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GRILLIUS ON CICERO'S *DE INVENTIONE*

We have no idea who Grillius was, or when[1] he wrote his commentary on Cicero's *De inventione*, only the first part of which has come down to us. The loss of the rest is little to be regretted; 'questo mediocre maestro' (so Castiglioni) had access to some Cicero that is otherwise lost to us, but his commentary is neither sophisticated[2] nor elegant. Scholars have not shown much interest in it (see n. 1). Halm edited some portions in 1863, on the basis of two local manuscripts, Josef Martin the whole in 1927, exploiting two more witnesses. Rainer Jakobi's recent edition employs ten manuscripts, and he has been able to draw a stemma. But though he has put the text on a newly sound basis, his work is not beyond criticism, especially in his failure to record plausible conjectures by his predecessors; and the following notes aim to make some advance in the criticism of a book which is not just corrupt but seriously interpolated.

4,93–6 Two parts of a *thesis* on the desirability of sailing:

Partem incommodorum: Quia cogito scopulos, quia vada. Partem commodorum: Considero diversas caeli rationes et quaesitas toto orbe divitias, varios cognitos provinciarum mores.

The pointless 'cognitos' should be replaced by 'cogito', despite the occurrence of the word just before.

4,99–101 Now for the *thesis*, Is rhetoric to be practised?

Ergo modo per thesin tractanda est ars rhetorica et danda sitne ei opera. Plato negavit; esse contra alii dicebant operam dandam.

'et' should be deleted: the topic of the thesis is 'danda sitne arti rhetoricae opera'. What follows needs re-punctuation:[3] 'Plato negavit esse, contra alii dicebant operam dandam.'

[1] Before Priscian, it would seem: Josef Martin, *Grillius* (Paderborn, 1927), 180–1. In what follows, Grillius is almost invariably cited from R. Jakobi's new Teubner (Munich and Leipzig, 2002), by page and line-number, and preserving his punctuation; reference is also made to Martin's edition and to the extracts printed by Karl Halm in *Rhetores Latin Minores* (Leipzig, 1863), 596–606. Cicero's *De inventione* Book 1 is cited by section number alone. Marius Victorinus' commentary on part of the *De inventione* is cited from Halm, 155–304. Julius Victor's *Ars Rhetorica* from Halm, 373–448, and Fortunatianus's *Ars Rhetorica* from the edition of Lucia Calboli Montefusco (Bologna, 1979).

[2] He is particularly feeble philosphically: note 3,59–60 'Epicurei dicunt non esse animam, sed spiritum quendam, ut *spiritus intus alit* et *vescitur aura* / *aetheria*'.

[3] For other cases where punctuation seems faulty, see 14,125 ('Ergo . . . casu' is a question); 21,155 (the inverted commas should stop at 'eius'; a new topic follows); 25,61–2 ('civilis . . . commoda' is a parenthesis, and 'res ut . . .' should attach itself to 'quia . . . scientiae'); 27,106–8 (change to 'non rerum rhetoricam; non esse . . .'); 33,2 ('non potest esse, nec hoc facere quod, artifex orator', which, however artifically, shows the intended sense); 44,10 ('change to 'non est vera definitio. Ubi minus . . .'); 79,125–7 ('Ex eo quod poenam voluit lex decernere desertori, a contrario intellegis voluisse praemium viro forti eandem legem, ideoque . . .').

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5,123–6 The good results of rhetoric outweigh the bad:

Modo ergo hic,[4] quia rhetorica media est—dicit enim rhetoricam multis civitatibus nocuisse, profuisse multis—, modo in principiis agitur de quantitate: Non negat multa incommoda . . .

The second *modo* is rightly omitted by one branch of the tradition.[5] The awkwardness of the sentence can be simply cured by reading 'agit', with Cicero still subject (as for 'negat').

6,143–6 Grillius lists five *vitia* which prevent a *controversia* 'standing up', because it leaves no room for a speech on both sides (cf. 7,156–8 'nec in dictione quidem controversia, cum alter dicit, alter quod dicat nihil est'). One is the type *Πάνυ ἄδοξον*. The example given is of someone who claims from his wife the money she owes him for an adultery he has contracted for.

Id quidem in dicendo controversia est, quia spectantur, ut ambo dicant, sed is qui petit, quia primus dicturus est, turpitudinis dictione deicitur.

The sense demands *expectatur* or (in the same sense[6]) *spectatur* (read, according to Martin, by two derivative MSS). It is assumed that both will be able to speak, but the claimant is 'dislodged' from speaking by shame at his disgraceful claim. It is the judges who do the expecting: cf. 83,33–4 'iudex exspectat et accusatoris infirmationem'. The construction of 'turpitudinis' is obscure; perhaps add *causa*.

8,193–5 Jakobi comments on this paragraph: 'fragmentum longioris tractatus fort. non suo loco insertum'. Not only that: it is not even all on the same topic. Two sentences concern *relatio*. The fifth starts, à propos of nothing, 'Ars rhetorica constat ex rebus', and is then cut short. The third and fourth return to the topic of *asystata*, and are intelligible by comparison with the discussion in 6,129–8,189.

Sciamus autem ista quinque [cf. 7,155 'his quinque'] in asystatis necessitatis genera ad reum <vel> accusatorem pertinere. Illa autem tria [cf. 7,158 'illa . . . tria quae sunt'] asystata sunt, sed iudicii.

We should delete 'necessitatis', which has nothing to do with the matter; the word is a stupid gloss, based on the mention of *necessitas* in connection with *relatio* in the previous line. No genitive is needed, for 'ista quinque in asystatis genera' in effect means 'ista quinque asystatorum genera'.

[4] 'Here', as in e.g. 12,92, cited below; in our passage 'hic' reinforces 'modo' (for which see the note on 27,126–9), and is taken up by 'in principiis'.

[5] For other cases where Jakobi rejects plausible readings, variants or conjectures, see 4,78 'quid sit' (cf. 4,80); 7,161 'duo' ('in' results from 'II'; though for 'ambo' cf. 55,128); perhaps 10,29 'impudenter' (cf. 10,19); 10,43 'cum'; 16,6 (for 'profiteris grammaticum', and 'profiteris medicum' just below, see *TLL* s.v. *profiteor* 1721,18–20); perhaps 19,96 '<se> scire'; 20,128 'Coracem' (either Greek 'Coraca', as at Quintilian 2.17.7, or Latin 'Coracem' is admissible, but not the hybrid 'Coracen'); 23,187 'facientis . . . patientis' seems preferable; 24,36 'colligit'; 30,21 'malitia, non sapientia' (defended by L. Castiglioni, *Riv. Fil.* NS 6 [1928], 574–5); perhaps 32,73 'adeo' (cf. the variants at 41,14); 34,110 (remove 'sed'); 38,15 ('praeclaro'); perhaps 42,28 'arrogantiam' (for the acc. with *ecce*, cf. 52,45–6); perhaps 49,148 ('complere' is supported by the rhythm); 55,129 ('coniugum' not imperative); 97,72–3 ('erat . . . invidia de divitiis, Verrem omnem spem . . . collocasse' will serve).

[6] See S. Wahlén, *Studia critica in declamationes minores quae sub nomine Quintiliani feruntur* (Uppsala, 1930), 178–9.

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11,62–4 By writing 'cogitavi, bonine an mali plus attulerit hominibus . . . copia dicendi' (1), Cicero has seemed to give us a *propositio* of what is to come. But the question arises: why in that case does he proceed to discuss the evils of rhetoric before the benefits?[7]

Sed quaeritur, quare, quemadmodum proposuit, non ita respondeat: 'Quia cogitationi nostrae illa prius occurrant, quae mala sunt . . .'

This should be re-punctuated. As Martin saw, 'ita' does not look forward to what follows, but back to 'quemadmodum proposuit': why does not Cicero 'answer' to his *propositio* ('pick it up') by keeping to its order, good, then bad? One possible answer to the question is then given by 'Quia . . .'

12,92–4 Cicero talks of what he has read of the benefits of thetoric (1 'cum . . . res ab nostra memoria propter vetustatem remotas ex litterarum monumentis repetere instituo').

Hic se dicit legere in historia, quae per artem rhetoricam bona facta sint; historia enim vera dicit ἀπὸ τοῦ ἱστορεῖν, id est a videndo.

Read *dicitur*. Cf. Isidore, *Etymologiae*, 1.41.1 'dicta autem Graece historia ἀπὸ τοῦ ἱστορεῖν, id est a videre vel cognoscere.' Martin had already made this conjecture, and there is much also to be said for his 'vere'; Jakobi reports neither suggestion.

13,115–7 Grillius approves of Cicero's 'ac me quidem diu cogitantem' (1), as picking up the first phrase of the book.

Sententia est et[8] optima, quae principium respicit. Nam superius se dixit multum cogitasse; ideo hic dixit *diu*.

For the second 'dixit', read *dicit* (so Martin, who implies he found it in M): Grillius refers to a word in his lemma. See also nn. on 27,126–9 and 96,46–50.

17,34–7

Orator enim aut vera debet dicere aut veri similia.[9] Sed non inconsulte hoc agit, quoniam Sallustius posuit scribens historiam, quod antea passim homines ferino more vixissent.

The preceding words are lost, but Grillius is defending the veracity of Cicero's narrative of the early life of man by pointing to a similar statement of Sallust's in a properly historical work. 'ait' rather than 'agit'?

18,54–7 It is argued that in Cicero 2 *ratio* is used to mean *ars*. Early men did not have *ratio* at first, but learned it subsequently. Therefore it was not given them by nature. Then:

Nam sicut visus auditus odoratus cum homine nascitur, sic et rhetorica cum homine fuisset nata, non instituta per alios, sed per rerum naturam <***

[7] The problem is also discussed by Marius Victorinus: see 156,38–157,2.
[8] Perhaps to be deleted. Martin reads 'haec', attributing it to G.
[9] Cf. perhaps 49,6 (from Cicero 9).

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Jakobi is doubtless right to write 'fuisset' for the MSS' 'fuit', but the sentence would better start 'Nam si, ut[10] visus'. Similarly at 24,30 Jakobi writes 'si ut' where the MSS vary between 'sed si ut', 'sed ut', and 'sicut'. Indeed, that passage ('si, ut diximus, animis hominum naturalis ars fuisset impressa, . . .') provides a parallel to ours,[11] and seems to refer back to it.

18,69–73 Cicero writes (2): 'nondum divinae religionis, non humani officii ratio colebatur'. Grillius comments:

Cecidit quaestio; sane enim[12] dixit ad res divinas rationem pertinere, ad humanas officium. <Non est tamen contrarium> *non officii ratio*: Nisi enim ratio fuerit, non procedit officium. Ideo hic ratio pro officio collocatur.

Jakobi's supplement is *exempli gratia*, and what follows is not pellucid. But a problem 'has arisen'[13] because Cicero here uses *ratio* in connection with both religion and human duty. But it is Grillius, not Cicero, who has connected *ratio* with *res divinae*, *officium* with *res humanae*; see 14,140–1 (cf. Marius Victorinus 159,22–3), and, unless he is being careless, he will have written not 'dixit' but 'diximus'.[14]

23,184–5

'Mitis' est qui animo mitis est. 'Mansuetus' est, qui ut mitis sit, man<u con>suetus fit.

Isidore, *Etymologiae* 10.168 'mansuetus, mitis vel domitus, quasi manu adsuetus' suggests a slightly different supplement.

23,5–7

Orator quid est? *Vir bonus dicendi peritus*, qui benivolentia et arte totum mitigat, ut est illud Virgilii: 'Ac veluti magno in populo . . .' [*Aen*. 1.148–54]

'totum' deserves an obelus.[15] It does not seem satisfactory to add 'populum'.

26,74–7

Orator ergo fuit, qui eloquentia divulgavit, quod sapientia invenit, et solius est oratoris, non philosophi, qui solam sequitur veritatem. Et factum Platonis probat [sc. Cicero], qui etiam eloquentissimus fuit, in quo a nonnullis reprehensus est.

An anecdote follows (Plato puts down Demosthenes for having regard to Plato's style, not his content); and one might expect Grillius to have written not 'factum' but 'dictum': Cicero, implicitly, approves this saying of Plato.

[10] 'si, sicut' is also possible. For 'sicut . . . *ita*', cf. 51,43–5.
[11] Cf. also 22,167–9 'Ergo non est naturae rhetorica, quam omnes non habent. Nam si fuisset naturae, omnes essent oratores'.
[12] PHI gives eight instances of this collocation, five from the Digest, one from Plin. *Nat*., two from the Minor Declamations.
[13] *cecidit* is used like *cadit* at 20,109; cf. *oritur* at 34.118 and *movetur* at 97,75.
[14] He may not use 'dixi', though this is a variant at 43,55.
[15] So do e.g. 13,108; 19,84; 31,40; 55,108–9; 58,17.

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27,126–9

Commoditas a quibusdam 'lucrum' exponitur, sed non ita <est>. Nam commoditatem modo bonum dixit ingenii; quod cum illi haberent, artem requirere[16] noluerunt, sed freti sola stultitia professi sunt ea, quae non didicerant.

As often, 'modo' implies 'in the passage under discussion'. The verb should then be present, 'dicit'.

28,139–43 To show that 'virtus in homine non nascitur, sed discendo adquiritur' (131–2), Grillius tells a story about Polemo and Xenocrates (cf. Diog. Laert. 4.16). The debauchee Polemo had gone into Xenocrates's school to mock him, 'cum choro suo unguentis oblitus sertisque coronatus'. But Xenocrates gave a discourse on the evils of luxury, and

tanta virtutis eius vis fuit, ut paulatim Polemo luxuriosus cum choro suo coronas de capite traheret abscondensque deterreret, atque alio die mutato habitu scholas auditor, non illusor intraret. Ergo videtur non nasci, sed disci.

So G (correcting the tradition's 'traherent abscondentesque deterrerent'). Jakobi writes 'traheret abscondens <unguenta>que detergeret', and this seems in the main right; but the participle should be 'abscidens' (or 'abscissas'). In the next sentence the addition of 'virtus' before 'videtur' would make for clarity. One might think that the word strayed to a position just above: 'virtutis' could well be deleted.

29,157–60 Grillius has argued that in 3 Cicero means by 'commoditas' a good quality that could be misused (27,127–9, cited above). He now (in what looks like a doublet) comes back to the meaning of the word:

Commoditatem ergo benignioris ingenii venam intellegamus. Nam quia hoc potuit—licet prava et mala rhetorica, ut solo usu confidentes saepe in iudicio mentirentur—crimen illorum arti applicatum [cf. 12,86] est.

Re-punctuate:[17] 'hoc potuit, licet prava et mala, rhetorica, ut solo usu confidentes saepe in iudicio mentirentur, crimen . . .', 'because rhetoric (though bad) was able to bring it about that men relying merely on practice often lied in court, those men's guilt was attached to the art'. The illogicality of the concessive clause could be removed by reading 'scilicet' for 'licet'.

32,58–62 Plato (says Grillius) asserts that something cannot have contradictory qualities. So fire:

ut ignis, quia natura calet, frigidus esse non potest; nec verum esse malum[18] aut <bonum> gladius potest, si illo male homo utitur, sed ipse homo malus est. Nam illum natura ad utilitatem procreavit, quae mali nihil genuit.

[16] 'Go in search of it'; cf. 5,118, where 'require' is opposed to 'vita' (imperative). Cf. also p. 604 n. 28.

[17] Martin gives this punctuation, but his wording is different.

[18] Why not 'malus' (so Martin, who implies he found it in G)? Cf. 31,54–32,55.

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Presumably 'vero' (read by Martin, who attributes it to G) should replace 'verum'. But the supplement is wrong. The argument[19] is that a sword is by nature good; if it is used badly that is because its user is bad. We need then not to supplement, but to delete 'aut'. Here again Martin saw the truth, and he implies he found it in G.

34,119–24 Why, in Cicero's account (4), did the wise abandon states they should have been ruling?

Sed bene excusantur, ut videantur doctiores eo tempore, quo magis prodesse rei publicae poterant, non odio artis rhetoricae fecisse, sed odio imperitorum. Sed non hoc prudentis est commissum sibi gubernaculum rei publicae odio cuiusque deserere.

A good excuse can be given, 'in such a way that the wiser may be thought to have done this . . .' We should add *hoc*, e.g. before 'non'. The second sentence is to be punctuated as a further objection: 'but the wiser should not have acted thus out of hatred for anyone' (read, perhaps, *cuiusquam*; but note the rhythm). Grillius answers yes, but it was only Greek statesmen who behaved like that!

39,57–40,2 Grillius has expounded the view of the *politici* that *rhetorica* is a 'pars minima civilis scientiae' and that therefore, while *civilis scientia* (qua genus) does not 'need' *rhetorica* (qua species), *rhetorica* 'needs' *civilis scientia*.

Unde rhetorica civilis scientiae cum *magna et ampla pars* sit, quomodo non <putari> potest hac indigere aut sine hac stare posse? Unde Cicero medium tenuit, ut et arte rhetorica indigere videatur civilis scientia et civili scientia rhetorica, quoniam *eius magna est et ampla pars*.

The supplement is mistaken. The question is: How can *rhetorica* not 'need' *civilis scientia*, granted that it is a part of it? Read then (with Martin): 'quomodo potest hac non indigere'. What follows is an alternative formulation: 'or [how can it] stand without it?' Faced with this problem, Cicero produces a compromise: rhetoric is a large, not a minimal, part of *civilis scientia*, and therefore each of the two needs the other. 'magna et ampla' in the first sentence anticipates this compromise, and should be deleted.

40,84–41,90 Grillius argues that an orator has 'persuaded' his audience, even if they do not act on his words. Thus, in the Verrines (cf. II *Verr*. 1.21), Cicero can say: If you acquit Verres, I have won, so far as in me lies, because I furnished all the evidence on which he could have been found guilty,

et adicit, ut ipsum officium monstret: 'Meum fuit cum causa accedere. Si vicisti, praemium consecutus es.' Addidit: 'Non ego spolia, sed existimationem populi Romani quaesivi. Omnis autem populus Romanus novit <me> meum implesse officium et bonam de me opinionem. Ergo habeo praemium senatus consultum et vici'.

'Si vicisti . . . es' should be punctuated as an objection: If (on this hypothesis) you won, as you say you did, well then, you must have received some reward. Cicero

[19] Surprising though it is. Normally one would argue that a sword is not either good or bad, but may be used well or ill (cf. 5,112–3; 15,172–3; 31,54–32,55). But a Quintilian would argue that rhetoric is good in itself, though it may be used badly; and the sword is ineptly used as an analogy to that (note Quint. 2.16.6). It is equally odd to speak of *nature* producing a sword; contrast 39,54 'quicquid perfectum natura procreavit', exemplified by kinds of animal.

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answers: Yes, I did: the good opinion of the Roman people. Some such verb as *habet* should be added to govern 'opinionem' (cf. e.g. II *Verr*. 3.59). In the next sentence, we should delete 'senatus consultum'; the *praemium* that Cicero has received is the good opinion of the people, and the senate has nothing to do with it.

41,90–7 Grillius goes on:

Et vide cautelam magnam! Si enim dixisset 'finis est persuadere, quod instituerit orator', non erat quo non persuasisset; quod ipse non potuit facere in Philippicis: Persuadere enim senatui non potuit, ut hostis pronuntiaretur Antonius. Ideo ergo addidit *finis persuadere*, quod instituerit, *dictione*. Oratoris igitur est impleto officio finem praesumere; sic ipse in Philippicis: *Quare ego Pisoni maximas <gratias> et ago et habeo*.

If rhetoric is defined without qualification in terms of persuasion, 'there was no means of persuasion which he could not have used [apparently on the occasion of the Verrines]'. Compare the argument at Quint. 2.15.6: many other things can persuade as well as speech ('verum et pecunia persuadet et gratia et auctoritas dicentis et dignitas, postremo aspectus etiam ipse sine voce'; cf. also Marius Victorinus 173,13–16). Cicero therefore added 'dictione' to the definition. The mention of the Philippics is quite irrelevant to this, and 'quod ipse . . . Antonius' should be deleted as a gloss commenting on 95–7, words which themselves only make sense if the citation of *Phil*. 1.15 is continued: 'qui non quid efficere posset in re publica cogitavit, sed quid facere ipse deberet'.

45,45–7 The severity of the Stoics extends to condemnation of begging.

Mortem etiam pro honestate persuadent; etiamsi fame emori dixeris, dicunt honestum esse, quoniam petere ab altero turpe est.

Something is wrong here, for 'dixeris' can hardly govern the preceding infinitive. Unless 'dixeris' is itself corrupt (under the influence of 'dicunt'), read 'etiamsi "fame emorior" dixeris', or add 'te'.

47,81–3 In the course of problematic remarks about the Third Academy, Grillius says:

Cum diversum a duobus dicitur, necesse est tantum ab hoc aut ab illo inveniri veritatem.

I do not know how to take 'tantum'. Perhaps read instead 'aut'. The corruption could have arisen (after -t) from a confusion of abbreviations.

48,127–9 Cicero (8) is critical of Hermagoras even when he seems to be granting him a point,

cum dicit ex alienis artibus eum multa collegisse, quasi nihil suum habeat, *et nonnihil ipse quoque novi protulisse*.

The criticism lies in 'quasi nihil suum habeat'. What follows cannot be construed as a further criticism; it is a new lemma, commented on from 129.

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50,30–3

Bene *breviter*; de his enim quinque partibus in libro 'de oratore' dictum est; de genere, item de officio, de fine *aliud in tempus differemus*, id est in libris, qui sunt ad Herennium.[20]

Pehaps read 'libros' for 'libris'. But a commentator on *De inventione* who thinks that it was written after *De oratore* is perhaps capable of anything.

52,40–1

Ut et in accusatore et defensore est controversia, ita et <in> ipsa disceptatione controversia est.

Delete the first 'et' (omitted by G, according to Martin). There is no place for it in the sequence 'ut . . . ita et', and 'et accusatore' cannot correlate with 'et defensore' in view of the interposition of 'in'. One would also expect 'accusatione . . . defensione' (cf. 32–5).

53,69

In eventum enim responsionis illius pendet status.

Read 'eventu' (so Martin). For *in* (rather than *ex*) cf. 83.40–1 'pendet in quaestione rationis'; 84,18.

53,70–5 Grillius goes on to explain the different *status* that arise from different replies of the defendant to a charge.

Intendis reo crimen; si negaverit, coniectura est; si dixerit se fecisse, sed aliter fecisse, finis est; si dixerit se fecisse, sed non aliter fecisse quam iure, qualitas est; si dixerit se fecisse et non aliter fecisse, sed tamen aliam petierit poenam aut alium iudicem aut aliud tempus, translatio est.

'aliter fecisse' in the sentence on *finitio* implies 'to have done what is said to have been done, but to plead that the act is to be called something different from what the accuser calls it'; cf. 59–60, 'Quando nominis [i.e. quando in nominis contentione vertitur controversia?]? Quando obiecta non negantur, sed de nomine facti quaeritur, quod est finis.' But this must be the meaning of the words in the succeeding sentences also. Grillius therefore wrote '*et* [as below] non aliter fecisse *sed* iure'; the plea turns not on *finis* but on *ius*. Cf. Marius Victorinus 190,40–2 'Etenim vim singularum defensionum considerare debemus. Primo hoc est innocentis hominis, ut dicat "non feci": deinde "feci, sed non sic vocatur": tertio "feci *et sic vocatur, sed iure feci*".'

54,86–91

Aut certe si dicat 'feci et sacrilegium est, quod feci, et male feci, sed non a te accusandus sum, non hoc tempore, non hoc loco, non hoc iudice'. Haec multa sunt. Ergo istud dicitur actio, quando, quomodo tecum agendum sit, quaeritur, quae ab Hermagora translatio dicitur.

The sentence 'haec multa sunt' should be deleted. It is a gloss worthy of the Idiot Glossator who added 'sed omnia haec tria sunt' at Quint. 5.14.20. Similarly, perhaps, delete 'non est vera definitio' at 44,10 ('ubi est definitio falsa?' has preceded).

[20] Regarded as the work of Cicero from at least as early as Jerome.

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54,91–5

Quicquid ergo extra has constitutiones fuerit, asystaton est. Istae autem sunt quattuor: Facti, nominis, generis, actionis. Quicquid igitur compensatio venialis relatio, et illae extra quattuor, quas dicit Tullius, constitutiones non putandae sunt, sed omnes ex qualitate descendunt.

The start of the second sentence is clearly faulty. One might think of a lacuna: 'quicquid igitur <extra has fuerit,> . . .'[21] But that would imply, at least for the moment, that the types that follow will be dismissed as *asystata*. We should better delete 'quicquid', as a perseveration from the start of the previous sentence. But all is not yet well. 'extra quattuor' is Jakobi's ingenious correction of the MSS 'quattuordecim', but 'quattuor' suffices. In either case, the reference is to Cicero 15 'eius partes sunt quattuor, concessio, remotio criminis, relatio criminis, comparatio', the four parts of the Assumptive subtype of the Juridical Issue. Grillius will give the same scheme at 71,31–3: *concessio criminis*, *remotio*, *relatio*, and *comparatio* 'quae et compensatio dicitur'. This disqualifies both 'compensatio' and 'relatio' for places in the first part of the sentence. As for 'venialis', alluded to at 68,22, it is identical to *concessio*, as Cicero 15 shows ('concessio est, cum reus non id quod factum est defendit, sed ut ignoscatur postulat'; Marius Victorinus 191,14–15 'sed veniam postulare, quae est qualitas venialis, quam concessionem Cicero vocavit'). We should therefore delete 'compensatio venialis relatio', as a deficient gloss on 'illae quattuor', and the 'et' that has been added to bind the sentence together, leaving merely: 'Igitur illae quattuor . . .' And if Grillius does not use *igitur* in first position, that word had better go too, or be replaced by 'at'.

55,132–4 Grillius has turned to the *asystata*.

'*Αντιστρέφον*, id est retorquens,[22] ubi in se transfert uterque id, quod ante alter obiecerat, et neuter utitur sua priore sententia, quasi in utraque parte conversum, ut puta . . .

Cf. Fortunatianus 1.4 'Quae est antistrephusa? Cum actionem suam convertunt litigantes et neuter utitur sua priore sententia, sed adversarii sui'. 'quasi in utraque parte conversum' (cf. Fortunatianus's 'convertunt') should be deleted as a gloss further explaining the concept; it is not in place here, and it cannot elegantly be transposed.

56,142–5 A declamation theme:

'Viro forti detur praemium.' Cum plerisque praemia postulantibus civitas vexaretur, quidam fortiter facit, petit praemii nomine, ut iuret civitas nulli se praemium dare.

The constant practice of such themes requires that past tenses mark the 'narrative', present the terms of the case resulting. Read (and punctuate): 'fortiter fecit. Petit . . .' (cf. exactly *Decl. min*. 306.1). Conversely, in 81,166, 'petit', there part of the narrative, should be given a circumflex or emended to 'petiit' (so Martin, who implies he found it in B).

56,150–2 Instances of a theme that is *asystaton* because incredible:

[21] 'putandae sunt' rather than 'putandum est' would be *ad sensum*.
[22] Grillius in his slovenly way has called it 'retortum' at 7,167 and 55,114.

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ut puta si quis lenocinii reum Socraten facit aut Catilina coniuratione a Tullio proditus Tullium sibi dicat fuisse participem.

If Cicero has betrayed Catiline, Catiline hardly needs to assert that Cicero was part of the plot. Delete 'a Tullio'.

63,171–3 On the five-part syllogism:

Quinquepartitus est, in quo et propositio et assumptio dubia est, quae utraque probanda sunt et sic quinta parte concludenda ad hunc modum: . . .

What is supposed to be the subject of 'concludenda'? Read 'concludendum', 'the conclusion should be stated in the fifth part'.

72,57–62 *compensatio* (otherwise *comparatio*) involves balancing subsequent good against prior evil. Having told us this twice, Grillius now tells us it again:

Item [!] numquam fit compensatio, nisi quando malum fit, post bonum, non primo bonum et post malum. Bono priore postea fit malum, ut si dicat Tullius: 'Ideo contra legem Porciam gladio cives Romanos occidi, quia imminebat per illos patriae periculum'. Ecce plus boni habet quam mali, quod fecit.

These imaginary words of Cicero (as 'ecce . . .' shows) illustrate the principle that compensating good must *follow* bad. They certainly could not illustrate 'bono priore postea fit malum', which must be deleted as a gloss on 'primo bonum et post malum'. This produces a smoother result than Martin's deletion of 'primo bonum et post malum'.

72,64–73,69 The status of *compensatio* is only in question when (72,52–4) 'assumitur defensio ex eo, quod existimatione mali, quod praecessit, bonum videtur esse, quod factum est'. So it does not apply in a passage of the fifth Verrine (4):

Unde quidam errantes in loco illo 'de suppliciis', ubi ab Hortensio Verris crimina defenduntur et pro eo, quod est bonus imperator, veniam postulat, cum dicit: *Sit fur, sit sacrilegus, ut est bonus imperator* esse <putant compensationem> 'quod fur, quod sacrilegus fuit'; sed deprecatio est.

'ut' must give place (as in Martin's ed.) to Cicero's 'at'; and add a comma after 'imperator'.

73,74–7 Grillius will discuss *concessio* last of the four parts into which he divided *assumptiva* at 71,31–3.

Diximus, per quas partes assumptiva constet, sed de concessione tacuimus, quam proposueramus, ideo quia partes suas habet *purgationem* et *deprecationem*. Quae nunc explicitis omnibus accommodatius dicitur.

'proposueramus' is not impossible, for the division at 71,31–3 was a sort of *propositio*. But better read 'praeposueramus'; *concessio*, placed first there, is now treated last of all.

77,63–8

Leges contrariae compensationis themate fiunt, non quia ipsae per se contrariae sunt [with an

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example of two laws that have no inherent connection with each other] . . . Adhuc sibi hae leges non sunt contrariae, quia unaquaeque diversa resecavit, sed fiunt contrariae hoc modo: [with the example of a declamation theme in which they do come into conflict].

'Up to this point these laws are not contradictory, for each was meant to "cut out" different crimes, but they *become* contradictory thus: . . .' This shows that the first sentence should be saying that laws, not in themselves contradictory, may become contradictory in the circumstances posited by a particular theme. Read then e.g. 'Leges contrariae interdum pro themate fiunt'.

78,82 A type of ambiguity.

Per discretum vel indiscretum ita fit [sc. ambiguitas]: 'Meretrices ancillae publicae sint'. Ecce ambiguum: Nescit<ur>, quid decrevit [v.l. discrevit]. Quid enim discrevit? Quaeritur enim, de ancillis an de ipsis meretricibus dixerit.

What is all this about? We learn from Fortunatianus (1.25), though not from Jakobi, what the law in question is: 'Meretrices si ancillas habuerint, publicae sint: meretrices habent ancillas; quaestio est, quae debeant publicari, meretrices an ancillae earum an utraeque'. Grillius should be supplemented to make this clear. Then what? 'Nescitur quid decrevit' will mean 'It is not known what the law (meant to) decree' (for *decernere* in this sort of context, cf. 79,116–17 and esp. 79,125–6 'poenam voluit lex decernere desertori'). The next sentence will have to do with 'per discretum vel indiscretum', but I do not know what that means (Julius Victor 383,16 makes this an example of ambiguity 'per voluntatem').

78,97–100 Another type of ambiguity.

Per abundantiam ita: Si lator[23] plus loquendo, quam competit, faciat ambiguitatem, ut puta: 'Meretrix, si utitur veste aurea, publica sit.[24] Nescitur hic, quid sit publica, vestis aurea an ipsa publica sit.'[25]

The phrasing of this is itself 'abundant', an inadmissible cross between 'quid sit publica, vestis aurea an ipsa' and 'vestis aurea an ipsa publica sit'. But 'quid' is unhappy, and we should prefer the latter formulation in view of Fortunatianus 1.25 'quaestio est quae debeat publicari, ipsa an vestis eius'.

78,104 Grillius has discussed four of the five types of ambiguity listed at 78.80–1; one more is to come in 79,105–10. Now we have:

Ex his argumentis asystaton dividitur.

These words are to be deleted. They are irrelevant to the context, as well as ill-expressed.

80,148–63 Two kinds of *definitio*:

[23] Sc. *legis*, which should doubtless be added before the word.
[24] Jakobi's punctuation resolves the ambiguity; the commas should be removed.
[25] Grillius cites the law in a form that shows no *abundantia*. Contrast Fortunatianus's formulation 'meretrix aurata veste ne utatur: si usa fuerit, publicetur', where, as he explains, the abundance lies in the words 'ne utatur', for if you get rid of them 'incipiet publicatio ad meretrices pertinere'.

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Inter hanc definitionem, quae ex lege nascitur, et illam, quae ad rationem pertinet, hoc interest, quia haec sine scripto esse controversia omnino non potest, illud vero etiam sine lege stat. Talis est <lex>: [an example]. Hic si legem removeas, penitus controversia esse non potest. Videamus nunc aliud thema, in quo etiam lege sublata per finem stet controversia [with example].

'illud' will have to be changed to 'illa'. Further, Jakobi's supplement is mistaken. We may understand *definitio*. Otherwise, there is some deeper corruption: e.g. 'Tale est hoc thema'.

81,169–70 Having given the example introduced at 80,162–3 (see the last note), Grillius says:

Hic etiamsi legem tollas, stat controversia hoc modo: [and another example is given].

The words 'hic . . . controversia' will look back to the example that has preceded (as does 'hic . . . non potest' at 80,160–1). They cannot then also look forward to another example. There must be a lacuna; read e.g. 'controversia. <Item> hoc modo:'

82,22–3

Quaerit enim iudex reddere rationem reum, infirmat accusator rationem rei, sequitur iudicatio iudicis.

The first words can hardly mean: 'the judge asks the defendant to give his reason'; and 'reum' is only Martin's emendation for 'reus'. Read 'quaerit enim iudex, reddit rationem reus, . . .' For the stages cf. just before: 'Quaestio enim dicta est, quod contemplans *iudex* intendentem et depellentem *quaerit*, utrum fecerit an non. Deinde ex hac quaestione procedit ratio et infirmatio rationis.' That is, the *ratio* is next given by the defendant (cf. 83,30–1 'si rationem non reddat reus, non stat controversia') and attacked by the accuser (cf. 83,33–5 'audita igitur hac ratione iudex exspectat et accusatoris infirmationem, id est qualiter infirmet accusator rationem rei').

83,35–6 Following the words cited in the last note, we have:

Infirmatio enim non iam firmatur nisi translatione; adeo rationi semper est inimica translatio. Non enim laborat accusator, ut defendat mortem Clytemestrae,[26] sed ut ita dicat: 'Est quidem, quia[27] iure occisa est, sed a te filio occidi non oportuit'.

Grillius will speak of the use of *translatio* to attack a defendant's *ratio* at 84,18–9 and 85,42–3; and this is the approach of the accuser of Orestes cited in the second *enim* sentence. But *translatio* is not *always* the means employed to attack a *ratio*. The first *enim* sentence seems to be the remains of a mistaken gloss; it will originally have started 'ratio enim non infirmatur nisi translatione . . .'

84,28–30 Grillius repeats, in similar words, what he has said in 84,22–4:

Hic autem, ubi coniectura est, id est, ubi negat<ur> factum, scit omnem iudicationem in quaestione esse.

[26] What can this clause mean?

[27] Is this really conceivable Latin for the required sense: 'it is true that she was killed justly'? Read 'esto' (without 'quidem'?); cf. Hofmann–Szantyr, 605 (*esto ut*).

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'scit' cannot be right. Perhaps read 'scito', though there is no parallel in Grillius; in another didactic work, cf. 'Remmius Palaemon' in *GL* 5.539.30–1 Keil 'si . . . de genitivo dubitas, scito quia in is exit'. Otherwise, e.g. 'scimus', or 'dixi'.

84,30–2 Grillius goes on:

Quid enim facere iudex potest, nisi ut requirat,[28] factumne sit? Hic nec ratio est nec infirmatio. Quare non sunt nisi in concessione.

It is not (and Grillius cannot have thought it) true that *ratio* and its *infirmatio* are only found in the status *concessio* (note *De inv*. 1.19). We had better delete. The glossator will have written not 'quare' but 'quae'.

85,63–86,67 Grillius comments on Cicero 19 'Tum his omnibus in causa repertis . . .'

Dedit praecepta posterius, ut requiras primo simplexne genus sit causae an coniunctum, deinde utrum ambiguum sit an ratiocinativum et reliqua talia. Modo dicit, ut, ubi haec inveneris, diligenter consideres partes orationis sex.

Grillius refers back to Cicero's precepts in 17 before coming to the present passage (for 'modo' see 27,126–9). 'posterius' has no reference, and we should read 'prius', taken up by 'deinde'. Cf. 88,62–5 'ideoque *prius* necesse habuit demonstrare causae genus et sic iam, in qua causa quemadmodum ordireris, ostendere; *prius* causarum divisit genera, ut facilius principiorum ostenderet rationem'. Another possibility is to read 'superius', taken up by 'modo'; cf. 13,116 and 23,20 (both answered by 'hic'), 27,120 and 44,2 (both answered by 'nunc').

88,54–6 Grillius has told us that 'obscuritas . . . tribus modis fit, a iudice, ab oratore aut ab ipsa causa' (48–9), and that obscurity *ab oratore* occurs 'si aut minus dicat aut multa dicendo se involvat' (50–1).

nunc Tullius dicit [20] a iudice et causa fieri genus [sc. obscurum genus causae], ab oratore autem non [cf. Marius Victorinus 196,39–41], quia praecepta dat, ut orator debeat esse plenissimus.

Not 'plenissimus', for that might lead to 'speaking much and getting into tangles', but 'planissimus', 'very clear'. For the importance of clarity, see e.g. *De orat*. 1.144 ('plane et dilucide').

88,69–89,72

Insinuatio autem fit duobus modis, aut dissimulatione aut circuitione. Dissimulatione, quando te benivolentiam fingis non petere et in ipso mereris, quia non potest.

Who or what cannot what? Martin understood '[benivolentia] non potest [sc. peti]'. But that is an unpersuasive claim. Read (with Christ, *ap*. Halm 601,33) 'petis': claim credit for not asking for goodwill.

96,46–50

Dixit, a nostra persona quibus modis benivolentia capiatur, dicit, <quo>modo ab

[28] = *quaerat*. Cf. 85,64.

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adversariorum persona capiatur benivolentia, si eos aut in odium aut in invidiam aut in contemptionem adducas; et modo, quibus rebus in odium adduci possunt, ostendit.

Jakobi's supplement is mistaken. We have here a case of the usage seen in 85,63–6 cited above, where a past tense refers to previous precepts (there 'dedit') and *modo* with a present tense (there 'dicit') signals the transition to the passage under discussion (see on 27,126–9).[29] Read then 'dicit modo <quibus rebus>';[30] cf. 96,60–1 '*docuit*, quibus rebus in adversarios possit odium concitari, *ostendit modo*, quibus rebus moveatur invidia'.

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[29] The next 'modo', in line 50, moves us on to *odium* in particular; cf. 61, cited below.
[30] Rather than '<quibus modis>', or Martin's 'modo <quomodo>', both inelegant after 'modo'.

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