primo significationum, quae ad ius pertinent, ait esse eum, qui liber, ex qua civitate in aliam civitatem abierat, in eandem civitatem redit eo iure, quod constitutum est de postliminis: item qui servos a nobis in hostium potestatem pervenit, postea ad nos redit in eius potestatem, cuius antea fuit, iure postlimini. Equi et muli et navis eadem ratio est postliminium receptionis quae servi. Quae genera rerum ab hostibus ad nos postliminium redeunt, eadem genera rerum < a > nobis ad hostis redire possunt*. A slave, like the other items listed, returns to the person who was his owner at the time when he came into the hands of the enemy. D. 49. 15. 2. pr., discussed by Watson (1967), 254, suggests that *postliminium* applied only to those things which were important for warfare; this would explain e.g. the restriction to tamed horses. If these items

were not protected by *postliminium*, they would—if found—become the property of the finder, which is of course undesirable with respect to the common cause in times of war.

postlimini vis. See above on *vi nominis*.

notatur. Apparently 'to be analysed etymologically' (cf. also *OLD* s.v. 1d); thus interestingly the new meaning of *notatio* influences other derivations from the same stem.

Servius. The jurist and *familiaris* of Cicero, Servius Sulpicius Rufus (*RE* Sulpicius 95, cos. 51, died 43); see Ch. 4.

productionem. Here used of the 'lengthening' of a word by the addition of a suffix; elsewhere the word denotes a lengthening of a vowel or syllable in pronunciation. Cf. *Rhet. Her.* 4. 29: *Hae sunt adnominationes quae in litterarum brevi commutatione aut productione aut transiectione aut aliquo huiusmodi genere versantur*; Var. *LL* 5. 6 specifically talks about *syllabarum productio*.

aeditimo. See Cavazza (1995).

meditullio. 'The part of the country that is remote from the sea' according to Paul. (Fest.) p. 110. 28–9: *meditullium dicitur non medium terrae, sed procul a mari, quasi meditellium, ab eo quod est tellus.* *-tullium indeed comes from *tellus*; cf. Walde–Hofmann s.v. *meditullium* ('*medius* und *tollium*, ablautend mit *tellus*'), Ernout–Meillet s.v. *tellus*. And as to *tullium*, is this perhaps a joke ('no Tullius in *meditullium*')?

§37 Scaevola. Q. Mucius Scaevola Pontifex, cf. Ch. 4 and the commentary on §29.

limen. This etymology is correct; see Ernout–Meillet s.v. *limen*. In the fragment of Aelius Gallus quoted under *homo . . . solet* above, the word *postliminium* at the beginning of the fragment must be taken as an old accusative of direction (see Hofmann–Szantyr 49), a construction which would probably seem impossible to those who like Servius refuse to interpret *postliminium* as a compound formed from *post* and *limen* (with *limen* then meaning the threshold of the Roman house); for only on Scaevola's explanation of the term would *postliminium* designate a place (on Servius' account *post* would have temporal force). Cf. also the explanation in Paul. (Fest.) p. 245. 4–6 s.v. *postliminium receptus* (apparently secondary to that ascribed to Scaevola here): *Postliminium receptus dicitur is, qui extra limina, hoc est terminos provinciae, captus fuerat, rursus ad propria revertitur*. There are more puzzles about the use of the

term *postliminium*; for instance, it occurs in the plural in many texts (cf. D. 11. 1. 16. pr., 49. 15. 21. 1). That *postliminium* brings the reinstatement to citizenship is acknowledged by the use of *liminium* in the sense of *captivitas* (*CGL* v. 603. 52) or *servitium* (ibid . 620. 41), which seems to be contingent on not identifying *limen* as the origin of -*liminium*.

ea] *et ea* a (*et* erasum B$_A$) : *hinc* ç. Winterbottom (1996), 408: '*hinc* is mere conjecture, not even supported by Boethius' paraphrase (337. 6–8), and we should read *ea* without *et* (erased in B$_A$). *hinc ea* (Friedrich) is an unwarranted conflation.'

Mancini causa. In *de Orat.* 1. 175–84, Cicero names ten *causae maximae* every orator must have heard of; this case features in 1. 181. On it see Watson (1967), 245 ff., Wieacker (1970), 204 ff., and Cursi (1996), 58–61, who conveniently cites all the relevant texts and also gives an account of earlier instances of *deditio non recepta*. As consul in 137 BC, L. Hostilius Mancinus (*RE* Hostilius 18) obtained peace from the people of Numantia, which was not accepted by the senate. In consequence he was surrendered to the enemy, who, however, refused to accept him; he returned to Rome, where he was barred from the senate by the *tribunus plebis* Rutilius, who argued that, as he had been surrendered, he was no longer a Roman citizen and that *postliminium* did not apply to him (Cic. *de Orat.* 1. 181). He went into exile, but was restored to his civil rights later on by a law and even received the praetorship again. The views expressed about his case were those of (i) P. Rutilius just reported, (ii) of Iunius Brutus, who argued that *deditio*, just like donation, requires acceptance by the other party (this can be inferred from D. 49. 15. 4; see Watson 1967, 247 n. 2 for the interpretation of that passage; cf. also *Caec.* 98), and (iii) that of P. Mucius, who challenged Brutus' view, arguing that *deditio* was one-sided like *aqua et igni interdictio* (D. 50. 7. 18). This means that Cicero reports Brutus' view in the sentence under discussion and not, as one might assume, Scaevola's. In fact, Mancinus' case could not be defended with reference to the *ius postliminii*; see the summary of the discussion by Modestinus (D. 49. 15. 4) and Cursi (1996), 67. There is, however, no reason to assume that Cicero was misled by the very broad scope suggested for *postliminium* by Q. Mucius' words; cf. Ch. 4 on the status of the legal arguments in the *Topica*.

receptus. Sc. by the people of Numantia.

donationem. The donation required acceptance, but, as indicated, it appeared strained to other jurists to make donation parallel to *deditio*. That the prevailing view was that Mancinus had lost his citizenship is demonstrated by the report about the law made on his behalf later on (D. 50. 7. 18. pr: *de quo tamen lex postea lata est, ut esset civis Romanus . . .*).

§§38–40

This section contains the second discussion of the *loci a coniugatione* and *a genere*.

As to the *locus a coniugatione* (§38), Cicero provides a second instance for this way of arguing, but gives no additional information about how such arguments are to be conceived of or used.

In the example given, the jurist Q. Mucius[1] is introduced as arguing that the right to divert rainwater (*aqua pluvia*) from one's land does not merely refer to water which has accumulated owing to rain, but also to water whose amount has merely been increased by rain (*aqua quae pluendo crevit*), e.g. that of a stream. In support of this view, it is pointed out that *pluvia* and *pluendo* are *verba iugata*, i.e. derivations of the same verbal stem.

The relevant provision, the *actio aquae pluviae arcendae*, apparently referred to *aqua pluvia* without further specification,[2] and strained as the reasoning might appear, it could establish the situation that the *actio*'s applicability was extended to such cases as the one indicated. We can infer from a later text that the need was felt to broaden the range of the provision in this way.[3] It may well be the case that Cicero is reporting a view actually held by Mucius.

[1] Cf. the commentary on §§29–37 and Ch. 4.

[2] The reconstruction by Lenel (1927), 375 with n. 4 has not been universally accepted, but the doubts do not refer to the notion of *aqua pluvia* itself: *Si paret opus factum esse in agro Capenate, unde aqua pluvia agro Auli Agerii nocet, quam ob rem Numerium Negidium eam aquam Aulo Agerio arcere oportet, si ea res arbitrio iudicis non restituetur*, etc. Aulus Agerius and Numerius Negidius are the blanket names given at the places where the names of the two parties are to be inserted.

[3] D. 39. 3. 1. pr.: *Si cui aqua pluvia damnum dabit, actione aquae pluviae arcendae avertetur aqua. aquam pluviam dicimus, quae de caelo cadit atque imbre excrescit, sive per se haec aqua caelestis noceat, ut Tubero ait, sive cum alia mixta sit* ('If rainwater is going to cause anyone injury, it can be averted by means of an action to ward off rainwater. We define ''rainwater'' as water which falls from the sky and is increased in quantity by a rainstorm, whether, as Tubero says, such water from the sky causes damage by itself or in conjunction with some other body of water'). On this passage see Watson (1968), 157.

§§39–40 give advice on how to use arguments *a genere* effectively. As explained in the discussion of §13, the underlying principle of such arguments is that all (essential) predicates which hold of the *genus* must hold of the *forma* as well. Therefore, that a predicate holds of a subject may be demonstrated by showing that the same predicate holds of the *genus* of the subject.[4]

The two precepts are:

(*a*) It is not necessary to use the highest *genus* of the subject for the argument, as long as the term employed as *genus* is in fact superordinate. For instance, to demonstrate that

> cats have sensual perception

one may argue that 'to have sensual perception' holds of mammals, and need not (though one obviously could) show that the same predicate holds of vertebrates (§39).

(*b*) An effective way to show that a predicate A holds of a subject B is to set up a full *divisio*/διαίρεσις of A, and then to show that one of the *species* of A holds of B.[5] This procedure may make the reasoning appear particularly stringent or 'firmum' (§40).[6]

The text of §39 is, however, less clear than one might hope, and editors have felt the need to change it. As the matter requires a more detailed treatment, I shall discuss it here rather than in the notes. Cicero illustrates instruction (*a*) by setting up a *divisio*/διαίρεσις with three levels, explaining that the *genus* in play need not be the *genus ultimum*, the highest *genus*. It should be noted that Cicero focuses on the *divisio* itself rather, leaving the reader to supply the manner in which this particular *divisio* may be used

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[4] Cicero's conception of such arguments has been analysed in more detail in the commentary on §13.

[5] In Cicero's example, to argue that a particular deed involved *dolus malus*, one is advised to argue that it may be subsumed under one of the *formae* of *dolus malus*.

[6] Boethius felt, not unreasonably, that this invites the question whether the description *a genere* (rather than *a forma*) is still applicable; he explains (339. 15–23): *Quotienscumque enim de aliqua re dubitatur, si facta generis alicuius divisione sub aliqua eius generis parte id, de quo ambigitur, potuerimus includere, tunc a genere tractum esse argumentum videtur, hoc modo: Sit dolus malus, quando aliud agitur, aliud simulatur. Huius ergo si species dividantur et id, quod factum arguimus, alicui earum specierum, quae a dolo malo deductae sunt, potuerimus adiungere: quidquid de dolo malo existimabitur, idem etiam de ea re, quam arguimus, necesse est iudicari, et factum est a genere.*

for an argument *a genere*; one reader, Boethius, has the question constantly in mind in his discussion of the section at 338. 31 ff.

Editors have taken offence at the phrase *genus est aqua pluvia*. Friedrich proposed to delete it on the grounds that it disrupts the syntax.[7] Di Maria deletes only *genus*.[8] I shall interpret the text as read by Friedrich and explain my decision below.

The notion of *aqua pluvia* is ambiguous in a certain way. On the level of ordinary spoken language it means rainwater in the most general sense, for which reason in a *divisio* of 'rainwater' it should take the place at the top, i.e. that of the highest *genus* which itself is divided. In legal terminology, however, only a particular type of rainwater is relevant and, thus, is strictly speaking *aqua pluvia*, namely that which is detrimental to the property of others and whose damaging force is due to actions of human beings, be it the structure of a surface of a piece of land, which was modified e.g. by ploughing, or some sort of edifice, wall, management of a stream, and the like.[9] Plainly, *aqua pluvia* in this sense must have a place at the very bottom of a *divisio* of rainwater in the general sense.

The first sentence of the *divisio* in §39—*aqua pluvia ultimo genere ea est . . .*—is crucial for deciding which sense of *aqua pluvia* is employed here. This is not the way to introduce *aqua pluvia* as *ultimum genus*, but rather an attempt to name the *ultimum genus* of *aqua pluvia*, which assigns to *aqua pluvia*, used in the technical legal sense, the status of a *forma/pars*.

As to the *divisio* itself, there are two ways to draw it up. One can either name the *genus*, its *formae*, their *formae* etc., or instead of the class-nouns representing the *formae* one gives the *differentiae specificae* which single out the *formae* they respectively belong to.[10]

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[7]   Friedrich (1889), 289: 'Die vulg. gibt nach den hss. vor nocens noch die worte *genus est aqua pluvia*. Aber *propiore genere genus est* zu konstruieren ist einfach unmöglich, *aqua pluvia*, das an der spitze des satzes steht, zu wiederholen überflüssig.' Yet Friedrich fails to explain what it was that *genus est aqua pluvia* was meant to explain, if it was an explanatory remark in the margin.

[8]   Di Maria 86, replying to Friedrich just quoted: 'De verbo *genus* secludendo prorsus assentimur, delere tamen nolumus *est aqua pluvia* quod, cum intellectui necessarium non sit, nobis tamen non videtur interpolatorum magis esse quam Ciceronis disserentis.' Friedrich was followed by Wilkins, Bornecque, and Riccio Coletti; Hubbell reads the text as transmitted.

[9]   See e.g. Kaser (1971), 407.

[10]   To illustrate the difference by an Aristotelian example (cf. *Top*. Z6, 143$^{\mathrm{b}}$1–2), one can name as εἴδη of the γένος 'animal' either terrestrial animals, fishes and birds, or merely refer to these εἴδη by naming their specific differences, in this case πεζόν, ἔννδρον, and πτηνόν.

Cicero takes the second option (cf. *formae loci vitio et manu nocens*).
He gives the *differentiae* of the *formae* involved, relying on the
method shown in the context with the *definitionis modus* in §29,
i.e. by adding on each level the new distinguishing feature without
repeating the full cluster of qualifications which mark out each
forma. This allows him to single out the individual *formae* and
seems in this case preferable, because for several of the *formae*
coming up there is no *verbum proprium* in Latin.

The *divisio* emerging is this:

1   (*aqua*) *ea quae de caelo veniens crescit imbri*

2   *aqua…imbri non nocens*   *aqua…imbri nocens*

3   *aqua…imbri nocens loci vitio*   *aqua…imbri nocens manu*
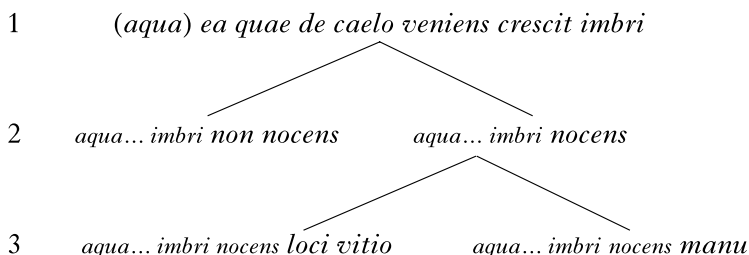
Quae de caelo veniens crescit imbri nocens manu would be the
differentia of *aqua pluvia* in the technical legal sense (to get the
definition add the *genus* '*aqua*' at the beginning).

The text makes good sense without *genus est aqua pluvia*, deleted
by Friedrich. I shall now offer two possible explanations as to what
the alleged gloss was originally meant to explain. Finally, I shall
state why I find the text as printed by Di Maria, i.e. with only *genus*
deleted, unsatisfactory.

genus est aqua pluvia could either have been written in the
margin by someone who was wondering—in the terminology
used above—whether *aqua pluvia* should be placed at the bottom
or at the top of the *divisio* or, respectively, which of the two senses
of *aqua pluvia* is at issue, and made the wrong decision. Alterna-
tively, the sentence could have been meant to clarify the immedi-
ately following *eius generis*, which—here my argument is in danger
of becoming circular[11]—would refer to the subordinate *genus*
marked off by '(*aqua quae de caelo veniens crescit imbri*) + *nocens*.'

My problem with the text as printed by Di Maria, who deletes
only *genus* rather than *genus est aqua pluvia* like Friedrich, is the

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[11] My argument will not be circular, if the point made above about the two ways
of presenting a *divisio* (by naming species or by naming *differentiae*) is a valid one.

following. Because the introductory sentence is clearly assigning the status of a *forma* to *aqua pluvia* (*ut aqua pluvia ultimo genere ea est*), employing the term in the technical legal sense, it would be misleading if *aqua pluvia* appeared in level 2 of the *divisio*. For then *aqua pluvia* (in *aqua pluvia nocens*) would quite confusingly be used in the broad general sense.

Boethius is likely to have read the phrase bracketed by Friedrich, as p. 338. 42–3 suggests: *id genus esse dicat, quod est aqua pluvia nocens*; but that does not settle the matter either way.[12]

§38 locus. Cicero had introduced this whole group of *loci* as one *locus ex rebus affectis* already earlier (§8).

de quo ambigitur. The subject under discussion is viewed as 'hanging in the balance' or 'being under examination' (§11 *affectae . . . ad id de quo quaeritur*), and the argument produced with the help of the *locus* is meant to support one of the two sides. For *ambigi* in this sense cf. also *Part. Or.* 139 and *de Orat.* 3. 111.

modo dixi. See §11.

finitimus notationi. Derivation was actually one method of etymological analysis. Whether a particular derivation was felt to be a *coniugatum* or a *notatio* depended on how present the connection of the two words was in the speaker's mind. On ancient views on word-formation see Vaahtera (1998).

essent. Watson (1968), 156 with n. 1 holds that an actual view of Q. Mucius is reported here. While the subjunctive of the *quia* clause would on the most natural reading indicate that a statement of Mucius' is being rendered, it may well be that Cicero imposed his own wording and that Mucius said no more than 'pluvia a pluendo dicta est'.

§39 a capite. This use of *caput* also in §31: *forma est notio cuius differentia ad caput generis et quasi fontem referri potest*.

arcessere. To adopt a *genus* in the course of an *argumentum a genere* (see also *ad quod sumitur* below).

citra. 'At a nearer point' (*OLD* s.v. *citra*[1] 1c), i.e. at a lower level of the *divisio*. On up-and-down terminology (see *supra* immedi-

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[12] Note that in MS d (and e, probably not independently) the words suspected to be a gloss are placed after *propius* (d)/*prius est et propius* (e) and before *in quo quasi ius*. Given the stemma, this must be regarded as an individual scribe's attempts to emend the text.

ately following) in the context of divisions see the commentary on §28.

in quo ... continetur. Although it is clear what Cicero wants to say, from the legal point of view this is slightly misleading, as only one of the *formae* of *aqua ... nocens* may be legitimately blocked. Cicero himself says that in the following sentence. So the *ius arcendi* is confined to one *forma* within this intermediate *genus* of rainwater, and an *argumentum a genere* relying on this *genus* would be invalid (this does not weaken the points made above, as it would hold for Di Maria's text as well).

loci vitio. Of course, the law did not give an action in every case where rainwater flowing from one person's land to another's caused damage; on the regulations for borderline cases see Watson (1968), 160 ff.

quorum alterum. For the lack of agreement in gender with *aqua/forma* see K.–St. i. 61–2.

iubetur ab arbitro coerceri. The actual decision in certain disputes was made by an *arbiter*, on whose role see Paulus (1996), 974–5 and Kaser–Hackl (1996), 56–60. It is, however, doubtful whether the *arbiter* dealing with the *actio aquae pluviae arcendae* performed the same role as, e.g., in the case of the *actio familiae erciscundae*; see Kaser–Hackl (1996), 107–11, in particular 109 n. 12.

§40 ex genere] *pro forma* vel *forma* ς. Because a second discussion of the *locus a forma* is lacking and perhaps also because of what follows (*partis persequare*), some scribes altered the text.

partis persequare. Though Cicero is clearly talking about a *divisio*, he uses the terminology of the *partitio*. *Ex toto partes persequi* means, as the context shows, starting from a highest *genus* to list its *formae* one by one.

dolus malus. The definition was formulated by the jurist Aquilius Gallus (cf. §32), as emerges from *Off.* 3. 60–1 (on this passage see Dyck 1996, 567–9). Moreover, Aquilius is said to have drafted the *actio de dolo*. There is disagreement as to whether he did this while he was praetor in 66 (so Watson 1974, 39, 72–82) or before or after he held this office (so for instance Brennan 2000, 462 with nn. 177–8; see also Dyck 1996, 568); the question has bearings on how one should conceive of the development of the praetor's edict and of the role of the jurists in this development. A historical assessment of his conception of *dolus* in Wieacker (1988), 644,

who argues that the decisive move of Aquilius' definition is to restrict *dolus malus* to actions (as opposed to e.g. defaults).

includere. To show that the action in question may be subsumed under the sub-genus of *dolus malus*.

§§41–5

The second treatment of the *locus ex similitudine* primarily focuses on the presentation of such arguments. Cicero begins with a way of arguing in which one case is proved by comparison with a number of similar cases. One could interpret such arguments as based on an inference rule ('If a predicate A holds of a subject B, this predicate will hold also of subjects *similar* to B'), but this does not seem to be the view held by Cicero, who equates this procedure with induction. As a second way to frame such arguments, there is the inference from *one* case to another similar to the first. A third type consists of examples, which may be either real (§44) or imaginary (§45), the latter being primarily at the disposal of orators and philosophers.

The terms involved here should briefly be put into a historical context. In the *Top.* (*A*12, 105ᵃ11–12) and elsewhere later on, Aristotle distinguishes two basic types of rational argument, induction (ἐπαγωγή) and deduction (συλλογισμός). In an induction, one infers—with varying degrees of certainty—a general proposition from a particular one or a particular from a particular proposition (in this case the corresponding general proposition is in the background). An example may be compared to induction, because it in a way also represents a particular proposition by which the (likewise particular) case to be proved may be supported.

Τόποι are linked by Aristotle to the συλλογισμός, in that they help to find premises from which a given conclusion may be deduced. In the *Top.* and the *Rhet.*, however, Aristotle classifies a good number of arguments as 'deductions' which are deductions only in a loose sense and which modern logic would rank among inductive arguments. Arguments 'from similarity' as envisaged in *Topica* §§41–5, for instance, can never be deductively valid. And after the description of induction above, it will be clear that such arguments may present a borderline case in Aristotle's understanding too.

So if Cicero introduces induction as an instance of the *locus ex similitudine*, he, unlike Aristotle, dissociates the *locus* from deduction, and we can understand why he does so. Elsewhere Cicero

does distinguish clearly between induction and deduction (cf. the definitions of *inductio* and *ratiocinatio* in *Inv.* 1. 51 and 1. 57). It should, however, be noted that Cicero normally talks about the premisses 'found' with the help of *loci* in rhetorical (i.e. non-logical) terms like *ratio* (§8).

As to the actual source, there are two texts which agree in a number of details with our passage, *Inv.* 1. 49 ff. and Arist. *Rhet.* B20; I shall record divergences and correspondences in the commentary.[1] Possible explanations for this situation are the use of the *Inv.* material, of similar material from elsewhere, or of material included in the main source for the *Topica*. It matters little which is actually the case. The whole complex of arguments from similarity forms part of the Aristotelian strand in ancient rhetoric; that this complex of material shows a relatively wide distribution will be due to the fact that for this part of his theory of rhetorical argument Aristotle relied more than elsewhere on doctrines and terminology already established in pre-aristotelian rhetoric (cf. *Rhet. ad Alex.* 1429^{a}21 ff.). This in turn will have eased the inclusion of his views in the school-tradition.

§44 presents a problem of interpretation which also involves a textual problem; it is more conveniently treated here than in the commentary. There Cicero discusses examples as one particular type of arguments *ex similitudine*, mentioning that the orator Crassus introduced many examples in the famous *causa Curiana*. Then the text runs in *a* (barring minor variations here suppressed): . . . *exemplis plurimis usus est qui testamento sic heredes instituisset* [*instituti essent* coni. Madvig; *instituissent* coni. Bornecque] *ut, si filius natus esset in decem mensibus isque mortuus prius quam in suam tutelam venisset, hereditatem obtinuissent.*

The relative clause has been taken by some scholars as referring to cases like the *causa Curiana*;[2] some scribes or correctors of MSS (the third hand in B_{1a}, the second hand in B_{1b}; FO) as well as Orelli have assumed that it is meant to give the content of the *causa Curiana* itself and have therefore inserted *agens/aiens de eo* before *qui*. Others have disagreed with both these views and deleted the relative clause as a gloss, opposing the first view with the argument

[1] Both passages are discussed in Schweinfurth-Walla (1986), 53–63, 147–55.
[2] Madvig (1873), 193, Wilkins, Di Maria. Riccio Coletti follows the MSS and reads *instituisset.*

that the very uniqueness of the *causa Curiana* would make a quoting of parallel cases absurd, and the second view on the grounds that the following sentence would then be nonsensical (see Friedrich 1889, 290–1). Yet another argument for a deletion was that we knew from elsewhere that the examples employed by Crassus were not actually similar to the *causa Curiana* and only supported the view that sometimes the spirit and not the letter had to be followed.[3] Di Maria kept the transmitted text without explaining his decision, but calls the relative clause 'verba suspecta' in the app. crit.

The legal background of the *causa Curiana* is most lucidly summed up by Wieacker (1967), 153:

In Rome and especially among the nobility, the designation of an heir by will was not only the right but also the social duty of the pater familias. Since at the time of writing the will he cannot yet know whether the heir appointed by him, naturally in most cases his son, will live to see the inheritance, it was usual for him to appoint, for the sake of security, a substitute heir (*substitutus*). The words of such a substitution ran as follows: *Titus filius mihi heres esto. Si Titius mihi heres non erit, tunc Seius mihi heres esto.*

Without further ado this substitution and what is meant by it is clearly understandable to us. Less easy to understand is a particular variant of substitution, pupillary substitution, which is opposed to the 'ordinary' or vulgar substitution. Here the substitute heir Seius is appointed in case the principal heir does indeed come into his inheritance, but dies before reaching puberty. The formula of this pupillary substitution ran: *Titius mihi heres esto. Si Titius filius meus ante moriatur quam in suam tutelam venerit, Seius heres mihi esto.*

This is a strange order. We can well understand its intention: if the son does not come of age the inheritance should not go to his *proximus agnatus*, for example his brother (who is already taken care of). . . .

Let us imagine now a conscientious *pater familias* who wants to have his son first in line as heir; if however by the time of succession a son does not exist or has not yet reached puberty he wants to appoint Seius. We must distinguish: if at the time of the establishment of the will a son already lives, the pupillary substitution will suffice: *si Titius filius meus ante moriatur quam in suam tutelam venerit, Seius heres mihi esto.* It is otherwise if at the time of writing the will the testator only *hopes* to have a son. In that case he will, as a precaution, combine a vulgar substitution with a pupillary substitution . . . If he does not do so, and then no son was born at all, an

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[3] Wisse (2000), 177, referring to *de Orat.* 1. 243: *. . . cumque multa conligeres et ex legibus et ex senatus consultis et ex vita ac sermone communi non modo acute sed etiam ridicule ac facete, ubi si verba, non rem sequeremur, confici nihil posset.*

unpleasant problem arose: will Seius become the substitute heir although he was *expressly* appointed only for the case that a Titius would have been born *and* and would have died before reaching puberty?

This is the crucial point of the Causa Curiana. A certain Coponius had taken for granted the birth of a son and therefore determined in his will: *si filius ante moriatur quam in tutelam venerit M. Curius heres esto*. However, when Coponius died no son had been born at all. Therefore a struggle arose between the substitute Curius and the legal heir (or legal heirs) of Coponius, i.e. his *agnatus proximus* or *agnati proximi*. Curius thought himself the heir, since the pupillary substitution (by its sense) comprised the case that a pupil is not born at all. The agnates thought themselves heirs, since, according to the text of the will, the condition *si filius ante moriatur* etc. had not been fulfilled. . . .

The case, in which Crassus spoke for Curius and Q. Mucius Scaevola for the opposite party, has been interpreted by Cicero and modern scholars as a battle between narrow-minded literal understanding of the law and an appeal to its sense. Subsequently, far-reaching hypotheses about the later development of Roman law have been based on Crassus' success in arguing for the sense of the will.[4]

But Wieacker (1967), 160–1, in a reconstruction of the arguments brought forward, has shown that Crassus' point was a slightly different one. He argued that normally in wills where vulgar and pupillary substitution had been combined the substitute heir was in both cases the same and that *therefore* the 'sense' of Coponius' will made Curius the heir, the assumption being that nobody would want to have *different* secondary heirs.

It may be noted that this view, which boils down to pupillary substitution implying vulgar substitution, is far less convincing than the plea for the priority of the spirit of the will is at first sight.[5] Inevitably, Crassus' argument involved the introduction of examples of wills where vulgar and pupillary substitution were juxtaposed. And it is to such examples that the relative clause refers.[6] This, of course, makes excellent sense in a paragraph which treats examples as instances of arguments *ex similitudine*.

[4] A summary of this discussion is in Fuhrmann (1971).

[5] See also Manthe (1997).

[6] Examples of *this* type are alluded to also in *Brut.* 197: *Deinde hoc voluisse eum, qui testamentum fecisset, hoc sensisse, quoquo modo filius non esset, qui in suam tutelam veniret, sive non natus sive ante mortuus, Curius heres ut esset; ita scribere plerosque et id valere et valuisse semper.*

Only in a second step will Crassus have introduced examples which support on a general level the argument for the spirit instead of the letter (*de Orat.* 1. 243, above n.). The insertion of *agens/aiens de eo* in some MSS before *qui* is due to a misunderstanding of the text.

§41 quam vobis. Cicero has in mind that philosophers and orators have a wider scope for such parallels than lawyers. This is confirmed by the evidence we have for such arguments in Republican jurists; see Horak (1969), 242–66. The metaphorical *late patet* appears to refer to the variety of forms of such arguments and of occasions to use them.

occurrunt. An odd word to express that certain *loci* apply primarily to particular types of *quaestiones*. One needs to visualize the speaker going through the list of *loci* (cf. *Or.* 47: *ut, quoniam loci certi traduntur, percurrat omnis, utatur aptis*); sources of arguments found that way 'occur'. Cf. §§87–8 for the question which *loci* match which *quaestiones* particularly.

quaestiones . . . admonebunt. Cf. *de Orat.* 2. 175: *Quod autem argumentorum genus cuique causarum generi maxime conveniat, non est artis exquisitae praescribere, sed est mediocris ingeni iudicare, neque enim nunc id agimus, ut artem aliquam dicendi explicemus, sed ut doctissimis hominibus usus nostri quasi quaedam monita tradamus. Hic igitur locis in mente et cogitatione defixis et in omni re ad dicendum posita excitatis, nihil erit quod oratorem effugere possit non modo in forensibus disceptationibus, sed omnino in ullo genere dicendi.*

§42 collationibus. Apparently Cicero is using the word already here in the sense established below in §43.

tutor. On *tutela* see the commentary on §33; the legal aspects of the example are discussed in more detail in Watson (1965), 201–2.

socius. On *societas* see Kaser (1971), 572–6.

mandaris. On *mandatum* see Kaser (1971), 577–80.

fiduciam. *Fiducia* is a transfer of property, usually by *mancipatio* or *in iure cessio*, undertaken in most cases for the purpose of getting a surety for a loan. Usually, a retransfer of the property was intended for the time when the need for *fiducia* had ceased to exist. See Kaser (1971), 415, 460–3; Watson (1968), 41 ff.

procurator. Although later on there were several kinds of *procuratores*, it is widely agreed that the oldest was the *procurator*

omnium bonorum, who was in a general sense in charge of another person's affairs. The *procurator* was either a freedman or a personal friend of the person for whom *procuratio* was exercised. On the institution see Kaser (1971), 275–6 and Watson (1965), 193–4.

ex pluribus . . . quo vult. Cicero does not explain how an induction acquires or appears to acquire probative force; he describes only the external form of an inductive argument.

appelletur] *appellatur* d. The subjunctive is preferable, cf. Winterbottom (1996), 409. Cicero uses this rendering of ἐπαγωγή already in *Inv.* 1. 51, but he will not have expected his readers to know that.

Socrates. Socrates is also linked to inductive argument in *Rhet. B*22, 1393ᵇ4 ff. and *Inv.* 1. 51.

§43 collatione. Cf. *Inv.* 1.49 and *Rhet. B*20, 1393ᵇ3 (παραβολή).

Quem ad modum. Several of the less sincere witnesses read *Quem ad modum si in urbe de finibus controversia est quia magis agrorum videntur esse quam urbis . . .* But there is no good reason not to follow α (but with *quia* instead of *qui*); see Winterbottom (1996), 409 and Reeve (1998), 140.

magis agrorum. On the restriction of the *actio finium regendorum* to the country see the commentary on §23.

de finibus. It is not self-contradictory to say that *fines* are in principle a problem of the country, but that they might give rise to a quarrel in the town.

finibus regendis. A *dativus finalis*, which can only depend on *arbiter*; cf. K.–St. i. 748. The same holds for *aquae pluviae arcendae*.

aqua pluvia. On the uncertainty about the role of the *arbiter* in connection with the *actio aquae pluviae arcendae* see the commentary on §39.

§44 Crassus. The orator L. Licinius Crassus (born 140 BC, cos. 95, died 91; *RE* Licinius 55). He is one of the two main speakers in the *de Orat.*

exemplis . . . qui. On omission of genitive antecedents before relative clauses see K.–St. ii. 282.

qui] ante *qui* add. *agens/aiens de eo* ς. Some MSS consistently have the necessary changes to make the text report the content of the *causa Curiana*.

sic. Prospective to *ut*. The cases referred to in *heredes . . . obtinuissent* are analogous to the *causa Curiana* in Crassus' view only;

Scaevola would have argued that their different wording conveyed a different sense.

heredes. On the argument offered above, these are those who are named as substitute heirs by vulgar *and* pupillary substitution. One might wonder why these on Crassus' view 'analogous' cases are referred to through two features: the testators' hopes for a son (*si filius natus esset in decem mensibus*) and their use of pupillary substitution (*si . . . isque mortuus prius quam in suam tutelam venisset*; cf. the wording of pupillary substitution cited above), while no reference is made to these wills' being different from Coponius' in including vulgar substitution too. The answer must be that the *qui-*clause reflects Crassus' point of view and that, while Crassus relied on the fact that in cases where both substitutions had been combined the same secondary heir was usually named in both cases, the analogy itself depended on the actual correspondences between these cases and Coponius' will—and these correspondences are the two features. A separate question is why the coming into inheritance of the secondary heirs is presented as counterfactual (*obtinuissent*). In these analogous cases either no son was born, or he survived till puberty. In the latter case, he would have taken without controversy, so that the validity of the substitution would not have been tested in court; in the former, either there was an explicit vulgar substitution or there was not. The latter was the situation in the *causa Curiana*. It follows that the situation in the *causa Curiana* need not have been unprecedented; if it was not unprecedented and if nevertheless it was the first case of its kind in legal memory, in previous instances one of three things must have happened: (*a*) the *substituti* had taken unchallenged; (*b*) the *proximus agnatus* had taken unchallenged; (*c*) the parties had settled the case out of court. Of these (*a*) would suit Crassus, (*b*) Scaevola, (*c*) would have the potential to embarrass either or both.

instituissent. The transmitted reading is impossible, but Bornecque's *instituissent* gives good sense and is closer to what is transmitted than Madvig's *instituti essent*. However, the virtue of Madvig's proposal is that it avoids the change of subject from testators to *substituti*.

ut . . . obtinuissent. I do not understand Di Maria's comment on the *ut* clause ('Modalis enuntiatio interrogandi vi praedita, ut videtur, est habendum'); it is consecutive, but to a counterfactual conditional, so that the pluperfect subjunctive in each clause is the

same that would be used if the sentence were not in *oratio obliqua* (see K.–St. ii. 185 c). That is to say, in direct speech the sentence would read neither *Sic heredes instituerunt, ut, si filius natus esset . . . veniret, hereditatem obtinerent* (*ut* ambiguous between final and consecutive sense; . . . *veniret . . . obtinerent* in indirect speech too) nor *Sic heredes instituerunt, ut, si filius natus esset . . . veniret, obtinuerint* (consecutive *ut*; . . . *veniret . . . obtinuerint* in indirect speech too), but *Sic heredes instituerunt, ut, si filius natus esset . . . venisset, hereditatem obtinuissent.*

in suam tutelam veniret. 'To reach puberty'; cf. OLD s.v. *tutela* 3b.

§45 Ficta. Imaginary examples need to refer to a particular case at issue to be arguments *ex similitudine*; in this paragraph Cicero is focusing only on the side of the example. Cf. Ar. *Rhet. B*20, 1393ᵃ27 ff.: παραδειγμάτων δ᾽ εἴδη δύο· ἓν μὲν γάρ ἐστι παραδείγματος εἶδος τὸ λέγειν πράγματα προγεγενημένα, ἓν δὲ τὸ αὐτὸν ποιεῖν ('There are two species of examples; for to speak of things that have happened before is one species of example and to make them up oneself is another').

etiam. The argument against Friedrich's *enim* is that it implies Crassus' examples were imaginary.

Finge. There are instances for such imaginary examples e.g. in D. 5. 1. 18. 1 or 5. 3. 13. 4. On the use of fictitious laws in the declamation schools see Winterbottom (1984), p. xviii.

Num . . . accepit? Watson (1968), 19 doubts the accuracy of the answer implied in this question: 'It is hard to believe that, at a time when the law was as developed as it then was, *mancipatio* of a *res nec mancipi* was not treated as being a valid *traditio*.'

ὑπερβολή. Cf. the passages from rhetorical handbooks collected in Martin (1974), 264–5 and Lausberg (1998), §579.

§46

The example given by Cicero here as an instance for the *argumentum a differentia* has the following structure: argument is directed against a certain proposition and, by implication, for its contradictory ('One cannot pay a pupil without the *auctoritas tutoris*') on the ground that a proposition from which it could seemingly be inferred *per analogiam* is in fact not analogous and hence not suitable for such

an inference.[1] I refer to the commentary on §16 for further analysis of the *locus a differentia* in the *Topica*.

§46 est eiusdem. Cf. Boethius 341. 43: *Eiusdem facultatis est similitudines differentiasque cognoscere.*

   quod mulieri debeas. Women who were *sui iuris*, i.e. in the *manus* neither of their father nor their husband, were normally in the *tutela* of their potential heirs (on this form of *tutela* and its implications see Watson 1967, 146 ff.). The *tutor* had to give his consent (*auctoritas*) to certain legal transactions (listed in Kaser 1971, 277–8); receiving payment for a debt was not among them (on our passage cf. Watson 1967, 134, 152; see also Gaius, *Inst.* 2. 85).

   auctore. On how a *tutor* authorized a transaction concretely see Watson (1967), 132 n. 2 and Kaser (1971), 87.

   solvas. See Kaser (1971), 635–40 on *solutio* (with n. 7 on the relationship to *satisfactio*); see also D. 46. 3. 49.

   pupillo aut pupillae. See Watson (1967), 114–45 on *tutela impuberum*. There were no different provisions for male and female pupils; that both genders are mentioned is either an imitation of legal language or due to a (legal) source Cicero may have used. Cases where only one gender was explicitly mentioned often presented problems, which emerges from, for instance, D. 32. 1. 62 (Julian): *Qui duos mulos habebat ita legavit: 'mulos duos, qui mei erunt cum moriar, heres dato.' Idem nullos mulos, sed duas mulas reliquerat. respondit Servius deberi legatum, quia mulorum appellatione etiam mulae continentur, quemadmodum appellatione servorum etiam servae plerumque continentur. Id autem eo veniet, quod semper sexus masculinus etiam femininum sexum continet* ('A man who had two mules left a legacy as follows: "Let my heir give two *muli* [he-mules] which shall be mine when I die." He left no he-mules but two *mulae* [she-mules]. Servius replied that the legacy was due, for she-mules are included under the term *muli*, just as *servae* [female slaves] are mostly included under the term *servi* [male slaves]. This comes from the usual practice of including the feminine in the masculine.' On similar cases see Horak (1969), 203–4.

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[1] There are exact parallels for this way of arguing in justifications of *responsa* given by Republican jurists; see Horak (1969), 258 ff.

§§47–9

This passage contains additional information on the *locus e contrario* which, as parallel texts show (see below), probably comes from the source for the *loci*. Here Cicero has not tried to adapt his material to the needs of the lawyer nor to make it accessible for him; what he is relating here is unusual also from the viewpoint of ordinary rhetorical theory, as emerges from Quintilian's comment on similar material.[1] Given that this section is somewhat out of place in its surrounding because of the lack of adaptation, an explanation of the text as material on topical argument will inevitably not be very pertinent to the understanding of the *Topica* as a whole, but rather shed light on the nature of its source.

Aristotle, in *Top.*, *Cat.*, and elsewhere, distinguishes between four types of opposites (ἀντικείμενα):

τὰ πρός τι	τὰ ἐναντία	τὰ κατὰ στέρησιν καὶ ἕξιν	τὰ κατ' ἀντίφασιν λεγόμενα
Relatives e.g. father and son	Contraries black and white	Privation and Possession blindness and sight	Contradictories man and not-man
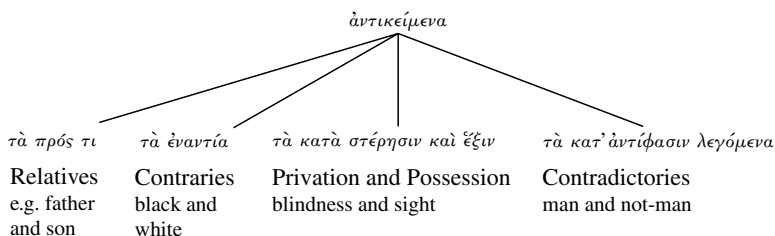
All four types of ἀντικείμενα may be used for the construction of arguments, and there are τόποι relying on each of these opposites in *Top.*;[2] in *Rhet.*, however, only ἐναντία appear in a τόπος. Note that τὰ κατ' ἀντίφασιν λεγόμενα are terms as opposed to propositions in the corresponding τόποι in *Top.* (cf. the example above)—as are the other ἀντικείμενα—and that the notions of στέρησις and ἕξις

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[1] *Inst. Or.* 5.11.31: *Contrariorum quoque aliter accipi opposita, ut noctem luci, aliter noxia, ut frigidam febri, aliter repugnantia, ut verum falso, aliter disparata, ut dura non duris: sed quid haec ad praesens propositum magnopere pertineant, non reperio.*

[2] I give references for *Top. B* only: 'Relatives' *B*8, 114ᵃ13–25 (one example of an argument relying on relatives is: εἰ ἡ ἐπιστήμη ὑπόληψις, καὶ τὸ ἐπιστητὸν ὑπόληπτόν, 'If knowledge is belief, then also the object of knowledge is an object of belief'); 'Contraries' *B*8, 113ᵇ27–114ᵃ6 or *B*7, 113ᵃ20–3; 'Privation and Possession' *B*8, 114ᵃ7–12 ὄψει μὲν αἴσθησιν (sc. ἀναγκαῖον ὑπάρχειν), τυφλότητι δ' ἀναισθησίαν ('perception is bound to follow sight, while absence of perception follows blindness'); 'Contradictories' *B*8, 113ᵇ15–26 εἰ ὁ ἄνθρωπος ζῷον, τὸ μὴ ζῷον οὐκ ἄνθρωπος ('if man is an animal, what is not an animal is not a man').

implicitly refer to an object in which they manifest themselves. In the example given, 'blindness' or 'sight' apply to a certain thing, 'blindness' being the absence of a quality this thing has 'by nature' ($\phi\acute{v}\sigma\epsilon\iota$; cf. *Cat.* 10, 12^{a}33). Contraries fall according to Aristotle under the same $\gamma\acute{\epsilon}\nu o\varsigma$, under contrary $\gamma\acute{\epsilon}\nu\eta$ or are themselves $\gamma\acute{\epsilon}\nu\eta$ (cf. *Cat.* 11, 14^{a}19–20).

Cicero gives this division:
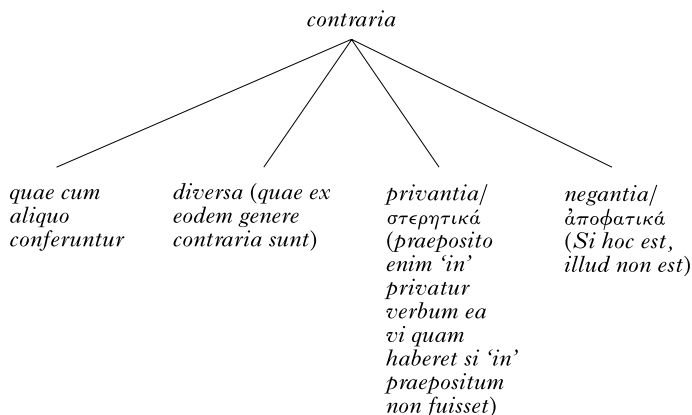
It is evident that the division is related to Aristotle's and that, in particular, it resembles the treatment of $\dot{\alpha}\nu\tau\iota\kappa\epsilon\acute{\iota}\mu\epsilon\nu\alpha$ in connection with $\tau\acute{o}\pi o\iota$ in *Top.* rather than in *Rhet.*, where there is only a $\tau\acute{o}\pi o\varsigma$ $\dot{\alpha}\pi\grave{o}$ $\tau\hat{\omega}\nu$ $\dot{\epsilon}\nu\alpha\nu\tau\acute{\iota}\omega\nu$.

The main difference is that in Cicero the term *contraria* ($=$ $\dot{\epsilon}\nu\alpha\nu\tau\acute{\iota}\alpha$) takes the place of $\dot{\alpha}\nu\tau\iota\kappa\epsilon\acute{\iota}\mu\epsilon\nu\alpha$ in Aristotle's division; this obscures how contraries were termed in Cicero's source. A further difference is that privation is not construed as a thing's being deprived of a quality it might be expected to have 'by nature'; instead, the notion is explained with reference to the meaning of a word to which a privative prefix is attached. This could have lead to a confusion with contradictories, as the difference from a contradictorily negated term may at times seem slight (cf. 'unpleasant' and 'not pleasant' in ordinary language). But Cicero appears to take what he calls *negantia* as referring to propositions rather than to terms (cf. the commentary).[3]

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[3] Since the hypothesis that Antiochus of Ascalon is in the background of the *Topica* partly rests on passages like this where an initially Aristotelian outline has

Compare now the Anonymus Seguerianus §179:

$$\pi\alpha\rho\alpha\kappa\epsilon\acute{\iota}\mu\epsilon\nu\alpha\ \tau\tilde{\eta}\ \mu\acute{\alpha}\chi\eta$$

τὰ ἐναντία (=ὅσα περὶ τὸν αὐτὸν τόπον   τὰ ἀντικείμενα (ὧν τὸ ἕτερον
στρεφόμενα πλεῖστον ἀλλήλων   τοῦ ἑτέρου ἀποφατικόν ἐστιν)
ἀπέχει)

τὰ στερητικά   οὐ στερητικά
(τέχνη, ἀτεχνία)   (ἀγαθόν, κακόν)
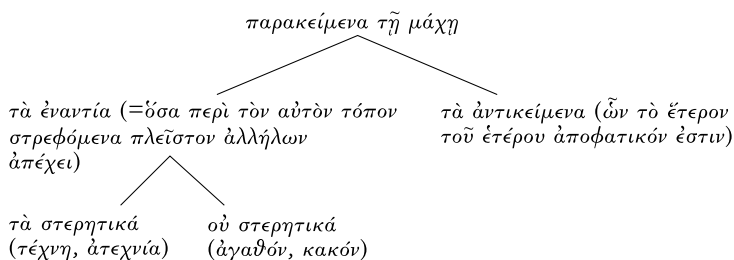
That the division forms part of the list of τόποι in the Anon. suggests that its counterpart in Cicero also belongs with the source for the *loci*. The second reason why it is treated here is that it in fact shows the Stoic influence that Wallies (1878), 28 ff. claimed to find in Cicero. Yet it must be underlined that Alexander (son of Numenios; see Ch. 3), from whose τέχνη the list of τόποι in the Anonymus derives, wrote in a time when the distinction between Stoic and Peripatetic theories of argumentation was less sharp than in the Hellenistic era; he might reflect a later development in this respect. Of Stoic origin are the notion of μάχη[4] and its use in connection with opposites,[5] and the use of ἀντικείμενα to denote contradictories alone.[6]

The section shows why it is difficult to classify Cicero's source as rhetorical or philosophical. For the division of opposites as given here is only to be found in works of Aristotle other than *Rhet.*; nevertheless, similar material appeared also in the τέχνη of Alexander, where it stood in an Aristotelian surrounding, but was clearly not part of a rhetoric with philosophical aspirations.[7]

undergone some changes, it is worth pointing out that these changes—perhaps with one exception ('privantia', see the commentary)—do not suggest *Stoic* influence. For the Stoics preserved Aristotle's restriction of calling only contraries ἐναντία (Simpl. *in Cat.* 405. 25–406. 5 = fr. 942 Hülser; Simpl. *in Cat.* 394. 14–15 = fr. 934 Hülser), and in Cicero's division *contraria*, in all likelihood the translation for ἐναντία, applies to all four types of opposites. There is, moreover, no evidence that the Stoics counted relatives as opposites.

[4] Cf. the commentary on §21.

[5] Apoll. Dys. *De coniunct.* pp. 208. 20–219. 6 (= fr. 926 Hülser; see also 951, 977); cf. Hülser iii. 1174–5.

[6] Simpl. *in Cat.* p. 403. 29–33 (= fr. 924 Hülser): . . . οἱ γοῦν Στωικοὶ μόνα ἀποφατικὰ τοῖς καταφατικοῖς ἀντικεῖσθαι νομίζουσιν ('Thus the Stoics consider that only negatives are opposed to affirmatives').

[7] Van Ophuijsen (1994), 148–57 argues that the disciplines of rhetoric and dialectic converged for various reasons in the Hellenistic Peripatos; the points made above are at least compatible with this proposition.

§47 quae ... differunt. The similar characterization in the Anonymus has been given above. In a book on opposites (now lost), referred to in the sources as *Περὶ ἐναντίων* or *Περὶ ἀντικειμένων*, Aristotle appears to have focused particularly on those contraries which fall under one *γένος* (Simpl. *in Cat.* p. 387. 17 ff. = fr. 1 *περὶ ἐναντίων* Ross = fr. 118 Rose); perhaps this accounts for the reduction of three types of contraries in *Cat.* (contraries which fall under the same *γένος*, fall under contrary *γένη*, or are themselves *γένη*) to one type in the tradition.

quibus propositis. What Cicero means is that in connection with contraries of this kind one of the two terms makes the other come to mind. *propositis* recalls *propositum*, Cicero's translation of *θέσις* in §79.

tamquam e regione. Cf. *OLD* s.v. *regio* 2b: '*e regione ...* directly opposite'.

non debilitas. *debilitas* in none of its meanings shows any direct relation to speed and is therefore not contrary to *celeritas*. Alternatively, *debilitas* and *celeritas* are not contrary because both may hold of the same subject: a man may be a fast runner but no good at lifting weights.

argumenta talia. *arg.* here means the whole argument, not the premiss from which a given proposition is inferred.

Si stultitiam ... malitiam. In Aristotle's view, such arguments from contraries are based on a rule like: 'If the contrary of a predicate A holds of the contrary of B, then A will hold of B.' For Cicero's different view cf. the commentary on §49 below.

diversa] *α* : *adversa ς*. Cf. Winterbottom (1996), 409: 'The same manuscripts have *diversa* at the reprise in 48, and it is more likely that FO [see list of sigla] have corrected from Boethius (344,13) than that the others have strayed twice.' Contraries are normally called *contraria* or *ἐναντία*; Cicero may have felt compelled by his source to use *contraria* in the general sense of opposites, but there is no Greek expression other than *ἐναντία* imposing itself to denote contraries and to be rendered properly through one of the variants given. So considerations of this kind are of no help. Di Maria 87 is confident that *adversa* is *difficilius*, and it was in the text which Boethius read. We certainly expect a word which expresses contrariety. *Adversa* clearly has this meaning (OLD s.v. *adversus*[1] 11a); so it is not *difficilius*. The question is whether *diversa* is *difficilius* or wrong. In fact, in Cicero's time *diversus* first and foremost meant 'opposite' (see *TLL* V/i. 1577. 9 ff.); cf. e.g. Varro, *RR* 3.5.12

dextra et sinistra . . . diversae duae . . . sunt piscinae; Cic. *Ver.* 5.117 *portus cum diversos inter se aditus habeant, in exitu coniuguntur*; Sall. *Catil.* 53. 6: *Diversis moribus fuere . . . M. Cato et M. Caesar.*

§48 licet. On *licet* with the subjunctive in this sense see K.–St. ii. 443 n. 2.

στερητικά. Aristotle's notion of privation, which was basically taken over (Simpl. *in Cat.* 394. 29–36 = fr. 935 Hülser), yet extended by the Stoics, has been explained above; it is linked to that of possession, which, however, is not mentioned explicitly by Cicero. Here στερητικόν is a word formed by attaching a privative prefix to a given word; for this use of the term we may compare Stoic dialectic, which distinguishes among the simple propositions as one class the privative ones (στερητικά; D.L. 7. 70 ἀφιλάνθρωπός ἐστιν οὗτος is the στερητικόν of φιλάνθρωπός ἐστιν οὗτος; see Frede 1974, 72). These get their privative character from a privative particle (στέρησις); in Greek this is the α *privativum* (cf. Apoll. Dys. *De coniunct.* p. 231. 11 ff.; Simpl. *in Cat.* p. 396. 3–22 = fr. 938 Hülser). It is possible that this doctrine exercised an influence on the division of opposites as given by Cicero.

tractatio est eadem. Cicero will have something in mind like 'If *indignitas* is *un*desirable, *dignitas* will be desirable.'

diversa. See on §47.

§49 conferuntur. Not 'are compared', which is not entirely appropriate to describe the relationship of two relatives and their role in an argument from opposites, but 'are referred to one another' or 'are related to one another'. Aristotle's definition of relatives is given in *Cat.* 7, 6ᵃ36–7: Πρός τι δὲ τὰ τοιαῦτα λέγεται, ὅσα αὐτὰ ἅπερ ἐστὶν ἑτέρων εἶναι λέγεται ἢ ὁπωσοῦν ἄλλως πρὸς ἕτερον ('We call relatives all such things as are said to be just what they are, *of* or *than* other things, or in some other way *in relation to* something else'; trans. Ackrill).

duplum simplum. Cf. *Cat.* 7, 6ᵃ39–b1: . . . καὶ τὸ διπλάσιον ἑτέρου λέγεται τοῦθ᾽ ὅπερ ἐστίν, τινὸς γὰρ διπλάσιον λέγεται ('And what is double is called what it is *of* something else (it is called double of something)').

illa] *alia* ς. Di Maria reads *alia* 'concinnitatis causa' (p. 88, referring to *alia* in §48 *init.* and §49 *init.*); but there are only four types of *contraria*, and the end of the series is better marked by *illa*.

ἀποφατικά. The adjective is rare in Aristotle (only *Cat.* 10, 12ᵇ8–9) but frequent in Stoic fragments; ἀποφατικόν can strictly speaking be applied only to the negative pole, the other being καταφατικόν. Compare the description of στερητικόν *without* a reference to possession above.

Graece. Di Maria 88 points out that reading *Graeci* would involve a change of construction from passive to active.

contraria aientibus. The present participle of *aio* is not elsewhere securely attested in classical Latin (cf. *TLL* s.v. *aio* i. 1453. 17–21); in *Rab. Post.* 35 the MSS have *dicentibus* and editors emend to *aientibus*, referring to our passage. Yet that Cicero intended to give a literal translation of ἀποφατικά seems a reasonable assumption. *Aio* was used in the sense of 'to affirm', not merely 'to say' (cf. Naevius v. 125 Ribbeck: *An nata est sponsa praegnas? uel aï uel nega*, 'Yes or no?'); *aientibus* is neuter plural and dative, depending on *contraria*; ἀποφατικά would be glossed as 'propositions opposite to those (sc. propositions) which affirm'.

Si hoc … non est. The Stoics call contradictorily opposed propositions ἀντικείμενα (cf. D.L. 7. 73: οἷον τὸ ἡμέρα ἐστὶν καὶ τὸ οὐχὶ ἡμέρα ἐστίν 'as e.g. the propositions "It is day" and "It is not day"'), and one pole of the contradictory pair ἀποφατικόν of the other. Apparently Cicero shifts from terms which are opposites to propositions which are opposites; *hoc* and *illud* refer to the *aiens* and to the *negans* that denies it ('If *p*, then not-*p*'). On this interpretation the conditional is not itself an example (which would be undesirable given the next sentence), but merely illustrates the relationship obtaining between the poles of the contradictory pair.

intellegantur] *intellegatur* ς. For the personal passive construction instead of an accusative with infinitive (*intellegatur*) cf. K.–St. i. 705 and *ND* 1. 106 *ex quo esse beati atque aeterni intellegantur*.

convenire] *non convenire* ς; cf. Di Maria 89–90. *Convenire* is preferable. Taking Cicero's example for *diversa*, a speaker who wants to prove that 'we (should) follow wisdom' will *in argumento quaerendo* use the *contraria* of 'to follow' and 'wisdom' to form a proposition which supports his point (*stultitiam fugimus*). *convenire* would mean something like 'to coincide with' or 'to apply at the same time' (cf. 'match' in the translation).

§§50–2

(i) Cicero starts with an explanation of the rationale of the example in §18, which he reproduces in indirect speech. In an argument *ex adiunctis*, one shows that a certain proposition must be rejected, because it has undesirable consequences. By implication, the contradictory of the rejected proposition is established. This, as had been pointed out, is a way of arguing of the *reductio ad absurdum* type.

(ii) Cicero then restricts the use of the *locus*, which makes the introductory sentence appear as an unusual example for an argument *ex adiunctis*: the primary application for it is, we are told, in *coniectura* cases in lawcourts, i.e. in cases where a question of fact is to be decided (as opposed for example, to cases in which the disagreement is about the legal evaluation of a certain fact). *Coniectura* cases are characterized through the main act of invention an orator has to undertake when setting up his speech: he has to consider the past, the present, and the future (in relation to the event at question, one is meant to supply), in order to be guided to eventual evidence.

(iii) As a heuristic principle, then, the *locus ex adiunctis* instructs us to ask what was before, simultaneous with, and after the action in question (§51).

(iv) But because the jurist is normally concerned merely with the assessment of facts which are not themselves doubtful (rather than with the establishment of these facts), the treatment of this *locus* is a digression within the general plan of the *Topica* (which is to prove the existence of and to describe 'thetical' patterns in legal argument and thus to prove the potential usefulness of the *loci* to the lawyer).

(v) In accordance with (iii), one can draw up a threefold classification of *adiuncta*. The examples given by Cicero can only be used as evidence in trials concerned with murder, which squares with the restriction in (ii).[1]

This restriction is remarkable, not only because, as Cicero himself realized, it is at odds with his aim to demonstrate the possible usefulness of the doctrine of τόποι for the jurist. It also seems to cast doubt on the assumption that the division of the θέσις in §§79–86

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[1] It is likely that someone committed a crime, if he can be shown e.g. to have undertaken preparations (*ante rem*). If it, however, can be ruled out that he did that, this will count as an argument against his guilt; in cases like this one the *locus* will yield *reductio*-like arguments. Cf. *de Orat.* 2. 170.

and the *loci* belong together, i.e. were not combined by Cicero himself, for in that case we should not expect a particular *locus* to be applicable to only one type of forensic ὑπόθεσις.

Since the example repeated from §18 indicates that Cicero knew the *locus ex adiunctis* was not by its very nature confined to the *status coniecturalis*, and since arguments from παρεπόμενα in medical writers such as Galen indicate that it was not so confined in practice, the decision to restrict it here would seem to be Cicero's own. A reason why he might have done this is that it shows certain similarities with a typical pattern of forensic argument. In standard rhetorical theory, the *status* '*coniectura*' is closely linked to present, past and future, either because the reference to a particular time is supposed to be inherent to a question classified as falling under '*coniectura*' (cf. *Inv*. 1. 11 = Hermagoras fr. 13a Matthes), or because the consideration of events prior to, simultaneous with or posterior to the action under discussion is viewed as a *locus* peculiar to forensic oratory (cf. *Inv*. 2. 43; *Rhet*. *Her*. 2. 8). Through his rhetorical education, mirrored in *Inv*., Cicero was used to associating the pattern 'past, present, future' with forensic *coniectura* cases.

In *Topica* §§ 87–90 we are told which questions match particularly which *loci*; the *locus ex adiunctis* is said to be particularly suitable for the *status coniecturalis*. However, this statement immediately follows the division of the θέσις, in which *coniectura* is used to denote on a general level a particular way to tackle a problem and has no specifically forensic connotation. So there is a certain tension between what Cicero says in §§50–2 about the connection between *coniectura* questions and this *locus* and what he says in §§87–90, which further supports the view that the restriction is not part of the original outline of the theory presented in the *Topica*.

And while the parallel τόπος in the Anonymus Seguerianus shows that Cicero's threefold classification of *adiuncta* was not his own idea (there παρεπόμενον is divided into πρὸ τοῦ πράγματος, ἐν τῷ πράγματι, and μετὰ τὸ πρᾶγμα, §178), in the Anon. there is no indication that the τόπος is restricted to forensic *coniectura* cases; note also that the source to which I assigned the τόποι in Ch. 3 (Alexander, son of Numenios) shows no trace of στάσις-doctrine.

Vaguely comparable argumentative principles are to be found in rhetorical handbooks which do not follow or represent exclusively

the mainstream of the technographical tradition,[2] in Aristotle's *Rhet.* and already in pre-Aristotelian rhetoric.[3] Themistius' list of τόποι appears to have included a similar τόπος, which seems to be influenced by a counterpart in Aristotle's *Top.* (B5, 112ᵃ16–24).[4] Nowhere else in the tradition is the restriction to be found. That *reductiones ad absurdum* are used by philosophers and jurists *passim* needs no demonstration.[5]

Although it is possible to point out some similar τόποι in Aristotle, there is no exact ancestor for this *locus* to be found there. But it is possible to suggest where it comes from.

It is evident that for Cicero an *adiunctum* is primarily not a proposition logically related to another in a certain way, but rather a factual situation, one state of affairs which is linked to another. (On the evidence of §53, Cicero views logical relationships like 'consequence' in principle in this way too.)

There are two elements of rhetorical theory which may be compared. First, there is a certain affinity to non-technical proofs, i.e. proofs relying on factual evidence, statements by witnesses, and the like. A testimony about the defendant's state of mind in a murder trial ten minutes after the alleged killing may be used as a non-technical proof *or* furnish the material for an argument *ex adiunctis* (cf. Quint. *Inst. Or.* 5. 9. 1). Secondly, there is a link to

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[2] e.g. Minucian. i. 420. 6 Spengel = 344. 5–6 Spengel–Hammer (ἀπὸ τῶν παρεπομένων; unfortunately there is no explanation because of a lacuna at i. 423. 6 = 348. 10). Quint. *Inst. Or.* 5. 10. 75 (who introduces—as he admits not very relevant—terminological distinctions).

[3] *Rhet.* B23, 1399ᵃ11–18, about which Aristotle says that it was the cornerstone of the τέχνη of the rhetorician Callippus (1399ᵃ17).

[4] *De Top. Diff.* 1190 B (corrected version of Migne): *A communiter accidentibus argumenta fiunt quoties ea sumuntur accidentia, quae relinquere subiectum vel non possunt vel non solent, ut si quis hoc modo dicat: Sapientem non paenitebit, paenitentia enim malum factum comitatur. Quod quia in sapiente non convenit, ne paenitentia quidem. Quaestio de accidente. Maxima propositio: Cui non inest aliquid, ei nec illud quod eius est consequens inesse potest; locus a communiter accidentibus* ('Arguments arise from associated accidents when we consider accidents which cannot or generally do not leave their subject. For example, if someone speaks in this way: a wise man will not repent, for repentance follows on a bad deed; but since (doing) a bad deed does not belong to a wise man, neither does repentance. The question has to do with accident. The maximal proposition: what follows from something which does not inhere in a thing cannot inhere in that thing either. The Topic: from associated accidents'; trans. Stump). Boethius equates the *locus ex adiunctis* with Themistius' *locus a communiter accidentibus* (*De Top. Diff.* 1204 A).

[5] For the jurists of the Republican era see Horak (1969), 267–75.

inferences 'from signs'. The analysis of such inferences has a long history from the *Rhet. ad Alex.* through Aristotle (*Rhet.*, *An. Pr.*) to the Stoics, the Epicureans, and medical writers. Burnyeat (1982), 194 explains the term: 'In everyday discourse . . . for x to be a sign or evidence of y requires (i) that x should be *evident* or manifest to us in some appropriate way, (ii) that it should be evidence *of* something else in that y may be inferred from it. The task of the technical analysis would then be to explain the relationship between x and y which sustains and justifies the inferring of the second from the first.'

   Parts of the rhetorical tradition were influenced by the philosophical analysis of signs. Quintilian, who distinguishes between necessary and non-necessary signs, glosses the former in this way (5. 9. 4–5):

Hoc genus per omnia tempora perpendi solet. Nam et coisse eam cum viro, quae peperit, quod est praeteriti, et fluctus esse, cum magna vis venti in mare incubuit, quod coniuncti, et eum mori cuius cor vulneratum, quod futuri, necesse est.

Quintilian himself says that many rhetoricians view signs as belonging with the treatment of *argumenta*. There are two distinctions to make. In the passage quoted it is the thing for which something is a sign which may be classified in terms of past, present, and future, while Cicero uses the classification for the thing which can be observed. And all the items Cicero lists as *adiuncta* would be non-necessary signs in Quintilian's division. Nevertheless, that Cicero's *locus ex adiunctis* and the Anon.'s παρεπόμενα reflect an influence of the theory of signs on rhetorical invention seems possible.[6]

§50 equidem. Marks the first of two antithetical clauses (cf. *OLD* s.v. 1e) and has concessive force (K.–St. i. 806); *sed* below answers to it.

[6] Cf. Allen (2001), 36: 'To conclude that a man is an adulterer on the basis of his taste for late-night walks would be reckless and unfair (cf. *SE* 5, 167b8). But suppose that there are other signs of this kind, i.e. that this person has other features belonging to adulterers, e.g. a new interest in his personal appearance (cf. 167b10–11; *Rhet.* 2.24, 1401b24): he will then belong to many such classes. The accumulation of signs, none of which has much weight by itself, may in the end constitute a powerful though, as we should say, circumstantial case, and there is evidence that the rhetorical tradition took signs to be valuable in just this way (cf. [Cicero] *Rhet. ad Heren.* 2. 11; Cicero, *Part. orat.* 39–40; Quintilian 5. 9. 9–10).'

exemplum. *Multa adiungi . . .* depends on *exemplum* or *exemplum posui*, a construction derived from that of the accusative with infinitive after a *verbum dicendi* or *sentiendi*; cf. K.–St. i. 695–6. Cf. *Rep.* 1. 5 . . . *exempla, Miltiadem . . . vitam . . . profudisse.*

paulo ante. Cf. §18.

suscipienda. *suscipere* instead of e.g. *accipere* indicates that the consequence (the *adiunctum*) is an undesired one (cf. *OLD* s.v. 10a).

ex edicto . . . tabulas. For the legal background of the example see the commentary on §18.

instituisset. This use of *instituere* (*tabulas/testamentum instituere*) is non-technical; *heredem instituere* is common. Cf. Heumann–Seckel s.v. *instituo* 5.

testamenti factio. 'The right to testate'; on the expression see Kaser (1971), 682 with n. 2.

nulla. The adjective instead of the adverbial *non* conveys emphasis ('who had no right . . . *at all*'); cf. K.–St. i. 236, 824.

Sed. The contrast to the first sentence consists in the restriction of the *locus* to forensic *coniectura* cases, which makes a problem relating to *testamenti factio* an irregular instance of an argument *ex adiunctis*.

coniecturales causas. *causa* can mean 'the case' or 'the particular question' ($= \dot{v}\pi\acute{o}\theta\epsilon\sigma\iota\varsigma$; cf. §79), which is at issue in a case. In both meanings, *causa* may be qualified by *coniecturalis* as opposed to *definitiva* and *iuridicialis* (cf. §92). But *cum quaeritur . . . .* below makes better sense with 'particular question'.

iudiciis. The mention of *iudicia* prepares for Gallus' quotation, as the actual trial was not the field of the jurist; he was consulted beforehand.

cum quaeritur. The following questions were not necessarily asked in the trial, but rather by the orator when undertaking *inventio*; therefore *causa* is likely to have the meaning indicated. That *coniectura* cases may be argued by referring to events past, present, or future to the action under consideration is standard doctrine; see the general note above.

§51 Ac . . . quidem marks a transition (K.–St. ii. 23.11) and rounds off §50; the *forma* was outlined in the first sentence where the structure of a given argument *ex adiunctis* was explained.

admonet autem. The *locus* is now considered as a heuristic principle.

quaeratur. As indicated in the general note above, the *locus* involves inquiring into what was before, together with, and after the subject at issue (*res*).

Nihil...Ciceronem. The jurist, when approached for a *responsum*, normally considers the *quaestio iuris* and takes the facts reported by the client for granted; the orator in a trial has, in *coniectura* cases, to persuade audience and judge that the facts are as he maintains. This requires rhetorical skill, which Aquilius primarily associated with Cicero. Of course, the bonmot is to be taken *cum grano salis*, as the tasks of the jurist and the orator could not be set apart so clearly; see Georgesco (1948), 194 and Wieacker (1988), 667 n. 27.

inquiebat] *inquibat* ς. MSS A and B read *inquiebat* at *Luc*. 145 (see Ch. 5 on their contents), and there are more parts of *inquit* as an *io*-present in Cic. and elsewhere (see Leumann 1977, 531); and *inquibat* does not exist except in late antiquity.

Gallus. On C. Aquilius Gallus cf. the commentary on §§32, 40; the range of his interests is outlined in Wieacker (1988), 600–1.

oratorius. Here the qualification of the *locus* as rhetorical is due to the restriction, as the next sentence (*enim*) indicates. On a more general level, Cicero views the *loci* treated in the *Topica* as a whole as a contribution to rhetorical theory; cf. §3 (a *rhetor* should explain Aristotle's *Top*. to Trebatius) and *Or*. §46.

§52 locus. The scene of the crime *ante factum* is to be considered; cf. *Rhet. Her*. 2. 7.

titubatio. Cf. *Inv*. 2. 41. *titubare* means 'to move unsteadily'; Ernout–Meillet call it a 'mot expressif à redoublement'. On the reduplication see Leumann (1977), 382. The noun has the figurative meaning 'hesitancy'.

cetera] α : *ceteraque* B$_A^{pc}$: *et cetera* ς. Winterbottom (1996), 409: 'The two different remedies applied to the asyndetic *cetera* strike the eye. For the asyndeton cf. *Inv*. 2.177 . . .'.

possunt] dL : *possint* B$_A$a. Winterbottom (1996), 409: '. . . a tolerable (generic) subjunctive'.

§§53–7

In this section Cicero deals with the so-called Indemonstrables, Stoic hypothetical syllogisms (see below), and links the third to the

locus a repugnantibus, and the first two to the *loci ex antecedentibus*
and *ex consequentibus*, in the sense that such syllogisms are assumed
to provide the underlying structure for these rhetorical argument
patterns (see the commentary on §§19–21). Cicero himself intro-
duced this material into the framework of the list of *loci*.[1]

Quite exceptionally, this section is largely a straightforward
reproduction of a Greek source. However, this does not entail
that it is mindless repetition, as some interpreters have suggested.
Cicero had an informed layman's knowledge of the material he is
introducing here (as will be shown presently), and it can be ex-
plained why he includes it.

Stoic logic crops up in Cicero's philosophical works in many
places, most prominently in the *Academica*, the *De Fato*, and the
De Divinatione. It would be worthwhile to bring together all the
relevant passages, many of them important *testimonia*, to show how
detailed Cicero's knowledge of the subject actually was and to
examine how much critical understanding on Cicero's part is in-
volved.[2] It may be difficult to imagine Cicero studying treatises
of Chrysippus, but this is unnecessary anyway. The Stoic philoso-
pher Diodotus lived in Cicero's house, and Cicero studied
logic with him (*Brut.* 309); as possible mediator of the material
in §§53–7, Diodotus is certainly as good a guess as any.[3]

Cicero's interest in logic was to some extent fuelled by his zeal to
understand philosophical texts, but he also believed in the practical
use of logical training. In *Or.* 113–15, he recommends the study of
logic to the perfect orator. Someone who is trained in logic is

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[1] Indemonstrables have in themselves nothing to do with 'invention', but rather
with 'judgement', which Cicero intended to cover in a separate work (cf. §6). The
reconstruction of the original context of the *Topica*'s main source (see Ch. 4) does
not account for its inclusion either.

[2] I give a very selective survey of pertinent passages, moving from the general to
the particular. The orator should adopt the dialecticians' acumen, their knowledge
about linguistic ambiguities and their capacity of concise expression (*de Orat.* 1.
128, 2. 111; *Part. Or.* 139–40 respectively); contrast the critique of this conciseness
in *ND* 2. 20. Dialectic is supposed to be the judge about truth and falsehood (*Luc.*
91; context: a sceptic attack on dialectic). The Stoic notion of a proposition (*Luc.*
95). The truth conditions of a disjunction (*Luc.* 97; *ND* 1. 70). The discussion
about the truth-conditions of an implication (*Luc.* 143). In a celebrated letter to
Varro (*Fam.* 9. 4) Cicero makes an elaborate joke relating to the Master Argument
of Diodorus Cronos (analysed by Griffin 1995, 339 ff.).

[3] *Luc.* 98, sometimes taken as evidence that Antiochus taught Cicero Stoic logic,
need not carry this weight; the reference may be to the assessment of a particular
problem.

capable of succinct argumentation, which in public oratory too is sometimes preferable to a more profuse manner of speaking. And in general, knowing Chrysippus' teachings furthers what are today called 'analytical skills'. *Haec tenenda sunt oratori* (*Or*. 115).

From here we move to analytical skills the perfect jurist should have. The relevant passage had been touched upon already in Ch. 4 (*Brut*. 152). Ser. Sulpicius Rufus' towering position in Roman jurisprudence is explained, and in particular his *ars*, which is contrasted with other jurists' *usus*:

quod numquam effecisset ipsius iuris scientia, nisi eam praeterea didicisset artem quae doceret rem universam tribuere in partis, latentem explicare definiendo, obscuram explanare interpretando, ambigua primum videre, deinde distinguere, postremo habere regulam qua vera et falsa iudicarentur et *quae quibus propositis essent quaeque non essent consequentia*.

This he could never have attained through knowledge of the law alone had he not acquired in addition that art which teaches the analysis of a whole into its component parts, sets forth and defines the latent and implicit, interprets and makes clear the obscure; which first recognizes the ambiguous and then distinguishes; which applies in short a rule or measure for adjudging truth and falsehood, *for determining what conclusions follow from what premises, and what do not*. [Trans. Hendrickson; my emphasis.]

The text continues with a praise of the clarity of thought and exposition which is the distinctive feature of Servius' writings and oral advice. The clause in italics refers again to logic in the sense of study of arguments.[4]

One might think that Cicero's view that certain Indemonstrables provide the underlying structure of arguments 'found' through the three *loci* under discussion does not in itself warrant the discussion of Indemonstrables; here the considerations of *Or*. 113–15 and *Brut*. 152 suggest an additional reason why this material was included. So if Cicero says in §57: *Sed ne hae quidem quas exposui ad hanc institutionem necessariae*, we should take this as referring to the shift of the discussion from *invenire* to *iudicare* (or, more narrowly, to the discussion of seven rather than the first three types of syllogism only), but not to the complete irrelevance of the section.

I shall now give a short general introduction to Stoic hypothetical syllogisms, in order to provide a background for what follows.

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[4] On the ancient notion of λογική, which included logic in the sense of study of arguments, see the commentary on §§6–8.

Stoic syllogistic centres around the—originally five—'Indemon-
strables' (see Frede 1974, 124 ff.; Bobzien 1996, 133 ff., on whose
exposition my introductory remarks are based). One has to distin-
guish between the Indemonstrables themselves, the modes
(τρόποι) of the Indemonstrables, the five (or, as here, more)
types, kinds, or classes of Indemonstrables, and the accounts or
definitions of the Indemonstrables of the different types.

An Indemonstrable is a particular argument, composed of prop-
ositions, e.g.

   If it is day, it is light. It is day. Therefore it is light.

A mode is a 'sort of scheme of an argument' (D.L. 7. 76; S.E. *Adv*.
Math. 8. 236) in which ordinal numbers are put in the place of
simple propositions in the sequence of their occurrence, the same
number being used for all occurrences of the same proposition, e.g.

   Either the first or the second. The first. Therefore not the second.

The 'five types of Indemonstrables' is an expansion of phrases like
'the five Indemonstrables', which are sometimes to be found in the
sources; since an Indemonstrable is a particular argument, 'the five
Indemonstrables' must be a way to refer to a class whose elements
are the Indemonstrables of the particular kind. The accounts or
definitions of the Indemonstrables determine whether a particular
argument is an Indemonstrable and which type it is, e.g. (cf. S.E.
Adv. *Math*. 8. 224; D.L. 7. 80):

A first Indemonstrable is an argument that is composed of a conditional
and its antecedent (as its premises), having the consequent of the condi-
tional as conclusion.

The distinction between mode and definition of an Indemon-
strable is crucial for the assessment of some textual problems in
our passage; for in modes the negations of the propositions of
the particular argument whose mode is given are preserved,
while the definition of an Indemonstrable is indifferent as to
whether the propositions involved are negated or not. Instead, it
refers to propositions and their contradictories, which leaves it
open in the individual case which of the two is a negated propos-
ition (see Bobzien 1996, 137).

Originally, the Stoics distinguished five types of Indemon-
strables, with types one and two having an implication as major

premiss ('If *p*, then *q*'), type three a negated conjunction ('Not both *p* and *q*'), and types four and five a disjunction ('Either *p* or *q*').

Later writers felt the need to extend this list (e.g. Martianus Capella, Cassiodorus, Isidore; see Frede 1974, 157 ff.), and one extension (with our passage cf. Philop. *in An. pr.* 246.5–14; Them. *in An. pr.* 94.21–30), apparently included syllogisms whose first premiss was a quasi-disjunction, i.e. a compound proposition of the form 'Either *p* or *q*', whose truth-conditions are that *p* and *q* cannot be true together, but can be false together, though either *p* or *q* is in fact true.

I expand briefly on the difference between a disjunction and a quasi-disjunction: the ancient sources explain the difference between these two types of compound propositions in terms of complete and incomplete 'conflict' (μάχη) of the constituent propositions involved. The constituent propositions forming a disjunction stand in a relationship of *complete conflict*, if they can be neither true nor false together (S.E. *PH* 2. 162). This entails that, for a disjunction to be true, one of the constituent propositions must be true. In a quasi-disjunction, the constituent propositions stand in a relationship of *incomplete conflict*, i.e. they cannot be true together but can be false together (combine D. 50. 16. 124 and Gell. *NA* 16. 8. 14). And although it could in principle be the case that the constituent propositions of a quasi-disjunction could in fact both be false, the requirement is maintained that, for a quasi-disjunction to be true, one of the constituent propositions must be true.

It is very likely that, because of terminological and systematic constraints, the quasi-disjunctive premiss was given the linguistic form of a negated conjunction, which may account for the apparent respective superfluity and invalidity of *modi* six and seven in Cicero (see Frede 1974, 164 ff. with 154–7). This interpretation renders unnecessary the assumption of Kneale–Kneale (1962), 177 ff. that Cicero's source or his rendering of it is grossly muddled.

Let me survey §§53–7 and address some questions which arise. Cicero introduces the discussion of the tripartite *locus*, called *dialecticorum proprius*, by distinguishing it from its predecessor, the *locus ex adiunctis*: *adiuncta*, accompanying circumstances, are

said not to occur always, whereas *consequentia* do. Cicero's choice of expression, *eveniunt*, suggests that when talking about *consequentia* he does not refer to propositions which stand in a certain logical relationship to other propositions, but rather to states of affairs that follow others. This impression is confirmed by Cicero's saying that what follows something (*res*) coheres with it necessarily, whereas what conflicts with something can never cohere with it. While this is worth pointing out, it is not unusual. The Stoics viewed logical relationships like consequence or conflict as holding not between propositions but between states of affairs referred to in propositions. There are parallels to Cicero's manner of speaking in our passage (e. g. Plut. *De E ap. Del.* 386 F–387 E).

In Cicero's initial exposition here, no reference is made to the third rhetorical *locus* (*ex antecedentibus*; §19). One might wonder why Cicero only talks about *consequentia* and *repugnantia*, not about *antecedentia*, given that he assumes a relationship between the three rhetorical *loci* and the first three Indemonstrables. I assume that this has to do with the fact that Cicero is already here reproducing the beginning of the source for the Indemonstrables. There *two* technical terms—ἀκολουθία and μάχη—will have appeared. As technical terms referring to the Indemonstrables, the notions of ἀκολουθία and μάχη were in all likelihood brought into play by Chrysippus (S.E. *PH* 2. 111; *Adv. Math.* 8. 265; for the ascription see Frede 1974, 82–93); he set as truth-conditions of an implication (ἀκολουθία) that there must be 'connection' (συνάρτησις) between the antecedent and the consequent involved, which meant that the antecedent and the contradictory of the consequent should be in conflict (μάχεσθαι). In a later text, Galen's *Institutio Logica*, the notions of consequence and conflict are also used in connection with the discussion of the Indemonstrables. And they are introduced as indicating the relationship of the states of affairs referred to by the two constituent propositions of an implication and a disjunction respectively (Galen says that they refer to the φύσις τῶν πραγμάτων; cf. *IL* p. 9. 12–16, 17 ff. (ch. 4) Kalbfleisch; equally Alcinoos, *Intr.* §§158. 16, 159. 25–8 Whittaker). Clearly Galen's use and interpretation of the two notions is close to what Cicero says in §53.

And if the hypothesis ventured in the commentary on §§19–21 is true that Cicero is likely to have found the items ἐξ ἀκολούθου and

ἐκ μάχης among his τόποι,[5] this would have constituted a point of contact between the two sources; this 'point of contact' may have inspired Cicero to associate the three rhetorical *loci* with Indemonstrables of the first three types.

Cicero continues by stating that while the *locus* (being *one*?) points to one way of finding an argument, it allows for three ways of arranging it. The example given is that of the *locus a genere* in §13, but this does not seem to play a role here; rather, Cicero assumes that to prove a certain proposition one may consider either the *antecedens* or the *consequens* or the *repugnans*, and in each case this process of invention will yield the same data, which, cast in the form of a proposition and appropriate negations having been attached, may be used to infer from it the desired conclusion in the form of one of the first three Indemonstrables. A parallel passage in Martianus Capella (4. 421) shows that there was a tradition to the effect that in Indemonstrables of the first three kinds one proposition *p* could be used to infer from it another proposition *q*, if *p* and not-*q* were incompatible.

Cicero then (§54) gives 'descriptions' or 'accounts' of the first three *modi conclusionis*, *modus* meaning 'type of Indemonstrable' rather than mode in the sense outlined above; to realize that definitions or accounts, not modes, are given is vital because of the pecularities of expression which the 'accounts of Indemonstrables' show (see above).

In §55 Cicero links enthymemes, rhetorical arguments involving contrarieties, to the third *modus*, illustrating this with three verses whose structure rests on contrarieties. This type of argument is said to be used by jurists as well, although primarily it belongs to philosophers and orators; its distinguishing feature are *repugnantes sententiae*. I shall return to this problem shortly.

[5] See the commentary on §§19–21 and Apsines on the τόπος ἐκ μάχης (p. 182. 1–8 Dilts–Kennedy): ἢ ἐκ μάχης· ... [first example] καὶ πάλιν· πῶς δ'οὐκ ἂν εἴη τὸ συμβαῖνον ἄτοπον, εἰ νομοθετοῦντες μὲν ὀργίζεσθε τοῖς πονηροῖς, ἐπ'αὐτοφώρῳ δέ τινας λαβόντες ἀφήσετε'. μαχόμενον γὰρ τὸ τιμᾶν τὸν νομοθέτην τῷ ἀτιμάζειν τοὺς νόμους, καὶ τὸ μισεῖν τοὺς πονηροὺς τῷ πάλιν ἀθῴους ἐᾶν. μάχη δ' ἐστίν, ὅταν τις τὰ ἐναντία ἑαυτῷ ποιήσῃ ('Or from conflict: ... And again, "How would it not be a strange situation if you express anger at criminals in legislation, but let them go when you take them in the act?" For honouring the lawgivers is incompatible with dishonouring the laws, and hating criminals with letting them go unpunished. There is conflict whenever someone does things that contradict himself'; trans. Dilts–Kennedy, adapted; example is from [Dem.] 26. 24). The example for the τόπος ἐκ τοῦ ἀκολούθου συλλογιστικῶς involves conditionals (p. 180. 2–4 D.–K.).

In §§56–7 *modi* four to seven are discussed, this time in the form of modes, but with demonstrative pronouns in place of ordinal numbers.

Four problems require further discussion, namely:

  (i) what exactly Indemonstrables of the third type have to do with 'conflict' (μάχη);

  (ii) why enthymemes are associated with 'conflicting' propositions;

  (iii) how the apparently Stoic terms ἀκολουθία and μάχη got into a list of Aristotelian τόποι;

  (iv) and finally, why enthymemes—given that they involve *repugnantes sententiae*—are associated with third rather than fourth or fifth Indemonstrables.[6]

(i) The Stoics set a negated conjunction as the first premise of an Indemonstrable of the third type and defined a conjunction as being true if all its constituent propositions were true, but false if one of them were false (e.g. S.E. *Adv. Math.* 8. 226; *PH* 2. 158; D.L. 7. 80). This means that a negated conjunction is true if only one of its constituent propositions is false.

Indemonstrables of the third type can, however, only be useful for proof if the constituent propositions of their first premise are incompatible. Therefore later writers, identified as Stoics themselves in Max. Plan. *in Pseudo-Hermog. Inv.* v. 408. 17–410. 7 Walz, added the requirement that the constituent propositions of a negated conjunction cannot both be true, though they may both be false (e.g. 'Dion is in Athens', 'Dion is in Rome') to the truth-conditions of the negated conjunction (Max. Plan. loc. cit.; cf. Galen, *IL* p. 34. 24 ff. Kalbfleisch). Chrysippus, who would not have denied that the *maior* of a third Indemonstrable, in order to be useful as a proof, would need to contain conflicting constituent propositions, apparently did not want the incompatibility of the propositions involved to be an *element of the logical form* of negated conjunctions.

Clearly the question of the relative date of Cicero's source for the Indemonstrables is connected with this problem. If the source

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[6] The rest of the introductory note owes much to the richly informative Burnyeat (1994), esp. 39 ff.

followed the view that true negated conjunctions are necessarily built from *conflicting* propositions, it would be unlikely to reflect the views of Chrysippus and would have to be seen as a later Stoic text. And it had been said above that Cicero equates Indemonstrables of the third type with enthymemes, because both are based on *repugnantes sententia* (§56). So Cicero seemingly sides with the later Stoics.

However, the description of the third *modus conclusionis* shows that the link to the notion of μάχη in Cicero's source followed the Stoic position (in not allowing μάχη of the propositions involved to enter into the logical form of the negated conjunction). The text runs (in a): *cum autem aliqua coniuncta negaris et ex iis* <u>*unum aut plura*</u> *sumpseris ut quod relinquitur tollendum sit, is tertius appellatur conclusionis modus*. The underlined phrase, which takes regard of negated conjunctions consisting of two or more constituent propositions as first premiss, rules out the possibility that these constituent propositions could be regarded as conflicting. For the case of *plura* would then yield a false compound minor premiss.

This makes the question why Cicero associates *repugnantes sententiae* with third Indemonstrables even more pressing. I presume that the connection between 'conflict' and third Indemonstrables in Cicero's source was merely an indirect one. To support this claim, I can again refer to the passage in the *Institutio Logica* quoted above (*IL* p. 32. 24 ff. Kalbfleisch). There it is stated that the Stoics did not require the constituent propositions of a negated conjunction to be incompatible; Galen criticizes this position for the reasons mentioned above and adds that many arguments of this form, *but with conflicting propositions*, occur in lawcourts. A similar statement in Cicero's source could account for the strangely contradictory state of affairs in Cicero. So much for the connection between μάχη and third Indemonstrables. I move on to the connection between μάχη and enthymemes.

(ii) The idea that enthymemes have to do with contrarieties or incompatibility is not only to be found in Cicero. From the earliest occurence in a rhetorical handbook onwards (*Rhet. ad Alex.* p. 37. 12 ff.), an enthymeme is an argument of the form: 'You say *p*; but *p* is incompatible with your statement/the fact *q*' (see Burnyeat 1994, 41). This could be the explanation: once the notion of μάχη had become current in logical contexts, it might have occurred to

someone to employ it to characterize the crucial feature of arguments which the rhetorical tradition had called enthymemes all along.

However, there is arguably a second, less direct way in which one might arrive at the notion that enthymemes are arguments ἐκ μάχης. Aristotle gives this fundamental classification of enthymemes (*Rhet. B*22, 1396ᵇ23–8):

ἔστι γὰρ τῶν ἐνθυμημάτων εἴδη δύο· τὰ μὲν γὰρ δεικτικά ἐστιν ὅτι ἔστιν ἢ οὐκ ἔστιν, τὰ δὲ ἐλεγκτικά, καὶ διαφέρει ὥσπερ ἐν τοῖς διαλεκτικοῖς ἔλεγχος καὶ συλλογισμός. ἔστι δὲ τὸ μὲν δεικτικὸν ἐνθύμημα τὸ ἐξ ὁμολογουμένων συνάγειν, τὸ δὲ ἐλεγκτικὸν τὸ τὰ ἀνομολογούμενα συνάγειν.

For there are two kinds of enthymemes: some are demonstrative of the fact that something is or is not the case, others are refutative, and the difference is like that in dialectic between refutation and syllogism. The demonstrative draws a conclusion from what is agreed, the refutative draws conclusions that are incompatible (with what the opponent says).

Enthymemes are discussed here against the background of the *Top.* (ἐν τοῖς διαλεκτικοῖς). An ἐνθύμημα can either prove that something is or is not the case by deducing a certain conclusion from premises which are agreed by the audience (ὁμολογούμενα), just as the dialectical συλλογισμός is performed by the questioner in a dialectical γυμνασία by deducing his intended conclusion from premises granted by the respondent; alternatively, an enthymeme refutes by deducing (συνάγειν being equivalent to συλλογίζεσθαι) that which is incompatible with what the opponent says (= τὰ ἀνομολογούμενα).[7] And because Aristotle connects the ἐλεγκτικὰ ἐνθυμήματα with the ἔλεγχος, one is entitled to take τὰ ἀνομολογούμενα more precisely as the *contradictory* of the opponent's position; for an ἔλεγχος is defined by Aristotle in just that way, i.e. an inference to the contradictory of the opponent's position.[8] In structure, the ἐλεγκτικὸν ἐνθύμημα resembles the ἐνθύμημα in the *Rhet. ad Alex.*

Now compare a passage in Quintilian, where two basic kinds of enthymemes are distinguished (*Inst. Or.* 5. 10. 2):

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[7] One might think that τὰ ἀνομολογούμενα meant, on analogy with τὰ ὁμολογούμενα, 'that which is not agreed by the audience'; but Aristotelian usage is different (cf. *Rhet. B*23, 1400ᵃ15–16).

[8] Ar. *SE A*1, 165ᵃ2–3:…ἔλεγχος δὲ συλλογισμὸς μετ' ἀντιφάσεως τοῦ συμπεράσματος ('A refutation is a deduction to the contradictory of the given conclusion').

tertium [i.e. the third meaning of ἐνθύμημα], quo certam quandam argumenti conclusionem vel ex consequentibus vel ex repugnantibus [sc. significat].

Here someone appears to have reinterpreted Aristotle's distinction of two types of ἐνθύμημα, relying on the Stoic notions of ἀκολουθία and μάχη (cf. also Demetrius, *Eloc.* §30 Roberts). For behind an Aristotelian enthymeme ἐξ ὁμολογουμένων lies the structure 'If *p* (= the ὁμολογούμενον), then *q*; *p*; therefore *q*', while a 'refuting' enthymeme involves incompatible propositions.[9]

We are now also in a position to answer the last two questions of those raised above, i.e. how ἐξ ἀκολούθου and ἐκ μάχης will have entered a list of Aristotelian τόποι and why enthymemes may be linked to Indemonstrables of the third type.

(iii) Because τόποι inherently have the ambiguous nature of being a heuristic device on the one hand and a pattern of describing or analysing arguments on the other (cf. Ch. 4), it is not surprising that the notions of consequence and conflict may be used either as means to classify arguments (as in Quintilian) or as guiding principles for rhetorical invention (as in Apsines and, I assume, in Cicero's source). However, we should note that the first of Apsines' τόποι is termed ἐξ ἀκολούθου, while the Stoic term for consequence is ἀκολουθία (ἀκόλουθος, as noun or adjective, is in Stoic texts normally used in a semi-technical sense); apparently the absorption of the philosophical terms into a rhetorical tradition went with a slight change of terminology.

(iv) Aristotle had made rhetoricians view enthymemes as rhetorical syllogisms (*Rhet.* Α1, 1356$^{\mathrm{b}}$4). However, the extant rhetorical handbooks contain ample evidence that the model for the rhetorical treatment of syllogisms was the Stoic or, more broadly speaking, the hypothetical syllogism; this reflects the strong influence of Stoicism in the Hellenistic era (see Kroll 1936). For a rhetorician in this age it must have been a natural move to ask what sort of *hypothetical* syllogism an enthymeme in the traditional sense ('argument involving a pointed contrast') was (cf. Burnyeat 1994, 42). We have seen that enthymemes in the traditional sense could come to be called an arguments ἐκ μάχης. Now one consideration must have lead to the identification of

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[9] That δεικτικὰ ἐνθυμήματα are based on ἀκολουθία and refuting enthymemes on μάχη is stated explicitly by Max. Plan. (quoted above), pp. 406. 17–407. 7.

enthymemes and third Indemonstrables: negated conjunctions are closer to typically 'rhetorical' formulations than disjunctions (cf. Cicero's examples and Max. Plan. p. 410. 4–5: πῶς γὰρ οἷον τε Σωκράτην ἕνα καὶ τὸν αὐτὸν ὄντα ἅμα καὶ φρόνιμον εἶναι καὶ ἄφρονα; 'For how should it be possible that Socrates, being one and the same man, was both practically wise and mindless?'). And the identification will have been made easier by the fact that third Indemonstrables, in order to be useful for proof, must have a first premiss composed from incompatible propositions, which had been pointed out by critics of the Chrysippean truth-conditions for negated conjunctions.

§53 dialecticorum proprius. Given the connection Cicero assumes between the τόπος he found in his source and the Indemonstrables, it is natural to call it 'proper to dialecticians'; nevertheless, Cicero is clear as to that it is a *locus*.

consequentibus. Cf. Apsines p. 176. 2 Dilts–Kennedy: ἐξ ἀκολούθου συλλογιστικῶς.

repugnantibus. Cf. Apsines loc. cit.: ἐκ μάχης.

coniuncta. That Cicero immediately after the discussion of the *locus ex adiunctis* uses *coniuncta* as opposed to *adiuncta* suggests that at other places (§11) we should read the latter if it is possible in the light of the MS evidence.

non semper. This remark must be understood in the light of the restriction of the *locus ex adiunctis* to *coniectura* cases in §§50–2; there accompanying circumstances are called *adiuncta*, which may or may not apply in a given case.

rem necessario. See the general note above for the understanding of a logical relationship as a necessary connection between states of affairs.

sequitur] *antecedit* ς. Despite the threefold division of the *locus*, Cicero discusses 'consequence' and 'conflict' exclusively; some scribes wanted to restore the number of three. The 'reduction' and the dropping of *antecedentia* is a consequence of the insertion of the discussion of the Indemonstrables; *antecedentia* must refer to a third *locus*, but ἀκολουθία 'consequence' (in a way 'comprising' *antecedens* and *consequens*) and μάχη 'conflict' were presumably the only terms used in the source for the Indemonstrables.

cohaeret. Cicero is talking about the relationship of two events referred to in the antecedent and the consequent of an implication.

Cohaeret may be a verbal rendering of συνάρτησις, Chrysippus' term for the connection between antecedent and consequent (*Fat.* 12 is independent evidence that Cicero was familiar with Chrysippus' understanding of implication). Cicero demonstrates familiarity with logical concepts like these already in *Inv.* 1. 86.

simplex. As pointed out above, this seems to mean that the consideration of antecedence, consequence, and conflict for inventive purposes yields materially the same data.

sumpseris. On the legal background of the example see the commentary on §13.

concludas argumentum. *argumentum* clearly means the whole argument, i.e. the intended conclusion and the propositions from which it is inferred.

§54 Appellant autem. Cicero is now giving the 'accounts' or 'definitions' of the first three Indemonstrables, seemingly leaving out the description of the first premiss of the first two (see the note below on *adnexum*).

conclusionem argumenti. *Luc.* 26 may look like a parallel (*itaque argumenti conclusio, quae est Graece* ἀπόδειξις, *ita definitur: ratio quae ex rebus perceptis ad id quod non percipiebatur adducit*), but in fact there *conclusio argumenti* is a demonstration, i.e. a particular sort of syllogism.

adsumpseris. The *minor*, i.e. the second premiss of an Indemonstrable, is called πρόσληψις (D.L. 7. 76), as a noun *assumptio* in Cicero (*Div.* 2. 53). *Primum adsumere* means 'to pose the antecedent'.

adnexum. Normally, the *consequens* of an implication is in Stoic texts dubbed λῆγον; but Cicero's choice of expression may have been influenced by the fact that 'conditional premiss' is συνημμένον in Stoic terminology (e.g. D.L. 7. 71). In a way, therefore, Cicero's account of the first two Indemonstrables includes a reference to the form of the first premiss.

coniuncta. For Indemonstrables of the third type, it is stated explicitly that their *maior* is a negated conjunction (συμπεπλεγμένον; D.L. 7. 72); through the plural Cicero refers to the simple propositions that form part of a conjunction.

negaris] *aliam negationem rursus adiunxeris* suppl. Di Maria ex Boethio 364. 15–16 post *negaris* : *et his alia negatio adiungitur* vel sim. ς, Orelli. Accounts or definitions of Indemonstrables, here

in Cicero and elsewhere, talk about propositions and their neg-
ations, not about affirmative and negative propositions (see above).
This makes it unnecessary to change the transmitted text by
inserting a phrase which talks about the negation of the second
member.

unum aut plura] α: *primum* ς. The reading of a is highly
unlikely to be a corruption. It allows for Indemonstrables of the
third type whose *maior* is a negated conjunction consisting of more
than two constituent propositions (cf. also Philoponus, *in An. pr.*
245. 20–4). Moreover, it rules out the possibility that Cicero's
source conceived of the propositions of a negated conjunction as
incompatible (μαχόμενα), because the *minor* could only have the
form '*p* and *q*' *and be true* if *p* and *q* are not incompatible.

tollendum. The word probably renders ἀναιρεῖν, an originally
Aristotelian term, which was later used by the Stoics as well (see
Frede 1974, 135).

§55 ex contrariis. Cf. *Rhet. Her.* 4. 25: *Contrarium est, quod ex rebus
diversis duabus alteram breviter et facile confirmat, hoc pacto: Nam qui
suis rationibus inimicus fuerit semper, eum quomodo alienis rebus ami-
cum fore speres*? Interestingly, this entry is in *Rhet. Her.* under
elocutio. It is therefore evidence for a link between the rhetorical
theories of argumentation and of style in the Hellenistic era; argu-
ments based on contrarieties can be described formally rather than
logically, and hence *contrarium/ἐνθύμημα* (cf. Quint. *Inst. Or.* 5. 10.
3) can become a *figura*. This shift may have been inspired by Aris-
totle's remarks in *Rhet.* Γ9, 1410ᵃ19 ff. See also Murphy (1990).

quin omnis … dicatur is acceptable (cf. *Att.* 7. 26. 2; *Phil.* 7.
6), accounts for the variants and is nearest to the transmitted
reading. See also Winterbottom (1996), 409 and Reeve (1998),
139–40. On the use of *non quin* see K.–St. ii. 385–6.

omnis sententia. On the various senses of ἐνθύμημα in the
rhetorical tradition see Quint. *Inst. Or.* 5. 10. 1 ff.

hoc metuere … ponere. A senarius, *trag. Rom. fr.*[3] Ribbeck
CX, also in *Att.* 12. 51. 3, 14. 21. 3. Shackleton Bailey translates
'Strange this to fear and that to set at naught'. *Hoc* is confirmed by
the parallel passages. This is an example of *repugnantia*; a conclu-
sion to be drawn from this 'conflict' is, as in the following example,
lacking. Burnyeat (1994), esp. 39–51 argues that in Aristotle,
*An pr. B*26, 70ᵃ10, where some MSS give συλλογισμὸς ἀτελής as
definition of the enthymeme, ἀτελής is a gloss which crept into

Aristotle's text after enthymemes of the type at issue here had been dubbed 'imperfect syllogisms', because they could be viewed as Indemonstrables of the third type *without a conclusion*.

eam quam nihil . . . autumas. A septenarius like the following verse, *trag. Rom. fr.*[3] Ribbeck CVII f.; also in *Or.* 166, where *autumas* is glossed *dicis* in the MSS, which confirms the reading of Boethius here (cf. Kroll ad loc.). I take *autumas* to be construed ἀπὸ κοινοῦ with *quam meritam esse* and *(eam) male mereri*. In his second edition Ribbeck, overlooking the *Topica* passage, failed to recognize that the verses were continuous, and that *dicis* in *Or.* 166 was a gloss; he corrected these errors in the third edition, but retained the two fragment-numbers.

§56 vestras . . . disputationes. Cicero has in mind that legal *responsa* can be arguments based on contrarieties. But later jurists took an interest in logic; cf. Proculus' second letter on the quasi-disjunction (D. 50. 16. 124).

communis. Here Cicero is actually equating third-type Indemonstrables and enthymemes, although his source in its original state cannot have done so; it is impossible to tell, however, whether the version of the source Cicero used already made the connection or whether Cicero himself made it.

Reliqui . . . modi. For the remaining four types, Cicero gives 'modes' (τρόποι) in the sense outlined above, yet with demonstrative pronouns instead of the usual ordinal numbers.

disiunctionibus] *diiunctionibus* B_Aa. The word is not newly introduced to Latin technical vocabulary, but is here a calque on διεζευγμένον (cf. D.L. 7. 190); Cicero earlier used it in the senses of 'separation' (*Inv.* 1. 109) and 'rupture' (*Prov.* 40); in *Rhet. Her.* 4. 38 it means 'the distinguishing of clauses, etc., by the use of a different synonym in each' (*OLD* s.v. no. 3). Cicero is likely to have used both spellings (*diiun-* is attested also in *Luc.* 91; *ND* 1. 70; *Fat.* 37), and it seems not possible to identify one of them as the 'correct' one. He may even have used the two spellings in close distance (cf. §56 *fin.* '*disiunctione*' α); but *disiunctionibus* is the transmitted reading.

ratae. 'Valid', also as a technical legal term (*OLD* s.v. *ratus* no. 1), which might have influenced Cicero's choice of the word.

plus uno verum. The Stoics defined a disjunction as true if its components 'conflicted completely', i.e. could neither be true nor false together (S.E. *PH* 1. 162). But Cicero is not giving a

definition here, but is rather naming a crucial feature of the disjunction.

§57 addunt. The word is slightly ambiguous. Cicero may be aware that what comes now is an extension of an original set of five. The philosophers *qui addiderunt* were probably later Stoics; see Frede (1974), 157–67.

   coniunctionum negantiam. *Negantia* is attested only here, the plural *coniunctionum* shows that Cicero refers to *modi* six and seven. Yet, as pointed out above, these two *modi* only make sense if their *maior* is viewed as a quasi-disjunction, formulated like a negated conjunction (see Frede 1974, 157–67). One has to assume, therefore, that Cicero's source in its original state included no such characterization of the last two *modi* (cf. note on *communis* above).

§§58–67

In this section Cicero discusses the notion of cause. The *locus ex causis* instructs one to consider the cause of a particular event to find an argument for a proposition referring to this event. Against this background, it is useful to distinguish different categories under which causal relationships may be looked at; from the point of view of invention, the search for an argument *a causis* may be guided by going through a list of types of causes. In the second part of the section, problems of causality in law come into the picture. I provide background information in the general note and refer to the commentary for particular matters.

   The theoretical discussion of causes itself may be divided into two sections, §§58–61 and §§62–4. In §58, Cicero distinguishes between two main kinds of causes,

   1: those which in themselves suffice to bring about their effect, and
   2: those without which a certain effect cannot obtain.

In §59, causes of type 2 are divided into

   2.1: those which are passive and
   2.2: those which—in a sense to be clarified—'precede' their effect and are actively involved in bringing it about; fate is said to be made up of causes of type 2.2 according to the Stoics.

Then causes of type 1 are, somewhat paradoxically, divided into

> 1.1: those which need no additional causal influence whatso-
>   ever to become effective and
> 1.2: those which do.

§§60–1 supplement these distinctions with further clarifications
and examples.

Types of causes are classified here according to the degree in which
they contribute to the explanation why a certain effect has come
about. The twofold main division is inspired by a philosophical
tradition. This may be demonstrated through a comparison with a
section in *De Fato*, written shortly before the *Topica*. There the
question is how Chrysippus could claim that fate is to be regarded
as an infinite chain of causes, and still maintain individual respon-
sibility for human actions; in §41 Cicero writes:

> Causarum enim . . . aliae sunt perfectae et principales, aliae adiuvantes et
> proximae; quam ob rem cum dicimus omnia fato fieri causis antecedenti-
> bus, non hoc intellegi volumus, causis perfectis et principalibus, sed causis
> adiuvantibus et proximis.

Fate leaves room for individual responsibility because it is not
made up of perfect causes, but of *causae adiuvantes et proximae*
which need 'supporting causes' to lead to an effect.

   So we can say that in our passage the main distinction between
causes which alone bring about their effect and those that do not is
of Chrysippean origin. And it is clear that Cicero relies on ideas
which he discussed in the *de Fato* also here in the *Topica*, modify-
ing them and putting them to a different use (a further passage
where the same doctrines are in the background is *Part. Or.* 93 ff.).
Closer comparison of the *de Fato*, our passage and other texts will
yield further information; see the commentary.[1]

   In §60 Cicero proceeds by stating that the distinction between
the two types of causes has bearings on argumentation; for an
argument *a causis*, in order to be irrefutable, cannot be based on
causes of type 2, but merely on those of type 1.

   In §§61–3 Cicero distinguishes various external factors which
may apply to causes as distinguished previously and thus may

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[1] Ancient, in particular Stoic and medical, theories of causation are a much-
disputed subject. A full list of pertinent studies to include discussions of our passage
here or the related one in *Fat.* is given in Bobzien (1998*a*), 234 n. 2.

enter into causal explanations. If, for instance, we distinguish between causes which involve the acting of an human agent whose actions may be explained in psychological terms as motivated in a certain way as opposed to causes which are not exercised by a human agent, we are of course not distinguishing types of causes. (Cicero seems to signal that these distinctions are logically on a level different from that of the previous ones by referring to them as *causarum dissimilitudines* in §62.) Comparisons with rhetorical handbooks suggest that Cicero is relying here rather on his knowledge of rhetorical theory or on his good sense.

The transition to problems of causality in law (§64) starts from a distinction of intended and unintended events. Here Cicero refers to a provision in the Twelve Tables which prescribed an expiation in cases of manslaughter by accident rather than a punishment. From there he moves on to cases of unsoundness of mind.

Closing the discussion of types of causes, he states that, like philosophers and orators, jurists use arguments *ex causis*, yet of a particularly refined type. This elaborate technique of juristic arguing *ex causis* is of benefit to people who seek legal advice. At this point Cicero seemingly loses the thread of his argument, for he proceeds to give a parade of legal concepts or institutions that were developed by the jurists. Yet what appears to be a rather misplaced praise of jurisprudence is still pertinent to the discussion of causes, as all the legal concepts involved share the feature of leaving an extremely wide margin for the judge's decisions. This in turn necessitated that orators, where they had to plead in a case of that kind, were particularly prone to turn to a jurist who might furnish them with the appropriate arguments to persuade the laymen who acted as judges. And that in such situations arguments *ex causis* took a prominent place is obvious.

In §67 arguments 'from effects' are mentioned as complements to those 'from causes'.

Cicero has been blamed for 'conflating' philosophical and rhetorical distinctions of causes in the present passage. This is surely the wrong way to read the text. No one will deny that much more could be said about causation in legal contexts. Yet as a matter of fact, in our passage Cicero applied for the first time theoretical reflection on causation to legal problems.[2] By adopting the Stoic

[2] Texts like Antiphon's second tetralogy or Arist. *NE* Γ1, 5 seem—for different reasons—not to fall in quite the same category.

distinction between sufficient and necessary causes, by naming
negligence and action with intent as causally relevant categories
which cut across the previous distinction, and by many other points
of detail he has created the terms in which discussion about caus-
ation in the law is conducted until the present day.[3] Moreover,
Cicero's remark about the subtleness of legal causal argument
cannot refer to subtlety of analysis (for there was no such thing as
theoretical reflection on causation among Roman jurists until
Labeo, who in turn made no impact on later jurists; see Nörr
1978*b*), but should be taken as the—perceptive—remark that legal
arguments pertaining to causal relationships cannot normally be
fully explained by the small number of categories Cicero provides.

§58 rerum efficientium. The notion of a cause as something
which *actively* causes something else rather than being a kind of
presupposition for something's existence or being the case—the
Aristotelian concept of the cause (*Phys. B*3, 194$^\mathrm{b}$23–35)—was
formulated for the first time by the Stoics; see Frede (1980) and
Hankinson (1998), 20 ff.

    deinde. Cf. §67.

    paulo ante posui. See §§22–3.

    et quidem] *equidem* ς, Friedrich, Wilkins, Di Maria. *Et quidem*
has clear MS support here, but *equidem* is what most editors print.
Superficial comparison with §50 *init.* might suggest that *equidem* is
correct (*ab adiunctis autem posui equidem exemplum paulo ante*); the
equidem there is concessive and followed by *sed* (cf. μέν...δέ).
However, there is a use of *et quidem* (and mostly *et quidem* in Cicero
in short sentences like the one at issue, rarely *quidem*, very rarely
equidem; see Solodow 1978, 110–11) in which it expands on a term

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[3] Cf. the preface to Hart–Honoré (1985). And here is a paragraph from Balkin
(1996), 216, exemplifying how lawyers tend to justify legal positions in terms of
recurrent patterns of argument: 'In tort law, for example, a standard defendant's
argument is ''No liability without a fault''. A standard plaintiff's rejoinder is ''As
between two innocents, let the person who caused the damage pay.'' In this case, the
defendant talks about fault, while the plaintiff emphasizes causal responsibility. But
the plaintiff can also argue that the defendant was at fault (''One who is at fault
should be liable''), and the defendant can also deny causal responsibility (''No
liability without causation''). Thus, there are fault-based and causation-based argu-
ments for both sides. These stereotypical arguments recur constantly in tort law;
indeed, they normally appear whenever a choice between two possible rules would
change a tort defendant's responsibility (or potential liability) towards a plaintiff.'
Balkin talks about fault, a broader notion than deliberate action, but I think it is
plain how far 'reading' a legal conflict as a conflict of recurrent argumentative
patterns puts flesh on the bones of Cicero's scholastic divisions of causal categories.

in the previous clause, often by repeating it. Cf. Cic. *Planc*. 31: *emissus aliquis e carcere. Et quidem emissus per imprudentiam*; *Clu*. 103: *dixit et bis quidem dixit*; Liv. 40. 13. 2: *volui interdiu eum post lustrationem, cum concurrimus, et quidem, si diis placet, lustrationum die occidere*. Our passage would fit this pattern very well, with *et quidem* further qualifying *exempla* (which we could mentally supply after *quidem* to generate the exact pattern in the examples). *Et quidem* would then mean 'and in particular' or 'and what is more'. It will also be clear that §50 is a parallel case only if we beg the question; for *et quidem* is impossible there.

One problem remains: the extending (*et*) *quidem* is related to the adversative *quidem*, and it needs to be established whether we have a clear-cut case here. A discussion of interesting borderline cases is in Solodow (1978), 118–19; cf. Liv. 10. 28. 4: *Longiore certamine sensim residere Samnitium animos, Gallorum quidem etiam corpora intolerantissima laboris atque aestus fluere*, on which Solodow aptly comments: 'One would be in real difficulty if forced to decide on this passage: the contrast between ''the spirits of the Samnites'' and ''the bodily strength of the Gauls'' inclines one to Adversative; but the strong *etiam* and the difference in degree between ''gradually sink'' and ''flow away'' urge Extending.' Compared with this our case is straightforward: *et quidem* is extending only, and the adversative relation obtains between *exempla posui* and *haec patent latius*. Two instances where *et quidem* is extending and followed by *sed* but where the adversative relation is between the words following *quidem* and those following *sed* are Cic. *Rab. Post*. 32: *Isdem testibus, et quidem non productis, sed dictis testium recitatis*; *Phil* 3. 20: *Convenerunt conrogati et quidem ampli quidam homines sed immemores dignitatis suae*.

Causarum enim] *causarum igitur* ς. Cf. Winterbottom (1996), 410: 'Di Maria defends *igitur* (pp. 95–6), but it is a mere conjecture, with no palaeographical probability. Both particles have been deleted in their time. But we should perhaps read *autem*, comparing 26 ''definitio est . . . definitionum autem duo genera prima: unum . . . alterum . . . '' (also 80–1). For the confusion of *autem* and *enim*, caused by similar compendia, see P. Lehmann, *Philologus* 27 (1914–16), 543–8.' One way to defend *enim* would be to point to the fact that the previous sentence emphasized the wide range of arguments *ex causis*; this could be illustrated by a fundamental (and hence widely applicable) division of causes.

unum ... certe efficit. Cf. *Part. Or.* 94: *Conficiens autem alia est absoluta et perfecta per se . . .* This type of cause corresponds to the *causae perfectae et principales* in the Chrysippean division of *Fat.* 41, where Cicero demonstrates familiarity with Stoic doctrines of causality and not only mentions terminological distinctions (I do not think that *causae perfectae et principales* refers to *two* types of causes; *pace* Görler 1987, 255–7, Sedley 1993, 322–3). As to the philosophical background, there can be little doubt that *causa perfecta* corresponds to the Greek αἴτιον αὐτοτελές, a notion which is nowhere defined in the sources, but often paired with σύνεργον or συναίτιον ([Gal.] *Def. Med.* xix. 393 Kühn; Clem. *Strom.* 8. 9. 33 = *SVF* ii. 121. 25 ff.), clearly possible counterparts for *causae adiuvantes* in *Fat.* 41 and *causae eius generis sine quo non efficitur* here in §59. Moreover, the concept of αἴτιον αὐτοτελές may to some extent be indirectly clarified, at least with respect to the degree of causal influence it has in bringing about an effect, as it is frequently identified with the συνεκτικόν (Clem. *Strom.* 8. 9. 33. 2 = *SVF* ii, p. 121. 27 and elsewhere). This type of cause, which probably originates from a different division of causes (see Frede 1980, 241–2), is said to be sufficient for and 'simultaneous' with its effect, i.e. when the συνεκτικόν ceases to exist, its effect does so as well (Clem. *Strom.* 8. 9. 33 = *SVF* ii, pp. 121. 25–6; see also Bobzien 1998*b*, 220). The rationale behind the distinction between perfect and auxiliary causes is apparently that a straightforward answer to the question what is responsible for an event cannot be given in most cases; rather, one needs ways to differentiate degrees of responsibility. From that point of view it is also clear that both auxiliary and perfect causes may be called 'efficient', though in different senses. So a perfect cause is perfect, because it 'does not depend for its causal efficacy on the agency of some other cause outside its control' (Frede 1980, 239); cf. *vi sua* here and *suapte vi et natura* in *Fat.* 43.

Ignis accendit. Of course fire, in order to set something on fire, needs certain prerequisites. The Stoics and Cicero made a distinction between passive prerequisites or background conditions and active causes. Accordingly, a cause would be deemed 'perfect', if it required no second active cause to become efficient.

alterum ... non possit effici. As distinct from efficient causes, corresponding to the *causae adiuvantes et proximae* (as a single class) in *Fat.* 41. The causes *sine quibus effici non potest* are subdivided

again into two groups in §59, and the example given here belongs
with the first group of that subdivision. For the Stoics, this first
group of causes would not have counted as causes at all (and is not
mentioned in *Fat.*); apparently Cicero draws on his knowledge of
Aristotelian ideas on causation here, perhaps in order to arrive at a
fourfold division. Cf. *Phys. B*3, 194ᵇ23–6: ἕνα μὲν οὖν τρόπον
αἴτιον λέγεται τὸ ἐξ οὗ γίγνεταί τι ἐνυπάρχοντος, οἷον ὁ χαλκὸς τοῦ
ἀνδριάντος καὶ ὁ ἄργυρος τῆς φιάλης καὶ τὰ τούτων γένη ('According
to one way of speaking, that out of which as a constituent a thing
comes to be is called a cause; for example, the bronze and the silver
and their genera would be the causes respectively of a statue and a
loving-cup'; trans. Charlton). Seneca (*Ep. mor.* 65. 4 = *SVF* ii.
346a), rejecting the Platonic and the Aristotelian understanding of
'cause', states: *Stoicis placet unam causam esse id quod facit.*

§59 ferramenta. Meaning 'tools made from iron' (not 'iron'), this
word looks slightly awkward in the series in which it stands;
perhaps Cicero has in mind that an iron tool is a cause for an action
to be carried out with this tool. Boethius 367. 28 writes *instru-
menta.*

   praecursionem . . . nectitur. Cicero now comes to those
causes which are (i) causes in the Stoic sense, (ii) cannot bring
about their effect alone, and (iii) are the kind of causes which is at
issue when fate is characterized as a chain of causes, i.e. of events
with each event causing the next. The Stoic term for this type of
cause is αἴτιον προκαταρκτικόν, 'antecedent cause' (see next
lemma). In *Fat.* 41, where Cicero refers to *causae adiuvantes et
proximae*, *causae proximae* is likely to correspond to 'antecedent
causes', *causae adiuvantes* being (as here) an explanatory qualifica-
tion. This last point is suggested by a comparison of Cicero and
Plutarch: in *Fat.* Cicero identifies fate with *causae adiuvantes et
proximae* (*Fat.* 41), while at Plutarch (*De Sto. Rep.* 1056 B = 55R
Long–Sedley = *SVF* ii. 997) it is maintained that Chrysippus
identifies fate with αἴτια προκαταρκτικά—which are very unlikely
to have been rendered *causae adiuvantes*. In medical theory,
αἴτια προκαταρκτικά play a prominent role; see Hankinson (1998).
   praecursionem . . . ad efficiendum. Without attempting a
translation of αἴτιον προκαταρκτικόν, Cicero tries to convey the
meaning of the expression. It is not exactly clear what the Stoics
(and perhaps Chrysippus in particular) intended when calling

something an αἴτιον προκαταρκτικόν; Bobzien (1998*b*), 220–1: 'If we take it that usually the prefix προκατα- means something like ''beforehand'', the whole term might translate (i) as ''that which commences [intr.] beforehand'', i.e. before the effect occurs or before the second causal factor comes in; or (ii) as ''that which initiates [tr.] beforehand'', e.g. initiates the effect before a second causal factor comes in. Alternatively, (iii) if we assume that ''procatarctic'' is understood as ''before the katarctic'', the meaning would be something like ''that which precedes that which is the origin of the effect''.' Clement (*Strom.* 8. 9 = *SVF* ii. 346) describes the αἴτια προκαταρκτικά as τὰ πρώτως ἀφορμὴν παρεχ-όμενα εἰς τὸ γίγνεσθαί τι 'that which first contributes the starting-point for something to happen' (trans. Bobzien 1998*b*: 221 n. 54), exemplified by καθάπερ τὸ κάλλος τοῖς ἀκολάστοις τοῦ ἔρωτος· ὀφθὲν γὰρ αὐτοῖς τὴν ἐρωτικὴν διάθεσιν ἐμποιεῖ. Beauty causes an impression (φαντασία, hinted at in ὀφθέν), which, however, in order to lead to desire, requires the assent of the perceiving individual; the only other occurrence of *praecursio* in Cicero is in *Fat.* 44, where Cicero appears to refer to the same example which Clement relates (. . . *non fieri assensiones sine praecursione visorum*).

adiuvantia. αἴτια προκαταρκτικά are by their nature σύνεργα.

Amori congressio. Although Cicero knew the example given by Clement (cf. *praecursionem . . . ad efficiendum* above) and like-wise links it to αἴτια προκαταρκτικά, here he seems to give a slightly different one. The antecedent cause for desire is not beauty, but a meeting (probably not a relationship, which *congressio* can mean as well). And the desire induced a *flagitium*.

ex aeternitate pendentium. To produce fate, antecedent causes must stretch into eternity from the present to the past. Probably somewhere in the otherwise lost sections of *Fat.*, Cicero defined fate as follows (Servius, *ad Verg. Aen.* 3. 376 = *SVF* ii. 919): *Fatum est conexio rerum per aeternitatem se invicem tenens, quae suo ordine et lege variatur, ita tamen, ut ipsa varietas habeat aeternitatem* ('Fate is the interconnection of events that alternates continuously throughout eternity, varying in conformity with a law of its own and an order of its own, yet in such a manner that their variation is itself eternal'; trans. Rackham).

nectitur. Cicero is playing on the etymology of εἱμαρμένη; cf. also Nemesius, *De nat. hom.* 36 (= *SVF* ii. 918): ἡ δὲ εἱμαρμένη

εἱρμός τις οὖσα αἰτιῶν ἀπαράβατος ('fate, being a kind of unbreakable string of causes').

plane efficiant … adiuvari velint. It may seem surprising that one group of efficient causes is said to 'want to be helped'. Moreover, there is no trace in *Fat.* of this type of perfect cause. Cicero appears to have extended a twofold Stoic distinction of causes to a fourfold one, adding the type at issue here and the 'Aristotelian' cause above. However, this does not mean that Cicero dreamed up this type of cause. In Stoic discussions of causes, there is the notion of the *σύνεργον* ([Gal.] *Def. med.* xix. 393 Kühn; Clem. *Strom.* 8. 9. 33). This type of cause contributes to the coming-about of an effect in such a way that in the absence of this cause the effect would still come about. What the *σύνεργον* contributes is to make the obtaining of the effect easier. For instance, a strong man might be able to lift a heavy weight alone, but to do this is easier if there is a second man helping him (see Clem. ibid., where this is explained in general terms). This second man contributes or acts as a *σύνεργον*. Now in this case the cause to which we would assign the primary responsibility for an effect could be described in the same way as the one Cicero is discussing in the present passage. Note that Cicero says that 'perfect causes' in this understanding *adiuvari volunt*, which is not to say that they *require* help in order to be efficient.

Sapientia … per se. For this part of the example, there is a parallel in a discussion of causation by Zeno (Stob. *Ecl.* i. 138. 14 ff. = *SVF* i. 89): *αἴτιόν ἐστι δι' ὃ γίγνεταί τι, οἷον διὰ τὴν φρόνησιν γίνεται τὸ φρονεῖν* 'a cause is that because of which something happens, e.g. being practically wise results from practical wisdom.'

beatos … quaestio est. The Stoics certainly did not believe that more than wisdom was required to achieve happiness (cf. Long–Sedley 1987, i, §§61, 63); others naturally did. Hence *quaestio est*. See Sharples (2000).

§60. In this paragraph, Cicero argues that an irrefutable argument *ex causis* must be based on a reference to a perfect cause as opposed to an auxiliary cause.

in disputationem. Cicero might visualize the jurist who replies to his clients' queries rather than the orator composing his speech.

sine parentibus filii. Cicero takes parents to be the 'cause' of their sons, but a non-necessitating cause only, as it was not necessary that the parents, i.e. a particular couple, should have children. The example is not Cicero's invention; cf. Alex. Aphr. *De Fato* p. 194. 8–15 Bruns = Sharples (1983), 155–6.

§61. Illud. Picking up *sine quo non fit*. *Illud . . . tamquam* means something like 'an instance of the former is, as it were'; *tamquam* is meant to soften the impression of *utinam ne in nemore Pelio*, which is used in a figurative way to refer to the way of arguing adopted at the beginning of Ennius' *Medea exul* (see below). For this use of *tamquam* see K.–St. ii. 455 n. 5.

Utinam ne in nemore Pelio. Cf. *Inv.* 1. 91, *Cael.* 18, *Tusc.* 1. 45, *ND* 3. 75, *Fat.* 34. This first part of a tragic trimeter is the beginning of Ennius' *Medea exul* (fr. 103 Jocelyn). For Cicero uses it elsewhere to refer to the play as a whole (*Fin.* 1. 5), and there was the convention that the opening line could have the same referential function as a title. *Rhet. Her.* 2. 34 quotes (with variants) nine verses of the play beginning with *utinam ne . . .*, behind which lie the first eight verses of Euripides' *Medea*; cf. Jocelyn (1967), 361 for a comparison between Euripides and Ennius. In both plays, the verses are spoken by Medea's old nurse, and the reason for her distress is Jason's decision to marry Creon's daughter. In *Rhet. Her.*, the verses are introduced as an example for needlessly long-winded arguing; but in philosophical discussions of causality too the *prooemium* of Euripides' *Medea* has an established place. Clement (*Strom.* 8. 9 = *SVF* ii. 347) uses Medea's case to illustrate the difference between the active cause (ποιητικόν) and things 'on account of which' (δι' ὅ); see Sharples (1995), 251.

Aiacis. Son of Oïleus of Locris; cf. Roscher s.v. 'Aias der Lokrer' cols. 133–8. According to one version of the myth, he was killed by Athene with a thunderbolt for the violation of Cassandra (Verg. *Aen.* 1. 43 and Hyg. *fab.* 116 tell the story of his death in exactly this way; the motif of his death because of *hubris*—which affected other Greek heroes returning from Troy—is of course much older, cf. Hom. *Od.* 4. 499 ff.).

navim] *navem* ε. On the acc. sg. *-im* of the *i*-stems see Leumann (1977), 439–40; α must have read *navim*, which is also the reading of bVP₁.

crispisulcans igneum fulmen. *Crispisulcans*, found only here, derives from *crispus* 3 'curled, twisted' and *sulcare* 'to make

a furrow'. Cicero is quoting a phrase from early tragedy; Ribbeck (1897–8) gives it as *fr. inc.* xxi and refers to Accius' *Clytaemnestra*; Warmington (1935–40), ii. 408 actually assigns it to Accius because of Acc. trag. 241–2 *in pectore | fulmen incohatum flammam ostentabat Iovis.*

§62. Cicero is now apparently no longer closely following philosophical distinctions of different senses of 'cause'. Rather, he is adding categories under which causes may be considered.

dissimilitudo. For this use of the word cf. *Fat.* 44: *modo intellegatur, quae sit causarum distinctio ac dissimilitudo.*

omne ... ortum sit. The inevitable decline of everything that has come into being is meant to be an effect of the type of cause at issue, which is contrasted with causes that involve human wish, thought, or impulse. The idea is of course very old; it already underlies Empedocles' physical theory (which was well known in Rome, as the extensive references to it in Lucretius show).

irascatur] *irascitur* ç. *Irascatur* is defended by Winterbottom (1996), 410.

§63. Further ways to view causes are introduced, different from previous ones and on the most general level ('*omnium* autem causarum'). The criteria are: (i) whether or not the cause exercises a constant effect (*constantes* vs. *non constantes causae*); (ii) whether the 'non-constant causes' exercise their effect in a manifest or in a hidden way (*perspicuae* vs. *latentes causae*). Those that do so in a hidden way are linked to what is commonly called 'chance' (*fortuna*). A third division turns on the question (iii) whether or not the causal influence involves an act of will.

appetitionem animi. Cf. *Fin.* 3.23 *appetitio animi, quae* ὁρμή *Graece vocatur.*

hoc ipsum ... latenter efficitur. *Fortuna* is not conceived of here as absence of causation as it is in Epicurean contexts, but in the Stoic sense as a cause unfathomable by human reason. Cf. Simpl. *in Phys.* p. 333. 2 ff. = *SVF* ii. 965 τὴν τύχην καὶ αὐτὴν εἶναι λέγουσι ... ἄδηλον αὐτὴν ἀνθρωπίνη διανοίᾳ νομίζοντες 'Others agree that luck obviously does exist, and say that it is a cause ... believing that it is inaccessible to human thought.' The passage also presents a textual problem. As it is read by Di Maria and Wilkins (*hoc ipsum est naturae eventus: obscura causa et latenter efficitur*; Friedrich prints '†*eventus*'), the passive *efficitur* with its

two adverbial qualifications and lacking subject gives harsh grammar. Madvig (1873), 193 makes a good point: 'Non agitur de fortunae eventu, sed, cum Cicero dixisset, latere causas, quae subiectae sint fortunae subiungit, hoc ipso, quod lateat, contineri fortunae vim et naturam, fortunaeque definitionem ponit: Hoc ipsum est fortuna, eventus obscura causa et latenter effectus, aut potius: eventus, qui obsc. c. et l. efficitur.' His second proposal was adopted (with slight variations) by Bornecque and Hubbell. Yet satisfactory sense can also be achieved if we follow Madvig's first proposal but keep *efficitur*. We should read a colon after *fortunae* (which becomes a *genitivus pertinentiae*; cf. *Att.* 10. 1. 3) and take *eventus* to be the subject of *efficitur*; in doing this we get a sentence rather than the apposition Madvig suggested by reading *effectus*. Madvig's first proposal may have been inspired by Boethius 372. 1–2: *Sed M. Tullius definit esse casum eventum causis latentibus effectum*.

Etiam ea quae fiunt. *Etiam* amounts to 'moreover' (cf. *TLL* v. 935. 42–75 on *etiam adiunctivum*; Cic. *Fam.* 9. 16. 7), introducing a new division of ways to look at causes (see also Boethius ad loc., 374. 25). The distinction is between actions involving an act of will and others; the previous distinction was between manifest and hidden causes. *Fieri* can in principle either be the passive of *facere* or mean 'to happen'; clearly, where actions are at issue the former makes more sense.

ignorata. 'Not known' in the sense of 'done in ignorance, unintentional' (cf. §64 below *ignorantiam atque imprudentiam*); *voluntarius* means accordingly 'intentional'.

necessitate. Necessity, e.g. as underlying the chain of events that make up fate (cf. e.g. the *aeternae causae naturae necessitate manantes* in *Fat.* 19). It needs to be borne in mind that *necessitas* and *fortuna* are up to this point conceptually distinct and belong with different divisions of causes; the causes of events which are assigned to *necessitas* involve no deliberate action, and the causes of events assigned to *fortuna* remain in the dark.

§64 Quae autem . . . voluntaria. The sentence has been deleted by editors since Schütz as nonsensical in its context. On any account, Cicero is not at his most lucid here. In considering what we should read and on what principles one should proceed in an inquiry into the matter, the following points should be borne in mind: First, while above Cicero provides merely a thumbnail sketch of the

Stoic theory of causation, we should take into account that immediately before the *Topica* Cicero wrote the *De Fato*, which presupposes and displays a fairly detailed knowledge of that theory; and, being the advocate that he is, he would have an extremely sophisticated intuitive grasp of arguments turning on causation. In a case where it is controversial what Cicero said, this could provide a handle for reconstructing what he may have thought. Second, in §§58–67 multiple causation, i.e. dependence of particular effects on more than one cause, is a notion explicitly introduced and relied on, e.g. in the reference to αἴτια προκαταρκτικά (§50).

   I shall first explain why I should like to retain the sentence and then set out why the text without the sentence seems unsatisfactory to me. I suggest that Cicero is *now* conflating the last two divisions of causes (manifest vs. hidden causation; involving an act of will vs. not involving one), stating that for events due to *fortuna*, which involve hidden causation, it is difficult to allot the involved amount of intention; note that *vel* is not 'or' in the exclusive sense like *aut* and invites a choice by the reader (see Hofmann–Szantyr 500 ff.), and that *autem* marks the reference back to the description of *fortuna*, i.e. *autem* does not signal an opposition with the sentence immediately preceding. If this interpretation of the phrase is correct, it will constitute a crucial separate step in an argument and not merely an explanation. The intentional throwing of a *telum* which leads to the unintentional hitting of someone is such a case. In a sense, the throwing is the cause of the hitting. Since the throwing was unequivocally an act of will (*iacere telum voluntatis est*), it seems counterintuitive to assign the hitting to *necessitas* alone; likewise, however, it seems absurd to call the hitting intentional. It is reasonable to assume that there is a cause–effect relationship between the throwing of the javelin and the hitting of the victim, and that somewhere along the way there must have been a causal influence on the javelin other than the drive conferred to it by the deliberate throwing (I take it that this is the idea Cicero identifies in *telum manu fugit* below). On this reading, we would be dealing with multiple causation, with some causal aspects resulting from an act of will and others being due to something other than intent (compare typical arguments in modern trials where criminal liability in cases of reckless action is considered). Admittedly in a somewhat obscure fashion, the alleged gloss would make a good point, one that I would prefer to assign to Cicero rather than to a interpolator.

Trying to make sense of the text without the sentence, we start from the distinction between events involving *necessitas* and those involving *consilium* (§63 *fin*.). This is a clear-cut dichotomy. If it is supposed to be illustrated by the sentence *Nam iacere telum*, the example is poorly chosen, for two reasons: (i) In the second part of this sentence *fortuna* occurs, which would simply be equated with *necessitas* as a causal factor. (ii) The sentence deals with a cause–effect relationship which is inappropriately analysed by saying the cause was exercised intentionally, but the effect came about by *fortuna*, i.e. *obscurā causā* (§63). Evidently there *is* a sense in which the throwing was the cause for the hitting. Note also that later in §64 Cicero discusses action carried out in the heat of the moment; such actions, too, are in his view on the brink between actions which are subject to the will and unintentional actions.

Boethius gives no indication that he read the sentence; if he did read it (which I should assume), he passed over it (cf. 373–4).

aries subicitur. This phrase has sometimes been misunderstood (Bornecque: 'De là cette fameuse machine de guerre qui constitue l'armature de vos plaidoiries'; Hubbell: 'This distinction supplies the beam which you use to prop up a weak case in your pleadings'), though not by Wilkins or Di Maria. The Twelve Tables (tab. VIII. 13 in Crawford 1996, ii. 692–4) included a provision, in later times conceived of as an *actio* (see below), for cases of unintentional killing of a man (cf. Cic. *Tull*. 51; cf. also Serv. *in Verg*. *Ecl*. 4. 43, where the provision is traced back to Numa; Augustine, *De libero arbitrio* 1. 4. 9); it was felt that blood feud should not apply, but that nevertheless some expiation was needed. Hence the person who caused the accident supplied a ram which was killed 'in his place', presumably to soothe the ghost of the killed (in the Twelve Tables, sacral law and criminal law were not yet clearly distinguished). To supply the ram instead of oneself was called *arietem subicere* (Fest. s.v. *subici*, p. 470. 22: . . . *expiandi gratia aries m*[*actatur*] and s.v. *subigere arietem*, p. 476. 18–20: *Subigere arietem in eodem libro Antistius esse ait dare arietem, qui pro se agatur, caedatur*). The distinction between negligence and intent is implied also in the treatment of arson (tab. VIII. 6 in Crawford 1996, 685–6; see D. 47. 9. 9). For further detail see Honsell–Meyer-Maly–Selb (1987), 228–38. A case of accidental killing with a javelin is the subject of Antiphon's second tetralogy.

actionibus. A legal word. The older form of Roman private trials was that based on *legis actiones* (cf. Gai. *Inst.* 4. 10–31 and Ch. 4), which involved the parties in uttering certain set phrases in a solemn manner. Provisions in older legislation gave rise to *actiones* (Gai. *Inst.* 4. 11; Cic. *Part. Or.* 99). See Kaser–Hackl (1996), 34–7.

si telum . . . A part of the relevant *actio*, which is not preserved in its entirety; Crawford (1996), ii. 692–4 reconstructs it as: *Si telum manu fugit magis quam iecit, < aries subiectus esto >*, relying on the texts quoted above.

fugit. Cf. Cic. *de Orat.* 3. 158 on metaphors: *Non numquam etiam brevitas translatione conficitur, ut illud 'si telum manu fugit': imprudentia teli missi brevius propriis verbis exponi non potuit, quam est uno significato translato.*

deiciuntur. Cf. *OLD* s.v. 10a.

§65 si non uberior, at fortasse subtilior. On *si non* followed by correcting or modifying main clause cf. K.–St. ii. 420–1.

Nam et adsunt multum . . . The passage is an important testimony for the activity of the jurists in the late Republic; cf. also *de Orat.* 1. 239, Watson (1974), 103, Frier (1985), 164, 205, Kaser–Hackl (1996), 197 n. 43.

hastas ministrant. Cf. *de Orat.* 1. 242, *Brut.* 271, *Part. Or.* 14; the speech as a weapon also in Quint. *Inst. Or.* 2. 1. 12, 10. 1. 30, 12. 5. 2; Philod. *Rhet.* ii. 142 Sudhaus; Lucian, *Nigr.* 35. On war imagery applied to oratory in Tac. *Dial.* see Winterbottom (2001), 140–1. The phrase *hastas ministrare* may have had certain connotations for the contemporary readership, because the *hasta* was the 'altrömische Nationalwaffe' (Klingmüller 1912, 2501). This would be relevant to the role Cicero is assigning to the jurists here.

§66. Cicero refers to some *iudicia* which are said to require the assistance of the jurists. As jurists will have been asked for help in many cases, there must be a reason why Cicero refers to these *iudicia* only. The common feature of those mentioned is that they leave an exceptionally wide margin for interpretation, as they lack a clearly defined legislative basis. Presumably Cicero had in mind that in such cases jurists have to rely on arguments *a causis* more often than on other occasions. Some months later, Cicero introduces the same group of *iudicia* in *Off.* 3. 61 as providing good opportunities to exercise *aequitas*.

iudiciis. In a general sense, this word denotes a lawsuit in which a judge is involved; see Leonhard (1916), 2479.

additum. For each of the types of *iudicia* that follow, there was a particular legal *formula* (cf. the commentary on §9); *formulae* were drafted according to a modular system, with certain elements to be found in every *formula* and some peculiar to the particular *formula*. *Addere* must be understood as referring to the addition of an element in this sense.

ex fide bona. The *bonae fidei iudicia* constitute a class of possible lawsuits, which were *sine lege* (*Off.* 3. 61), i.e. without a clearly defined legislative basis. The pertinent *formulae* all include the phrase *ex fide bona* as the possible justification for the claim. See Wieacker (1963), 20 on the implications of turning the archaic Roman virtue *fides* into *bona fides* in the sense of a legal basis for several kinds of transactions.

ut inter bonos . . . oportet. A set phrase from the *formula* for the *actio* concerned with trust, *fiducia* (cf. Lenel 1927, 292); again, the vagueness of the provision is obvious; apparently, there was a second *formula* about *fiducia*, which included the phrase 'ex fide bona'. See Watson (1965), 176 ff. and Watson (1968), 142.

quod eius melius aequius] *eius* om. ς. The *eius* is confirmed by *Tab. Herc.* 87. It may be useful to put the phrase in the original context of the *actio rei uxoriae* (as reconstructed by Lenel 1927, 305): *Si paret Numerium Negidium Aulae Ageriae dotem partemve eius reddere oportere quod eius melius aequius erit, eius iudex Nm Nm Aae Aae condemna. Si non paret absolve.* According to this *formula*, the judge had to decide whether the dowry or part of it has to be returned in accordance with the *ius civile*; then he had to decide how much of that should be returned in accordance with equity (*melius aequius* meaning 'better and fairer'); see Watson (1967), 67–8.

dolum malum. *dolus malus* (malicious fraud) is not a *bonae fidei* action, but leaves as much room for interpretation as the other legal institutions listed here. In the relevant *formula*, presumably only a *dolo malo factum* was mentioned (cf. Lenel 1927, 115). The jurist C. Aquilius Gallus (cf. the commentary on §§22, 40, 51), who is said to have drafted the *formula* of the *actio de dolo*, defined *dolus malus* as *cum esset aliud simulatum aliud actum* (*Off.* 3. 60; cf. also *ND* 3. 74), which, though deemed too broad by later jurists (Servius, Labeo; cf. D. 4. 3. 1. 2), restricted the notion of malicious fraud to actions (as opposed to default); see on §40. In the rest of

the sentence Cicero refers to *bonae fidei* actions, as he does else-
where (*ND* 3. 74; *Caec*. 7; *Q. Rosc*. 16); see Wieacker (1963),
(1988), 643–4, Kaser (1971), 406.

   qui . . . curasset. On the scope of *negotia aliena* see D. 3. 3 and
Kaser (1971), 265–6.

   copiose de consultationibus suis disputare. I argued in Ch.
1 that the underlying source of the *Topica* represents material
Cicero had retained from the rhetorical teachings of his teacher
Philo of Larissa. The distinctive features of Academic rhetoric as
taught by Philo were probably a focus on abstract general ques-
tions (as opposed to particular ones, with which ordinary rhetoric
is concerned) and a mode of rhetorical training modelled on the
forms of dialectical discourse, i.e. 'speaking on either side of a
question'; the *Topica* represent a theory of rhetorical invention
which is tailored to this kind of rhetoric. The seemingly incon-
spicuous description of the possible use of the *Topica* for jurists
here fits well with this hypothesis, in that it is couched in termin-
ology which is applicable both to Academic rhetoric and the typical
function of a jurist. The key words are *copiose* and *consultatio*. On
the one hand, as explained elsewhere (e.g. *Or*. 45–6; *de Orat*. 3.
107), what in particular makes a discourse *copiosum* is the consid-
eration of the abstract problem included in a particular case, in
rhetorical terms: its ascending to the θέσις from the level of the
ὑπόθεσις. *Consultatio* means 'question' or 'problem' here, not 'dis-
cussion' or 'consideration'; technically, however, *consultatio* is
Cicero's rendering of θέσις, 'abstract, general question' (cf. *de
Orat*. 3. 110–11, *Part. Or*. 4; and *TLL* iv. 590. 80 ff.). And the
loci are applicable to *consultationes*, as they are discussed in the last
part of the *Topica* (§§81–6; see again Ch. 1). That jurists are
primarily approached for advice about particular questions is com-
patible with this, as these may often invite discussion on an ab-
stract level (see Ch. 4). On the other hand, *consultatio* is the
technical term for advice given by a jurist (and other authority
figures like magistrates or priests); cf. Cic. *Leg*. 1. 17: *Non enim id
quaerimus hoc sermone, Pomponi, quem ad modum caveamus in iure,
aut quid de quaque consultatione respondeamus*, and *TLL* iv. 591.
32 ff. That *consultatio* is ambiguous here emerges from its being
introduced as common to orators, philosophers, and jurists. In
using the verb *disputare*, normally reserved for philosophical dis-
course, Cicero might simply be trying to describe the authoritative

mode of speaking likely to have been adopted by jurists; yet given what he says elsewhere about *consultationes* and *loci*, it is tempting to assume that Cicero not only views *loci* as tools to prove one's point straightforwardly, but also regards them as useful for dealing dialectically with problems.

§67. Cicero now moves on to the *locus ab effectis rebus*.

  etiam philosophis, sed iis qui . . . loqui possunt Cf. the remark on *copiose . . . disputare* above. The philosophers whose trademark is this kind of discourse are for Cicero the Peripatetics and above all the Academics (*de Orat.* 3. 107, referring back to 3. 67; 3. 109 ff.).

§ §68–71

In this section Cicero gives further information concerning the application of arguments *ex comparatione*. To make sense of the advice given here, it will be useful to reconsider briefly how arguments of this type work. For instance, we could infer the proposition 'armed robbers deserve punishment' from the proposition 'shoplifters deserve punishment', which is likely to command the assent of most audiences. One can draw this inference from what to do about shoplifters to what to do about armed robbers, because both groups of persons display, if in different degrees, an objectionable attitude through their actions which makes it plausible to say that they deserve punishment.

  For such arguments to be persuasive, the two things compared must first share some feature with respect to which they may be compared, i.e. in the example given the 'objectionable attitude' which shoplifters and armed robbers show. Secondly, what is said to hold of the two things compared must stand in some relevant connection to this feature; one holds the view that, if shoplifters deserve punishment, armed robbers do so, too, *on the grounds that* they share a certain attitude. And the *a fortiori* element comes in because the shared feature may be manifest in two things to different degrees, i.e. the attitude armed robbers reveal through their deeds is *more* objectionable than that of shoplifters.

  The instructions given in §§68–71 do not relate to the question when an inference of the kind envisaged here is licensed in virtue of a relevant feature shared by the things compared, i.e. how 'relevance' is to be defined. Instead, Cicero names, classified according

to four headings, some patterns of comparison (e.g. 'pervagata angustis [sc. comparantur]') which turn on the question how the two things compared in an argument *ex comparatione* may be related to one another. Their application can only work in such a way that the thing or state of affairs about which something is to be proved is identified with one of the poles of a comparison. Then consideration of the second pole triggers an associative process, ideally leading to a second thing or event which may be compared with the first one. Obviously, this procedure is greatly eased if one has memorized possible patterns of comparison.

§68 supra. At §23.

   tractatio. The word fittingly describes the second discussions of the *loci* as opposed to the first.

   spectantur. In rhetorical theory this is a commonly used word for the consideration of a certain key term which, by stimulating an associative process, might yield an argument. Cf. Quint. *Inst. Or.* 5. 10. 28 *Spectantur ante acta dictaque*, 7. 2. 35.

   numerus. As the examples suggest, amounting to 'quantity'.

   affectio. The meaning here (and in §70) is the standard passive one of relatedness, *pace TLL* i. 1176. 80–4, but without an emotional register; peculiar is merely the construction with *ad*.

§69 pervagata angustis. As the contrast with *angustis* shows, *pervagata* means 'wide-ranging' or 'widely extending' (*OLD* s.v. *pervagor* 2a).

   ex quibus...faciant. The relative clause gives the reason why *diuturniora* and *late pervagata* are to be preferred *numero*; this is suggested by *plura* and *plures*. Otherwise one wonders why duration and extension should come under this head.

   voluntaria necessariis. On this antithesis see the commentary on §63.

§71 elationem...summissionem. The explanation of *elatio* in the *TLL*, 'fere i.q. gradatio, amplificatio' (v/2. 326. 44–6), is mistaken. Like *adfectio* above, the two terms have a neutral sense here, denoting the *maior–minor* relationship of the proposition to be argued for and the argument supporting it; *amplificatio* and *gradatio* in rhetorical terminology denote the amplification of a given idea in a speech.

Si consilio iuvare... Cicero is referring to jurists (*consilio iuvare*, *consuli*) and orators (*auxilio iuvare*, *defendere*), as Boethius had already pointed out (383. 4 ff.); cf. also *Off.* 2. 65 and Dyck (1996), 454–5. What follows shows that Cicero means this conditional to be the first premiss of a first Stoic Indemonstrable. We must read *consuluntur*, not *consulunt* with some of the contaminated witnesses; cf. Winterbottom (1996), 410: '. . . *consulo* does not mean "advise". The active is doubtless taken over from Boethius 383. 9.'

auxilio. A richer notion than my somewhat bland translation might suggest. See Hellegouarc'h (1972), 172, who compares it with other terms from the same semantic field: it is the preferred term to denote actions of support carried out for the benefit of someone with whom one stands in a patron–client relationship, and designates help in cases of emergency as opposed e.g. to help in situations which could be anticipated and prepared for.

at quod primum, est. Stoic syllogistic (see the commentary on §§53–7) distinguishes between Indemonstrables, i.e. particular arguments that cannot and need not be demonstrated, like 'If it is day, it is light; now it is day; therefore it is light', and 'modes' (τρόποι) of Indemonstrables, in which the simple propositions involved are replaced by ordinal numbers ('If the first, then the second; now the first; therefore the second'). This facilitates talking about complex arguments in that it becomes unnecessary to reproduce the arguments referred to; cf. Bobzien (1996), 134–5, 138–9. Cicero adopts this way of taking up propositions by ordinals here (though not consistently; see *quod sequitur igitur* below). Not surprisingly, this peculiar mode of expression was not understandable to everyone, and the reading of α (*et ita fit quod* instead of *at quod*) represents an attempt to emend the text. See Ch. 5 for more information on this passage.

§§72–8

In the present passage, Cicero offers a classification of non-technical arguments, i.e. arguments 'from authority', the criterion being what the reputation of an authority appealed to is grounded on. For the question how this sort of proof fits into the doctrine of *loci* in the *Topica* and what its Aristotelian origins are, I refer to the commentary on the first treatment of non-technical arguments (§24).

The classification of non-technical proofs is structured roughly as follows:

In §73, *testimonium* is introduced as a name for all non-technical proof and thus presumably translatable by the general term 'evidence'. Then we are told that not every *persona* is suitable as external evidence, but only that which has authority. It is not entirely clear whether *persona* is meant to constitute merely one class of *testimonia* (this would be suggested by the lists of non-technical proofs elsewhere, which include e.g. laws or statutes, and by Cicero's introduction here:...*omne quod ab aliqua re externa*...) or is intended to clarify *testimonium*, thus being coextensive with it (which is, if not entirely clearly—see the 'divine evidence'—suggested by what follows).

'Authority' being the crucial feature of *persona*, a distinction between authority resting on 'nature' and on 'time' is made. Under 'time' several factors are listed which determine the credibility of a person (§§73 *fin.*–76), while authority based on 'nature' (i.e. the nature of the person providing the evidence) is said to be due to 'virtue'. There is a certain artificiality in this division. Take, for instance, *ingenium*, classified by Cicero under 'time', presumably because *ingenium* is usually shown or comes to light in a particular situation; it is not obvious why *ingenium* cannot belong with the *natura* of a person.

Since gods possess 'virtue' without effort, while man has to struggle for it, evidence based on virtue is divided into that 'by nature', i.e. divine evidence (§77), and 'by effort', i.e. human evidence (§78); clearly, this does not enhance the clarity of the division, as 'nature' appears now twice and in different senses.

As to the kinds of non-technical evidence given here, Cicero departs from the rather Aristotelian list with its strong focus on forensic rhetoric he uses in *de Orat.* 2. 116: *ad probandum autem duplex est oratori subiecta materies: una rerum earum quae non excogitantur ab oratore, sed in re positae ratione tractantur, ut tabulae, testimonia, pacta, conventa, quaestiones, leges, senatus consulta, res iudicatae, decreta, responsa*...with *Rhet. A*2, 1355[b]36–8: ἄτεχνα δὲ λέγω ὅσα μὴ δι᾿ ἡμῶν πεπόρισται ἀλλὰ προϋπῆρχεν, οἷον μάρτυρες βάσανοι συγγραφαὶ καὶ ὅσα τοιαῦτα ('I call atechnic those that are not provided by us [i.e. the potential speakers] but are preexisting: for example, witnesses, testimony of slaves taken under torture, contracts and such like'; trans. Kennedy).[1] Instead,

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[1] See also Wisse (1989), 141–2.

he names sources of evidence which would seem to be more useful in epideictic oratory or popular philosophical discourse. That he gives a very similar division of non-technical evidence in *Part. Or.* 6 shows that the division here was not created *ad hoc* (*C. Testimoniorum quae genera sunt? P. Divinum et humanum; divinum est ut oracula auspicia, ut vaticinationes et responsa sacerdotum haruspicum coniectorum; humanum, quod spectatur ex auctoritate, ex voluntate, ex oratione aut libera aut expressa, in quo insunt scripta pacta promissa iurata quaesita*.). And a comparison with the Anonymus Seguerianus suggests that probably Cicero received some inspiration for developing the classification outlined from his source-material.[2]

Cicero presumably worked on the *De divinatione* shortly before he wrote the *Topica*,[3] and not surprisingly it is easy to point to parallels in *Div.* for the various types of *divina testimonia* he mentions here (see the commentary). More interesting are points of contact with *Off.*, written later in the same year. There Cicero juxtaposes attempts to give advice for the *institutio vitae communis* that shall meet the standards of Panaetius' theory of duties, impractical if less so than Chrysippus', with references to the difficulties of living up to any standards of morality in 44 BC. This becomes particularly manifest when a certain value (and the corresponding behaviour) is contrasted with a degenerate form of this value in reality; in *Off.* 1. 61–2, for instance, a desirable form of *gloria* is contrasted with a degenerate counterpart that is based not on praiseworthy deeds, but on underhandedness and inferiority. Later on it seems as if *gloria* in general is discredited, as it is said to presuppose dependence on the inconstancy (*error*; 1. 65) of the ignorant masses.

Also in our passage there are remarks about the dubious ways in which a good reputation may be acquired, or about the lack of judgement that inheres in public opinion frequently (§73 *fin.*, §78). In a text on 'arguments from authority' one would not expect such reflections except for personal reasons of the author, as for such arguments to work it does not matter whether, say, the weight attributed to a particular man's views is based on an undeserved esteem of his character.

[2] Anon. §181 on κρίσις: Κρίσις δὲ ληφθήσεται ἀπὸ θεῶν, ἀπὸ ἡρώων, ἀπὸ συγγραφέων, ἀπὸ φιλοσόφων, ἀπὸ ποιητῶν 'Judgement will be taken from that of gods, heroes, prose writers, philosophers, poets' (trans. Dilts/Kennedy). Cf. also Theon, *Prog.* ii. 108. 32–5, 110. 27–8 Spengel and Quint. *Inst. Or.* 5. 11. 36.

[3] See Pease (1963), 13–15 on the dating of *Div.*

§72 nihil omnino…pertinent. Cicero does not mean that legal arguments could not rest on authority (cf. the example in §24). It is just that a jurist, when acting as a counsellor, will not normally need to rely on someone else's *auctoritas* to back up his views, whereas an orator frequently has to. So Cicero has in mind that the social context in which jurists issue their *responsa* (alluded to in *disputationes* here) does not normally call for non-technical arguments. Since external arguments turn on questions of fact, they are not the jurist's business (on the principle *nihil hoc ad ius, ad Ciceronem*); the responding jurist merely stated the law that would apply to the facts as stated if the orator convinced the court that they were true.

in aliorum manus. So Cicero planned the dissemination of the work from the start.

quos. For *eis quos*: on omission of antecedents in oblique cases before relative clauses see K.–St. ii. 282.

recta studia. Where Cicero uses the adjective *rectus* to qualify *studia* it normally has a moral connotation (cf. *OLD* s.v. 10), i.e. *studia* of the sort which lead or contribute to a virtuous or civilized attitude (*Cael.* 24; *Inv.* 1. 4; *Part. Or.* 80: *Sunt autem alii quidam animi habitus ad virtutem quasi praeculti et praeparati rectis studiis et artibus, ut in suis rebus studia litterarum, ut numerorum ac sonorum, ut mensurae, ut siderum, ut equorum, ut venandi, ut armorum*).

delectant prodesse. This *iunctura* is hardly accidental; on the history of the pair *delectare/prodesse* in literary contexts see Brink (1971), 352–3 on Horace, *AP* 333.

§73. artis expers. Translates ἄτεχνος; cf. §24 above.

iudicant…existimant. The distinction is presumably between those who make a judgement *ex officio* in a trial and those who simply entertain a view.

§74 a corporibus. In the Republican era, torture was a common means of taking evidence; yet it was not used in private trials, and was only applied to slaves and people alleged to have committed certain crimes. The technical term is *quaerere/quaestio* (*in tormentis*). See Waldstein (1963); Kaser–Hackl (1996), 119 n. 33, 367. On torture in connection with rhetorical argument see Berry (1996), 289–2 on Cic. *Sull.* 78–9, Quint. *Inst. Or.* 5. 4, and Winterbottom (1984), 364–6 on 'Quint.' *decl.* 269.

perturbationibus animi. In rhetorical contexts, *perturbationes animi* frequently occur, as a matter of fact and as issued to be addressed, in connection with the *status qualitatis*, the defence strategy which relies on a reference to the motivation or possible justification of an action (rather than the denial of the charge). In *Tusc.*, Cicero discusses at several places the Stoic theory of πάθη, *p. a.* (e.g. book 4; 3. 24–5), distinguishing between *voluptas gestiens*, *cupiditas* (*libido*), *metus* and *aegritudo* (ἡδονή, ἐπιθυμία, φόβος, λύπη; cf. Andronicus, *De Passionibus* 1 = *SVF* iii. 391). Clearly, Cicero is not following this division here; he talks about passions as ordinary use conceives of the term.

necessitatis vim. Cf. §64 with commentary.

auctoritatem et fidem. Both terms refer to the evidence; *fides* means 'credibility', not 'belief', which would require a change of focus from the evidence to the person who relies on it and a zeugmatic use of *afferunt* (one would have expected *et afferunt auctoritatem et faciunt fidem*).

§75 Staieno. C. Aelius Paetus S., Roman politician and orator, born 108 (death before 66 may be inferred from *Clu.* 70, 72). After a trial against Statius Albius Oppianicus, in which S. acted as a juror, he was found to have committed bribery. Someone eavesdropped on a conversation between him and Oppianicus about repayment of money he had received for arranging an acquittal (though he failed to do so); cf. *Clu.* 78. (However, our knowledge of this part of the story derives from the *Cluentiana* alone, and there is reason to assume that the account given there is skewed; see Stroh 1975, 213.) S. was condemned to repay the money (*Clu.* 65, 78, 102). Later, he was successfully accused *maiestatis* by C. and P. Cominius (*Clu.* 99–101) for stirring up mutiny in the camp. See also Münzer (1929).

nuper. Here referring to an event which happened more than twenty years ago, which is not unparalleled. Cf. *Cato* 61 and *N. D.* 2. 126: *ea quae nuper, id est paucis ante saeculis, medicorum ingeniis reperta sunt*. The same holds for *modo*. See Reid (1925) on *Fin.* 2. 100.

subauscultantibus. This colloquial word means 'to eavesdrop' and is, not surprisingly, common in comedy; Cicero uses it only here, in a dialogue (*de Orat.* 2. 153), and in a letter (*Att.* 10. 18. 1). *Auscultare* is to be found only once in Cic. (*Rosc. Am.* §104, on

which see Landgraf (1914), who cites the *TLL* s.v. 'verbum impri-
mis scaenicorum et sermonis vulgaris'); Cicero's earliest speeches
show a number of colloquialisms which he later purged from his
usage.

rei capitalis. Presumably referring to Staienus' accusation
maiestatis; on *capitale* see Schiemann (1997).

Pausania. The victor of Plataiai; see Schaefer (1949). After the
victory, he had become suspect in Sparta because of high-handed
actions and shady contacts with the Persians. Thuc. 1. 131–2
reports that the Ephors, when several vague accusations against
Pausanias were already pending, got hold of a letter Pausanias had
written to Artabazos. They verified the suspicion arising from this
letter by eavesdropping on a discussion between the messenger and
Pausanias about the content of the letter, hiding in a secret space of
the tent in which the meeting took place. Thucydides states twice
that this move was undertaken to get further evidence (131.
1 σημεῖον, 132. 5 ἀναμφισβητήτων τεκμηρίων).

§76 talis est ut si . . . *Ut si* correlates to *talis*, *ut si* meaning 'as, for
example, if'. *Interventum est* is the main verb of the *si* clause, adver-
bially qualified by *casu*; the *cum* clause depends on the *si* clause.

Palamedem. Cicero was aware that the myth of Palamedes is not
be found in Homer (*Off.* 3. 97); on it see Höfer (1901), 1264–75,
Wüst (1942), 2500–12. The mention of *suspicio proditionis* shows
that Cicero has the episode in Troy in mind which led to the death of
Palamedes by stoning; it involved the burying of gold at the place
where Palamedes was to erect his tent, and a letter forged by Odys-
seus, allegedly written by Priam, in which the gold was mentioned as
remuneration for treason (Hyg. *fab.* 105). This being so, the se-
quence of the three examples has a quite elaborate structure, the
common feature of Staienus' and Pausanias' case being the over-
hearing of a conversation, and that of Pausanias' and Palamedes'
case being the letter that counts as circumstantial evidence.

§77. For the *divina testimonia* discussed in this paragraph, a
parallel in *Part. Or.* has been quoted above.

oracla . . . oratio. On ancient etymologies of *oraculum* see Mal-
tby (1991), s.v. Cicero's is the earliest attested; later authors have
slightly different accounts, linking *oraculum* either to *orare* (Prisc.
Gramm. ii. 125. 7 Keil) or to *os* (Isid. *Orig.* 15. 4. 3). On synco-
pated forms see Leumann (1977), 95–9.

primum. There is no exact parallel for *primum . . . deinceps . . . deinde* in Cicero, but in *Fin*. 3. 20 we have the sequence *primum . . . deinceps . . . deinceps . . . deinde*. I prefer *deinceps* (α) to *deinde* (β) because *primum* introduces a broader category, under which the two following categories (themselves on the same level) are subsumed; this structure seems more clearly marked by *primum . . . deinceps* than by *primum . . . deinde*. There are no good parallels for this use, but few enumerations have this kind of structure. On *primum . . . deinceps . . . deinde* see *TLL* v/1. 410. 15–38 (s.v. *deinceps*), on *primum . . . deinde . . . deinde* ibid. ll. 35 ff. (s.v. *deinde*).

mundus . . . ordo . . . ornatus. *Prima facie* one might wonder whether the arrangement of the universe could be taken as evidence for anything else but the existence of the being who arranged it; cf. *ND* 2. 90: *sic philosophi debuerunt, si forte eos primus aspectus mundi conturbaverat, postea cum vidissent motus eius finitos et aequabiles omniaque ratis ordinibus moderata inmutabilique constantia, intellegere inesse aliquem non solum habitatorem in hac caelesti ac divina domo sed etiam rectorem et moderatorem et tamquam architectum tanti operis tantique muneris*. Cicero must be thinking of astrology in our passage, i.e. the art of making inferences from celestial events about terrestrial or human affairs (cf. *Div*. 2. 89). This clearly may involve arguments for or against certain views because 'the stars say so'. Astrology, which became popular in Rome from the third century BC onwards (see Cramer 1954, 44–50), was not perceived as a matter of traditional religion (indeed, there were occasional expulsions of astrologers on the grounds that they were subversive, e.g. in 139 BC), but rather was complementary to *divinatio* in the technical sense, which comprised divination by means of birds and weather signs, and by inspection of entrails and interpretation of prodigies. *Divinatio* in this more narrow sense formed an integral part of the ceremonies of Roman state religion. On astrology in general see Cumont (1912), Long (1982), and Graf (1999); on astrology and *divinatio* in Rome see Rawson (1985), ch. 20; on divination in Cicero see Linderski (1982).

cantus. Cf. *Div*. 1. 94, 1. 118. The technical term of the augurs' language for the bird whose voice (rather than flight) is relevant is *oscen, -inis*; see Wissowa (1895). On Roman augural lore in general see Linderski (1986) and Vaahtera (2001); on philosophical theories about the subject see Pfeffer (1976).

aeris sonitus. Cf. *Div*. 1. 35.

portenta. Cf. *Div*. 1. 97.
per exta inventa. Cf. *Div*. 1. 93.

§78 rentur. See Laurand (1936), 96–7 on Cicero's use of this word.

§§79–86

Cicero has finished his treatment of the *loci* and is now turning to the division of the 'general question', on which some information, including to what extent it forms a unity with the *loci*, had been provided in Ch. 1. For the sake of convenience I shall restate in summary form what I have said there and add some supplementary remarks.

(i) The passage contains a division of the 'general question' (θέσις), which, however, is intended to be equally applicable to the 'particular question' (ὑπόθεσις; see §86 *fin.*). For illustration see below.

(ii) The division represents an application of the method of the στάσις-doctrine, notoriously set up to tackle the particular question, to the general question. Thus it conveys by itself, even before we consider Cicero's comments about it elsewhere, a deliberately unorthodox spirit.

(iii) The way to use it can only be analogous to that in which a division of the particular question would be used: by going through the question-types, we come to consider a complex problem from a variety of angles and are eventually able to break it down to the question (or questions) that is at issue, which we then try to tackle in a further step of the process of invention. This method, if it is not artificially restricted in its use, is in principle neutral against the distinction between general and particular questions, for which reason Cicero can justly claim that his division is 'also applicable to particular questions'.

(iv) In *de Oratore*, Cicero more or less explicitly names Philo of Larissa as his source for the θέσις division. It is introduced there as a remedy for the rhetoricians' neglect of the general question and, because general questions are normally the philosopher's concern, as a focal point for Cicero's programme of bringing together again rhetoric and philosophy, which had been separated by Socrates.

While the attribution of the division to Philo in *de Orat*. 3 is quite clear, it cannot be ruled out that he used already existing material.

The least implausible guess for an ultimate origin of the division from outside the Fourth Academy would be the Peripatos. Mansfeld (1990), 3193–205 has linked the θέσις division to this school. The evidence he offers for this view consists of a group of texts which say that Aristotle introduced the arguing of the θέσις as a form of rhetorical training,[1] and of a text in Strabo which pejoratively describes 'declaiming θέσεις' as an occupation of the Hellenistic Peripatetics.[2]

It should be clear that a material origin of the θέσις division in this school would in itself be perfectly compatible with Philo's being the mediator of it (I have argued in Ch. 3 that something similar happened in the case of the *loci*). It is this possibility which I shall investigate now.

Two features of the θέσις division allow us to date it independently from what Cicero says about it. The first one is the fact that it is said to range over particular and general questions. This distinction of questions was, as far as we know, introduced by the rhetorician Hermagoras of Temnos (*Inv.* 1. 8 = fr. 6a Matthes). So if the division makes reference to it, we get a *terminus post quem*. Second, the occurrence of the names of the στάσεις (*coniectura*, *definitio*, *qualitas*), which add to the division's rhetorical outlook, is consistent with this, though in itself it would represent less conclusive evidence. For while the later tradition would associate στάσις-theory intimately with Hermagoras' name, these technical terms

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[1] Cic. *Or.* 45–6 (discussed in Ch. 2); D.L. 5. 3.

[2] Strab. 13. 1. 54: . . . συνέβη δὲ τοῖς ἐκ τῶν περιπάτων τοῖς μὲν πάλαι τοῖς μετὰ Θεόφραστον οὐκ ἔχουσιν ὅλως τὰ βιβλία πλὴν ὀλίγων, καὶ μάλιστα τῶν ἐξωτερικῶν, μηδὲν ἔχειν φιλοσοφεῖν πραγματικῶς, ἀλλὰ θέσεις ληκυθίζειν 'And so it happened that the members of the ancient Peripatos, i.e. those after Theophrastus, had but a few books [of Aristotle], and in particular the exoterical writings and were therefore unable to do philosophy in a professional fashion; instead they declaimed *theseis*'. The word θέσις, given the contrast in which it stands, presumably has its rhetorical meaning here; so also Barnes (1997), 12 n. 55. On ληκυθίζειν, 'to declaim in a hollow voice, as though speaking into a λήκυθος' (LSJ s.v.), see Callimachus, fr. 125 Pfeiffer[2] and Brink (1971), 180 on Horace, *AP* 97. More material of the kind found in Strabo is collected in Düring (1957), 299–314, most of whose annotating remarks are, however, now outdated.

are unlikely to have been coined by him,[3] nor did he invent the method itself.[4]

However, scholars were unable to agree on an exact date of Hermagoras for a long time, and dates between 160 and 100 BC have been argued for (see Matthes 1958, 70–81). Recently Brittain (2001), 306–7, in the context of his reconstruction of the 'quarrel between rhetoricians and philosophers' in the later second century BC, has pointed out that the criticism launched by philosophers like the Peripatetic scholarch Critolaus against rhetoric in its usual form (ibid . 299–300) does not in any form betray a knowledge of Hermagoras' handbook, though later on he became very much the focal point of antirhetorical attacks. Since Critolaus can be securely dated to the middle of the second century, Brittain's case for 140–130 BC as the period when Hermagoras' τέχνη became widely known is a strong one.

These considerations, taken together with some of the features of the θέσις division, rule out Critolaus. They also rule out contemporary Peripatetics who dissented from their scholarch, given that the division, as argued above, *presupposes* Hermagoras. Yet since my arguments above hinged on some contested or only recently proposed datings, it may not be superfluous to add that the evidence we have for Critolaus' views not only shows that he rejected rhetoric completely (frr. 25–34 Wehrli), i.e. in a way which makes it difficult to believe that he would have given the name of 'rhetoric' to some sort of popular philosophical discourse, as it is reasonable to postulate for the (later) Hellenistic Peripatos.

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[3] One of Hermagoras' innovations is said to be the introduction of a fourth στάσις (μετάληψις/*translatio*), which obviously implies the pre-existence of a set of three; see *Inv*. 1. 16 (= fr. 13a Matthes). And Quintilian in his historical survey of different versions of the στάσις-doctrine refers to an Archedemos who distinguished two στάσεις only and who may be older than Hermagoras (*Inst. Or.* 3. 6. 31: *Fuerunt qui duos status facerent: Archedemus coniecturalem et finitivum exclusa qualitate, quia sic de ea re quaeri existimabat: quid esset iniquum? quid iniustum? quid dicto audientem non esse? quod vocat de eodem et alio*). We know of an Archedemus who criticized (on improper grounds) Aristotle's definition of the colon and who, since this critique is reported in Demetrius' Περὶ ἑρμηνείας §34, is to be dated before Demetrius. The date of Demetrius is contested (E. G. Schmidt 1970: 1388–90 surveys the arguments for both the 3rd c. BC and the 1st c. AD). It seems to me to be crucial that Philod. *Rhet*. i. 165 Sudhaus (col. 4) summarizes a four-style theory which, as Grube (1961), 53–5 argued, implies knowledge of Demetrius; but see Innes (1995), 313, 315 n. 10, and 330, who, while agreeing with the early date, is slightly sceptical about the decisiveness of the Philod.–Demetrius correspondence.

[4] Cf. already *Rhet. ad Alex*. p. 26. 23 ff. Fuhrmann; Matthes (1958), 135 n. 2.

In addition, another aspect of his views on rhetoric is that his rejection of it goes hand in hand with advice not to engage as a philosopher in everyday politics (frr. 35–7b Wehrli). This is difficult to reconcile with the spirit of the θέσις division. For this division, with its declared range over θέσεις and ὑποθέσεις and its adoption of the στάσις method, reflects clearly a philosopher's attempt to keep in his rhetorical training a promise the rhetoricians have made but broken. And *this* rhetoric, as emerges from the context in *de Orat.* 3. 110 ff. where the θέσις division is contextualized (see Ch. 1), is set up to beat the rhetoricians on their own ground, to provide an education which qualifies *for the same occupations as standard rhetorical training*, but does so better.

So if a Peripatetic originally set up the division, this could only have happened in the next generation after Critolaus. The only candidate we know of is Ariston of Cos, a contemporary of Hermagoras: *quorum fuit Ariston, Critolai Peripatetici discipulus, cuius hic finis est: scientia videndi et agendi in quaestionibus civilibus per orationem popularis persuasionis* (Quint. *Inst. Or.* 2. 15. 19). On this evidence, Barwick (1963), 55 argued that Ariston proposed a version of the στάσις doctrine and relied on the Hermagorean distinction of the two questions. This may be pressing the evidence too far (there is no need to take *quaestio civilis* in a technical sense here, equivalent to the Hermagorean πολιτικὸν ζήτημα, which concept was meant to cover θέσεις and ὑποθέσεις, nor is στάσις doctrine mentioned), but clearly a change of attitude has occurred since Critolaus (see Brittain 2001, 307–8 for an analysis of this passage). Overall it seems fair to say that assuming an ultimate origin of the division in the Peripatos is not impossible but amounts to multiplying unknown quantities *praeter necessitatem*.

It would have been easily possible to extend the claim that the *loci* could be useful for a jurist to the θέσις division; it must be admitted, however, that Cicero gives no clear indication to this effect.

Here follows an outline of the division provided in this passage (cf. *de Orat.* 3.111–18, *Part. or.* 61–7).

1. Theoretical questions, relating to the *cognitio rei*: (Quaeritur) a natur-ane ius profectum sit an ab aliqua quasi condicione hominum et pactione.
    1.1 *coniectura*: *(Quaeritur)*
        1.1.1 *sitne aliquid*. (Quaeritur) ecquidnam sit honestum, ecquid aequum re vera.

    1.1.2 *unde sit ortum*. (Quaeritur) natura an doctrina possit effici virtus.

    1.1.3 *quae id causa effecerit*. (Quaeritur) quibus rebus eloquentia efficiatur.

    1.1.4 *de commutatione*. (Quaeritur) possitne eloquentia commutatione aliqua converti in infantiam.

  1.2 *definitio*: *(Quaeritur) quid sit*.

    1.2.1 *notio*. (Quaeritur) sitne id aequum quod ei qui plus potest utile est.

    1.2.2 *proprietas*. (Quaeritur) in hominemne solum cadat an etiam in beluas aegritudo.

    1.2.3 *divisio et eodem pacto partitio*. (Quaeritur) triane genera bonorum sint.

    1.2.4 *descriptio*. (Quaeritur) qualis sit avarus, qualis adsentator.

  1.3 [*qualitas*] *(Quaeritur) quale quid sit*.

    1.3.1 *simpliciter*. (Quaeritur) Expetendane sit gloria.

      1.3.1.1 *de expetendo fugiendoque*. (Quaeritur) si expetendae divitiae, si fugienda paupertas.

      1.3.1.2 *de aequo aut iniquo*. (Quaeritur) aequumne sit ulcisci a quocumque iniuriam acceperis.

      1.3.1.3 *de honesto aut turpi*. (Quaeritur) honestumne sit pro patria mori.

    1.3.2 *comparate*. (Quaeritur) praeponendane sit divitiis gloria.

      1.3.2.1 *de eodem et alio*. (Quaeritur) quid intersit inter amicum et adsentatorem, regem et tyrannum.

      1.3.2.2 *de maiore et minore*. (Quaeritur) eloquentiane pluris sit an iuris civilis scientia.

2. Practical questions:

  2.1 relating to the *officium*: (Quaeritur) suscipiendine sint liberi.

  2.2 relating *ad movendos animos*: *cohortationes ad defendendam rem publicam, ad laudem, ad gloriam*. Ex eo genere sunt querellae incitationes miserationesque flebiles; rursusque oratio tum iracundiam restinguens, tum metum eripiens, tum exsultantem laetitiam comprimens, tum aegritudinem abstergens.

§79 nec ullam . . . aptiores locos. The idea, which is more fully worked out in §87, is that particular patterns of argument are especially useful for or relevant to the consideration or settling of certain types of questions.

    quam] *β*: *qua* α. Di Maria 107 writes in defence of *qua*: '*Incurrere in* ablativus sequitur, cum de generibus sive rationibus sermo sit quae in argumento exsistant vel occurrant: cf. *Part*. 14, 51; 31, 107; vd. praeterea *Th. L. L.* VII 1 c. 1085.25–51.' The passage in *Part*.

Or. 51 reads *Atque etiam incurrit alia quaedam in testibus et in quaestionibus ratio*. But contrast Cic. *Part. Or.* 107 *Ac ne hoc quidem genus* [a particular type of argument] *in eas causas incurrit quae coniectura continentur*. Thus β and α offer mere alternatives here.

Quaestionum duo genera. The distinction of questions is said to have been used also by Academics and Peripatetics in *de Orat.* 3. 109 and *Fin.* 4. 6 (on the troublesome reference to the Peripatetics in this context see Ch. 1, *fin.*). As what follows shows, the contrast *finita/infinita* is to be taken in such a way that the individual circumstances involved in a case (time, place, etc.; Greek: περιστάσεις) 'narrow down' or 'restrict' (*finire*) the general question, turning it into a particular one.

nos causam. That *causa* can *mean* ὑπόθεσις has no doubt to do with the primary application of the στάσις doctrine to forensic oratory in standard rhetoric; the 'case' at issue in a trial is actually encapsulated in the 'particular question'. But because it is not the same thing to talk about (i) the 'particular question' and (ii) the case as pointedly formulated in the particular question, Cicero may also distinguish the two, e. g. in *Inv.* 1. 10: *Eam igitur quaestionem, ex qua causa nascitur, constitutionem* [= στάσιν] *appellamus*. We find ὑπόθεσις in the sense of 'lawsuit' in inscriptions (*IG* ii/4. 1299. 29, Delos, 3rd c. BC) and Ptolemaic papyri (see the references in Preisigke 1927, s.v. 3), which explains why 'particular questions' were given this name.

propositum. Other renderings of θέσις are *consultatio* (*de Orat.* 3. 109), *quaestio infinita* (*Part. Or.* 61), *genus infinitum* (ibid.).

§80. personis ... negotiis. These are the περιστάσεις mentioned above; cf. Martin (1974), 17–18.

in maximis. 'In the most important ones'. Cicero seems to hold the view that a θέσις also may have περιστάσεις and that what distinguishes a θέσις from a ὑπόθεσις is not that the latter alone has περιστάσεις, but rather that a θέσις is unspecific and general with respect to a *crucial* περίστασις. 'Is it acceptable for a politician in late Republican Rome to try to win the electorate's sympathy through favours?' is a question which is specific with respect to place and time, but it is still a θέσις. But if we replace 'politician' by the name of a particular individual (e.g. 'Murena'), the question turns into a ὑπόθεσις.

pars est causae. A characterisation of the θέσις, which is attributed to an Athenaios in Quint. *Inst. Or.* 3. 5. 5; it is too general to be attributable to him also here. Cf. *Part. Or.* 61: *Sed propositum quasi pars causae; inest enim infinitum in definito et ad illud tamen referuntur omnia.*

§81 quacumque de re. Cf. the introduction of the θέσις division in *de Orat.* 3. 111: *Omnis igitur res eandem habet naturam ambigendi, de qua quaeri et disceptari potest, sive in infinitis consultationibus disceptatur sive in eis causis, quae in civitate et forensi disceptatione versantur.*

    actionis . . . cognitionis. It has been mentioned above that this division of θέσεις is also to be found in the *Progymnasmata* literature under the heading of θέσις. Theon assigns θεωρητικαὶ θέσεις to the philosopher, but regards the whole division as artificial (ii. 121. 14–17 Spengel): οὐδὲν μέντοι διαφέρει, ἐάν τε οὕτω λέγῃ τις, εἰ γαμητέον ἢ οὔ, καὶ πάλιν εἰ αἱρετέος ὁ γάμος ἢ φευκτέος· ἓν γὰρ καὶ ταὐτόν ἐστι διὰ πάντων τούτων τὸ δηλούμενον ('It makes no difference whether someone says: "Should one marry or not?" or again "Is marriage to be sought or avoided?"; for it is one and the same thing that is indicated by all such questions'). Theon's argument would not work for those θέσεις included under *cognitio* which are not about what one *ought* to do.

§82 a naturane ius profectum sit . . . The exemplary questions given in *Part. Or.* 62 and *de Orat.* 3. 112 are different; Cicero chooses an example which, broadly speaking, belongs to the sphere of the lawyer. The legal aspect of the νόμος − φύσις contrast is at issue in several of Cicero's works, e.g. *Rep.* 3, *Leg.* 1.

    sitne . . . quid sit . . . quale sit. This is the point where Cicero's division diverges from the standard treatment of θέσεις, by applying the στάσεις to θέσεις.

    iuris et iniuriae distinctione. This occupies the place which ποιότης/*qualitas* normally has in the system; Mansfeld (1990), 3194 n. 647 assumes that it is an *ad hoc* restriction due to the legal context in the *Topica*. Contrast the examples in *Part. Or.* 62 (*iuste vivere sitne utile*) and *de Orat.* 3. 113 (*sitne aliquando mentiri boni viri*).

    quibus rebus eloquentia efficiatur. One argument against the τέχνη status of rhetoric was that there are eloquent speakers

who have never received rhetorical training; cf. S.E. *Adv. Math.* 2. 16; Quint. *Inst. Or.* 2. 17. 11; Philod. *Rhet.* ii. 71, 97 Sudhaus.

§83. In the treatment of the second στάσις (*definitio*/ὁρισμός; cf. *de Orat.* 3. 115), several of the topics which were discussed in the second treatment of the *locus ex definitione* recur: the question of 'concept' (*notio*; §27), which corresponds to what is to be defined (the *definiendum*), the notion of 'property' (§29), which represents a distinctive feature of definitions (that they must be coextensive with their *definienda*), and division into species and parts (§28). I assume that Cicero used the παράδοσις of the source for the *loci* (cf. Anon. Seg. §§172–3) and of the θέσις division as an inspiration for his choice of material in §§26–34.

χαρακτῆρα. Cicero's equation with *descriptio* shows that this is an established technical term; otherwise it would be difficult to understand why χαρακτήρ is not what is described, but the description of something. In rhetorical handbooks we find χαρακτηρισμός (cf. e.g. Rutilius Lupus 2. 7: *Quem ad modum pictor coloribus figuras describit, sic orator hoc schemate aut vitia aut virtutes eorum, de quibus loquitur, format*), for which the usual Latin rendering is *notatio* (*Rhet. Her.* 4. 63; *notatio* is used in a different sense in §10 of the *Topica*). The title of Theophrastus' famous book may give us an idea how χαρακτῆρες can come to mean 'character descriptions'.

Notio. In §31 *notio* had been given as the translation of the Stoic (or originally Epicurean) concept of the ἔννοια. In the discussion of the θέσις in Hermogenes *Prog.* (*Rhet. Gr.* i. 51 Walz), questions concerned with κοιναὶ ἔννοιαι are mentioned; the context shows that these are θέσεις on matters of widespread controversy (e.g. εἰ ῥητορευτέον); see also *Proleg. Syll.* pp. 282. 25–283. 1 Rabe.

§84 Si expetendae divitiae. On *si* introducing an indirect question, a construction rare in Cicero, see K.–St. ii. 426.

§85 an iuris civilis scientia. The example in *de Orat.* 3. 117 is different; Cicero adapts the example to the lawyer. The question itself is not always answered in the same way by Cicero, depending on the argumentative situation. In Ch. 4 I have collected some passages suggesting a positive answer, while in the *Pro Murena* legal science is denied the status of a science (this is an element of

Cicero's attempt to undermine the reputation of one of the prosecutors, who was a jurist).

§86. This paragraph deals with the second main group of θέσεις,
those concerned with action. It is puzzling that within the second
subgroup *ad movendos animos* we are not given questions that invite
a rhetorical treatment as a given problem would, but rather ones
that represent possible elements of an argumentative strategy; I am
not sure how to interpret this. That there is at all a reference to the
psychology of oral discourse could be explained in the following
way: in the *de Orat.*, where Cicero prides himself on making use of
methods shared by philosophers and orators like the τόποι or the
θέσις, Cicero also presents a version of the—for the audience in 55
BC—recondite Aristotelian theory of ἦθος and πάθος. And in 1. 87,
he has the Academic Charmadas—in an attack on ordinary rhetoric
and very much in the spirit of Plato's *Phaedrus*—say that a profound knowledge of psychology, which a true orator needs, is only
accessible to philosophers. There is the possibility that the Academic teaching of rhetoric included instruction on the 'psychology
of rhetoric' along the lines of Aristotle's *Rhet.*

    suscipiendine sint liberi. 'whether one should have children'.
Cf. *OLD* s.v. *suscipere* 4b.

    abstergens. The language used to refer to θέσεις relating to
actio is, as it is appropriate for the subject, vivid; Cicero preferably
uses *abstergere* metaphorically of emotions (*ad Q. fr.* 2. 9. 4; *Fam.*
9. 16. 9; *Phil.* 14. 34).

    eadem in causas. Cf. *de Orat.* 3. 111, quoted above on §81.

§§87–90

This section provides an account of which *loci* particularly match
which question-types. In Ch. 1 I have offered arguments for the
view that Cicero adopted both the *loci* and the θέσις division from
one of his philosophical teachers, Philo of Larissa; anyone who
accepts this assumption will also take it that in the present passage
Cicero at least partly relates ideas which he found in his source.

    The question how both elements of theory fit together needs to
be considered regardless of whether it was Cicero or Philo who
combined them; I shall begin with some systematic considerations
and then give a summary of what Cicero says. The point of refer-

ence for many of the *loci* is a simple and unanalysed proposition,
which can be either established or refuted (in a weak sense of both
terms) by an argument fitting the argumentative pattern(s) classi-
fied under the name of one *locus*. It is possible to extract such a
proposition from most of the question-types in the θέσις-division.
To give one example: under the heading *definitio* (§83) we find the
θέσις *Triane genera bonorum sint?*, containing the proposition
'There are three types of *bona*'. We could now, for instance, use
the *locus ex adiunctis* (cf. the commentary on §18) and consider
possible *adiuncta* of there being three kinds of *bona*. A possible
adiunctum, at least in the sense in which *adiunctum* is used in §18,
would be that there are three kinds of *mala*. Assuming that we want
to attack the proposition, we could argue that there are, say, actu-
ally four types of *mala*.

   Another group of *loci* presupposes that we analyse the θέσις
under discussion as a subject–predicate proposition (*a genere*; *a
forma*; *ex definitione*; *ex partium enumeratione*). Take, for instance,
the θέσις *Aequumne sit ulcisci a quocumque iniuriam acceperis?* (§84).
To find an argument relevant to the settling of this question, we
could use the *locus a forma*. We would analyse the proposition in
question: 'To be justly taken revenge on' holds of 'someone who
has done us harm'. Since Cicero construes the notion of *genus* very
broadly, we are licensed to call different types of wrongdoing
formae of *aliquem iniuria afficere*. Assuming we want to attack the
proposition 'It is fair to take revenge on someone who has done us
harm', we should pick a weak sort of wrongdoing. Then we could
argue that, because it is not fair to take revenge for this particular
type of wrongdoing, it cannot be claimed that to take revenge for
wrongdoing is fair in general.

   There are some question-types in the θέσις-division which
cannot be reduced to a simple subject–predicate proposition, be-
cause they involve two-placed predicates (see §88 below *Idemne sit
pertinacia et perseverantia?*) and therefore fit neither of the two
patterns just discussed. Here Cicero tells us what to do about
them, and I shall interpret what he says in the survey of the passage
below.

Reviewing the classification of theoretical questions as given
in §§82–5, Cicero names the *loci* which are suitable for tackling a
particular question-type. For questions of fact, the *loci ex causis*,

ex effectis, and *ex adiunctis* are said to be most helpful; for the *locus ex adiunctis* I refer to the commentary on §§50–2, where its relationship to *coniectura* is examined in detail. And it is obvious that the notions of cause and effect easily lend themselves to developing arguments which settle questions of fact (e.g. '*x* is the case, because the cause of *x* applied'; '*x* is not the case, because an effect of *x*, which one would have expected, is not in evidence').

Questions involving definition are to be tackled by using the 'science of defining', which is presumably a reference to the second discussion of the *locus ex definitione* and the methods of defining expounded there (§§26–34). Then there is an inconsistency with the θέσις division when Cicero includes questions of identity under the second *status*; for these questions had been treated as belonging with quality in §85.[1] This may simply be a slip. Questions of identity, we are told, may be settled with the help of five particular *loci*.

Here is the place to fill the gap left at the end of the systematic discussion above: how to deal with questions of identity like 'Is B identical with C or not?' The instruction Cicero gives is to rely on five of the *loci*, which may yield five principles by which such questions may be settled. The five *loci* are *ex antecedentibus*, *ex consequentibus*, *ex repugnantibus*, *ex causis*, and *ex effectis*; the five principles associated with them are:

(i) If A follows B but not C, then B and C are not identical.
(ii) If A precedes B but not C, then B and C are not identical.
(iii) If A is incompatible with B but not with C, then B and C are not identical.
(iv) If the causes of B and C are different, then B and C are not identical.
(v) If the effects of B and C are different, then B and C are not identical.[2]

The passage shows once again that Cicero may at times associate certain principles with certain *loci*. Thus to some extent it sanctions Boethius' interpretation of Cicero (see Ch. 2), which assumes that for every *locus* there is a *maxima propositio* which may either

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[1] The order as proposed in the θέσις division also appears in *de Orat*. 3. 117, but in *Part. Or*. 65 questions of identity are, as in the present passage, treated under *definitio*, not under *qualitas*.
[2] As explained in §§53–7, Cicero interprets 'logical' relationships like consequence and conflict as relationships between states of affairs; the letters A, B, and C are to be interpreted accordingly.

underlie the arguments 'found' through this *locus* and guarantee
their cogency or even figure as a premiss in them. Moreover, it is
obvious that the particular principles mentioned are only suitable
for settling questions of identity. It seems likely, therefore, that in
the totality of possible contexts Cicero might associate more than
one principle with a given *locus*. This, too, has a counterpart in
Boethius' view of topical argument, for he assumes that the name
of a *locus* may function as a general term which *classifies* a number
of *maximae propositiones* pertaining, for example, to 'definition' or
'cause'.

In §§89–90, questions of quality are discussed. Questions involv-
ing comparisons are naturally to be settled with the help of the
locus ex comparatione and the various criteria of comparison given
in §§68–71. For the discussion of questions *de expetendo fugiendo-
que* and *de honesto turpique* only general points of guidance are
given, i.e. none of the *loci* discussed in the *Topica* is singled out
as being especially suitable. Questions *de aequo et iniquo* require the
use of the *loci aequitatis*; these are newly introduced here, and
comparisons with other rhetorical texts suggest that here Cicero
has added rhetorical material from elsewhere, which, however, fits
the context of our passage.

§87 Loci autem . . . aptiores. There is an interesting passage in
Theon's discussion of the θέσις (*Prog.* 121. 23–6): . . . εἰς ἑκάστην
δὲ ἐπιχειρήσομεν, ἐξ ὧν τόπων δυνατόν ἐστι· ὡς γὰρ πολλάκις
ἐπισημαινόμεθα, οὐχ οἷόν τέ ἐστιν ἐκ πάσης ἀφορμῆς πρὸς πᾶν
πρόβλημα ἐπιχειρεῖν ('We shall attack every *thesis* starting from
those Places from which this is possible. For as remarked on
several occasions, it is not possible to attack every problem from
every starting-point'). Theon continues by giving τόποι which may
be used to argue for a certain θέσις (ἐκ τοῦ ἀναγκαίου, καλοῦ,
συμφέροντος, ἡδέος) and adds that an argument against a certain
θέσις needs to rely on the ἐναντία of these τόποι. As emerges from
the context, the sentence quoted from Theon means that a *particu-
lar θέσις* may call for the application of a *particular τόπος*; quite
differently, Cicero has in mind that *θέσεις of a certain kind* may
necessitate the use of *a certain kind of τόπος*. Once again it turns out
that the rhetorical theory of the *Topica*, while deliberately
adopting the terminology and—to some extent—the methods and

the modes of thinking current in standard rhetoric, is nevertheless characterized by a level of abstraction which is alien to ordinary rhetorical theory.

ut dixi. Cf. §79.

Ad coniecturam. Referring to the group of question-types dubbed *coniectura* in §82.

maxime apta. Sc. *argumenta sunt*.

Ad definitionem. Referring to the group of question-types treated in §83.

ratio et scientia. Cf. *Tusc.* 5. 72 . . . *disserendi ratio et scientia*, rendering the Greek λογική (the third branch of philosophy). The combination of *ratio* and *scientia* suggests a set of rules and methods and hence the assumption that here Cicero is referring to his survey of definitory method in §§26–34.

de eodem et de altero . . . forma quaedam definitionis est. The suggestion is to examine if two things (*pertinacia*, *perseverantia*) are identical by checking whether they have the same definition, in which case they would be alternative designations of the same entity. Di Maria, omitting *de*, prints *et altero*, which he found in one of the contaminated witnesses; but *de* is confirmed by Quint. *Inst. Or.* 7. 3. 8. 1.

pertinacia et perseverantia. Cf. *Inv.* 2. 164–5 *Perseverantia est in ratione bene considerata stabilis et perpetua permansio. . . . Sic uni cuique virtuti finitimum vitium reperietur, aut certo iam nomine appellatum, ut . . . pertinacia, quae perseverantiae finitima est . . .*

§88 adiunctis etiam iis] *adiunctis etiam īs* (as opposed to *adiuncti etiam iis/īs*) is well defended by Di Maria 109–10.

Nam si hanc . . . potest. In this sentence Cicero demonstrates how five *loci* may be used to determine whether two things are identical (see the introductory note above); his point is that, to take the first *locus* as an example (*ex consequentibus*), A is not identical with B if C follows A but not B (*si hanc rem illa sequitur, hanc autem non sequitur*). He does not intend to state the rule: 'If C follows A, it does not follow B', which is a conditional that is true only for particular instantiations of A, B and C and hence useless for his purposes. We can make this clear through punctuation. From the viewpoint of grammar, the apodoseis of the five *si* clauses are not main clauses, but syntactically on the same level as their protaseis (so Hubbell; Bornecque mistranslates the sentence), i.e. they are in

subordinate clauses in asyndeton (cf. Fraenkel 1960, 390 n. 1).
An open question remains why identity claims are in some
sense categorized as belonging with the *status* of definition
(here) *and* with that of quality (in §85); one way to explain that
is that the source put questions about identity under 'quality',
but mentioned the relevance of definitory methods for their
treatment.

§89 aut animi . . . vel incommoda. *Vel commoda vel incommoda*
is logically subordinate to the series of terms linked by *aut*, i.e.
there are *commoda* and *incommoda* in the sphere of the soul, in that
of the body, and external ones. For this use of *aut* and *vel* see K.–
St. ii. 110. 6. For the terminology cf. *Tusc.* 5. 51 *Quo loco quaero,
quam vim habeat libra illa Critolai, qui cum in alteram lancem animi
bona imponat, in alteram corporis et externa, tantum propendere illam
bonorum animi lancem putet, ut terram et maria deprimat* (though
there is no need to see a connection with Critolaus here in the
Topica; these matters were widely discussed in Hellenistic philoso-
phy). It is unclear whether Cicero himself inserted the division of
commoda into the framework provided by his source. In the rhet-
orical tradition, however, the notions of *commoda* and *incommoda*
are used quite differently, to denote—in a broad sense—features of
a person, which may be referred to in the course of an argument in
a favourable or unfavourable way; Di Maria's reference to *Rhet.
Her.* 3. 10 and 3. 13 (cf. also *Inv.* 1. 35) in his collection of parallels
is therefore misleading.

    derigenda. *dirigenda* would be equally possible; cf. *TLL* v/1.
1232. 34 ff.

§90 disseritur. The word denotes philosophical discourse rather
than forensic oratory (= *dicere*).

    aequitatis loci. This is the first time that *loci* of equity come up;
that in all probability they originally formed no part of the theory
of argumentation underlying the *Topica* is suggested by a parallel
passage in *Part. Or.* 129 ff., where they are introduced as devices
for the discussion of ὑποθέσεις (*Part. Or.* 131) falling under the
status of *qualitas*: that is, they originate in school rhetoric. The *loci
aequitatis* may be characterized as a classification of legally relevant
aspects; unlike the *loci* discussed in the *Topica*, they do not corres-
pond to inferential principles, but since they show a certain kind of

generality, they are easily adjustable to a method of discussing θέσεις.

cernuntur bipertito. For the construction of the adverb *bipertito* cf. *Rhet. Her.* 1. 18 . . . *illos distribuisse dupliciter et bipertito*.

instituto. Here *institutum* does not mean 'practice of a particular group of people', as *OLD* s.v. 2b suggests; it denotes an institution established by man rather than by nature. The parallel passage in *Part. Or.* 129 has *lex* (= νόμος, as opposed to φύσις).

Institutio . . . aequitatis. Corresponding to *institutum* above.

[Atque etiam . . . nominatur.] Deleted by Schütz 298 n. 2 (and all later editors except Orelli): 'Uncis inclusa adeo inepta sunt, ut non potuerint a Cicerone scribi.' Whether *ineptum* or not, the sentence raises also suspicion for more concrete reasons. Although a Roman may call certain religious actions *aequum* towards the gods (Plaut. *Poen.* 1254; *Pseudol.* 269), *aequitas* is normally used with reference to relationships between human beings; see Kipp (1893), Hellegouarc'h (1972), 150–1. And Cicero does not use the word *sanctitas* in connection with reverence paid to the *manes*; cf. *ND* 1. 116: *Sanctitas autem est scientia colendorum deorum*.

proposito. *propositum* renders θέσις (§79).

§§91–100

Before I give a summary of the content of this passage, I shall explain why it is to be regarded as a sort of appendix to the *Topica* rather than an integral part of it.

Having expounded the theory of the θέσις in §§80–6, Cicero supplements it now with a treatment of the ὑπόθεσις, the sort of question public speech is normally concerned with. In §97 he makes a not entirely convincing attempt to connect the present section with Trebatius' request to learn something about τόποι: in every part of a speech there is an opportunity to use argumentative strategies which in a very broad sense of the term may be called τόποι.

Cicero is here no longer following his primary source (the doctrine of invention which employs the θέσις-division and the τόποι); rather, he is drawing on his knowledge of ordinary rhetorical theory. This is suggested by a great number of parallels in standard rhetorical handbooks to information given in this section (*Inv.* and *Rhet. Her.*; see below) and by the fact that the θέσις division is

supposed to cover both θέσις and the corresponding ὑποθέσεις (§86 *fin.*; *de Orat.* 3. 111).

At the end of the work, Cicero returns to a motif introduced in the *prooemium*: the transfer of the topical method to Trebatius as a legal transaction; this time he explicitly compares the delivery of the topical method to the sale of a house.

The exposition may be summarized as follows:

§91 (i) There are three types of particular questions, corresponding to the three *genera* of oratory.

§92 (ii) Particular questions may be settled with the help of *loci proprii* pertaining to them. To discuss forensic particular questions, one may use the three *status* 'coniectura', 'definitio', and 'qualitas'.

§93 (Some technical details about the theory of *status*).

§94 (iii) The *status* are applicable to non-forensic particular questions, too, which is exemplified for the *genus demonstrativum* ('praise and blame').

§95 (Further details about the terminology of *status*-doctrine). And since the law plays a crucial role in rhetorical contexts . . .

§96 (iv) . . . Cicero gives a classification of conflicts which may arise from laws, documents like wills, and so forth.

§97 (v) [Cicero's point is slightly obscure here, but he seems to say:] For each of the parts of a speech, i.e. not only πίστις/*argumentatio*, there are means to make sure that the respective argumentative aim is achieved. And these means are in a sense *loci*, too.

§91 Tria . . . genera causarum. First to distinguish these three areas of rhetoric was Aristotle in his *Rhet.*, though he may have followed earlier writers in this respect; see Hinks (1936) and Mirhady (1994) for a closer comparison of the division's rationale in Aristotle and elsewhere. In the Latin rhetorical tradition of the first century BC, however, there are two different ways of talking about *genera causarum*, depending on the sense in which *causa* is used. If *causa* is used in the straightforward sense of 'case', one can talk about *genera causarum* in the same sense as Aristotle (*Inv.* 1. 7); if, however, *causa* is used as a technical term, meaning ὑπόθεσις and thereby referring to the Hermagorean distinction of particular and general question, talking about *tria genera causarum* may imply a more complex view of the subject area of rhetoric, i.e. comprising the general question (θέσις) and the particular question (ὑπόθεσις), the latter being divided into three different species. It is very likely that Hermagoras did not rely on the *tria genera* at all, but used his

distinction of questions instead, while the source of *Inv.* rejects the Hermagorean distinction of questions and goes for the *tria genera* (*Inv.* 1. 7; see also the 'argument analytique' in Achard 1994, 54).

What our text gives us is the 'more complex' view just mentioned (cf. §90: *De proposito . . . de causa*), a combination of the two approaches set out above: 'particular questions' are classified according to the *tria genera*, and the first three *status* are meant to apply to the three of them (the fourth one, an original contribution by Hermagoras, is not mentioned). There is a passage where Cicero says that this division is used by 'Academics and Peripatetics' (*de Orat.* 3. 109; cf. *Fin.* 4. 6–7), and while I have expressed reservation as to the inclusion of the Peripatetics (Ch. 1), there is no reason to doubt the accuracy of this information with respect to the Academics. Now in *de Orat.* 2. 104 ff., Cicero has Antonius, who represents 'ordinary rhetoric' as opposed to the 'philosophically refined rhetoric' of Crassus, report something very similar. This has led scholars to assume (Barwick 1963, 53–4, followed by Calboli Montefusco 1984, 37) that one branch of the rhetorical tradition adopted this version of *status* doctrine from philosophers of the schools mentioned.

Yet in the light of the modes in which the rhetorical tradition constantly creates new divisions, concepts, and categories out of the very material that forms the tradition, to link the *tria genera* to the *status* in this way is a move which almost suggests itself (in particular for the Latin tradition, because of the ambiguity of *causa*; cf. the commentary on §79). So *de Orat.* 2. 104 ff. may reflect a branch of the standard tradition which came independently to this variety of the στάσις doctrine.

ex quo . . . nomen. For ancient etymologies of *iudicium* and related words see Maltby (1991), s.v. *iudex-iudico*.

Iuris . . . partes . . . cum aequitatis. The division of *aequitas* given in §90 is introduced in *Part. Or.* 129 as that of *omnis ratio iuris*.

modo expositae. Cf. §89.

[rerum expetendarum] Deleted by Friedrich (1889), 294–5 as having no construction. *Rer. ex.* could only go with *partes*, which would mean, roughly, *species*, as an epexegetic genitive (the *res expetendae* themselves are the *partes*). This seems too contrived an explanation for a phrase which contributes nothing in the way of content.

ante dictum. Cf. §89.

§92 instruuntur. On this use of *instruere* cf. *OLD* s.v. 5c and *de Orat.* 2. 49: *pars haec causarum propriis praeceptis instruenda est.* However, there seems to be no parallel for *instrui ab aliqua re* in the sense required here, and the word-order of the sentence does not suggest that *a suis locis* depended on a part of the sentence that stood in the *lacuna*. Perhaps we should delete *a*. In rhetorical theory, the concept of the *locus proprius* (and, correspondingly, that of the *locus communis*) is used with reference either to the *status* (e.g. Anon. Seg. §170) or to the *genera causarum* (as here) or to the person who uses them (prosecutor or defendant; *Rhet. Her.* 2. 9). Cf. also *de Orat.* 2. 117, where *loci proprii* are rejected as childish devices and *loci communes* as discussed in the *Topica* are recommended; this suggests, as the present passage as a whole does, that here Cicero is no longer following his primary source. A variety of *loci proprii* for the *genus iudiciale* is discussed in *Inv.* 2. The first to introduce τόποι, the so-called εἴδη, for each of the three *genera* was Aristotle in his *Rhet.*; the εἴδη were meant to be the first premisses of enthymemes (e.g. *Rhet.* A10, 1368ᵇ6–7 ἔστω δὴ τὸ ἀδικεῖν τὸ βλάπτειν ἑκόντα παρὰ τὸν νόμον, under which a particular action may be subsumed and thereby proven to represent an act of ἀδικεῖν).

quae. A *lacuna* before *quae* was first posited by Kayser (1860), 28: '*Post hoc verbum* [sc. *instruuntur*] nonnihil excidit, quod commemorationem causarum iudicialium haberet.' The word on which the relative clause originally depended was feminine (*prima . . . altera*), could be called 'divided into *accusatio* and *defensio*' and could be qualified by the adjectives *coniecturalis, definitiva,* etc.; *causa* is the only plausible candidate.

accusationem defensionemque. All versions of *status* theory in its application to legal contexts assume that the problem at issue is determined by the clash of the charge of the prosecutor (*accusatio*; κατάφασις) and the reply by the defendant (*defensio*; ἀπόφασις); but there is disagreement as to whether there are further exchanges necessary to determine the nature of the case and which step exactly is to be termed *status*/στάσις. On this question see Heath (1994).

de tribus. See the commentary on §§76–81, where it is set out how *status* theory helps to organize data and frame a line of argument.

infitialis. 'Negatory'. There is an archaic noun *infitias* (existent only in the acc. pl.) formed from the negative prefix *in-* (*OLD* s.v.

*in-*²) and **fătos* (see Ernout–Meillet s.v. *fateor*), used exclusively in the expression *infitias ire* 'to deny' (cf. e.g. Plaut. *Bacch.* 259, *Curc.* 489, *Mil.* 188); from it the denominative verb *infitiari* was formed. *Infitialis* comes from *infitiari*. Cf. also Quint. *Inst. Or.* 3. 6. 32.

quos exposuimus. Cicero has explained them not in the *Topica*, but in *Inv.* 2 (*in praeceptis oratoriis*). So *in praeceptis oratoriis* goes with *quos exposuimus*, not with *explicata sunt*.

§93 Refutatio…accusationis. The *defensio* of §92, the reply that is meant to refute the prosecutor.

στάσις. In one version of the theory, it is the defendant's reply that is called στάσις (see Heath 1994, 116–17); but Hermagoras himself appears to have been inconsistent on this point.

insistit…congressa defensio. Already in antiquity there were several accounts of the metaphor in *status*; cf. Quint. *Inst. Or.* 3. 6. 3 with Adamietz (1966) ad loc. Here Cicero takes it to mean the defensive position, not of an individual, e.g. a wrestler, but of an army (this is suggested by *congressa*).

in deliberationibus… As indicated above, *de Orat.* 2. 104 ff. is a parallel for an application of the theory to non-forensic ὑποθέσεις.

possint. The subjunctive is best explained as reflecting what orators (cf. *aliquo*) typically say in court, i.e. as *oratio obliqua*.

§94 contra Catonem meum. Cicero's *Cato* was an encomium on the younger Cato, to which Caesar replied with an *Anticato* in two books, written at Munda in March 45; see Tschiedel (1981), 9, who gives a full study of the scanty evidence for the latter. From the context of our passage he draws inferences as to the structure of the book.

§95 ex statu contentio. From the defendant's reply to the charge (*status*) the 'dispute' (*contentio* = κρινόμενον) emerges.

κρινόμενον. On the historical development of this concept see Calboli Montefusco (1972); later translations include *iudicatio* (*Rhet. Her.* 1. 16. 26; Quint. *Inst. Or.* 3. 11. 4) and *id de quo contenditur* ([Aug.] *De Rhet.* p. 145. 8 Halm).

appellant] *β*: *vocant* *α*. Both readings are possible, but cf. e.g. §6 *quam* διαλεκτικήν *appellant*; and given that *vocari* follows, *appellant* is preferable as creating *variatio*, which a scribe is likelier to have removed than introduced.

qua de re agitur. Berger (1953), 662 s.v.: 'A clause in the procedural formula by which the object of the controversy, already defined in the foregoing part of the formula, was pointed out once more for better identification (= that which is the object of the trial).' A detailed discussion of the phrase is Krüger (1908). Cf. also Cic. *Mur.* 28 and *Brut.* 275.

continentia. Rendering συνέχον, a term used in various senses to denote one step of the exchange between prosecutor and defendant; see Heath (1994), 115–19. As the context shows, Cicero apparently has a more complex schema in mind, in which (i) the prosecutor puts forward a charge ('Orestes killed his mother'), (ii) the defendant replies to it ('I killed her justly'), then (iii) modifies it appropriately ('For she killed my father') and only thereby determines (iv) the 'issue before the court' (κρινόμενον: 'Did Orestes kill his mother justly, given that she has killed his father?'). Cf. Heath (1994), 119. The more complex schema imposes itself for the *status* other than *coniectura*, because 'Yes, and with perfect right' is in itself an insufficient reply to 'You did it'.

in controversiis disceptandis. *Controversiae* are forensic ὑποθέσεις; for *disceptare* as a word for legal arguing cf. *Orat.* 116.

legitimae disceptationes. Corresponding to ζητήματα νομικά. Their clear formulation was a contribution of Hermagoras' to rhetorical theory, but in substance these modes of legal arguing referring to 'texts' had already been in use for a long time. Cf. Hermagoras fr. 20 Matthes; Matthes (1958), 182–6. The basic idea of this group of argumentative patterns is that an argument relying on a legal text may be opposed either by stating that the opponent misinterprets it (which he can do because it is ambiguous), by coming up with a text of equal authority which contradicts the first one, or by arguing that the 'letter' of the text says one thing but its 'sense' something different; for a judicious evaluation of this theory from the standpoint of legal history see Wieacker (1950).

§96 duae sententiae differentes. In Greek ἀμφιβολία, cf. Cic. *Inv.* 2. 116–21; Quint. *Inst. Or.* 7. 9.; [Aug.] *Rhet.* p. 143. 21 Halm.

verbane...sententia. In Greek ῥητὸν καὶ διάνοια. Cf. Cic. *Inv.* 2. 122–43; Quint. *Inst. Or.* 3. 6. 61; [Aug.] *Rhet.* p. 143. 19–20.

lex contraria. In Greek ἀντινομία. Cf. Cic. *Inv.* 2. 144–7; [Aug.] *Rhet.* p. 143. 20–1.

stipulationibus. Berger (1953), 716 s.v. *stipulatio*: 'An oral, solemn contract concluded in the form of a question (*interrogatio* by the creditor: *Spondesne centum dare?...*) and an affirming answer (*responsio*) of the debtor (*spondeo...*). The answer had to agree perfectly with the question; any difference or restriction (addition of a condition) made the *stipulatio* void. Presence of both parties was required, and any interruption between question and answer was inadmissible. *Stipulatio* was used for any kind of obligation, from the payment of a sum of money to the most complicated performances.' See also Kaser (1971), 168 ff. Since the contract was oral, its validity did not depend on the written record, but this was evidence that the *stipulatio* had taken place and in what terms.

in aliis libris. See *Inv.* 2. 116–54.

§97 perpetuae actiones. Continuous speeches, contrasted with brief exchanges with the prosecutor (*altercationes*) by Quint. *Inst. Or.* 6. 4. 2.

partes orationis. The 'parts of a speech', at least four (προοίμιον, διήγησις, πίστις, ἐπίλογος), are in evidence already in the pre-Aristotelian *Rhet. ad Alex.* They form an important element (and sometimes ordering principle) of rhetorical handbooks of the Hellenistic era; see Wisse (1989), 88–104.

principiis. Here *principium* is equivalent to *prooemium*; elsewhere it is also a particular type of *prooemium*, distinguished from *insinuatio* (Quint. *Inst. Or.* 4. 1. 42). The qualities required in a *prooemium* are traditional, cf. *Rhet. Her.* 1. 7, Quint. *Inst. Or.* 4. 1, and Lausberg (1998), §§263–88.

§98. For a sample of precepts for the *narratio*, i.e. the presentation of the case (as opposed to the arguments relevant to its consideration, *argumentatio*), and the *peroratio*, i.e. the conclusion, see *Rhet. Her.* 1. 12–16 and 2. 47–50 respectively. Cicero's *in iis in quibus de omni ratione dicendi* is very vague; he may not be referring to a work of his own (the *de Orat.* is not systematic enough to warrant the description, and *Inv.* does not deal with *narratio*).

§99. cumulate satis factum. This phrase is frequently used in the letters *ad Fam.*, while it is relatively rare in the other letters and works of Cicero. Naturally, the topic of favour and favour in return is very common in *Fam.* (more so than in *Att.* or *ad Q. fr.*), and to

refer to this sort of exchange in a slightly exaggerated way is characteristic for the discourse of many of the letters in *Fam.*, which is at the surface urbane but often utilitarian—as are the *prooemium* and the end of the *Topica*.

§100. desiderata. The word can have a legal sense; cf. Berger (1953), 433 s.v. *desiderare*: 'To apply to a judicial magistrate for granting an action, an interdictum, or a restitutio ad integrum.' So Trebatius' request for an account of the book in Cicero's library is likened to the application to a magistrate (to whom in turn Cicero is likened). The paragraph is full of words which can be taken in a legal sense; only the less obvious ones will be signalled below.

   rutis caesis. Berger (1953), 686 s.v. *ruta et caesa*: 'Things taken out of the soil (= *eruta*, such as sand, clay, quarry-stones) or cut down (such as trees). If separated from the soil, they could be reserved for the seller (*excepta*) on the occasion of selling the land. According to another opinion, they always remained in the ownership of the seller unless they were expressly sold together with the land.' See also Marrone (1971). That *ruta* is the perfect participle of *ruere* is a view we find already implied in ancient sources (Festus p. 262. 49–50: *ruta caesa*: *quae venditor possessionis sui usus gratia, concidit ruendoque extraxit*), and it is also the opinion of Walde–Hofmann. However, Ernout–Meillet point out that in this case we should expect *rŭta*, not *rūta*; cf. *dirŭtus*, *obrŭtus*, *erŭtus*, *semirŭtus*. That the *u* is long emerges from Varro, *LL* 9. 104: *Ideoque in lege venditionis fundi 'ruta caesa' ita dicimus, ut U producamus*. Yet so far no satisfactory alternative explanation of the origin of *ruta* has been given. On *recipere* 'to retain' see Heumann–Seckel s.v. 3.

   mancipio dare. *Mancipatio* or *mancipium* is a type of transfer of property which in Republican and Classical law applied only to certain types of goods (*res mancipi*) and could only be carried out by Roman citizens, i.e. people to whom the *ius Quiritium* applied; see Steinwenter (1928) and Kaser (1971), 43 ff. On the dative (not ablative) in *mancipio dare* (= *mancipare*) see Hofmann–Szantyr 99. That Cicero uses *tradere* in the *prooemium* (§2) and talks about *mancipio dare* here does not imply that he compares the 'transfer' of the topical method to different legal transactions; the reference to the sale of a house, i.e. a typical *res mancipi*, is the reason why he comes now to talk about *mancipatio* (*traditio* applied only to *res nec*

mancipi in Cicero's time). Cf. also Lucr. 3. 971 *vitaque mancipio nulli datur, omnibus usu.*

   accedere. Another legal term. Cf. D. 34. 2. 19. 13: *Semper enim cum quaerimus, quid cui cedat, illud spectamus, quid cuius rei ornandae causa adhibetur, ut accessio cedat principali* ('For when we inquire what is counted with what, we always look to what is applied as ornament to an object with the result that an accessory is counted with the main object'); Heumann–Seckel s. v. *accessio* No. 3: 'Was zu einer Hauptsache als Nebensache, als Zubehör, Zuwachs hinzukommt, im Gegensatz von principalis res ...; insbesondere bedeutet es das *von außen her* zu einer Sache Hinzu-gekommene, im Gegensatz des fructus, als der Erzeugnisse aus der Sache selbst.' See also Leonhard (1893).

Appendix

Cicero, *Ad Familiares* 7. 19

Latin text as in Watt (1982):

Vide quanti apud me sis (etsi iure id quidem; non enim te amore vinco; verum tamen): quod praesenti tibi prope subnegaram, non tribueram certe, id absenti debere non potui. Itaque, ut primum Velia navigare coepi, institui Topica Aristotelea conscribere ab ipsa urbe commonitus amantissima tui. Eum librum tibi misi Regio, scriptum quam planissime res illa scribi potuit. Sin tibi quaedam videbuntur obscuriora, cogitare debebis nullam artem litteris sine interprete et sine aliqua exercitatione percipi posse. Non longe abieris: num ius civile vestrum ex libris cognosci potest? qui quamquam plurimi sunt, doctorem tamen usumque desiderant. Quamquam tu, si attente leges, si saepius, per te omnia consequere ut recte intellegas; ut vero etiam ipsi tibi loci proposita quaestione occurrant exercitatione consequere; in qua quidem nos te continebimus, si et salvi redierimus et salva ista offenderimus. V Kal. Sext. Regio.

<div align="right">Regium, 28 July [44 BC]</div>

Look how much I value you—and this is only right, for your affection is no smaller than my own, but anyhow—what I almost denied you when we were together, or at least did not grant, this I could not have gone on refusing now that you are not here. So, as soon as I sailed from Velia, I began to write up an Aristotelian Topics, prompted by the town itself in which you are so dearly loved. I am sending you this book from Regium; it is written as plainly as one could write on such a subject. But if certain things in it seem all too obscure to you, you must bear in mind that no craft can be absorbed through writings alone without an interpreter and without any practice. You will not have to look far for an instance—for can your civil law be grasped from books alone? Although there are very many of them, they require a teacher and the actual application of their content. In any case, through your own effort—if you read with care and frequently—you will come to understand everything correctly. But it is through practice that you will bring it about that, once a question has been posed, the Places come to your mind of their own accord. I shall keep you hard at it, if I return safely and find matters in Rome in a good state.

Fam. 7. 19 is a sort of covering letter to the *Topica*. Although the letter includes a number of interesting linguistic features, I shall leave them aside, rather focusing on its content, in order to shed further light on the *prooemium* of the *Topica*. (I refer to the book in Cicero's library by 'Topics of Aristotle', and to Aristotle's *Topics* as transmitted in the manuscripts as *Top.*, which is not to imply that the two are not the same thing.)

In my commentary on the *prooemium* I suggested that Trebatius found a copy of a 'Topics of Aristotle' in Cicero's library which may well be identical with the *Top.* we can read today. I argued further that Cicero does not identify the primary source of the *Topica* with this book. Other interpreters of the *prooemium* have assumed that Cicero does identify his

source for the *Topica* with the 'Topics of Aristotle' in Cicero's library. Since the source for the *Topica* is evidently not Aristotle's *Top.*, these scholars had to make further assumptions, i.e. either that Cicero was wrong in believing that he possessed a copy of Aristotle's *Top.* or that he deliberately mislead his readership by claiming to use one book as his source and in fact using another. I do not think that the letter settles the matter either way, but it needs to be demonstrated that it is compatible with my interpretation.

praesenti tibi...subnegaram. The sentence confirms that the scene in Cicero's library at the *Tusculanum* is not a literary fiction. Cf. *Topica* §2: *...mecum ut tibi illa traderem egisti. Cum autem ego te non tam vitandi laboris mei quam quia tua id interesse arbitrarer, vel ut eos per te ipse legeres vel ut totam rationem a doctissimo quodam rhetore acciperes, hortatus essem, utrumque, ut ex te audiebam, es expertus.* Moreover, an implication of the sentence seems to be that the *Topica* is exactly what Trebatius actually asked for: not a translation of any Greek book (see my note on *traderem* in the commentary on §2), but the gist of Aristotle's method of finding arguments. If this is correct, Trebatius would not at all have been surprised if Cicero had not based his account of the topical doctrine on the 'Topics of Aristotle'.

navigare coepi. Interestingly, Cicero does not repeat here that he wrote the *Topica* without having any books available. And this is so, although a defensive note is also to be found in the letter. Perhaps the choice of the verb *conscribere* points to an arrangement of material previously prepared; but the word need not carry this weight.

Topica Aristotelea. I take this to mean 'Topics in the Aristotelian vein'. For this rather loose sense of 'Aristotelian' cf., for instance, *Att. 2. 1. 1* (21 S.-B.): *Meus autem liber* [sc. Cicero's *commentarius* on his consulate] *totum Isocrati myrothecium atque omnis eius discipulorum arculas ac non nihil etiam Aristotelia pigmenta consumpsit.*

videbuntur obscuriora. In the *prooemium*, Cicero says that the *obscuritas* of the 'Topics of Aristotle' which Trebatius found deterred him from reading the book (§3). The partisans of the interpretation I am contesting would stress that the obscurity of the *Topica* merely reflects that of the 'Topics of Aristotle'. I would argue that Cicero is not directly referring to the obscurity of the book found by Trebatius; he is now excusing the obscurity of his *Topica* with a reference to the subject-matter, which may be called obscure by its general nature.

proposita quaestione. See Ch. 4: Cicero envisages Trebatius using the *loci*. And since Trebatius did, for all we know, not act as an advocate, this will mean either that he is supposed to use the *loci* in everyday conversation or, more plausibly, in his practice as a jurist.

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Index locorum

Index of Latin terms

Index of Greek terms

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General Index