

QUINTILIAN ON THE USES AND METHODS OF DECLAMATION

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Quintilian of Calagurris may have been Spain's greatest contributor to Roman rhetoric, but he was not the first. His father was a professional speaker¹, and the *Quintilianus senior* mentioned by Seneca rhetor in *Contr.* 10.Pr.2 was surely a great-grandfather or similar relation. Seneca and his schoolfriend, the most admired Porcius Latro, were taught by a certain Marullus, who seems also to have declaimed at Rome. Junius Gallio, who adopted Seneca's son Novatus was probably Spanish, and Gavius Silo practised advocacy at Tarragona (*Contr.*10.Pr.14) like Clodius Turrinus (10.Pr. 14-16), who owed his wealth and authority in the province to his eloquence (*pecuniam... et dignitatem, quam primam in provincia Hispania habuit, eloquentiae debuit*)². However, there is no doubt that Porcius Latro was the most distinguished declaimer of his day, at least in part, as Seneca puts it, because of *illum fortem et agrestem et Hispanae consuetudinis morem* (*Contr.*1.Pr.16), his hardy Spanish vigor and passion for work-or whatever else he was engaged in. The Spanish connection may be why Quintilian, who quotes Seneca's *controversiae* only once, in his chapter on *figurae* (*schemata*)³, cites both Latro and Iunius Gallio approvingly later in the same discussion (9.2.91-2). But we must remember the lapse of time between our surviving sources. The great names of the elder Seneca's reminiscences were dead before Quintilian was born, around 40 C.E., and we do not know whether he studied declamation with Domitius Afer, who was his teacher in the late 50's, or with other instructors. (Regrettably we cannot claim Afer, who came from Gaul, for Roman Spain.) When Quintilian returned to Spain about 59 C.E., he must have served, like Gavius Silo and Turrinus, as an advocate in the Roman communities of his region⁴. He may also have

¹ We cannot be sure that his father was a professional advocate, since the retort to an ineffectual envoy cited by Quintilian at 9.3.73 could arise either in a prosecution or a political dispute in the local senate.

² On these men of Spanish origin see L. BORNECQUE, *Déclamation et Déclamateurs* (Lille 1902) part 3, and L. SUSSMAN, *The Elder Seneca* (Leiden 1978), 21, 56, 91.

³ *I.O.* 9.2.42. See below.

⁴ J.A. CROOK, *Legal Advocacy in the Roman World* (London 1995), shows the importance of

started to build his reputation as a teacher, but the practice of advocacy is more likely to have attracted the attention of Galba, who brought him to Rome in 68.

The pity of it is that we know nothing about the teaching of rhetoric at Rome between around 35 C.E. and Quintilian's own time, apart from the manuals of Celsus and Verginius Flavius mentioned by Quintilian. Yet although there are almost 60 years between Seneca Rhetor's reminiscences and the criticisms of Quintilian himself, the picture of other teachers' approach to declamation conveyed in the *Institutio* is little different from that reflected in Seneca. And we know that Quintilian himself declaimed, not just as a teaching tool but for the benefit of visitors, since he mentions it incidentally in his discussion of memory at 11.2.39

Etiam quae ex tempore videbantur effusa ad verbum repetita reddantur. Quod meae quoque memoriae mediocritatem sequebatur, si quando interventus aliquorum qui hunc honorem mererentur iterare declamationis partem coegisset.

The traditional picture of hostility and even contempt on Quintilian's part arises from two well-known passages, 2.10.4-15 and 5.12.17-23, in which he deplores the divergence of declamation from forensic practice. In his second book, on instructing adolescents, he protests that the *controversiae* have fled into a fantasy world of wizards and pirates, plagues and oracles (2.10). Again, writing on the techniques of argumentation in book 5 he despairs that declamations, which should arm young men for the forum, have long since lost touch with real pleading: *olim iam ab illa vera imagine orandi recesserunt*: now they are composed purely to please and titillate *ad solam compositae voluptatem* (5.12) and the audiences enjoy their wantonness with passive lust: *licet hanc libidinosam resupina voluptate auditoria probent*.

We should, however, keep in mind two things: first, that Quintilian sees the training offered by *controversiae* as the most modern method (*novissima*) and also by far the best (*utilissima*), perhaps sufficient in itself and certainly requiring for its practice all the necessary virtues of serious oratory (*perpetuae orationis* 2.10.2). He asks only that declamation, created as the imitation of *iudicia* and *consilia* (5.12.12) be closer to real lawsuits and cases: it should use names and circumstantial details like age and occupation, instead of stereotyped «fathers» and «sons» and accepting more complexity of legal situation, relying on normal everyday language (*verba in usu cotidiano posita* 2.10.9).⁵ After all, these young men will be using their

advocacy in the disputes between local communities, and their suits for favourable consideration from Rome.

⁵ Compare M. WINTERBOTTOM, in *Empire and Aftermath*, ed. T.A. DOREY (London 1975), 82-3.

training in judicial oratory as advocates, and their study of deliberative oratory as members of a personal council, to give a senatorial opinion, or to urge a policy on the Princeps if he consults them (3.8.70 *advocari in consilio amicorum, dicere sententiam in senatu... suadere si quid consulit princeps*). Why, then, do they so seldom enact the role of *advocati* in *controversiae*, but play sons and fathers, rich men, old men severe or indulgent, and other roles which belong to new comedy? (3.8.51) Oddly Quintilian does not develop this practical argument, preferring to complain about students' carelessness of speaking «in character».

My second, and more significant, theme is Quintilian's constant use of declamatory situations in his own teaching, above all in the area of argumentation (*inventio*) to which he attaches the greatest importance. He most often cites examples of declamation, including extensive demonstration of how to organize a declamatory speech, in the three main discussions of *inventio*. These are the outline of *status*-theory in 3.6; the discussion of argumentation in the *confirmatio* in 5.10; and finally chapters 1-4 of book 7, ostensibly on *dispositio*, but in fact about using *status*-theory to determine the issue, and choice and sequence of arguments in a given case⁶. With the Spanish tradition in mind we should also consider his few references to declamation under *elocutio* in 9.2, since this is the chapter which reveals his verbatim knowledge of Seneca and the two Spanish declaimers, Seneca's friends, Latro and Gallio.

Quintilian quotes so many types of scenario for the *controversiae* that I shall deliberately limit myself to the family problems (*domesticae disceptationes*, 7.2.31) which focus on fathers and sons, with the least possible complications from adulteresses, pirates and tyrants⁷. He will allow such romantic contrivances to his pupils as an occasional indulgence, but sees the nucleus of the *controversiae* in these family disputes because they resemble common types of court case.

Quintilian's discussion in 3.6 is important because he is our only rhetorical authority to combine *status*-theory with declamatory themes in his instruction. In introducing the *status* he first reviews earlier schemes from Hermagoras onwards, then puts forward his own view at 3.6.66f, dividing the general issues into three *rationales* (*coniectura*, determining the facts, *qualitas*, dealing with the moral nature of the deed, and *definitio*) and one

⁶ Here for once WINTERBOTTOM's summary «the methods of treating cases of different *status*», (*op.cit.* p. 85) does less than justice to Quintilian's concerns. For a full list of declamatory scenarios cited by Quintilian see J. COUSIN, *Études sur Quintilien*, II, 617-22.

⁷ Cf. 3.6.80 *quod ipsa nobis etiam natura praescribit*, cf. 84 and 103. Quintilian associates nature with reasoning; whatever follows logically is «natural». See E. FANTHAM, «The concept of Nature and Human Nature in Quintilian's Psychology and Theory of Instruction», *Rhetorica* 13.2 (1995), 125-37.

legalis (covering five subgroups of issues of law). These he sees as natural in origin, that is, determined by logical analysis. One of his earliest examples is the *controversia* of the disgraced father who wishes to disown his son (3.6.77), a scenario so familiar that Quintilian starts, not with summary narrative, nor even the declamatory «law», but with the son's response: «You don't have the right to disown me, because a disgraced man cannot launch an *actio*» (lawsuit): this is quoted to illustrate the legal status of rejecting the case (*trahatio*). The father retorts «I have the right, because disowning is not an *actio*» This, says Quintilian, will require us to use the status of definition to define an *actio*, or argue by *syllogismos* to extend the restriction against proper actions to disowning⁸.

The conduct of declamatory exercises would normally be determined by a bare narrative synopsis and a set of «laws», like the rules controlling a chess game. Thus Quintilian cites an extreme-case scenario of an inheritance dispute involving both *abdicatio* and adoption, and adding an utterly un-Roman complication (3.6.96f)

A certain father has two legitimate sons: he has one of them adopted and disowns the other. Having then no sons he fathers an illegitimate child and acknowledges paternity. He then makes the disowned son his heir and dies.

The laws operating are

- 1) Legally made wills should be valid.
- 2) When parents die intestate *liberi* should be their heirs.
- 3) No disowned son should receive any of his father's property.
- 4) An illegitimate child is deemed legitimate if born before *legitimi*, but if born after them he only has the status of citizen.
- 5) It should be lawful to give a son in adoption.
- 6) An adopted son may return to the family if his father dies without *liberi*.

As usual in declamatory contexts these are not actual Roman laws, but the rules limiting how each of the sons must plead his claim to be heir. In this case 1, 2 and 5 are normal Roman practice, but 3 and 4 are not valid in Roman law, as Quintilian shows, by using and explaining the Greek word *nothos* for an illegitimate son. But the nightmare scenario has been designed to maximize the trainee's use of different issues (*status*). Thus the law for-

⁸ On disowning (*abdicatio*), which stopped short of being a legal process, see S.F. BONNER, *Roman Declamation* (Liverpool 1947), 102-7, and J. ADAMIETZ, *M.F. Quintiliani Institutionis Oratoriae Liber III* (Munich 1966), 152. Useful is L. SUSSMAN «Sons and Fathers in the *Major Declamations* ascribed to Quintilian», *Rhetorica* 13.2 (1995), 179-192.

bidding a disowned son from receiving property obstructs the son recorded as heir in the will; he will have to argue the issue between letter and intent (*scripti et voluntatis*) opposing the law with his father's intent to make him heir. The illegitimate son has two tasks; to prove he was not born after legitimate sons, and that he was not born before them. He deals with the first by syllogism, arguing that sons alienated from the household are to be considered *non nati*⁹ and the second by the intent of the law, that an illegitimate son should count as legitimate, if born when there were no sons in the family. He will exclude the letter of the law by using a *fictio* (invented situation). Suppose he had been the only child, what would his status be? Just a citizen? But he was not born after a legitimate son, so does that make him a son? Nor (in another sense) was he born before a legitimate son. So if it is impossible to observe the letter of the law, we must reach its intent by deduction. The disowned son will tell his brother who wants to be restored to the family «yes, you may be restored, but I am still the heir». And both the disowned son and the illegitimate boy will tell the adopted son «you cannot be restored to our family because our father did not die without *liberi*». And – to ignore further argument sketched by Quintilian – this returns the pupils to an issue of definition, this time *quid sit filius?*

Quintilian has used this scenario to involve two issues of the law and one of definition, or in his other terms, every one of the three «natural»¹⁰ issues: *coniectura* about the letter of the law, quality in constructing the syllogism, and the issue based on definition. The scenario is a sharp test of the students' command of logic and of the tension between the general written law and the specific written will. Whether or not this is Quintilian's own invention, it forms the climax of his demonstration of how to apply *status*-theory.

Book 7, giving precepts for argumentation, begins with a chapter on determining the best *status* for handling the case and the best organization of arguments. The pupil will find the *quaestio* at the point where the two sides disagree (7.1.6) and construct his arguments by working out the most general category to which his case belongs, and then arguing back from the general to the particular instance – a process similar to dialectic, which Quintilian follows in recommending *naturam sequi ducem* (7.1.40)¹¹. Throughout book 7, he is concentrating on teaching logical argument, and countering the tendencies of the declamatory schools by forcing his pupils to think of the contrary arguments which their opponent will produce, again somewhat

⁹ This can be understood as both «not-born» and «not-sons.»

¹⁰ On Quintilian's use of *natura*, *naturalis*, see FANTHAM (loc.cit), 135-6. Here and in the other books on *inventio* Quintilian uses «nature» to designate logical as opposed to legal thinking.

¹¹ Cf 7.1.26 *quid naturale sit respondere*, 7.1.46 *at qui naturam sequetur*, 7.1.48 *natura permittit...*

in the manner of chess where it is necessary to think out play several moves ahead.

Family disputes with a given scenario and set of «laws» again provide the best testing ground for this kind of logical exercise. For this purpose Quintilian cites several generally assumed laws at different points in his introductory chapter on argumentation

- 1) MINUS DICTO AUDIENTEM FILIUM LICEAT ABDICARE: let it be permitted to disown a disobedient son: 7.1.14
- 2) NON ABDICABIS ADOPTATUM: you may not disown a son you have adopted: 7.1.21
- 3) LIBERI PARENTES ALANT AUT VINCIANTUR: sons must support their parents or be imprisoned: 7.1.55 (cf. Sen. *Contr.* 1.1.7; 7.4)
- 4) VIR FORTIS OPTET QUOD VOLET: the war hero may choose his own reward: 7.1.21-22 (cf. Sen. *Contr.* 10.2, *Minor Declamations* 293, 304, 371)

These «laws» were so common as declamatory rules that Seneca reports Latro arguing a century before that one should take as already agreed (*res iudicatae*) the right of a war-hero or tyrannicide to choose his reward (= 4), a son's obligation to do everything his father commanded (= 1), and the restriction that only a son could charge his father with *dementia* (*Contr.* 2.3.12).

Given the crucial impact of disowning on the adolescent son expelled from his home, and the extraordinary frequency of this paternal act in declamations, Quintilian explores the assumptions about this punishment in more detail in 7.4 on the *status qualitatis*. There are (7.4.4) three common reasons for disowning: because the son did military service, or sought office (*honores petierit*), or married-against his father's will. Quintilian explains the importance of these scenarios of protest against *abdicatio* as one of three categories of domestic dispute closely resembling actual lawsuits which might come into court in adult life: *abdicatio* is parallel to suits before the Centumviral court protesting disinheritance (*exhereditatio*) by a son excluded from the will after his father's death: so also the declamation on behalf of a wife accusing her husband of *mala tractatio* corresponds to the *actio rei uxoriae*, suing for restoration of a dowry on divorce. The third type, where a son accuses his father of *dementia*, is seen as parallel to the petition for a *curator furiosi*, an administrator to represent a crazy father or householder (7.4.11-repeated in 29).

Two examples in this book based on a family of more than one son illustrate how Quintilian used these hypothetical situations, and what he was trying to teach through them. Twice in book 7 (7.1.38; 7.4.39) he recalls the *controversia* based on the competition of three sons, an orator, a philoso-

pher and a doctor, each claiming to be most useful to society and so deserving an additional share of their father's inheritance. Here is no challenge to logic, but a fertile field for praise and blame. The essentially epideictic issue could be tackled by a less advanced student; indeed it features with little variation in *Minor Declamation* 268, produced in conformity with Quintilian's principles¹².

One last case, which Quintilian tells us comes from the school syllabus, but regards as neither difficult nor new, he explains and develops in detail, to show how to construct a plea. Here I shall not go through his recommended argumentation, but try to isolate the principles which he is advancing¹³.

A father has two sons, one a trained orator (*disertus*), the other a farmer (*rusticus*). When he is accused of treason, his lawyer son defends him, but he is condemned. His farmer son is absent from the trial, and the father goes with his lawyer into exile. However the farmer becomes a military hero and ask as his reward the restoration of his father and brother. When the father dies intestate, the farmer asks for his share of the inheritance, but the lawyer claims it all (7.1.42f).

The situation is controlled by only two laws:

- 1) Any man who does not support (*adesse*) his father when tried for treason shall be disinherited
- 2) Any man convicted of treason shall go into exile with his lawyer.

Quintilian mocks the declaimers for preferring the emotionally attractive option: to defend the farmer and war-hero and restorer against the unwarlike and ungrateful lawyer. He imagines them blustering their way through the material to search out extreme and obscure aphorisms (as is now fashionable – *nam ea nunc virtus est*) and make a fine melodramatic display. Instead Quintilian suggests the farmer should follow the lead of nature. Here this means citing the basic claim to inheritance of sons in a normal Roman family, ignoring the exceptional, unnatural situation: «Our Father left us two sons and I am asking for my share in common law». Inevitably the lawyer will answer by citing the declamatory law excluding anyone absent from the defence, and use it to condemn the absentee.

The farmer's best hope is to show the letter of the law cannot hold good (49). Supposing the son who was absent from the trial was an infant or on military service? He must focus on the legislator's intent, to punish disloyalty. But since each son can accuse the other with equal justice of failing his

¹² Cf. M. WINTERBOTTOM, *Minor Declamations* (Berlin-New York 1984), *ad loc.*

¹³ On this as on other cases the reader should consult the *notes complémentaires* of COUSIN's edition, here p. 216.

father, Quintilian turns to other approaches to interpreting the application of the law, such as the moral and legal standing of the father himself. To argue in most general terms, should the law punish the absentee, no matter what kind of father is in question? (7.1.55) He reminds his readers of two stock bad parents, well-known from declamation, the mother who bears witness against her son charged with non-citizenship, and the man who sells his son to a pimp. Are sons obliged by the law to support this kind of parent? Again and again Quintilian prods the student to envisage the most general situation: in 58, does the law bind whoever is advocate, and to whatever defendant? The student should simply imagine in the most general terms that the father has been restored, then treat this restoration by the farmer son as a special case¹⁴. Can he not claim that his act of restoration was equivalent to acting as advocate, since it achieved the same effect as successful advocacy (61)?

We need not follow this outline step by step to the bitter end. In this preliminary *sermo*, «talking through»¹⁵ the sequence of claims of the declamatory scenario, Quintilian uses the declamatory scenario to lead the student through the mental processes which generate each argument by reducing each element of this situation to the most general categories, because he believes that abstract argumentation, and the manipulation of the *status*, play an essential part in the success of his brief.

The last passage which bears on Quintilian's experience of declamation and declamatory literature comes in his account of figures in 9.2. He approaches figures and figured speech critically, stressing the deviation of figures of thought from direct significance¹⁶. Quintilian brings up the declaimers to illustrate the extravagance of *schemata* (cf. 9.2.27, 55, 65, 79, 92), which he rejects as unnatural¹⁷ because he is both impressed and repelled by their passion for bold figures. At 9.2.42 (and here only in the whole *Institutio*) he cites the elder Seneca, for his use of *evidentia* in the *controversia* in which a (blind) father is guided by one son to catch his other son in adultery with his stepmother: «lead me, I will follow you. Take this aged hand and press it where you choose»... and again «see what you long refused to believe; for I cannot see, night and thick darkness come before my eyes». He seems both shocked and impressed by this powerfully vivid

¹⁴ 7.1.59 *qui subtiliter quaeret aliquid, spectabit ultra, nam ut genus species sequitur, ita genus speciem praecedit. Fingamus ergo ab alio restitutum, ... quaestio orietur: an valeat ac si iudicium non fuisset?*

¹⁵ I have not seen this term used by Quintilian in the *Institutio*, but it is the heading supplied for the teacher's outline in the *Minor Declamations*.

¹⁶ *Sententiarum figurae quae ab illo simplici modo indicandi recedunt*, 9.2.1.

¹⁷ 9.2.32 *in iis quae natura non permittit, mollior fit figura*, and the comment *audacius genus*, repeated in criticism of Seneca at 42.

figura... One reason for his hostility may be moral fastidiousness. In the rest of his work Quintilian avoids adulterous scenarios¹⁸. While it was the extravagance of *elocutio* which offended Quintilian in the contemporary declamation, he may also have felt a proper embarrassment at these family scandals, serving up adulterous mothers and brothers to impressionable pupils.

When he returns to the *scholae* for his material later in the same discussion (9.2.67-68, 70 and 81-92) he protests at the *schemata* or innuendos as an outdated fashion in declamation, at its worst when he was first training¹⁹. The examples include a scenario based on an adulterous, indeed an incestuous, mother and a violent father accused of *mala tractatio*. What could be more offensive and impure than if he defended himself by hurling innuendos against his wife? (9.2.80)

It is the last of the family conflicts mentioned in this context (9.2.91), which returns, or seems to return, to Seneca the elder. The scenario of the third *controversia* of Seneca's second book assumes a law that a rapist must die unless he persuades his victim's father and his own (to forgive him) within 30 days. One young man has won over his victim's father but cannot persuade his own father; so he launches a suit for *Dementia* against him. Here, Quintilian twice quotes what look like excerpts from the Senecan collection. First he praises Latro for this wording: «then will you kill me?» «If I can bring myself to» (9.2.91). Gallio's contribution he criticizes as slacker and more in keeping with his talent: «be firm my heart, be firm! yesterday you were brave». So does this mean Quintilian knew parts of Seneca's work which are now lost? The blinded father of 9.2.42 is not found in the continuous declamations but was appended by Mueller's edition as a fragment. The quotation from Gallio has a slightly different form in Sen. *Contr.* 2.3.6 (*fortior fuisti*, instead of *eras*) and the comment of Latro is not among the many preserved in Seneca's record of this declamation. Could Quintilian have found these sayings, not in Seneca, but in an intermediate source? Gallio certainly published on rhetoric; there may have been other, rival, collections by declaimers, for him to consult. Even so, why does he quote from and name the actual declaimers only in this chapter? Has he turned, for this chapter only, to a sourcebook on figures which drew only on declamation?

We have no answer. Instead let me end by adding to Quintilian's use of declamation as training in logical thinking, the moral and psychological mo-

¹⁸ Apart from the scenario derived from Euripides' *Hippolytus* at 4.2.98.

¹⁹ 9.2.77 *praecipue prima quibus praecipere coeperam tempora hoc vitio laborarunt: dicebant enim libenter tales controversias*. Although this would not take us quite as far into the past as the declamatory youth of Seneca the elder, it suggests that the mannerisms of his youth persisted into the second half of the century.

tives that would lead him to select the typical father-son scenarios we have been examining. Quintilian knew that adolescent sons had mixed feelings towards their powerful fathers; and he speaks of the *personae reverentia* (9.2.76) which led other speakers to veil their criticisms of those with power. But he also recognized that many pupils were glad to attack the father obliquely (*qui libenter patres figura laedunt* 7.4.28) even if they showed tact in actions for *dementia* by deploring the insanity but pitying the father for his condition, and praising his past goodness to emphasize the present change for the worse. One way in which the son could feel released from oppressive control is by contriving a scenario in which the father needs his help, or is abandoned by all but his son: hence the fathers captured by pirates, or convicted of desertion or treason. In most of the *controversiae* considered by Quintilian, the son has to deal with conflicting obligations – to stay married to the generous pirate’s daughter against his father’s will – while others deal more with matters of equity than law, and stress *officium* (duty) and good intent (*voluntas*) rather than the unbending written law. While Quintilian gave absolute priority to preparing his students for arguing real-life lawsuits, we can also see that he kept in mind the principles of morality on which they would both argue these fictional cases, and – we may hope – determine their own adult behaviour.