

## Cicero and the art of *dispositio*: the structure of the *Verrines*<sup>1</sup>

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ABSTRACT: This paper contests the notion that the *Actio Secunda* of the speech *In Verrem* lacks a formal rhetorical structure. It has often been noted that Cicero's earlier speeches generally conform to the precepts of speech structure (*dispositio*) and the alleged lack of formality of the *Actio Secunda* has been used to argue that this reflects its special status as a literary artefact, rather than a speech prepared for delivery in court. This paper suggests that the *Actio Secunda* does adhere to the precepts of speech structure when it is treated as one oration, rather than five separate speeches. By way of conclusion, it hopes to demonstrate that the *Actio Secunda* should be treated as an example of a real prosecution speech, whether or not any of it was actually delivered.

### 1. The problem

*Dispositio*—the art of arranging a speech—is one of the key tasks of the orator noted by the rhetoricians: in the preface to his seventh book, Quintilian compares *dispositio* to the erection of a building, claiming that, just as the collection of materials is insufficient to build a structure, so *inventio* is useless without *dispositio*. Yet the structure of the *Verrines*<sup>2</sup> has received comparatively little attention by scholars of rhetoric. There is only one study, that I know of, that seeks to provide anything like a synopsis of the *Verrines*: it can be found in Chapter 5 of Richard Leo Enos, *The Literate Mode of Cicero's Legal Rhetoric*.<sup>3</sup> Yet Enos' study only provides a brief overview, neglects to use section numbers, and analyses the structure of the individual books as seven separate orations, each with their own rhetorical structure. In what follows, on the other hand, I shall suggest that the five books of the *Actio Secunda* should be treated as one speech and that, so treated, they appear to follow the precepts of speech structure (*dispositio*) familiar from Greek and Roman rhetorical theory.

The argument presented here—that the *Actio Secunda* does follow the rhetorical guidelines when read as a single speech—contests the methods and findings of those scholars who examine the individual books as separate orations

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<sup>2</sup> The text of the speech used here is W. Peterson's (1917) and references are made as follows: a capitalised Roman numeral indicates whether the speech belongs to the *Actio Prima* (I) or the *Actio Secunda* (II). The book and small paragraph numbers that follow are all arabic numerals. Thus, II.1.1-3 indicates [*In Verrem*] *Actio Secunda*, *Oratio Prima* (*De Praetura Urbana*) paragraphs 1-3. All translations of the *Verrines* and other Latin texts are my own.

<sup>3</sup> Enos (1988) 63-72.

rather than as part of a larger prosecution file. Following a suggestion by Donovan J. Ochs, who claims that the structure of the speeches in the *Actio Secunda* is ‘incorrect’,<sup>4</sup> Enos’ analysis of the seven orations leads him to the misleading conclusion that although the *Divinatio* and *Actio Prima* accord perfectly with the structural precepts provided by the rhetorical works, the *Actio Secunda* does not; thus proving it was composed for publication rather than delivery. He claims: ‘while the *Divinatio* and *Actio Prima* are paradigms of highly structured forensic argument, the five orations of the *Actio Secunda* are little more than detailed expositions which, although expressive, ignore the systematic structuring of forensic argument recommended by Cicero in theory.’<sup>5</sup>

Enos’ concern over the alleged lack of rhetorical structure in the *Verrines* does not stand alone: compare, for example, Andrew Riggsby’s statement that ‘each individual speech [of the *Actio Secunda*] contains only a few of the conventional parts’.<sup>6</sup> But even those scholars who do read the *Actio Secunda* as one speech deny that it exhibits a formal structure. Rather than seeing a difference in the oral and literate mode of Cicero’s rhetoric, Ann Vasaly attributes the lack of rhetorical structure in the *Actio Secunda* to its length which, she claims, ‘made it impossible for Cicero to structure the speech in the ordinary way, that is by dividing the whole into proem, narration, argument, and peroration’.<sup>7</sup>

It may seem reasonable to use the length of the *Actio Secunda* as an explanation of its apparently anomalous structure, but Vasaly’s argument leads to what looks like a paradoxical result; for she adds that the speech ‘accurately represents the kind of speech that might actually have been made in a complex trial when a *single orator* presented the case for the prosecution’.<sup>8</sup> But if we follow this line of reasoning, then Vasaly seems to be suggesting that standard structure in a case of this length is impossible in cases in which a single orator speaks; yet that is precisely where we would typically find a higher degree of adherence to the rhetorical structure. For the rhetorical handbooks presupposed a single speech on each side and it is rather the division of labour that would produce deviations from the standard structure in the actual speeches.<sup>9</sup>

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<sup>4</sup> Ochs (1984) 311.

<sup>5</sup> Enos (1988) 73. To clarify Enos’ argument I include two further quotations: ‘We may well have in the *In Verrem* one of the prototypes illustrating George Kennedy’s notion of *letteraturizzazione*—that is, the shift of rhetoric from its primary function of immediate, oral persuasion to rhetoric in a secondary function, the use of rhetorical techniques for effective literary expression ... With the *In Verrem*, however, we have an instance of the phenomenon of *letteraturizzazione* occurring within one piece of discourse. Such an occurrence reveals an increasing specialization—and separation—of oral and written genres’ (74); ‘Cicero’s *In Verrem* has two dimensions which warrant its preservation: initial orations which offered paradigms of effective legal argument and later orations which provided eloquent models of forensic rhetoric composed in a literate mode’ (77).

<sup>6</sup> Riggsby (1999) 179.

<sup>7</sup> Vasaly (1993) 124.

<sup>8</sup> Vasaly (1993) 124 n.52 (my italics).

<sup>9</sup> According to the Scholia Bobiensia’s comment on the *Pro Sestio*, when ‘several men spoke for the defence ... they divided the parts [of the speech] between them and stuck to them while pleading’. (Stangl 125: ‘causam plurimi defenderunt, ... partibus inter se distributis quas in agendo

Thomas D. Frazel, on the other hand, notes that at times the *Actio Secunda* does adhere precisely to rhetorical theory; using the *enumeratio* at II.5.136-8 as an example, he illustrates that parts of the *Actio Secunda* do ‘follow the rules’. Thus he suggests that the form and techniques of the *Actio Secunda* are similar to other Ciceronian speeches.<sup>10</sup> Frazel still believes that the *Actio Secunda* lacks a formal structure but he thinks that the flexibility of other Ciceronian speeches renders its deviation unimportant. In the light of Dominic Berry’s comments on the informal structure of the *Pro Sulla*, Frazel asks ‘why can’t the second action of the *Verrines* be accorded the same consideration?’ But this goes against Berry’s own observation that ‘the six-part structure prescribed in *De inventione* provided the model for many of Cicero’s speeches, particularly those delivered in his early career’.<sup>11</sup>

To sum up: Enos claims that the *Actio Secunda* does not conform to the precepts of rhetorical theory, and explains this by it not being written for delivery. Vasaly agrees that the *Actio Secunda* does not conform to the standard structure, but offers an alternative explanation: it is too long, because a single speaker handled the whole case; however, that is paradoxical. Frazel, too, thinks that the *Actio Secunda* does not conform to standard structure, but he does not think that needs explaining, because such flexibility is paralleled in Cicero; however, Cicero’s early speeches are more conformist in structure. So we need to re-examine the view about the structure of the *Actio Secunda* and question whether it really is as informal as the consensus suggests.

## 2. Rhetorical theory and the *partes orationis*

The theorists have offered a number of approaches for examining a speech’s *dispositio*, differing nominally in the number of divisions they make and the terminology they use. By far the most systematic account is Cicero’s own in the *De inventione*. In later years its author, Cicero, by then an experienced orator,

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tuerentur.’) Cicero naturally spoke last and thus, in his actual defence of Sestius, he claims that ‘in this case, and speaking as I am in last place, the part which belongs to me is to argue the matter on grounds of affection, rather than to defend my client, to employ complaints rather than eloquence, and to display my grief rather than my ability’. (Cic. *Sest.* 3: ‘a me in hac causa atque hoc extremo dicendi loco pietatis potius quam defensionis, querelae quam eloquentiae, doloris quam ingeni partis esse susceptas.’) This conclusion is corroborated by later Greek rhetorical literature and Athenian practice where the division of labour is used to explain *deviations* from the standard structure in the published speeches (e.g. explaining why a speech has no *prooimion* or *diêgêsis*). Thus the scholiast on Dem. 22.1 (*schol.* Dem. 22.1b, Dilts), quoted in full by Rubinstein (2000) 59, explains that the speech does not contain either a *prooimion* or *diêgêsis* by the fact that the first speaker (Euctemon) had already made them and it was superfluous for the second speaker to say these things all over again. Clear examples of the division of labour in practice include Aeschines’ prediction that Ctesiphon will make the *prooimion* and then call upon his *synêgoros*, Demosthenes to conduct the actual defence (Aeschin. 3.201-2). Similarly, in [Dem.] 59 Themonestus provided the *prooimion* while Apollodorus contributed the narrative and argumentation. For examples of published speeches that lack either the *prooimion* or *diêgêsis* for the fact that they were only *part* of the whole case see Rubinstein (2000) 175 esp. n. 148. On this point I am indebted to the comments and discussion of Lene Rubinstein and Malcolm Heath.

<sup>10</sup> Frazel (2004) esp. 135-8.

<sup>11</sup> Berry (1996) 44.

dismissed the *De inventione* as juvenile<sup>12</sup> but this does not undermine its ultimate worth. It offers us a valuable insight into Cicero's mind at the beginning of his career and what he deemed to be important in a speech.

Cicero suggested that there were six main parts to a speech (*Inv.* 1.19)—the *exordium* (introduction), *narratio* (statement of facts), *partitio* (to make the speech clear), *confirmatio* (argumentation), *reprehensio* (attack on the opponent's argument) and *conclusio* (peroration).<sup>13</sup> To these subdivisions he later adds an optional part based on the teachings of Hermagoras—the *digressio* (digression)—which, if used, should come in between the *reprehensio* and the *conclusio* (*Inv.* 1.97). Each of these parts he further subdivided and I shall discuss these in turn as they arise.

At the same time, however, we should not be blind to the fact that rhetorical theory, not to mention the practice of oratory, allowed for and even required some deviation from the standard precepts. Quintilian summarises this point nicely in book 2 of the *Institutiones* in which he criticises those who reject theoretical *praecepta* as unnecessary, but also insists that *praecepta* need to be applied flexibly.<sup>14</sup> There is not space to examine in detail the arguments concerning the relationship between theory and practice; nor to take the ideas presented here further into an examination of the strategy of the speech. What is important to note is that the rhetorical theory must have been, at the least, an adequate reflection of its practice, otherwise its perseverance does not make a huge amount of sense.<sup>15</sup> And while a number of scholars have reminded us that the task of analysing a speech in terms of its structure is a beginning rather than the end in itself,<sup>16</sup> the aim of this paper is more modest. By showing that the *Actio Secunda* does adhere to the guidelines of *dispositio*, it is hoped that the path will be opened for further study.

### 3. The structure of the *Actio Secunda*

In my reconstruction, the structure of the *Actio Secunda* is as follows:

II.1.1-23	<i>exordium</i>
II.1.24-31	preliminary refutation
II.1.32-4	<i>partitio</i>
II.1.34-II.4.151	<i>confirmatio</i>
II.5.1-138	<i>reprehensio</i>
II.5.139-70	<i>digressio</i>
II.5.171-89	<i>conclusio</i>

In presenting this outline, it is not my intention to exclude the possibility that several of the books of the *Actio Secunda* exhibit a rhetorical structure of their

<sup>12</sup> Cic. *De orat.* 1.5.

<sup>13</sup> Cf. Cic. *De or.* 1.143.

<sup>14</sup> Quint. *Instit.* 2.11-13.

<sup>15</sup> For the adequacy of rhetorical theory see Wisse (2007) 58; Neumeister (1964) 8-9.

<sup>16</sup> In particular, see Stroh (1975). Other scholars who advocate the need to examine the structure of a speech in order to understand more about Cicero's strategy include Wisse (2007); Fotheringham (2006) 33; Vasaly (1993) 5-6; Classen (1985) 11-12.

own. As I have argued elsewhere,<sup>17</sup> Cicero could expect to deliver the *Actio Secunda* over several days and the rhetorical divisions could also be applied, as necessary, within the course of the speech. Indeed, there are several examples of each division within the individual books as Cicero introduces new charges,<sup>18</sup> explains how he intends to arrange material pertaining to the separate allegations,<sup>19</sup> introduces proof (*passim*) and draws the allegations to a close in short *conclusiones*.<sup>20</sup> In a speech as long as the *Actio Secunda*, such subdivisions are essential. My aim, however, is to strip the *Actio Secunda* of the abundance of its material to the core structure of the speech.

### 3.1 *Exordium* (II.1.1-23)

Cicero claims that the function of the *exordium* is to prepare the listener's mind for the rest of the speech and that 'this is achieved if he becomes well-disposed, attentive and ready to receive instruction'.<sup>21</sup> Even though Cicero's audience would have known the thrust of Cicero's case by the time the *Actio Secunda* began, Cicero could still anticipate some hostility. The *Actio Prima* which preceded it would have allotted time for the defence to speak and (as I discuss further below, §3.2) it is only to be expected that the defence would try to rally prejudice against the prosecutor at the end of his speech.<sup>22</sup> Therefore, in the sense that the *Actio Secunda* is a reply to a reply, Cicero would need to win the attention and the support of his audience all over again.

The *exordium* to II.1 clearly fulfils the numerous expectations of the rhetorical handbooks and in this way it also acts as the *exordium* to the *Actio Secunda* as a whole.<sup>23</sup> Cicero is keen to capture the *benevolentia* of his jurors and he sets about achieving this from the four standard *loci*: the person of the speaker ('ab nostra'), from the person of the opponents ('ab adversariorum'), from the persons of the jury ('ab iudicum persona'), and from the case itself ('a causa').<sup>24</sup> Thus he

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<sup>17</sup> Tempest (2006) 38.

<sup>18</sup> The *exordium* at II.3.1-12 is the most clearly defined *exordium*, see n.23, and the discussion on p.12, below.

<sup>19</sup> The *partitio* at II.3.12 is the best example, see discussion on p.13, below.

<sup>20</sup> E.g. II.3.226-8; II.4. 150-51.

<sup>21</sup> Cic. *Inv.* 1.20: 'quod eveniet si eum benivolum, attentum, docilem confecerit.' Cf. *Rhet. ad Her.* 1.6-8; Quint. *Instit.* 4.1.5.

<sup>22</sup> For the suggestion that Hortensius did make a speech in the *Actio Prima* see Alexander (1976).

<sup>23</sup> While the *exordia* to the individual books deploy several of the conventional topoi for making an introduction, they do not rival the *exordium* of II.1 for its richness and variety of their deployment. The topoi deployed in the other *exordia* are: the need for brevity (II.2.1); motives for prosecution (II.2.1; II.3.1-7); call for attention (II.2.2; II.3.10); ethos of the speaker (II.3.7-9); declaration of truth (II.4.2; II.5.9); hostility against the defendant (II.3.5, 6-8; II.4.1; II.5.1-10, *et passim*). But the *exordia* of the books in the *Actio Secunda* work to introduce the fresh species of charges against Verres (that is, accusations about his judicial mismanagement, misconduct relating to the corn tithes, his thefts of precious or sacred works of art, and his summary execution of Roman citizens). On the other hand, the *exordium* to II.1 works to introduce the *Actio Secunda* as a whole and is the only *exordium* to qualify in my reconstruction of the *Actio Secunda*'s structure.

<sup>24</sup> See Cic. *Inv.* 20-26, esp. 22; Quint. *Instit.* 4.1.1-71. Leon (1935) 34-6 provides a useful summary of the ancient discussions of *exordia*.

presents himself as a patriot, a saviour of Sicily, and the champion of the courts.<sup>25</sup> Hostility is continually generated against the defendant with a summary of Verres' crimes, the condemnation of his character, and accusations of anti-Roman attitudes and tendencies.<sup>26</sup> Cicero addresses the jurors offering both flattery and threats: the stark reminder offered to the jurors about the importance of their verdict and its consequences is an approach favoured by both theorists and practitioners.<sup>27</sup> And finally the case itself is praised in the light of Cicero's proven success in the *Actio Prima*, the illustriousness of the Sicilians, the timing of the trial and the opportunity it offers the Senatorial order to clear their bad reputation.<sup>28</sup>

Throughout the *exordium* Cicero neatly balances his criticism of the courts with his hopes of mitigating the unpopularity attached to them. At one and the same time he is their saviour and their critic. Nor does Cicero attempt to conceal the duality of his role but instead juxtaposes the two ideas to strengthen his devotion to the Senatorial Order while criticising directly a few of its number. Thus, at II.1.5-6, Cicero reminds his audience that he is working for the good reputation of the judges as much as his own reputation. This thought is immediately followed by his hope that, with Verres convicted, the people will stop claiming that money is the chief power in the courts.

Despite the seemingly confrontational nature of this *exordium*, several factors lead to the conclusion that Cicero's admonitions may not have been overly offensive to his audience: first, as Cicero admits at II.1.22, jury-service was burdensome and several senators no doubt welcomed the distribution of duty that the *Lex Aurelia* sought to establish.<sup>29</sup> Secondly, Cicero's reference to the *Lex de tribunicia potestate* that had been passed earlier in the year, shows, through the figure of Q. Lutatius Catulus, that several of the optimates were attempting to maintain their dignity in the face of inevitable reforms (I.44).<sup>30</sup> Cicero's claim that the monopoly of the courts will be transferred completely to the equestrian class is questionable.<sup>31</sup> And, finally, it has been suggested that, by the time of the trial, the reforms were perhaps unavoidable.<sup>32</sup>

In sum: the *exordium* exhibits all the conventional elements recommended by the theorists. In line with the precepts of rhetorical theory, Cicero draws his material from the persons involved in the case and from the case itself. And,

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<sup>25</sup> E.g. II.1.4-5, 10, 15-22.

<sup>26</sup> E.g. II.1.1-2, 6-10, 12-15.

<sup>27</sup> E.g. II.2, 3-4, 5-6, 10, 18, 22-3. For theoretical advice, see Quint. *Instit.* 4.1.16: Quintilian refers to the *Verrines* to illustrate his point at Quint. *Instit.* 4.1.20 and 6.1.13.

<sup>28</sup> E.g. II.1.22-3.

<sup>29</sup> Cf. Mitchell (1986) 172.

<sup>30</sup> For other references to this law, cf. II.3.210; II.4.69. For further discussion see Loutsch (1994) 190 and McDermott (1977) 49-52.

<sup>31</sup> At II.1.6 Cicero talks about the transference of the courts: 'de iudiciis transferendis.' For the unlikelihood that such a proposal was formally made see Seager (1994) 225-6, who concludes: 'Cicero may for rhetorical effect have deliberately exaggerated the effects of the *Lex Aurelia* in its final form' (*ibid.* 226).

<sup>32</sup> Thus Butler (2002) 78 and Mitchell (1979) 134.

whether or not his threats were offensive to his audience, we see that he combines his praise of the jurors with a strong warning about the effect of their verdict.

According to rhetorical theory, a *narratio* may follow.<sup>33</sup> But Cicero states in the *De inventione* that a *narratio* is useless in cases where the audience had thoroughly grasped the facts of the case; for there is no advantage in instructing them in a different fashion.<sup>34</sup> Cicero had already presented the body of his material evidence and the facts of the case in the *Actio Prima*; the jury had, then, a sound grasp of the accusations against Verres. Furthermore, Cicero expressly states his intention not to include a *narratio* in either *Actio* at II.1.27:

[27] Dixi prima actione me planum esse facturum C. Verrem HS quadringentiens contra leges abstulisse. Quid? hoc planius egissem, si ita narrassem? ‘Dio quidam fuit Halaesinus ...’

(I said in the *Actio Prima* that I would prove that Gaius Verres had illegally stolen forty million sesterces. Well, would I have made this any clearer by providing a narrative of the following kind? ‘There was a man of Halaesa, called Dio ...’)

However, Cicero could expect to deliver the *Actio Secunda* after an interval of some thirty-five days and thus a re-statement of the charges against Verres would be in order both to amplify and remind the jury of the case to come. It is for this reason that a simple statement of the alleged facts is embedded within the confines of the *exordium* at II.1.9-15.<sup>35</sup>

Cicero claims that Verres is guilty of despoiling sanctuaries, butchering a multitude of innocent people; he has slain, tortured and crucified citizens of Rome, and accepted bribes to allow pirate chiefs to go free (II.1.9). Cicero will prove that Verres has acquired wealth illegally (II.1.10). In his quaestorship he embezzled public money that had been assigned to the consul Gnaeus Carbo; Verres has also tampered with various accounts and by doing so he abstracted as much as he could from the total of the Sicilian tithe corn (II.1.11). He continued to strip the holiest sanctuaries and the cities of the Sicilians and this culminated in his theft of the memorials of Marcus Marcellus and Publius Africanus which were also the gifts of the Roman nation (II.1.11). Cicero repeats that Verres was bribed to set free the enemy captains and he now adds that in the *Actio Prima* Verres confessed that he had failed to behead those pirate captains (II.1.12). Verres should explain why he kept those pirate captains alive and unharmed in his own house and show that his actions are legal (II.1.12). His ultimate crime was the execution of a Roman citizen, Publius Gavius of Consa. Additionally, Verres beheaded Herennius, a banker from Africa, despite the pleas of his Roman friends and acquaintances. And by his orders, many Roman citizens met a violent death in the stone quarries (II.1.13-15). The ‘climax of the indictment’ occurs at II.1.9.<sup>36</sup>

<sup>33</sup> On the *narratio* see Cic. *Inv.* 1.27-30; *Rhet. ad Her.* 1.12-16; Quint. *Instit.* 4.2.

<sup>34</sup> Cic. *Inv.* 1.27-30. Other rhetoricians who claim that the *narratio* was not always needed include: Arist. *Rhet.* 1416b16-17b20; Cic. *De or.* 2.330; Quint. *Instit.* 4.2.4-8, 6.5.5.

<sup>35</sup> I am grateful to Lynn Fotheringham for pointing out my original error in calling this section an internal *narratio*.

<sup>36</sup> For the phrase ‘climax of the indictment’ see Mitchell (1986) 163-4.

[9] Non enim furem sed ereptorem, non adulterum sed expugnatorem pudicitiae, non sacrilegum sed hostem sacrorum religionumque, non sicarium sed crudelissimum carnificem civium sociorumque in vestrum iudicium adduximus, ut ego hunc unum eius modi reum post hominum memoriam fuisse arbitrer cui damnari expediret.

(For we have brought before your tribunal not only a thief, but a wholesale robber; not only an adulterer, but a ravisher of chastity; not only a sacrilegious man, but an open enemy to sacred rites and religion; not only an assassin, but a most barbarous murderer of both citizens and allies; so that I think him the only criminal in the memory of man so atrocious, that it would even be for his own good to be condemned.)

### 3.2 Preliminary refutation (II.1.24-31)

Cicero ends his *exordium* with a justification for its length: ‘This matter, gentlemen, has forced me to discuss it with you in rather many words.’<sup>37</sup> The use of the vocative ‘iudices’ adds closure to the *exordium*<sup>38</sup> and clearly marks the transition to a new part of the speech. A similar effect is achieved by the reference back to ‘this matter’ (here, the consequences for the Senatorial order if Verres is acquitted) which hails the end of these preliminary remarks on the importance of the trial. Cicero marks the transition to the next part of the speech with a series of words that announce the change of time (‘nunc’), tone (‘querimonia’), person (‘Hortensius’) and intention (Cicero will now make an ‘oratio perpetua’):

[24] Nunc ne novo querimoniae genere uti possit Hortensius et ea dicere, opprimi reum de quo nihil dicat accusator, nihil esse tam periculosum fortunis innocentium quam tacere adversarios; et ne aliter quam ego velim meum laudet ingenium, cum dicat me, si multa dixissem, sublevaturum fuisse eum quem contra dicerem, quia non dixerim, perdisse: morem illi geram, utar oratione perpetua, non quo iam hoc sit necesse, verum ut experiar utrum ille ferat molestius me tunc tacuisse an nunc dicere.

(Now so that Hortensius cannot employ a new kind of complaint and say that a defendant about whom his prosecutor says nothing is oppressed and that nothing is so dangerous to the fortunes of innocent men than the silence of their opponents; and so that he does not praise my talent in a way other than I would like by saying that I would have helped my opponent if I had spoken at length but that I have ruined him by not speaking: I shall comply with his wishes and make a continuous speech, not because I need to at this point in time, but so that I may find out whether he considers me more troublesome then, when I remained silent, or now when I speak.)

Cicero’s placement of a preliminary refutation is rare, but by no means unique. An obvious parallel is the preliminary refutation of the *Pro Milone* (*Mil.* 7-22) explicitly praised by Quintilian.<sup>39</sup> But in a trial of this sort, it is also expected.

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<sup>37</sup> Cic. II.1.23: ‘Haec me pluribus verbis, iudices, vobiscum agere coegit.’

<sup>38</sup> For the use of *iudices* as a means of marking the separate stages of an argument, see Wisse (2007) 39.

<sup>39</sup> Quint. *Instit.* 6.5.10: the example of the *Pro Milone* has been much debated and scholars have adduced a number of parallel instances. See Wisse (2007) 38-9 who summarises the findings of Dyck (1988) and Stroh (1975).

Cicero had already introduced the facts of the case and the majority of his evidence in the *Actio Prima*. Hortensius, although he allegedly did not cross-examine any of Cicero's witnesses, seems to have made a speech condemning Cicero's strategy in cutting short the *Actio Prima*;<sup>40</sup> thus Cicero later asks 'does he still complain at me because I brought the first hearing of his trial to an end in just nine days?'<sup>41</sup> It was thus important, if not essential, for Cicero to dispel any hostility aroused against him by Hortensius; and following so closely after the *exordium*, it accords perfectly with the need to secure the audience's good-will.

We can assume that an educated jury of Senatorial rank would recognise Cicero's deviation from the standard order of speech-parts. And by signalling his departure in order to deal with Hortensius' complaint, Cicero demonstrates that he is basically adhering to the rhetorical precepts; even if the circumstances of the trial necessitate a level of flexibility.<sup>42</sup> Cicero signals an equally clear return to the *partes orationis* by the repeated use of 'nunc' (with which he opened the refutation at §24, quoted above):

[32] Nunc mihi temporis eius quod mihi ad dicendum datur, quoniam in animo est causam omnem exponere, habenda ratio est diligenter.

(Now I must take careful account of the time given to me for my speech, for I intend to set forth the whole case.)

The closure and transition of this preliminary refutation are thus clearly marked; this section would be recognisable as non-standard to an educated audience, but it would also be perfectly intelligible. For the omission of narrative and the preliminary refutation are both manifestations of the same principle of adapting theoretical schemata to the needs of the particular case.

### 3.3 *Partitio* (II.1.32-4)

Theoretically speaking, a *partitio* stating the order in which the orator plans to present his material should follow; and there is a clear reference to the forthcoming structure at II.1.32-4. Here, Cicero states his resolve to set forth the case in full, passing over the incidents of Verres' youth, and concentrating only on his public career:

[34] Quaestor Cn. Papirio consuli fuisti abhinc annos quattuordecim. Ex ea die ad hanc diem quae fecisti in iudicium voco: hora nulla vacua a furto, scelere, crudelitate, flagitio reperietur. Hi sunt anni consumpti in quaestura et legatione Asiatica et praetura urbana et praetura Siciliensi; quare haec eadem erit quadripertita distributio totius accusationis meae.

(You were quaestor to Cnaeus Papirius the consul fourteen years ago. I shall bring before the court all that you have done from that day to the present: not one hour will be found that is free from theft, wickedness, cruelty and atrocity.)

<sup>40</sup> Thus Alexander (1976) 49-50: 'his [Hortensius'] response was quite short, and not equal to Cicero's (as Quintilian says it was not).'

<sup>41</sup> Cic. II.1.156: 'Is mihi etiam queritur quod a nobis IX solis diebus prima actio sui iudici transacta sit?'

<sup>42</sup> Compare Wisse's observation on the structure of the *Pro Milone* and its adherence to rhetorical precepts: Wisse (2007) 39.

You have spent these years in the quaestorship, as a legate in Asia, and in the urban praetorship and your Sicilian governorship; the whole of my prosecution will be structured into these same four parts.)

What is important to note, however, is that the *partitio* offered is clearly looking beyond the confines of II.1, thus confirming that a rhetorical structure should be sought in the speech as a whole, rather than in its five parts individually. The three stages before Verres' Sicilian governorship will be detailed in the present accusation but Cicero is also looking forward to the following four books which focus on his crimes in Sicily.

### 3.4 *Confirmatio* (II.1.34-II.4.151)

The *confirmatio* (the argumentation) is undoubtedly the key element of a speech and it is this which occupies the body of the text. Cicero describes it as 'the part of the speech through which our case gains trust, authority, and foundation by the presentation of argument'.<sup>43</sup> And it is here that he will most forcibly deliver his arguments against Verres. The majority of the evidence had already been presented in the *Actio Prima*. Cicero still refers to witnesses and documentary evidence, as appropriate, in support of his claims;<sup>44</sup> however, in the *Actio Secunda* Cicero needs, instead, to convince the jurors of the credibility of his evidence and the plausibility of his case.

The classification of issues—upon which Cicero expands in his theoretical discussions<sup>45</sup>—was simply not required in the prosecution of Verres. The law was statutory and all that mattered for Cicero was proving Verres' guilt.<sup>46</sup> Still in line with rhetorical theory, however, his proof derives from Verres' character ('ex personis') and actions ('ex negotiis').<sup>47</sup> Cicero divides his argument into four main categories of accusation: (1) accusations concerning Verres' *vita ante acta* (II.1.34-158) or, more commonly, the *De praetura urbana*, (2) accusations regarding Verres' judicial mismanagement in Sicily (II.2.1-192), commonly referred to as the *De iuris dictione* (3) accusations concerning Verres' extortions from the tithe system (II.3.1-338), called the *De frumento* and, (4) accusations regarding Verres' thefts of art (II.4.1-151), or the *De signis*. However, these titles have proved misleading and in what follows I shall make some observations concerning how the *confirmatio* flows, *when read as a whole*.

Cicero begins by detailing at some length the events of Verres' public career and the crimes he committed before the governorship of Sicily. He deals with Verres' quaestorship (II.1.34-40), Verres' time as legate and pro-quaestor of

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<sup>43</sup> Cic. *Inv.* 1.34: 'Confirmatio est per quam argumentando nostrae causae fidem et auctoritatem et firmamentum adiungit oratio.'

<sup>44</sup> There is not space to chart the evidence produced in the *Actio Secunda*: see, instead, Tempest (2006) 242-53.

<sup>45</sup> Cf. Cic. *Inv.* 1.10-16, 2.14-51, 52-115, 153-4; *Top.* 82-5, 92-4 *et passim*.

<sup>46</sup> Cf. *De or.* 2.105, where Cicero explicitly states that in trials for extortion the charges must be flatly denied by the defence (making this a conjectural case).

<sup>47</sup> Cic. *Inv.* 1.34: 'all propositions are supported in argument by attributes either of persons or of actions.' ('omnes res argumentando confirmantur aut ex eo quod personis aut ex eo quod negotiis est attributum.')

Dolabella (II.1.41-102) and his urban praetorship (II.1.103-58). The transition between these stages is clearly marked in the first line of each new accusation against Verres as Cicero draws attention to the change in Verres' status and responsibilities.<sup>48</sup> There is no summary, or indeed conclusion, at this stage; rather, Cicero signals his intention to move on swiftly in a *praeteritio* at II.2.1-2. This links the two accusations for Cicero 'will have to pass over many things in order to deal with Verres' crimes more thoroughly'.<sup>49</sup> The transition is further emphasised by the address to the 'iudices'.

Cicero proceeds to a clearly marked *digressio* in praise of Sicily (II.2.2-11) claiming 'before I speak about the deprivations of Sicily, I think I must say a few words about the dignity, antiquity and usefulness of the province'.<sup>50</sup> This is followed by a further introductory exposition, detailing the circumstances in which Sicily enlisted Cicero's help (II.2.11-17). Again, Cicero signals to the jury ('iudices') and guides them through his digressions and chain of events before coming to the main point of this second accusation: Verres' judicial mismanagement.

The material in support of Cicero's claims can broadly be divided as follows: Verres' inheritance swindles (II.2.17-67); Verres' misconduct in trials for capital offences (II.2.68-118); Verres 'sold' judicial decisions and magisterial offices (II.2.119-40); Verres' extortions from the statue fund (II.2.141-64); and Verres' collusions with the *publicani* (II.2.169-91). There are several digressions; such as the digression on the character necessary in a praetor's court (II.2.28-30); the legal rights of the Sicilians (II.2.32-4); and Cicero's outrage at the statues erected and the festival instituted in Verres' honour (II.2.51-2). The numerous instances of misconduct cited, the number of witnesses to whom Cicero refers by name and the range of crimes in this set of accusations make the argument hard to follow. Yet the main transitions are clearly announced. Often Cicero marks a transition by referring to the name of Verres' victim within the first line of the new accusation.<sup>51</sup> At several points he uses imperative verbs to ask the jury to listen, learn, see, hear etc.,<sup>52</sup> or prohibitions asking them not to expect Cicero to relate every charge against Verres.<sup>53</sup>

A *reprehensio* follows these accusations, in which Cicero mocks any defence Verres might make against his extortion of money for the statues (II.2.165-8). What is particularly interesting, however, is that Cicero makes a further allegation

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<sup>48</sup> 'Quaestor ex senatus consulto provinciam sortitus es' (II.1.34); 'Itaque idem iste, quem Cn. Dolabella postea, C. Malleolo occisso, pro quaestore habuit' (II.1.41); and 'Verum ad illum iam veniamus praeclaram praeturam' (II.1.103).

<sup>49</sup> II.2.1: 'Multa mihi necessario, iudices, praetermittenda sunt, ut possim aliquo modo aliquando de his rebus quae meae fidei commissae sunt dicere.'

<sup>50</sup> II.2.2: Atque antequam de incommodis Siciliae, pauca mihi videntur esse de provinciae dignitate, vetustate, utilitate dicenda.'

<sup>51</sup> E.g. Dio of Halaesa (II.2.17); Sosippus and Philocrates (II.2.25); Heraclius of Syracuse (II.2.35); Epicrates of Bidis (II.2.53); Sopater of Halicyae (II.2.68); Sthenius of Thermae (II.2.83).

<sup>52</sup> E.g. 'accipite' (II.2.18, 25, 82); 'cognoscite' (II.2.32, 33, 35, 65, 71, 161, 169); 'videte' (II.2.12, 19, 53, 98, 102, 106, 161, 163); 'audite' (II.2.62).

<sup>53</sup> E.g. 'nolite expectare' (II.2.125).

after the *reprehensio*: he claims that Verres was working in collusion with the *publicani* (II.2.169-91). By placing this accusation at the end, Cicero prepares to lead into the charge that Verres committed extortion from the grain tithes, this time with the help of the *decumani*. A *dubitatio* in which Cicero questions how Hortensius plans to defend Verres bridges the transition from the charges *De iuris dictione* and the forthcoming accusations *De frumento* (II.2.192).

It is at this point that Cicero makes a long *exordium*; the first of its kind within the *confirmatio*. Quintilian seems to suggest that it was not unusual for an *exordium* to appear in a different part of the speech. Following his summary of the guidelines for making an *exordium* he claims ‘these are the guidelines for the *prohoemium*, wherever it is employed’.<sup>54</sup> Nor should Quintilian’s decision to use the Greek word *prohoemium* be overlooked: for he explicitly rejects the term *exordium* for the very reason that it only indicates the beginning of a task rather than a subject about which the orator has to speak.<sup>55</sup> Indeed, several precedents in Attic oratory point to the conclusion that a *prohoemium* was well-fitted both at the beginning of a speech and at the beginning of a new category of accusations *within* a speech.

A clear example, and one with which Cicero was doubtless familiar, occurs in Lysias’ speech *Against Eratosthenes* (Lysias 12). The formal charge against Eratosthenes—that he murdered Lysias’ brother Polemarchus—is covered in 12.6-36. The last two paragraphs of this section resemble those of a typical *conclusio* (*epilogos*): Lysias reminds the jury of the consequences of their verdict (12.35) and calls upon the jury to punish the Thirty and their descendants (12.36). Lysias devotes the rest of the speech to material that is more prejudicial than relevant (12.37-100); moreover, he introduces this section with an internal *prohoemium* (12.37). Lysias denies the need for a lengthy prosecution speech; anticipates and rejects any defence on the grounds of Eratosthenes’ military ability; and calls upon the jury to insist upon hearing the facts.

It is clear that, for the Attic orators,<sup>56</sup> the *prohoemium* was not restricted to the beginning of the speech; for a strikingly similar *prohoemium* to the internal

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<sup>54</sup> Quint. *Instit.* 4.1.72: ‘Haec de prohoemio, quotiens erit eius usus.’

<sup>55</sup> Quint. *Instit.* 4.1.1: ‘The introduction, or what is called an *exordium* in Latin, is more rationally called a *prohoemium* by the Greeks. While we only signify the beginning, they clearly show that this part is an introduction to the subject on which the orator must speak.’ (‘Quod principium Latine vel exordium dicitur, maiore quadam ratione Graeci videntur prohoemium nominasse, quia a nostris initium modo significatur, illi satis clare partem hanc esse ante ingressum rei de qua dicendum sit ostendunt.’)

<sup>56</sup> There are other instances of internal *prohoemia* in the works of the other Attic orators: Demosthenes’ speech *Against Aristocrates* breaks off after a *conclusio/epilogos* (Dem. 23.95-9) only to offer a fresh *exordium/prohoemium* at 23.100-2. Similarly, following a *prohoemium* in which Aeschines stresses his moderation in launching the prosecution of Timarchus (Aeschin. 1.1-4), he makes the same appeal to the jurors’ sympathy at 1.37-8. This repeated *captatio benevolentiae* acts as a transition from the laws dealing with decent conduct to Aeschines’ narrative of Timarchus’ sexual career. Again Aeschines asserts his own moderation and appeals to the jurors to pardon him if he is forced to talk about activities that are, by their nature, distasteful. The repeated *captatio benevolentiae* is doubtless a result of Athenian attitudes towards propriety in court and Aeschines’ awareness that he may be transgressing the boundaries of what is ‘proper’ to talk about: see Carey (1994).

*prohoemium* of Lysias 12.37 occurs at Lysias 27.1 in the speech *Against Epicrates*.<sup>57</sup> And, indeed, one should not imagine that an orator could assume that he had his audience's continued patience and good-will, especially in a speech of some length. The inclusion of an *exordium* at this point in the *Actio Secunda* should not, therefore, be a cause of surprise.

In the *exordium* to II.3, Cicero recognises the need for prosecutors to live an honest life themselves (II.3.1-5) and regrets that men like Verres are still preferred and even defended by the nobility (II.3.6-10). The clue to why Cicero makes an *exordium* at this point may well lie in the third point: this part of the accusation is far less entertaining than what has gone before it (II.3.10-11). It is also worth noting that we are now in the middle of the speech for the *Actio Secunda* which, given its length, makes it the ideal place to re-enlist the support and attention of the jury. A *partitio* is given in section 12 identifying three parts to the accusation:

[12] Ea causa tripartita, iudices, erit in accusatione; primum enim de decumano, deinde de empto dicemus frumento, postremo de aestimato.

(This section of the accusation, gentlemen, will be in three parts; for I shall speak first about the tithe, then about the purchase of corn, and finally about its valuation.)

The presence of a *partitio* is not problematic for this reconstruction of the structure.<sup>58</sup> Quintilian expressly states that individual arguments can have a *partitio*: 'consequently we must regard it [the *partitio*] not as one part of a whole speech, but as a part of each individual argument. For what argument is there in which an orator cannot set forth what he will say in the first, second or third place?'<sup>59</sup>

The following argument *De frumento* adheres to these divisions meticulously. Later in the argument, after the early *reprehensio* at II.3.40-49, the clarity of the division is reinforced by Cicero's repeated use of the vocabulary from the *partitio* to mark the transition to each new argument. The echoes of the *partitio* are notably stronger the further into the argument Cicero goes:

[49] Cognoscite nunc innumerabilem pecuniam frumentario nomine ereptam.

(Hear now the immeasurable sums of money stolen under the name of the tithe.)

[163] Sequitur ut de frumento empto vos, iudices, doceam.

(It follows that I am to inform you, gentlemen, about the purchase of corn.)

<sup>57</sup> This can be seen by a comparison of the opening lines of each *prohoemium*. At Lys. 12.37, Lysias claims: 'And so I believed, gentlemen of the jury, that these accusations were sufficient' (ἐγὼ τοίνυν, ὦ ἄνδρες δικασταί, ἤξιουν ἰκανὰ εἶναι τὰ κατηγορημένα); cf. Lys. 27.1: 'Sufficient accusations, gentlemen, have been voiced against Epicrates and his fellow envoys' (κατηγόρηται μὲν, ὦ ἄνδρες Ἀθηναῖοι, Ἐπικράτους ἰκανὰ καὶ τῶν συμπρεσβευτῶν). Rubinstein (2000) 28 further notes that this remark has been used as an opening phrase in four other speeches: Lys. 14.3; Dem. 22.3-4, 25.1; Dein. 1.1-2.

<sup>58</sup> A similar instance of a *partitio* within the *confirmatio* appears at II.3.164.

<sup>59</sup> Quint. *Instit.* 3.9.3: 'ideoque eam non orationis totius partem unam esse credendum est, sed quaestionum etiam singularum. Quae est enim quaestio in qua non promittere possit orator quid primo, quid secundo, quid tertio sit loco dicturus?'

[188] Dictum, iudices, est de decumano frumento, dictum de empto, extremum reliquum est de aestimato.’

(I have now spoken, gentlemen, about the corn tithe, and I have spoken about the purchase of corn, it finally remains for me to talk about the valuation of corn.)

The charges *De frumento* come to an end in a short conclusion at II.3.226-8, in which Cicero states that he has proved his case before moving onto the next set of charges: the charges *De signis*. The transition to the next subject is clearly marked: ‘I come now to what he himself refers to as his ‘hobby’, his friends as a mad disease, and Sicily as open robbery.’<sup>60</sup> The accusations open with a short *exordium* (II.4.1-3) in which Cicero implies what the division of his material will be:

[2] Etiam planius: nihil in aedibus cuiusquam, ne in hospitis quidem, nihil in locis communibus, ne in fanis quidem, nihil apud Siculum, nihil apud civem Romanum, denique nihil istum, quod ad oculos animumque acciderit, neque privati neque publici neque profani neque sacri tota in Sicilia reliquisse.

(I shall put it clearer still: in no man’s house, not even if the man was a host; in no public place, not even if it was a shrine; in the possession of no man, Sicilian or Roman; nowhere, in short, in the whole of Sicily, has Verres left behind any object that happened to catch his eyes or his desire, whether it was private or public, or whether it was sacred or not sacred.)

In the arguments that follow, Cicero divides his material into Verres’ thefts from private individuals (II.4.3-71) where the transitions are typically made by name;<sup>61</sup> and Verres’ plunder of public sanctuaries and temples (II.4.72-136) where the transitions are geographical.<sup>62</sup> The transition between the two halves—public and private, sacred and not sacred—is clearly marked by reference to Verres’ theft of the candelabra the Syrian Prince had planned to donate to the Temple of Jupiter at Rome once it had been restored:

[72] Itaque hoc nefario scelere concepto nihil postea tota in Sicilia neque sacri neque religiosi duxit esse; ita sese in ea provincia per triennium gessit ut ab isto non solum hominibus verum etiam dis immortalibus bellum indictum putaretur.

(And so, once he had planned such a sinful crime as this, he did not consider anything holy or sacred in the whole of Sicily thereafter; throughout his three years in that province he behaved in such a way that everyone thought he had waged war not only against men but even the immortal gods.)

As stated above, the arrangement of the second half is geographical, the tour ending in Syracuse from where Cicero moves easily towards the final division of the accusation: Cicero’s scrutiny and rejection of the *laudatio* presented in support

<sup>60</sup> II.4.1: ‘Venio nunc ad istius, quem ad modum ipse appellat, studium, ut amici eius, morbum et insaniam, ut Siculi, latrocinium.’

<sup>61</sup> Gaius Heius of Messana (II.4.3-7); Phylarchus of Centuripae (II.4.29-33); Diocles Popilius (II.4.35-6); Marcus Coelius, Gaius Cacurius, Quintus Lutatius Diodorus, Aulus Clodius, Lyso (Lilybaetanus), Heius (Lilybaetanus) (II.4.37); Diodorus of Melita (II.4.38-42); Gnaeus Calidius (II.4.42-6); Lucius Papinius (II.4.46-9); the mass plunder of citizens living in Catina and Agyrium (II.4.51) and Haluntium (II.4.52-4); Lucius Titius (II.4.57-8) and the Syrian Prince (II.4.60-72).

<sup>62</sup> Segesta (II.4.72-84); Tyndaris (II.4.84-93); Agrigentum (II.4.93-6); Assorus (II.4.96-7); Engyion (II.4.97-9); Catina (I.4.99-102); Melita (II.4.103-5); Henna (II.4.106-15); Syracuse (II.4.115-43).

of Verres by the Syracusans (II.4.143-50).<sup>63</sup> A short conclusion (II.4.151), introduced by the summarising phrase ‘quod ob rem’, ironically confers on Verres the right to take joy in his eulogy and *Verria* festival; Cicero has shown that they were, in fact, the product of Verres’ impudent arrogance (‘impudentia atque arrogantia’).

When read in this way, the *Actio Secunda* flows from one topic to another. The long narrative of Verres’ *vita ante acta* (II.1) causes Cicero to state in a *praeteritio* that he will have to pass over many incidents if he is to detail in full Verres’ crimes in Sicily. Cicero proceeds to structure these crimes topically beginning with Verres’ mismanagement of the judicial system (II.2). At the end of these accusations, Cicero recalls Verres’ collusions with the *publicani* and this opens the way for the argument that Verres rigged the tithe system, again with the help of corrupt men living in Sicily, notably the *decumanus* Apronius (introduced at II.3.22). The accusations *De frumento* are noticeably self-contained but still they are only summarised in a short conclusion (II.3.226-8) before Cicero passes onto Verres’ thefts of private and public works of art. At the beginning of these accusations, Cicero makes the bold claim that there was not one vessel of silver, not one Corinthian or Delian bronze, no pearl or jewel, no object of gold or ivory, no statue of bronze, marble or ivory that Verres left untouched in the whole of Sicily (II.4.1-2). And by surveying the individuals from whom Verres stole precious items and detailing the cities affected by his plunders, Cicero fully creates the impression that he set out to achieve. Furthermore, the lack of formal conclusions that has worried scholars of the individual books of the *Actio Secunda* is no longer a cause of embarrassment: long conclusions do not exist for the very reason that they would disrupt the force and the momentum of the *confirmatio*.

### 3.5 *Reprehensio* (II.5.1-138)

At several points in the *Verrines* Cicero appears to deviate from the conventional pattern by developing early *reprehensiones* (the anticipation and destruction of the defence’s argument). This is most clearly the case at II.1.24-31, discussed above, where he makes a *reprehensio* before even stating the *partitio*. Other supporting *reprehensiones* appear in the *Actio Secunda*;<sup>64</sup> as I have already mentioned, there may be need for earlier *reprehensiones* to gain the audience’s good-will and the analyst must be prepared to allow for some flexibility within a speech’s structure. But these *reprehensiones* are concerned with deflating specific points relevant to the time and the accusation: (1) Hortensius’ complaint that Cicero had cut short the *Actio Prima* is rebutted at the beginning of Cicero’s speech for the *Actio Secunda*; (2) Verres’ defence against the charges of extorting

<sup>63</sup> Within this basic structural division, Cicero includes a refutation of Verres’ alleged defence that he bought the items (II.4.8-28), and *digressiones* dealing with Verres’ expertise as a judge of silver plate (II.4.33-4) and the degeneracy of manners (II.4.56-7). The first *digressio* is marked by Cicero’s clear return to the subject at II.4.35: ‘Let us now return to Lilybaeum from where this speech digressed.’ (‘Verum ut Lilybaeum, unde digressa est oratio, revertatur.’) The transition of the second *digressio* is topical: Cicero compares Verres against Piso, Piso had a ring mended but acted wisely by having the gold openly weighed before and after the repair, the ring of Piso reminds Cicero of a ring that Verres stole from Lucius Titius (II.4.57-9).

<sup>64</sup> E.g. II.2.149-51; II.3.40-49; II.4.8-15.

money from the statue fund is mocked immediately after Cicero has made his accusations; (3) Cicero refutes Verres' claim that his actions in the tithe collection benefited Rome at the beginning of the *De frumento*; and (4) his defence that he bought the statues is similarly deflated at the beginning of the *De signis*. These *reprehensiones* are thus applied 'locally', whereas the *reprehensio* at II.5.1-138 deals with the larger line of defence with which it seems prosecutors had to contend: the argument that the defendant was a good military commander.

To begin with, we may question whether Hortensius really planned to rely on this defence to any large degree; it would not be unusual, after all, for Cicero to exaggerate the hostilities he faces.<sup>65</sup> Yet this defence was clearly of use in the Roman courts.<sup>66</sup> Aulus Gellius (*NA* 4.18.3) reports that when Marcus Naevius prosecuted Publius Cornelius Scipio Africanus the elder before the people in *ca* 187 BC, the latter recalled that it was the anniversary of his success over Hannibal the Carthaginian. Rather than pass judgement on Scipio, the people accompanied him to the Capitol to celebrate his past actions. In Cicero's speeches for the defence in *repetundae* cases we see clearly that his client's military success was a crucial source of testimony to his character.<sup>67</sup> From what Cicero tells us, Verres did not himself come from an illustrious background;<sup>68</sup> but at II.5.2 Cicero expresses his anxiety about Verres' military reputation in a *dubitatio*:

[2] Quid agam, iudices? quo accusationis meae rationem conferam? quo me vertam? ad omnis enim meos impetus quasi murus quidam boni nomen imperatoris opponitur. Novi locum; video ubi se iactaturus sit Hortensius. Belli pericula, tempora rei publicae, imperatorum penuriam commemorabit; tum deprecabitur a vobis, tum etiam pro suo iure contendet ne patiamini talem imperatorem populo Romano Siculorum testimoniis eripi, ne obteri laudem imperatoriam criminibus avaritiae velit.

(What am I to do, members of the jury? In what way shall I shape my prosecution? Which way should I turn? Against all my attacks, the appellation of a good commander rises like a wall of defence. I know the topic; I see what

<sup>65</sup> As I have argued elsewhere (Tempest, forthcoming), Cicero's exaggeration of the hostility he faces in the *Divinatio* forms an elaborate rhetorical strategy designed, in part, to gain the sympathy of the audience.

<sup>66</sup> Cf. Quintilian who claims that the 'defendant gains credit from his bravery, scars received in battle, and the ancestry and deeds of his elders'. (Quint. *Instit.* 6.1.21: 'Periclitantem vero commendat dignitas et studia fortia et susceptae cicatrices et nobilitas et merita maiorum.')

<sup>67</sup> In the fragments attributed to Cicero's defence of Flaccus, the claim that the defendant is an illustrious man, engaged in many wars is prominently brought to bear upon the jury. In particular, see the manuscript of Nicolas of Cusa: 'Our ancestors thought, gentleman, that this class of men should be respected in such a way that they defended them not only when they were victims of malice but even when they were in the wrong.' (*Frag. Cusana*: 'Huic hominum generi maiores nostri sic parcendum, iudices, arbitrantur, ut eos non modo in invidia, verum etiam in culpa defenderent.')

<sup>68</sup> His father was of Senatorial rank but Cicero links his name with the *divisores*, the bribery agents (I.23, 25; II.2.95, 97, 98). While his mother seems to have come from a respectable family (I.128), little is said of the *gentilicium* Verres (although a distant connection with the Metelli is possible: cf. II.2.64, 139; Wiseman (1971) 53 n.3 seems to accept this, although Brunt (1980) 281 is surely right in suggesting any kinship must have been 'remote'). For further discussion on Verres' family background, see Cowles (1917) 1-4; for more on Verres' name as his *nomen gentilicium* see Smith (1954).

Hortensius will boast. It is the dangers of war, the crisis of the republic, the shortage in able generals that he is going to recall; then he will beg you, he will even claim as a right belonging to himself, that you should not let such a great general be torn from the Roman people by the testimonials of the Sicilians, nor that you let his glory as a general be overclouded by accusations of greed.)

There are a number of factors at play here. First, the opening rhetorical questions are most likely intended to bring to mind a famous passage of C. Gracchus that similarly began: ‘Quo me miser conferam? Quo vertam?’<sup>69</sup> Levens, who has also noted this imitation,<sup>70</sup> does not offer any suggestions for why Cicero might intentionally mimic Gracchus here. But it is a plausible suggestion that he uses the Gracchan passage to highlight the insincerity of his anxiety: he does, after all, proceed to make a complete joke of Verres’ achievements.

Secondly, Cicero emphasises that the plea is a commonplace (‘locus’) to be expected of the defence, as discussed above. But, thirdly, the form of the *dubitatio* should alert our attention to the potential strength of this plea; the anonymous author of the *Rhetorica ad Herennium* gives clear instructions on this point: ‘it is about that point which our adversaries have regarded as their strongest support that we shall promise to discuss first; ... and we shall use *dubitatio*, along with an exclamation of astonishment as to what we could most possibly say or to which point we should respond first.’<sup>71</sup> The author’s advice pertains to the *exordium*, but it should be noted that Cicero’s anticipation of his opponent’s argument forms the *exordium* to the fresh set of charges against Verres that form the fifth book of the *Actio Secunda*.

There may, indeed, have been a case for Hortensius to make here. For example, Cicero mocks any suggestion that Verres played a role in protecting Sicily from the revolted slaves of Spartacus’ troops:

[5] Obstitisti videlicet ne ex Italia transire in Siciliam fugitivorum copiae possent. Ubi, quando, qua ex parte? cum aut ratibus aut navibus conarentur accedere?

(So it was you who made it impossible for the bands of revolted slaves to cross from Italy to Sicily? But where, when, and from which part of Italy? Did they try to approach Sicily either on boats or ships?)

Yet, from the little evidence we have, we do know that, let down in their attempts to secure ships from the pirates, the revolted slaves built rafts in which to sail across to Messana (Florus 2.8.13). And, furthermore, we find among the

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<sup>69</sup> Cic. *De or.* 3.214 = Malcovati *ORF* 322: fr.35.

<sup>70</sup> Levens (1946) 68.

<sup>71</sup> *Rhet. ad Her.* 1.10: ‘de eo quid adversarii firmissimum sibi adiumentum putarint primum nos dicturos pollicebimur; ... dubitatione utemur quid potissimum dicamus aut cui loco primum respondeamus, cum admiratione.’ Cf. *Rhet. ad Her.* 4.40 and Quint. *Instit.* 9.1.30, 35; 9.2.19; 9.3.88.

fragments of Sallust evidence to suggest Verres had taken measures to deny them access: ‘Verres fortified the shores nearest to Italy.’<sup>72</sup>

That Verres had proved himself a good military commander may have been one of the arguments that Hortensius intended to make in his defence. Cicero’s refutation of it consists of three main elements: first he questions Verres’ efficiency in dealing with the slave revolts (II.5.10-43); secondly he accuses Verres of naval malfeasance (II.5.43-63); and thirdly he disproves any claim that Verres protected Sicily from pirate invasions (II.5.63-138). To mark the end of the *reprehensio*, Cicero indulges in some show-stopping rhetoric as he recapitulates the charges of the *De suppliciis* through the figure of Verres’ now deceased father (II.5.136-8). Placed before the *digressio*, then, the *reprehensio* seeks to rebuff the main argument that Cicero anticipated the defence would make. Cicero uses the same techniques as the *confirmatio* in order to establish the absurdity of the defence’s claims: claims that, as we know from Cicero’s own defence speeches in extortion trials, could potentially persuade the jurors to acquit the defendant.<sup>73</sup>

### 3.6 *Digressio* (II.5.139-70)

In this analysis of the *Verrines*’ rhetorical structure, the charge that Verres assaulted, tortured, and even crucified Roman citizens, forms the *digressio*: it does not, after all, form part of the formal charge of extortion against Verres. As Cicero himself indicates, what remains of his speech (‘reliqua’) ‘concerns not the safety of the allies, but the life and existence of Roman citizens, that is to say, of each and every one of us’.<sup>74</sup>

It has often been noted that the *Actio Secunda* concludes with the most gruesome account of all: the crucifixion of Gavius of Consa. By doing so, Cicero arranges the five speeches of the *Actio Secunda* according to what would seem most important to his Roman audience.<sup>75</sup> But what has not been noted is that the episode of Gavius, while emotionally charged and an effective climax to the prosecution, also fulfils the criteria for an effective *digressio* listed at *De inventione* 1.97:

Hermagoras digressionem deinde, tum postremam conclusionem ponit. In hac autem digressione ille putat oportere quandam inferri orationem a causa atque a iudicatione ipsa remotam, quae aut sui laudem aut adversari vituperationem contineat aut in aliam causam deducat ex qua conficiat aliquid confirmationis aut reprehensionis, non argumentando, sed augendo per quandam amplificationem.

(Hermagoras puts the *digressio* next, and then, in the last place, the *conclusio*. In this *digressio* he thinks that a passage should be introduced that is unconnected with the case and point to be decided, and which may contain either praise of oneself or abuse of one’s opponent, or which could lead to some other case

<sup>72</sup> Sall. *Hist.* 4 fr. 32: ‘Verres litora Italia propinqua firmavit’ (in Maurenbrecher (1893) 170); Maróti (1961) 41-70 has even argued that the removal of Spartacus from the Sicilian coasts would have been an undeniable success for Verres.

<sup>73</sup> Cic. *Font.* 6; *Flac.* 1-5, 98, 101-6; cf. Quint. *Instit.* 3.8.1-3, 30; Cic. *Off.* 3.40.

<sup>74</sup> Cic. II.5.139: ‘quae non ad sociorum salutem, sed ad civium Romanorum, hoc est ad unius cuiusque nostrum, vitam et sanguinem pertinet.’

<sup>75</sup> Steel (2001) 13-24; Enos (1988) 73.

which may contain *confirmatio* or *reprehensio*, not by arguing, but by adding emphasis by means of some amplification.)

As this reconstruction of the structure shows, the *digressio* is correctly placed before the *conclusio*.<sup>76</sup> The charge that Verres maltreated Roman citizens, as Cicero himself claims, has nothing to do with the point to be decided (viz. extortion). And the abuse it contains makes the *digressio* a perfect vehicle for the amplification of Cicero's argument against Verres.

### 3.7 *Conclusio* (II.5.171-189)

The final part of the speech is the *conclusio*. At *De inventione* 1.99-109, Cicero identifies three elements: the *enumeratio* (recapitulation), the *indignatio* (arousal of ill-will against one's opponent)<sup>77</sup> and the *conquestio* (the arousal of pity and sympathy). In addition to this, several *topoi* and techniques became standard elements of the *conclusio*: in particular, the stern reminder to the jury of the importance of their verdict for both the present case and future decisions.<sup>78</sup> Later theories simplified these guidelines into a twofold division that gave equal weight to the recapitulation and the arousal of emotions generally.<sup>79</sup> Yet, for the purposes of this discussion, the threefold division provides a better overview of the range and type of arguments that Cicero brought to bear upon the minds of his audience.

#### *Recapitulation*

Cicero's advice for the recapitulation in the *De inventione* comes with a caveat that is useful for understanding the *conclusio* of the *Verrines*: 'if this is always treated in the same way, everyone will see clearly that it is being handled according to some system; but if it is managed in different ways it will be possible to avoid both this suspicion and boredom.'<sup>80</sup> We see such variety throughout the course of the *Verrines*, as, for example, the *prosopopoeia* of Verres' father at II.5.136, duly regarded as one of the most elaborate recapitulations. But this recapitulation serves only to summarise and enhance the audience's indignation at Verres' treatment of Roman citizens during his tenure of office in Sicily and the

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<sup>76</sup> Quintilian discusses the place of the *digressio* at some length: *Instit.* 4.3.1-17, and notes the custom also of placing the *digressio* after the *narratio*, at the end of the *confirmatio*, as well as in the middle of the speech. This is true of the *Verrines* also, as well as many of Cicero's defence speeches: for a full overview see Canter (1931). But what is clear here is the deployment of the *digressio* in the manner of the Hermagorean theory that Cicero recognises both at *Inv.* 97, cited above, and at *De or.* 2.80. For further discussion on Cicero's use of *digressiones* in his speeches see Davies (1984).

<sup>77</sup> The rhetorical works further subdivide the *indignatio* into a range of topics suitable for arousing hostility against one's opponent. At *Inv.* 1.101-6, Cicero lists 15 commonplaces ('loci') that can be used in the *indignatio* which, he claims, can be used in addition to the arguments of the *confirmatio* that arouse enmity 'ex personis' or 'ex negotiis'. The first ten of these commonplaces can also be found in *Rhet. ad Her.* 2.48-9.

<sup>78</sup> For a good overview of the range of arguments see Winterbottom (2004).

<sup>79</sup> *Cic. Part. orat.* 52; *Quint. Instit.* 6.1.1.

<sup>80</sup> *Cic. Inv.* 1.98: 'Haec si semper eodem modo tractabitur, perspicue ab omnibus artificio quodam tractari intellegetur; sin varie fiet, et hanc suspicionem et satietatem vitare poterit.' Cf. *Quint. Instit.* 6.1.3-5 who specifically praises Cicero's handling of it in the *Verrines*.

charges detailed in the *De suppliciis*. And nowhere do we see Cicero's ingenuity more than at the end of II.5 where he latches onto the charges made against Verres in the *De signis* and, in an elaborate summary of his thefts of statues and his impiety, invokes each of the gods against whom Verres committed sacrilege (II.5.184-8). The idea of closing with an appeal to the gods may have been one that he received from Attic oratory: Dem. 18.324 and Din. 1.64 both illustrate the appropriate application of such an appeal to the peroration.<sup>81</sup> That this prayer is a fitting conclusion to the *Verrines* can only be strengthened by the recurrent theme of Verres' impiety that has so forcefully run throughout the *Verrines*. These are not the main or the only crimes that constitute the charge of extortion, but they are certainly the most poignant.

### *Arousal of anger*

The *conclusio* begins at II.5.171 where Cicero departs from his narrative of Gavius of Consa's crucifixion. Cicero begins his *conclusio* with a classic topos of the *indignatio* which aims to mark out the defendant's crimes as extraordinary, or, as Cicero elaborates: 'unknown even among savages, barbarians, tribes, and wild beasts.'<sup>82</sup> It is for this reason that, in the *Verrines*, Cicero claims Verres' cruelty would rouse the indignation of anyone, even beasts, or further still, stones and rocks (II.5.171).

This is swiftly followed by the topos in which the prosecutor reminds the jury that everyone is watching their verdict (II.5.173) as well as the potential damage to their reputation should Verres be acquitted (II.5.174). The ensuing caveat to Hortensius (II.5.174-7) is combined with an attack on Hortensius' motives for defending Verres.<sup>83</sup> Turning to apostrophise Hortensius informally, Cicero complains 'you have, Quintus, no relationship, no connection with that man. In the case of this man you can have none of those excuses with which you formerly used to defend your excessive zeal in any trial'.<sup>84</sup> Cicero insinuates the role of bribery in Hortensius' decision to defend Verres and he strengthens his attack by addressing Hortensius by his *praenomen*. Since *praenomina* were an intimate mode of address amongst family members, Cicero implies that by undertaking Verres' defence, Hortensius is behaving as if he were related to him.<sup>85</sup> The 'truth',

<sup>81</sup> Some discussion in King (1955); although his focus is only on Dem. 18 and Aeschin. 3.

<sup>82</sup> Cic. *Inv.* 1.103: 'id a feris quoque hominibus et a barbaris gentibus et immanibus bestiis esse remotum.'

<sup>83</sup> For this topos in reverse, see Cicero's justifications and/or reply to the prosecution's attacks for undertaking the defence of Sextus Roscius of Ameria (*Rosc. Am.* 1-5); Gaius Rabirius (*Rab. Perd.* 1-5); Murena (*Mur.* 1-11); Sulla (*Sull.* 2-3).

<sup>84</sup> Cic. II.5.176: 'nulla tibi, Quinte, cum isto cognatio, nulla necessitudo; quibus excusationibus antea nimium in aliquo iudicio studium tuum defendere solebas, earum habere in hoc homine nullam potes.'

<sup>85</sup> Cf. *Mur.* 10 where Cicero addresses his friend, yet opponent in the trial, Servius Sulpicius Rufus, by his *praenomen* (vocative: 'Servi') 'as if he were my brother' (*ibid.*: 'si meus esset frater'). For the implications of address by *praenomina* see Dickey (2002) 130 who cites address by *praenomen* as one of the chief ways to express affection, respect, admiration; in this way it is closely associated with kinship terms.

as we hear from Plutarch, Quintilian and Pliny, is that Hortensius had received the statue of a sphinx for his services.<sup>86</sup>

***Importance of the jury's verdict***

The defendant will most likely plead that his past services to the state and/or the achievements of his ancestors establish the necessity of his acquittal. The *topos* is a common one. As discussed above, Cicero could anticipate that Hortensius would enlarge on Verres' services to Rome in the light of his achievements in defending Sicily. By way of an antidote, the prosecution could instead argue that the condemnation of the accused was for the public good and/or the validity of the laws in future years. In the *Verrines* Cicero makes a number of appeals based on the importance of the jury's verdict. At II.5.172, this appeal follows the typical pattern:

[172] Omnes hoc loco cives Romani, et qui adsunt et qui ubique sunt, vestram severitatem desiderant, vestram fidem implorant, vestrum auxilium requirunt; omnia sua iura commoda auxilia, totam denique libertatem in vestris sententiis versari arbitrantur.

(At this point, all the Roman citizens, both those who are present, and those who are absent in distant lands, require your severity, implore the aid of your good faith, look anxiously for your assistance. They think that all their privileges, all their advantages, all their defences, in short their whole liberty, depends on your sentence.)

Thus Cicero appeals to the jury to make a just verdict and reminds them of the Roman citizens' (alleged) interest in the outcome of the trial. He reiterates this claim and extends the caveat to Hortensius, whose conduct will also be scrutinised (II.5.175). But by far the most prominent warning Cicero offers the jury is that concerning the circumstances of the trial and the pending *Lex Aurelia* (II.5.177-8). As mentioned above, the effect that the jury's verdict may have had upon the passage of the *Lex Aurelia* is questionable, but what is important to note is Cicero's insistence that a conviction would remove the bad reputation of the Senatorial courts.

***Pity***

In his study of *perorationes*, Michael Winterbottom notes that pity can attach itself both to the defendant and to the orator himself, with the word *miser* and its cognates being particularly effective in descriptions of each.<sup>87</sup> But, as Cicero notes in *De partitione oratoria*, while pity is primarily the province of the defence and anger that of the prosecution, pity can also fall into the realm of the prosecution as the prosecutor seeks to arouse the juror's anger by a pitiful description of the defendant's victims.<sup>88</sup> Thus in the *conclusio* Cicero recalls how

<sup>86</sup> Plut. *Cic.* 7-8; Plin. *NH* 34.48; Quint. *Instit.* 6.3.98: on the plausibility of Cicero's argument here see Brunt (1980) 276 who finds it 'hard to resist'.

<sup>87</sup> Winterbottom (2004) 223.

<sup>88</sup> Cic. *Part. orat.* 58: 'In trials, it largely falls upon the prosecutor to arouse anger, and upon the defendant to arouse compassion. Although sometimes the prosecutor should arouse compassion and the defendant anger.' ('In iudiciis accusatori fere quae ad iracundiam, reo plerumque quae ad

‘a little while ago, gentlemen we did not restrain our tears at the miserable and most unworthy death of the naval captains’.<sup>89</sup>

In this way Cicero capitalises on the third approach available in the *conclusio*: the *conquestio* (the arousal of pity and sympathy). But he also extends the sympathy demanded to his own position: as a *homo novus* Cicero laments that he does not have the same advantages as the nobility. His approach may at first seem unusual but it should be remembered that it was conventional to stress one’s disadvantage during a trial.

#### 4. Conclusion

It has often been noted that the task of analysing a speech into its constituent parts is ‘not a task to be undertaken lightly’.<sup>90</sup> In recent years, scholars have spoken disparagingly of the unimaginative attempts of scholars in taking this approach.<sup>91</sup> And rightly so, for studies focusing purely on the congruence of the speeches with rhetorical theory are often inadequate. Yet it is important to acknowledge that rhetorical theory remains an inevitable part of any study of how Ciceronian oratory operates. Craig states that ‘it is only through rhetorical theory that we may securely determine the argument forms that Cicero and his audience would take as markers of forceful reasoning’;<sup>92</sup> Vasaly suggests that to read any of Cicero’s speeches ‘without the understanding of its formal framework that can be gleaned from the rhetorical handbooks may be compared to listening to the first movement of a symphony with no comprehension of sonata form’.<sup>93</sup>

It is precisely because common consensus rules that the *Actio Secunda* lacks a formal framework that some scholars have refused to accept the *Actio Secunda* of the case against Verres as a ‘real’ speech. Even those scholars who are willing to examine the speech for its argumentation, are forced into the paths of apology and justification for believing that a speech that may not have been delivered can be used as an example of practical oratory at all. On the other hand, the aim of this paper was to demonstrate that the *Actio Secunda* of the case against Verres does conform to the rhetorical precepts of *dispositio* if we examine it as one speech rather than five separate orations. The *Actio Secunda* is an exercise in persuasion

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miseriordiam pertinent; nonnumquam tamen accusator misericordiam movere debet et defensor iracundiam.’) Quint. *Instit.* 6.1.9 also claims that ‘from time to time even the prosecutor excites tears of pity for the victim whose wrongs he seeks to avenge (‘et accusator habet interim lacrimas ex miseracione eius quem ulciscitur’, cf. Quint. *Instit.* 6.2.20).

<sup>89</sup> *Verr.* II.5.172: ‘Paulo ante, iudices, lacrimas in morte misera atque indigna navarchorum non tenebamus.’ Other examples of tears in court include: Cic. *Font.* 46 (the defendant’s family); Cic. *Cluent.* 201 (the defendant’s); Cic. *Planc.* 104 (the tears of the court-magistrate, the jury, and Cicero’s); Cic. *Mil.* 92 (Cicero’s); Quint. *Instit.* 6.1.30-2 (the audience’s). See Winterbottom (2004) esp. 217-27 and Clarke (1966) 79, for discussion of emotional appeals and the use of tears.

<sup>90</sup> Thus Winterbottom (2004) 217 n.9.

<sup>91</sup> Thus Berry (1992) 202 claims, ‘studies of this nature have tended to be quite mechanical, and consequently overlook much that happens in a Cicero speech’.

<sup>92</sup> Craig (1993) 6.

<sup>93</sup> Vasaly (1993) 4; see also 5-6.

and it should be treated as an example of a real speech, whether or not any of it was actually delivered.

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