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Metalepsis, paragraphe and the scholia to Hermogenes

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ABSTRACT: This paper investigates developments in the treatment of the related concepts of *metalepsis* and *paragraphe* in Greek rhetorical theory from the second century AD onwards. It argues that *prima facie* anomalies in theoretical discussion can be explained as a pragmatic adaptation to contemporary court practice. Examination of the relevant scholia to Hermogenes throws light on their sources. In particular, it is argued that the Sopater of *RG* 4 is likely to be an attested Alexandrian sophist of the late fifth century; he should not be identified with the Sopater of *RG* 5, although he adapted material from the latter's commentary, as well as from one of the sources of the compilation in *RG* 7.

This paper takes as its point of departure an anomaly in the version of issue-theory developed by Greek rhetorical theorists in the second and subsequent centuries AD. *Metalepsis* ('objection') was one of thirteen issues distinguished by the version of the theory that prevailed from the second century onwards. The initial puzzle arises from the subdivision of *metalepsis* into two species, which relate to different kinds of dispute, requiring substantially different strategies of argument. Since issue-theory seeks to identify different kinds of dispute, and to define a strategy of argument appropriate to each kind, the combination of these two species within a single issue seems to contradict the theory's fundamental rationale. This problem is compounded by the fact that the combination resulted from a modification of the theory. In an earlier version of the thirteen-issue system only one of the species was classed as *metalepsis*; cases falling under the other species (called *paragraphe* by most theorists) were handled, more logically, under one of the legal issues. It is not easy to find a rationale for the apparently anomalous modification. If we turn to the scholia to Hermogenes for assistance we find a bewildering variety of complex and contradictory accounts. At first sight, the later history of rhetorical theory seems only to have multiplied the puzzles.

The first aim of the present paper is therefore to improve on the brief and somewhat inadequate treatment of this material in my commentary on Hermogenes.¹ The first section examines the treatment of the concepts of *metalepsis* and *paragraphe* in rhetorical theory in and after the second century AD, and seeks to understand why the theory developed as it did during that period. The second section returns, in the light of that survey, to the initial puzzle, and suggests that the early modification of the thirteen-issue system is best understood as an adaptation of theory to contemporary court practice. The focus of attention changes in the third section. The evidence for the history of the

¹ Heath (1995) 78f., 134-41. The research for the present paper was completed with the support of a British Academy Research Readership. I am grateful to Ed Carawan for reading and commenting on an earlier version of the present paper; I have found his encouragement and advice extremely helpful.

theoretical development is preserved mainly in the scholia to Hermogenes, and any attempt to reconstruct that history inevitably encounters questions about the structure of the traditions which lie behind the extant collections of scholia. The scholia concerned with *metalepsis* prove to be especially revealing in this respect. They provide a solution to a long-standing problem about the distinct but related bodies of material attributed to Sopater in volumes 4 and 5 of Walz's *Rhetores Graeci*, and throw light on the sources of the scholia in volume 7. The third section of the paper thus provides a detailed justification of the source-critical conclusions that are assumed without detailed supporting argument in the first section. The relevant sources are reproduced in a series of appendices. The appendices do not attempt to produce anything like a properly critical edition (though I have made some unsystematic improvements on Walz's text); their purpose is to make the source material more readily accessible to the readers of this paper, using a layout designed to illustrate the source-critical argument by making the relationship between different versions of the same underlying text easier to grasp.

The immediate stimulus for the investigation was provided by Carawan's recent paper on *paragraphe* and issue-theory.² It should be noted, however, that our aims and emphases are not identical. First, Carawan's approach to the material is guided by an interest in court procedure in classical Athens. I find his conclusions convincing, but they are only marginally relevant to my own enquiry: interpreting the rhetoricians and evaluating their grasp of historical facts are separate questions. Secondly, Carawan contrasts classical Athens and the fictive realm ('Sophistopolis', as Russell calls it) of the later rhetoricians. Since the relationship of rhetorical theory to contemporary reality also has a bearing on how we view the enterprise in which the rhetoricians were engaged, I wish to add a third term to this equation; hence the attention I give in §2 to the relationship between the rhetoricians' theories and the court procedures of their own time. Finally, since my interest is in the Greek rhetoricians of the second century AD and later I leave Hermagoras and the Latin tradition down to Quintilian out of the discussion.³ The degree of resemblance between Hermagorean and later versions of issue-theory has in my view often been exaggerated, not least because Hermogenes has been used in attempts to reconstruct Hermagorean theory, on the (circular) assumption that the resemblance is close.⁴ To avoid contaminating the evidence it seems methodologically preferable to leave Hermagoras (and his followers and opponents) out of consideration here.

² Carawan (2001).

³ Cicero *Inv.* 1.16, 2.57-61; *Rhet. ad Her.* 1.22, 2.18; Quint. 3.6.60-79, 7.5.2f.; [Aug.] 142.31-143.18 Halm (on the date of this author and his reliability as a source for Hermagoras see Heath (2002a) 288f.). The Latin sources are discussed by Carawan (2001) 31-7.

⁴ See further Heath (2002a).

1. The theoretical discussion: a survey of its development

1.1 Narrow *metalepsis*: Zeno

The earliest known exponent of the thirteen-issue system was **Zeno**, who taught in Athens in the middle of the second century AD.⁵ Most of what we know about his work on issue-theory is preserved by Sulpicius Victor, who identifies Zeno as his main source (313.2-4 Halm); subsequent references are to the text of Sulpicius.

For Zeno, *metalepsis* (*translatio* in Sulpicius' version: 339.6-340.13) covers cases in which a defendant claims that the act on which the charge against him is based is explicitly permitted under some law (or other verbal instrument with legal force), and the prosecution counters this defence on the basis of one of the circumstances of the act (in the technical sense of *περιστατικά*: who, what, where, when, how, why?). For example: both parties to adultery may be summarily killed; a husband kills an adulterer, but spares his wife; subsequently he discovers his wife weeping at the adulterer's tomb and kills her; he is charged with murder (339.15-22, cf. Hermogenes 43.3-8). The man claims that he was legally entitled to kill his wife, but (the prosecution argues) not then and there.

Metalepsis as defined by Zeno is a clearly demarcated and unitary issue, named after the decisive head of argument—that in which the prosecution seizes upon or objects to (*μεταλαμβάνει*) a circumstantial aspect of the defendant's act. This understanding of *metalepsis* seems to have been inherited from theorists who antedated the formation of the thirteen-issue system. In the early second century the younger Hermagoras and Lollianus, who recognised seven and five issues respectively, included *metalepsis* in their systems (*RG* 5.79.10-15). Neither gave a separate place to *antilepsis* ('counterplea'), and according to Nilus (fol. 155r) Hermagoras said that *metalepsis* and *antilepsis* did not differ.⁶ *Antilepsis*, in which the defendant maintains that the act in connection with which he has been charged is legitimate in principle, closely resembles *metalepsis* in Zeno's sense, and later rhetoricians had to work hard to define the difference between them.⁷

1.2 Extended *metalepsis*: Sulpicius and Marcomannus

Sulpicius reports Zeno's treatment of *metalepsis*, but says that others extended the scope of *metalepsis* so that it also included *paragraphe* (*praescriptio*). He

⁵ On Zeno, and his precedence, see Heath (1994); (2004b) §2.6-7.

⁶ Hermagoras (*not* Hermagoras of Temnos!) and Lollianus: Heath (2002a) 290-2. Nilus' testimonium (= Matthes F III11, first published in Gloeckner (1901) 33) can be found in Appendix 7. At *RG* 5.79.12f. *ἦν τέμνουσιν εἰς τε ἔγγραφον καὶ ἄγραφον* is not reporting Hermagoras; it is a post-Hermogenean comment (perhaps added to make up the seven, ὅρον having been lost in the transmitted text).

⁷ On the problem of differentiating *metalepsis* and *antilepsis* see Heath (1995) 115f.; cf. n.12, n.22 below.

follows this extended version of the theory, identifying Marcommanus as the immediate source for his account of *paragraphe* (338.31-339.1, 341.27-9).⁸

In Zeno's *metalepsis* the legal justification of the act on which the charge is based is challenged on circumstantial grounds; in *paragraphe* it is the prosecution itself that is challenged on circumstantial grounds (339.3-6). Sulpicius mentions that Zeno included such cases under letter and intent (339.1f.); so the question raised by the challenge to the prosecution is a legal one. It follows that the starting-point for the defence in *paragraphe* must be an explicit legal provision, as it is in *metalepsis* in Zeno's sense. The defence might invoke, for example, a statute of limitations; the circumstantial basis of the challenge would then be time. Similarly, if the law invoked by the defence defines who may prosecute, or which court has jurisdiction, or a procedural rule, the circumstances of person, place and manner would provide the basis for the challenge to the prosecution.

In Sulpicius' example (340.14-341.30) the legal provision on which the *paragraphe* is based is the rule of double jeopardy. For example: a poor man returns from an embassy to find that his son has been murdered, and that his two rich enemies have unsuccessfully prosecuted each other for the murder; he wishes to charge them both, but they enter a *paragraphe* under the principle of double jeopardy (340.14-341.28). Although Sulpicius does not state this explicitly, the circumstantial basis in such a case is apparently act: one cannot be tried twice for the same act (*de eadem re* 340.27). That reveals a potential instability arising from the extension of *metalepsis*. The original form of *metalepsis* makes a contrast between act and circumstance, so that the act of (for example) killing the adulterous wife is accepted as such, but the person, place, time, manner or reason of the killing is faulted. But in *paragraphe* act is included among the circumstances in respect of which the prosecution might be faulted. Double jeopardy *paragraphe* seems in this respect to stand apart from the other kinds of *paragraphe*.

There is, in addition, a more significant structural anomaly that results from the expansion of *metalepsis*. Issue-theory classifies cases according to the underlying structure of the dispute, but that basis of classification is abandoned once *metalepsis* and *paragraphe* are brought under a single issue. Although *metalepsis* and *paragraphe* both start from an explicit legal provision, the subsequent disputes develop along different lines. In the original category of *metalepsis* the argument turns on substantive points about the act and its circumstances. In *paragraphe*, by contrast, the argument is about the interpretation or application of the law on which the challenge to the validity of the prosecution is based. Zeno's classification of such cases under the legal issues (such as letter and intent) seems logical. Alternatively, it might be thought that *paragraphe* requires a strategy of argument different from that of any of the legal issues; Marcomannus' treatment, as reported by Sulpicius, does give *paragraphe* a

⁸ Marcomannus is also listed as one of the sources used by Julius Victor; he is named by Fortunatianus (98.26 Halm) and Victorinus (173.34f., 299.15 Halm). There is no clear criterion for dating him independently of Sulpicius, who I would not wish to place much if at all beyond the end of the second century, since Zeno's work seems to have lost currency rapidly (it was apparently unavailable to Porphyry: Heath (2003a) 152f.).

distinctive division (340.21-341.25).⁹ But in that case it would seem more appropriate to regard it as a separate issue in its own right. The rationale for treating *metalepsis* and *paragraphe* as species of a single issue is therefore unclear.

1.3 Extended *metalepsis*:: Minucianus and Hermogenes

The extended version of *metalepsis* is also found in Greek sources. There is some evidence that adaptation of the theory was already in progress among Zeno's pupils. **Antipater** (presumably Antipater of Hierapolis, who studied theory with Zeno: Philostratus *VS* 607) is reported to have shared with Minucianus a view about *metalepsis* that Zeno is unlikely to have accepted (*RG* 7.244.12-20, discussed more fully below); but since the reference is to *metalepsis* in the narrow sense, it is not certain that Antipater had extended *metalepsis* to include *paragraphe*. It is with **Minucianus**, probably an older contemporary of Hermogenes,¹⁰ that we begin to get a clearer view. According to Syrianus, Minucianus said that *metalepsis* was double, while treating it as a single issue (τὴν μετάληψιν διπλὴν μὲν εἶναι λέγων ὥς μίαν δὲ αὐτὴν ἐξετάζων, 55.3f.). This must refer to the duality that arises from the extension of *metalepsis*.

Hermogenes agreed with Minucianus on the dual nature of *metalepsis* (42.11-43.8, 79.18-82.3). In both species the question is whether a case is admissible (εἰ δεῖ τὸν ἀγῶνα εἰσελθεῖν), and both start from a verbal instrument (ἀπὸ ῥητοῦ); but in one species the dispute is also *about* the verbal instrument, while in the other the dispute is about one of the circumstances of the act itself (περὶ τι τῶν περὶ τὸ πρᾶγμα). This is a clear formulation of the difference between the species, and highlights the anomaly of their inclusion in a single issue. The species in which the dispute is about a circumstance of the act, which corresponds to Zeno's issue, Hermogenes calls non-documentary (ἄγραφος) *metalepsis*; the species which is about the verbal instrument, corresponding to Sulpicius' *paragraphe*, Hermogenes calls documentary (ἐγγραφος) *metalepsis*. So Hermogenes' terminology does not divide *metalepsis* into *metalepsis* and *paragraphe*, but into two varieties of *metalepsis*; this allows him to categorise *metalepsis* as a whole as *paragraphe* (42.11), since both species seek to restrain the primary case by a procedural challenge based on a verbal instrument (ἀπαγωγὴ τῆς εὐθυδικίας κατὰ παραγραφὴν ἀπὸ ῥητοῦ τινος, 42.14f., 20f.). The tendency of later commentators to retain the variant terminology which treats *paragraphe* as a subdivision of *metalepsis* creates scope for confusion. In particular, as we shall see, Hermogenes' description of documentary *metalepsis* as a 'complete *paragraphe*' (79.19f.) was to cause problems.

Hermogenes says that documentary *metalepsis* involves two questions: argument about the legal challenge to the proceedings is followed by argument about the primary case (εὐθυδικία). The division of the first question follows one of the legal issues, or sometimes definition (79.20-80.1); the division of the second question follows whichever logical issue belongs to the case itself (80.1-

⁹ Two of the heads in Marcomannus' division are mentioned below: n.25 (conjecture) and n.37 (homonymy).

¹⁰ Minucianus: Heath (1996); (2004b) §2.8.

3). A consequence is that there is no division (that is, no set of heads of argument) distinctive to documentary *metalepsis*; each of the two questions adheres to the division of some other issue. In this respect Hermogenes' theory differs from that of Marcomannus, and of at least one later Greek theorist (§1.5). The absence of any evidence in the scholia of disagreement between them suggests (though it does not prove) that Hermogenes and Minuciannus were at one on this point.

For Minucianus, issues are generally to be recognised from the way the defence is formulated. For example, if a man is accused of murder the issue depends on whether he denies the fact or seeks to justify or mitigate it. *Metalepsis* (in its original narrow sense) is an exception to this general principle: the defendant claims legal warrant for the action with regard to which he has been charged, and it is the prosecutor's counter-argument that determines the issue. Zeno (to judge from 339.6-25) only recognised *metalepsis* determined by the prosecutor, and Hermogenes gives no hint of any other kind. Minucianus accepted that *metalepsis* is normally determined by the prosecutor (*RG* 7.667.8f.), but he and Antipater thought that it could also be determined by the defendant. The following example is given: under Athenian law rape is punishable by a fine, under Spartan law it is a capital offence; a Spartan ambassador to Athens rapes a young woman of citizen status, and is fined; on returning home he is prosecuted under the Spartan law (*RG* 7.244.12-20). One might have expected the defendant to invoke the double jeopardy rule; but the following analysis (244.20-245.4) suggests that the defendant's *paragraphe* is based on place, and this is confirmed by Marcellinus, who cites the example without attribution (*RG* 4.292.29-293.6). Thus the defendant invokes a circumstance of his *act* that places it outside Spartan jurisdiction. This is completely different from documentary *metalepsis*, in which the *paragraphe* is based on circumstances of the *case*; Marcellinus makes it clear that the example is an instance of non-documentary *metalepsis*. But it reverses the normal pattern for non-documentary *metalepsis*, in which the prosecutor invokes a circumstance of the act that places it outside the scope of the law by which the defendant claims his act is warranted. The dominant opinion among later theorists seems not to have followed Minucianus' lead on this point.¹¹

1.4 *Metalepsis* in third-century technography

Sulpicius indicates that the proper position of *metalepsis* within the system of issues was difficult to determine (338.31-4). A variety of solutions to this problem can be found in the theorists. Zeno placed *metalepsis* between definition and the practical issue, before the counterpositions and counterplea. Minucianus placed *metalepsis* after counterplea, because of the natural resemblance between them (Nilus fol. 155r).¹² Hermogenes places *metalepsis* last in the introductory survey of the issues, but in the body of the text it comes after the practical issue, at the

¹¹ For the association of documentary *metalepsis* with the defendant, non-documentary *metalepsis* with the prosecutor see Syr. 153.1-3; *RG* 4.288.3-8, 775.16-18. Sopater's view (*RG* 5.196.8-16) that the prosecutor determines documentary *metalepsis* κατὰ ἀξίωσιν is complicated by the ambiguity as to whether the petitioner (who speaks first) or the opponent is the 'prosecutor' in such cases: see Heath (1995) 141.

¹² Gloeckner (1901) 33: see Appendix 7. For *metalepsis* and counterplea see n.7 above.

point of transition between the logical and legal issues.¹³ A more radical solution to the problem was that of **Harpocraton**, a theorist who criticised Hermogenes, and was in turn criticised by Metrophanes, and must therefore be dated to the early or middle part of the third century. He placed *metalepsis* first, since other questions do not arise if the admissibility of the case itself is in dispute (Syrianus 60.14-19, Nilus fol. 154v).¹⁴ This view is also reported, and criticised, without attribution by Sopater (*RG* 5.190.9-12) and Marcellinus (*RG* 4.278.17-29).

Harpocraton devised an example of a *paragraphe* followed by a second *paragraphe* (Christophorus fol. 132r-132v):¹⁵ a private case cannot be brought against a general while he is in post; a general whips a soldier for not wearing his helmet; the soldier prosecutes him for assault, and the general enters a *paragraphe*; after he leaves office the soldier prosecutes him again. The general first enters a *paragraphe* under the double jeopardy rule, and then a second *paragraphe* under the law governing litigation against generals (the dispute here will presumably be based on ambiguity: does the law mean that the general's actions in post are immune to private prosecution, or that the general's actions are immune to private prosecution while he is in post?). Then, to avoid the appearance of having no confidence in his case, he proceeds to the primary question (in which the issue is counteraccusation). It is worth noting that this example presupposes that a *paragraphe* is adjudicated in the same hearing as the primary case, not just because we would otherwise be faced with the prospect of three hearings arising from the second prosecution, but also because the double jeopardy *paragraphe* presupposes that the hearing in which the *paragraphe* against the first prosecution was upheld might be counted as a trial of the charge against the general. It is important to keep in mind that the rhetoricians are primarily concerned with the underlying structure of disputes; when they refer to two questions or contests, they are not commenting on the number of court hearings involved.

The misconception that a *paragraphe* and the primary case are tried at separate hearings¹⁶ arises in part from the prominent role that Aeschines *Against Timarchus* plays in later discussions of *paragraphe*. We shall have to return to this question repeatedly; here it is worth noting that the author of the pseudo-Hermogenean *On Invention*, writing in the first half of the third century, treats the speech as conjecture (130.3-16, 131.3-8).¹⁷ [**Hermogenes**] acknowledges that the attention which Aeschines gives to the law under which he has brought the prosecution does not correspond to any head of argument in conjecture; he explains this as a preliminary confirmation (προκατασκευή), an interpretation we

¹³ The fourth-century sophist Epiphanius, who wrote a work *On the similarity and difference of the issues* (*Suda* E2741) from which some fragments are preserved, placed *metalepsis* after the practical issue, on the grounds that it is mid-way between the logical and legal issues: Nilus fol. 155r (Gloeckner (1901) 93): see Appendix 7.

¹⁴ Gloeckner (1901) 95: see Appendix 7. On the problematic prosopography of rhetoricians named Harpocraton see Heath (2003a) 147; (2003b), 132f. (on a testimonium relating to progymnasmata); (2004b) §3.9.

¹⁵ Rabe (1895) 248: see Appendix 7. Perhaps this is the example that *RG* 7.624.24-7 has in mind, but I have been unable to trace the cross-reference.

¹⁶ Carawan (2001) 29-31 argues against the two-trial model.

¹⁷ I think it likely that [**Hermogenes**] is Apsines: Heath (1998a).

will meet again (§1.9). We know that [Hermogenes] worked on issue-theory, since he refers to a treatise *On Division* (132.2-4, 136.21-3, 194.2 app.);¹⁸ he reveals very little about its contents, but here we can make a deduction about what it did not say. Later rhetoricians tend to classify *Against Timarchus* as *paragraphe*, in the sense of documentary *metalepsis*, on the grounds that it is designed to challenge the validity of Timarchus' prosecution of Aeschines on circumstantial grounds (the person of the prosecutor). Obviously, the possibility of such a classification can only arise after the extension of *metalepsis* that we have met in Minucianus and Hermogenes. But the dispute arising from Aeschines' challenge is not about the law under which the challenge is brought, but about the facts concerning Timarchus. So a further theoretical development is needed beyond what we find in Hermogenes before this classification becomes possible—or, alternatively, once the question of the relationship of *Against Timarchus* to *paragraphe* had been raised, a further theoretical development would be required. The question had apparently not been raised when [Hermogenes] was at work.

The general in Harpocration's example introduces the primary question by saying that he does not wish it to be thought that he is at a loss to justify his actions. The rhetoricians often warn about the danger that a *paragraphe* may give rise to a suspicion that the speaker lacks confidence in the strength of his position in the primary case. The sixth of a series of excerpts from **Longinus** (F50 Brisson-Patillon = 214.7-9 Spengel-Hammer) observes that the use of *paragraphe* is out of place on the part of distinguished persons, since it is destructive of their reputation (καθαριετικὸν ... ἀξιόματος) and gives rise to suspicion.¹⁹ The treatise by [Aspines]²⁰ shows how the party bringing the *paragraphe* (ὁ παραγραφόμενος) can use the proem to dispose of this potential objection (1.88); the opponent (ὁ ἀντιλέγων τῇ παραγραφῇ) will of course invert this argument, claiming that the *paragraphe* was motivated by a lack of confidence with regard to the charges in the primary case (1.92). In addition, [Aspines] suggests that the defendant (ἀπολογούμενος) will protest against the prosecutor (κατήγορος) trying to silence him without the court having an opportunity to give judgement (1.89). Although this section follows the advice to the party initiating the *paragraphe*, the 'defendant' here must be the party who is opposing it, that is, the original accuser; it is the original defendant who is (it is tendentiously claimed) trying to deny his opponent's right by preventing the primary case being heard.²¹

¹⁸ I do not agree with Rabe (*ad loc.* and (1913) vii) that the last of these (omitted by the first hand in VcBa, but present in PaPcAc) is interpolated.

¹⁹ Heath (1998b) 275 refers to parallels in what I would now call deuterio-Sopater (see §1.9, §3.3 below): *RG* 4.317.27-319.21 (319.4-13, cf. sch. Dem. 18.196 (277b)), 320.4f., 596.30f., 599.15-17. (Since I no longer regard deuterio-Sopater as reliable evidence for Sopater in *RG* 5, the reference in 275 n.6 to the use of Porphyry by Sopater in *RG* 5 is an irrelevant distraction.) There are also parallels in *RG* 7.263.4-6, 16f., 518.2-7 and especially 598.15-22.

²⁰ See Heath (1998a) for my reasons for rejecting the traditional attribution; I suggest that [Aspines] was a pupil of Aspines, perhaps Aspasius. The translation of the sections cited here in Dilts and Kennedy (1997) is somewhat confused; Patillon (2001) is more reliable.

²¹ Sopater, too, notes that *paragraphe* inverts the contest: that is, the prosecutor in the primary case becomes the defendant in the contest about the *paragraphe* (*RG* 5.112.13-17, 191.6f.); Demosthenes *Against Stephanus* 6 is quoted as an illustration.

1.5 The earliest commentators

The third century saw the development of the commentary on a rhetorical treatise as a favoured vehicle for theoretical exposition. The earliest attested example is Porphyry's commentary on Minucianus; the only relevant fragment is concerned with how to define the distinction between *antilepsis* and *metalepsis* (RG 7.234.20-235.24).²² The shift of focus to Hermogenes was initiated by Metrophanes, and Menander followed that precedent (critical references to Metrophanes in the fragments of Menander establish the probable order). It is important to understand that the adoption of Hermogenes as a standard text did not make him an authority beyond question or criticism: Metrophanes did not follow him in every respect, and Menander was sometimes sharply critical.²³

According to Syrianus (55.5-8), **Metrophanes** divided *metalepsis* into two issues, by contrast with Minucianus, who treated it as a single issue, though dual in nature (§1.2). Syrianus attributes the division into two issues to Hermogenes as well; since he was wrong about Hermogenes,²⁴ it is possible that he was also wrong about Metrophanes. If he was right, then Metrophanes is the earliest attested adherent of a position adopted by Syrianus himself and his main source Aquila (§1.6), but not by other theorists.

For Hermogenes documentary *metalepsis* (*paragraphe*) involves two questions, each divided according to the heads of argument appropriate to the relevant issue; unlike at least some of his predecessors (§1.2) he does not recognise any division distinctive to *paragraphe*. Metrophanes held that *paragraphe* does have some distinctive heads of its own: τὸ κατ' ἐπαγγελίαν, in which the party opposing the *paragraphe* promises to show that his opponent has committed a serious crime if the *paragraphe* is not accepted; and τὸ ἐκ τοῦ ἀποβησομένου, in which the party bringing the *paragraphe* warns of the bad consequences if malicious or unworthy prosecutors are allowed freedom of speech. The head κατ' ἐπαγγελίαν has some similarity to the head of conjecture in Marcomannus (341.14-25), in which the prosecutor obliquely suggests that the defendant's guilt would be proved if the primary case is allowed to proceed, while the defendant seeks to dispel the suspicion (cf. §1.4) that the *paragraphe* is a tactical device to conceal guilt. Marcomannus sees this as something that pervades the whole of the case (*in omni causa diffudendus*); one might argue, therefore, that it is less a distinct head of argument (the concern of issue-theory) than a presentational device (the concern of the subsequent stage in the rhetorical

²² For this problem see n.7 above, and n.12 for Minucianus' recognition of the close relationship between the two issues. Fragments of Porphyry are collected and translated in Heath (2002c), with commentary in Heath (2003a); this is F10. For the subsequent development of the commentary tradition see Heath (2004b) §3.8.

²³ Menander's fragments are collected with translation and commentary in Heath (2004b) Chapter 4. Metrophanes: Heath (2002a) 294; (2004b) §3.9.

²⁴ Compare the misleading way Syrianus puts words into Hermogenes' mouth at 151.2-14 (explaining the position of *metalepsis* in the system of issues).

curriculum, addressed in treatises on the parts of a speech).²⁵ Accordingly, our sources for Metrophanes' theory object that these are not heads of argument, but simply epicheiremes (*RG* 7.626.18-26, 4.780.22-29) or heads of purpose appropriate to the epilogue (Georgius fol. 224r).²⁶ Syrianus (160.26-161.6) reports the theory without naming Metrophanes, adding a third alleged head, τὸ ἐκ παραδειγμάτων, for which no explanation is given; he too denies that they are distinctive heads of argument.

None of the fragments attributed to **Menander** by name have any bearing on *metalepsis*, but something may perhaps be learned from the Demosthenes scholia, for which Menander's influential commentary on Demosthenes was an important source.²⁷ Sch. Dem. 20.147 (368) associates the double jeopardy rule with a 'complete *paragraphe* of the primary case'. Sch. Dem. 21.84 (281ab) mentions *paragraphe* based on manner (the prosecution is being brought in the wrong court), person (the wrong person is bringing the prosecution) or time as delaying tactics used by defendants. Both these points will be met again in Aquila (§1.6).²⁸

1.6 Aquila

Aquila (often cited together with Evagoras, on whose work he evidently drew) is Syrianus' favoured theoretical source. His date is roughly fixed by the identification with the Aquila who wrote on Aristotle's *Categories* before 320, and by the fact that he was familiar with Metrophanes' commentary.²⁹ He was not a commentator on Hermogenes; hence Syrianus abandons Hermogenes' text after expounding the introductory part of *On Issues*, announcing that he will follow the 'more scientific' treatment by the philosophers Evagoras and Aquila (56.16-24). Thereafter he rarely mentions Hermogenes, except to criticise his definitions, and the divisions into heads which he specifies are in many cases significantly different from those in Hermogenes. Syrianus' definitions and divisions certainly come from Aquila (128.22-129.3). There is a likelihood that other doctrines in

²⁵ On this distinction see Heath (2004b) §7.1. Note that conjecture as a head in Marcomannus is different from the conjectural question that arises from a *paragraphe* if it rests on a disputed factual claim (as in *Against Timarchus*).

²⁶ Schilling (1903) 753: see Appendix 7.

²⁷ For the source-critical analysis of the Demosthenes scholia on which my attributions to Menander are based see Heath (2004b) Chapter 5.

²⁸ Sch. Dem. 19.80 (188b) sees Demosthenes responding to a counterposition based on *metalepsis* (μεταληπτική αντίθεσις) on the part of Aeschines, to the effect that the accusation should not have been brought by Demosthenes but by the Phocians. For μεταληπτική αντίθεσις in Menander see also sch. Dem. 22.22 (65), 33 (97bc), with Heath (2002b) 659-61 (on [Apsines] 4.15.13-19), and (2004b), §4.2 (on Menander F14). In sch. Dem. 19.80 (188a), from a later source (perhaps Zosimus, in the fifth century), the same interpretation is developed with a contrast between *paragraphe*, which completely rejects the case on the principle of double jeopardy, and μεταληπτική, arguing that the prosecution should have proceeded otherwise.

²⁹ On Aquila's date: Schenkeveld (1991). For his familiarity with Metrophanes see Georgius fol. 11r (Schilling (1903) 709); it is presumably from Aquila that Syrianus derived his knowledge of Metrophanes' theory of distinctive heads in *paragraphe* (§1.5). Other fragments are preserved in the Hermogenes scholia; for fragments in the unpublished commentaries of Nilus and Georgius see Gloeckner (1901) 64-71, Schilling (1903) 693-702.

Syrianus also come from Aquila; I shall therefore take Syrianus at this point, out of apparent chronological order.³⁰

First, we can be more confident about the formal division of *metalepsis* into two issues in Aquila than in Metrophanes. This resolves the structural anomaly identified earlier (§1.2), in which a single issue embraces two different kinds of dispute. The innovation (which creates a system of fourteen, rather than the canonical thirteen, issues) did not gain general acceptance among later rhetoricians.

Within *paragraphe*, Syrianus distinguishes between kinds that are complete and incomplete (159.18-160.25). A *paragraphe* is complete if the defence rejects the primary case entirely on the grounds that the charge relates to a matter already adjudicated; the defendant makes no defence on the charge against him, but bases his position entirely on the inadmissibility of a second judgement. The concept of ‘complete *paragraphe*’ based on double jeopardy has already been met in the Demosthenes scholia (§1.5). A *paragraphe* is incomplete if the primary case is faulted with regard to some circumstance (such as the person of the prosecutor, as in *Against Timarchus*, or the jurisdiction of a particular court) but remains admissible under other circumstances (for example, with Demosthenes as prosecutor, or in another court). Here, too, the reference to delaying tactics in the Demosthenes scholia provides a parallel: if the case remains admissible in principle, a successful *paragraphe* cannot be relied upon to do more than delay the decisive confrontation.

The reference to *Against Timarchus* as a paradigm of incomplete *paragraphe* shows that we have now reached the point of development forecast earlier (§1.4). If *Against Timarchus*, which deals with a conjectural question, is a *paragraphe*, then Hermogenes’ claim that the prior question in documentary *metalepsis* is based on one of the legal issues, or sometimes on definition (79.20-80.1), must be revised. In fact, according to Syrianus *paragraphe* may be based on conjecture, definition, the practical issue, letter and intent, or conflict of law (158.13-159.12).

In the example of *Against Timarchus* the *paragraphe* is heard first, and the primary case comes to trial later (157.9-17). But Syrianus also says (159.14-17) that the *paragraphe* is sometimes introduced separately *after* the primary case, and sometimes the *paragraphe* and primary case are introduced at the same time. The latter possibility is consistent with the comments on the number of hearings made earlier (§1.4); Carawan must, I think, be right in understanding the separate introduction of the *paragraphe* after the primary case as a reference to cases where the *paragraphe* claims that the primary case has already been decided by a previous trial (cf. 159.20f.).³¹

1.7 Sopater’s *Division of Questions*

There is uncertainty about whether the Sopater who wrote *Division of Questions* is to be identified with Sopater the commentator (§1.8). In view of

³⁰ The text of Syrianus is given in Appendix 1.

³¹ Carawan (2001) 46f.

differences in doctrine, I have argued elsewhere that they should be distinguished.³² Although a definitive solution to this problem is not necessary for present purposes, the treatment of *metalepsis* in *Division of Questions* is so unlike that in Sopater's commentary as to support the distinction.

The author of *Division of Questions* strenuously denies that cases of *paragraphe* can be recognised simply by the occurrence of the words καὶ παραγράφεται in the formulation of a declamation theme (268.2-269.1).³³ He attributes this view to 'some technical writers'; we find it in a later commentator conjecturally identified as John of Caesarea (§1.9, §3.4), who in a list of differences between *paragraphe* and non-documentary *metalepsis* comments (*RG* 7.236.27-237.2) that uniquely among the issues *paragraphe* is declared in the way the problem is formulated. Sopater observes that παραγράφεται is sometimes used loosely for 'opposes' (ἀντιλέγει) or 'tries to restrain' (κωλύει); but *paragraphe* properly only occurs in cases of double jeopardy, involving a second judgement or penalty with regard to something already adjudicated. He gives an example in which someone who is both disfranchised (and so barred from appearing in court) and the guardian of an orphan (and so required to represent the orphan) seeks to appear on the orphan's behalf and the opponent παραγράφεται; this, he says, is really conflict of law. This very limited definition of *paragraphe* is surprising. Sopater's example of what is not *paragraphe* has the two-question structure which other theorists regard as a distinguishing feature of *paragraphe*: the question about the conflict of law is followed by the question in the primary case. The rationale for restricting *paragraphe* to a subset of cases with this double structure is unclear.³⁴

1.8 Commentators in the fourth and fifth centuries

The distinction between complete and incomplete *paragraphe* that we have glimpsed in Menander and seen clearly stated in Aquila (as reported by Syrianus) poses a problem for theorists who take Hermogenes as a reference point: Hermogenes applies the expression 'complete *paragraphe*' to the whole species of documentary *metalepsis*, not to any subdivision of it (79.19f.). According to John of Caesarea, this problem perplexed many theorists, and especially **Athanasius**

³² See Heath (1995) 106. But *ibid.* 95 is doubly mistaken: even if *RG* 4 were reliable evidence for the Sopater of *RG* 5, Walz's heading Σωπάτρου at *RG* 4.444.6 is incorrect: the manuscript reading is ἐξ ἀνεπιγράφου (Rabe (1909) 588). Carawan (2001) 40 is right to stress the uncertainty of the conclusion. There is reason to believe that the Sopater of *RG* 5 was the author of the Aristides prolegomena (Gloeckner (1927) 1004 notes that his preference for εἰ δεῖ δοθῆναι, instead of the more common εἰ δεῖ δοῦναι, is shared by the Aristides prolegomena); on the other hand, it has also been claimed that linguistic resemblances make it 'certain' that the same author wrote *Division of Questions* and the prolegomena (Innes and Winterbottom (1988) 13 n.3, without specific examples).

³³ The text of the relevant sections of *Division of Questions* is given in Appendix 2.

³⁴ In Sopater's first worked example of *paragraphe* (270.6-277.12) the primary question is non-documentary *metalepsis*; deuterio-Sopater (§1.9) declares this combination impossible (4.282.30-283.2).

(*RG* 7.619.3f.), who probably dates to the late fourth century.³⁵ John does not record what conclusion, if any, Athanasius reached; his own solution (619.10 λυθήσεται δὲ ἡ ἀπορία ...) will be mentioned in due course. A detail to note in the summary of Athanasius' problem is that complete *paragraphe* rejects the act (πρῶγμα) entirely, while incomplete *paragraphe* concedes the act but brings a *paragraphe* against the case (ἄγών) on the basis of some circumstance. We noted in Sulpicius (§1.2) that the circumstantial ground for a *paragraphe* based on double jeopardy is act, which is treated as one of the circumstances even though act and circumstances are contrasted in non-documentary *metalepsis*. But for Sulpicius the act is the act of the defendant on which the charge is based (one cannot be tried twice with regard to the same act); in Athanasius the 'act' is evidently the legal proceedings. We can discern a terminological shift here.

That shift can also be observed in **Sopater**. He too probably dates to the late fourth century; his work, preserved in an abbreviated form in *RG* 5, is almost certainly the earliest extant commentary on Hermogenes.³⁶ Sopater is critical of Hermogenes elsewhere, sometimes very aggressively. Hermogenes' statement that in *metalepsis* 'the enquiry is about whether the case should be allowed to come to trial' (42.6f.) is emphatically rejected (109.29-110.15, 111.15-112.2) on the grounds that non-documentary *metalepsis* is entirely concerned with the primary case, and the enquiry is about a circumstance of the action. When the defence claims that the prosecution is invalid, this is a way of introducing the primary case rather than an attempt to restrain it; it is closer to the heads known as exception (παραγραφικόν) in conjecture or parts of right (τὰ μόρια τοῦ δικαίου) in counterplea than to a proper *paragraphe*. Sopater pursues his argument further (112.5-19) in response to Hermogenes' remark that in non-documentary *metalepsis*, 'we concede the act as such, but find fault with one of these by way of objection' (43.1-3): if the act is conceded, how can there be a restraint on the primary case? In classical examples of *paragraphe*, such as *Against Timarchus* or Demosthenes' paragraphic speeches, the restraint on the primary case precisely does not involve conceding the act, but rather an enquiry into its admissibility. Sopater here clearly refers 'the act' to the legal action, just as Athanasius does. But the shift in terminology makes his criticism puzzlingly at variance with the point of Hermogenes' statement, which refers to the action on which the charge against the defendant is based. Sopater has either been confused by the variety and complexity of the terminology, or has exploited an ambiguity for polemical convenience.

Sopater is also critical of Hermogenes' analysis of his example of documentary *metalepsis*. According to Hermogenes, the prior question is letter and intent (42.18f.); Sopater identifies it as ambiguity κατὰ ἀμφιβολίαν, a species of ambiguity which Hermogenes had overlooked (111.6-13).³⁷ Sopater

³⁵ We have an epitome of the prolegomena to his commentary (*PS* 171-83), and a number of other fragments preserved in the scholia to Hermogenes. For fragments in unpublished commentaries see Gloeckner (1901) 90-2, Schilling (1903) 738-42.

³⁶ The text is given in Appendix 3.

³⁷ Sopater introduces this species of ambiguity at *RG* 5.83.6f., 16-19, and was not alone in recognising it: see e.g. *Syr.* 123.19-23. Marcellinus reports Sopater's view (without attribution),

holds that the issue of the prior question in documentary *metalepsis* is always legal; so he rejects (192.2-18) Hermogenes' statement (80.1) that it is sometimes definition. He does not explain how the insistence that the prior question is legal is to be reconciled with his classification of *Against Timarchus* as *paragraphe*. Nor does he explain a unique feature of *Against Timarchus*—the fact that the first question, about the admissibility of the primary case, is not followed by a second question about the primary case itself (191.26-31); he merely refers us vaguely to 'the interpreter' of Aeschines' speech for an explanation (see further §1.9). It is worth noting that his comments on *Against Timarchus* assume that both questions would normally be argued out in a single hearing (a question raised in §1.4 above). If the absence of the second question in *Against Timarchus* is unique, then the normal expectation must be that the second question will be treated within the same speech as the *paragraphe*. Moreover, since this expectation apparently applies even in a case (such as that against Timarchus) in which *paragraphe* is successful, the assumption must be that there is normally a single verdict at the end of the single hearing.³⁸

Hermogenes' view on the issue of the prior question is also rejected, though in a different way, by **Eustathius**. He is cited (Nilus fol. 156v; Christophorus fol. 131r)³⁹ for the view that *paragraphe* may be based on conjecture, definition, letter and intent, or ambiguity. This is similar to the view mentioned under Aquila (§1.6), except that ambiguity takes the place of conflict of law. This variance is perhaps related to the reinterpretation of the prior question in Hermogenes' example of documentary *metalepsis* as ambiguity rather than letter and intent, which we observed in Sopater's commentary. But it is puzzling: what, for example, would Eustathius do with the conflict of law in the example from Sopater's *Division of Questions* (§1.7)?

Sopater describes *paragraphe* as a 'complete ejection' (ἐκβολή ... τελεία) of the primary case (191.5-26, cf. 110.14f.). This implies that he understands 'complete *paragraphe*' to be making a contrast with non-documentary *metalepsis*; there is no indication that he distinguished complete and incomplete *paragraphe* within the documentary species. So the problem which troubled Athanasius would not arise for him. **Marcellinus**, one of the main sources of the 'three-man commentary' (RG 4),⁴⁰ also takes up the question of what Hermogenes meant when he described documentary *metalepsis* as a 'complete *paragraphe*' (292.18-29). He rejects the view that documentary *metalepsis* is being contrasted with the incomplete non-documentary *metalepsis*; instead he contrasts complete *paragraphe*, which rejects the primary case completely, with incomplete

but does not endorse it (RG 4.285.28-286.9, 782.2-8). Compare the head of homonymy in Marcomannus' division of *paragraphe* (340.31-7).

³⁸ Of course, a successful incomplete *paragraphe* leaves open the possibility that the prosecution will be renewed under other circumstances. But this is irrelevant to Sopater's point: in this sense, the second question (that is, primary case against Aeschines) was heard, with Demosthenes as prosecutor.

³⁹ Gloeckner (1901) 79; Rabe (1895) 248; see Appendix 7. Further fragments from unpublished scholia are collected in Gloeckner (1901) 78-86, (1908) 22-5; Schilling (1903) 715-33.

⁴⁰ The text of the 'three-man commentary' is given in Appendix 4.

paragraphe, which finds fault with an aspect of it, such as the person of the prosecutor, as in *Against Timarchus*. We have found this terminology in Menander (§1.5), Aquila (§1.6) and Athanasius; but unlike Athanasius, Marcellinus does not see Hermogenes' text as posing any difficulty for this interpretation.

Unlike Sopater, Marcellinus has no problem with the idea that non-documentary *metalepsis* is about the admissibility of the primary case. But his formulations are not very clear: 'the one utterly rejects the case on the basis of one of the circumstances specified in the law; the other, conceding permissibility (ἐξουσία), in turn makes use of the circumstances' (279.21-3); 'the documentary kind completely rejects the case initially and primarily; the non-documentary kind, which is determined by the prosecutor, concedes the primary case but rejects it by means of the circumstances' (279.33-280.3). His main purpose here is to stress the relevance of circumstance in both kinds of *metalepsis*: since circumstance is the crucial element in *metalepsis* as a head of argument, the fact that circumstance is involved in both species of the issue helps make their combination within a single issue seem easier to understand. But the formulations do not give a clear statement of the nature of the two species. He later provides a more focused account of non-documentary *metalepsis* (291.14-23); but even here a formula such as that 'it brings a *paragraphe* in certain way (τρόπον τινὰ παραγράφεται), rejecting the permissibility of the act (ἐκβάλλουσα τὴν ἐξουσίαν τῆς πράξεως)' does not make it clear that the *paragraphe* belongs to the defendant, while the denial of permissibility is the prosecutor's response (292.6f. shows that the permissibility of the act is the permissibility of the defendant's act, not of the case).

1.9 John and deuterio-Sopater

John of Caesarea has been conjecturally identified as the author of a commentary, probably dating to the first part of the fifth century, that was one of the sources of the compilation of scholia in *RG* 7 (see §3.4).⁴¹ He offers another solution to the problem posed by Athanasius (§1.8): the distinction between complete and incomplete *paragraphe* is consistent with *paragraphe* as a whole being 'complete', if that is taken in a comparative sense: any *paragraphe*, even an incomplete one, is more complete than non-documentary *metalepsis* (619.3-11).

John says that the division of the prior question in *paragraphe* usually follows one of the legal issues, although it may also use the heads of conjecture or definition (617.10-14); in fact, the view that *paragraphe* may be based on letter and intent, ambiguity, definition or conjecture (compare Eustathius, in §1.8) is at one point described as a universally accepted tradition (κατὰ τὴν κοινὴν ἀπάντων παράδοσιν 619.30f.: an exaggeration, as we have seen from Sopater). But John sees that this raises a problem (619.23-620.2): why does Hermogenes say nothing

⁴¹ The text of *RG* 7 (omitting material from the 'patchwork' source: §3.4) is given in Appendix 5. Note that Walz does not print the text of the *RG* 7 scholia in full: where the text is parallel to material already printed in the commentary attributed to Planudes in *RG* 5, he merely gives a cross-reference. When I refer to a passage in *RG* 7 which includes such a cross-reference the material printed in *RG* 5 (taking account of the *RG* 7 variants reported in the apparatus) is to be incorporated (as has been done in the text in the Appendix).

about conjecture? (He mentions only the legal issues and definition.) Strictly speaking, John argues (620.2-622.5), *paragraphe* cannot be conjectural; being documentary, the *paragraphe* itself must be legal. How, then, can Hermogenes envisage *paragraphe* based on definition? He does not mean that the issue is definition, but that the way the argument is developed may emphasise the definitional aspect. As for *paragraphe* based on conjecture—which John himself has acknowledged—although, strictly speaking, there is no such thing, theorists developed the concept for a special purpose. It may happen that a *paragraphe* depends on a claim that is disputed in point of fact; then there is a conjectural question that has to be settled in order to determine the validity of the *paragraphe*. That is the situation with regard to *Against Timarchus*.

John's reference to *Against Timarchus* does not mean that he assumes that a *paragraphe* involves two hearings. He comments that a *paragraphe* is 'often' introduced without the primary case, giving *Against Timarchus* as an illustration (625.12-14). This is not as strong as Sopater's claim for the uniqueness of *Against Timarchus*, but it still follows that the *paragraphe* is not always introduced separately, and nothing that John says rules out (for example) a single hearing in which a conjectural question has to be settled to resolve a dispute about the factual presuppositions of a *paragraphe*, before the parties proceed to further legal argument about the *paragraphe* and then to the primary case. Elsewhere he says that, once the question about the admissibility of the case has been argued out, the speaker will proceed to address the primary case *κατὰ περισυσίαν*—that is, as something not strictly necessary that makes a show of the abundant resources available to him (234.10-18). This way of thinking about the primary case implies that it is possible, but not necessary, to address both questions in one speech, and that whether this is done is in some measure at the discretion of the speaker.

John is one of the sources used by the commentator who goes by the name 'Sopater' in the 'three-man commentary' of *RG* 4 (§3.4). This commentator also made use of the Sopater of *RG* 5. But the material taken from these two sources was heavily, if inconsistently, adapted. Hence we must regard the commentary which goes under Sopater's name in *RG* 4 as a substantially different work from that of the Sopater of *RG* 5. I offer a suggestion about the identity of the author in §3.5, but here for convenience refer to him as **deutero-Sopater**.⁴²

Evidence that deutero-Sopater used more than one source, and was not always consistent in combining them, is easy to come by. He incorporates Sopater's criticism of Hermogenes' claim that non-documentary *metalepsis* is about the admissibility of the case. At the beginning it is adapted so as to report the criticism non-committally (μέμφονται ... τινες ... 276.21-277.8). This adaptation is almost unavoidable, since the contrary view has just been asserted (276.17-21), but it is not carried through consistently (289.7-24). Sopater's criticism of Hermogenes' treatment of the prior question in the case of the man who consults the oracle is taken over (284.26-285.4), although it is also mentioned that Hermogenes has defenders on this point (285.9-17). The distinction between complete and incomplete *paragraphe* (283.24-284.2) rubs shoulders with the contrast between

⁴² The text of the 'three-man commentary' is given in Appendix 4.

complete *paragraphe* and incomplete non-documentary *metalepsis* (290.28-291.13, 776.14-23); but we are also told that Hermogenes was distinguishing *paragraphe* from the head *paragraphikon* in conjecture (44.11-20),⁴³ or ‘if you like’ from non-documentary *metalepsis* (777.9-21).

Sopater referred us to the speech’s interpreter for an explanation of why in *Against Timarchus* the *paragraphe* is uniquely not followed by the primary case. Like John, deuterio-Sopater does not think that *Against Timarchus* is unique in this respect; he introduces it with the general proposition that there is no need to use the primary case everywhere (281.25-7). But he does offer an explanation of Aeschines’ procedure in this speech: Aeschines omits the primary case because it would have blunted the effect of his subsequent defence against Demosthenes (281.27-282.4). Deuterio-Sopater notes (282.4-6) that some deny that *Against Timarchus* is a *paragraphe*; according to them the issue is conjecture. Gregory of Corinth, in his commentary on [Hermogenes] *On Method* (RG 7.1183.9-29),⁴⁴ reports that Cheirisophus (otherwise unknown) took this view. He goes on to say that the reading of the law (282.6-17), which seems out of place in a conjecture, is explained as a preliminary confirmation (προκατασκευή); this is the view found in [Hermogenes] (§1.4). But an accused person cannot bring a counter-accusation before his defence; so Aeschines’ speech must be a *paragraphe*, albeit a *paragraphe* based on conjecture.⁴⁵

Deuterio-Sopater’s explanation of *Against Timarchus* assumes that the omission of the primary case was a tactical decision on Aeschines’ part. He regards the inclusion of the primary case in a similar light: he suggests that the primary case is a technical resource that can be used to counter the suspicion of a lack of confidence that (as we have seen before) may arise from the resort to a *paragraphe* (281.14-25). The speaker’s distribution of emphasis between the *paragraphe* and the primary case is likewise determined by tactical considerations: if we have strong arguments in the primary case, we will treat the *paragraphe* briefly before proceeding to the primary case (as in Demosthenes’ paragraphic speeches), while a weak primary case forces us to put more weight on the *paragraphe* (284.2-11). Thus deuterio-Sopater assumes a single hearing, in which the decision whether and to what extent the primary case will be addressed is a matter of tactical choice; the speaker could, in principle, decide to rely in *paragraphe* alone. Elsewhere (780.9-21) deuterio-Sopater contrasts declamations (πλάσματα), in which both questions are always addressed, with the variable practice ‘in real cases’ (ἐν τοῖς ἀληθινοῖς ἀγῶσι).⁴⁶

⁴³ I believe this may be the correct interpretation: Heath (1995) 136.

⁴⁴ Not in John Diaconus: Rabe (1908a) 138.

⁴⁵ The meagre extant scholia to Aeschines add little. Sch. Aesch. 1.37 (79) comments on the beginning of the conjectural *paragraphe* after the question of legality; sch. 1.71 (162) notes that the *paragraphikon* is omitted because the speech as a whole is a *paragraphe*. The Demosthenes commentator I identify as Zosimus (n.28) uses παρεγράψατο to describe Aeschines’ case against Timarchus at sch. Dem. 19.2 (17a).

⁴⁶ This contrast does not imply that declamation is unrealistic, and therefore ineffective as preparation for real courts. It can be argued that school exercises may need to be unrealistic in some respects if they are to provide practice in techniques required in making in real speeches (if

This is consistent with the impression given by John of Caesarea. But other sources seem to tell a different story. In the special heads of argument proposed by Metrophanes (and accepted, though in different theoretical terms, by his critics), the speakers need to *argue* for the acceptance or rejection of the *paragraphe* in order to secure or close off the opportunity to argue about the primary case (§1.5). It follows that the speaker's tactical decisions are not the only factor that might determine whether both *paragraphe* and primary case are heard. In §2, we shall follow deuterio-Sopater's lead and consider whether 'real cases' help us to discern a coherent picture in this variation.

1.10 Conclusions

We have seen that *metalepsis*, a unitary issue in Zeno's theory, was extended to produce an anomalous combination of two diverse species in Minucianus, Hermogenes and later theorists.

Every prosecution starts with a charge: typically, it will be claimed that the defendant has performed a certain act, and therefore is guilty of a certain crime. In Zeno's system, the issue is *metalepsis* if the defendant responds by arguing that the act is explicitly licensed by some law (or other legal instrument), and the prosecution counters by arguing that a circumstance of the act puts it outside the scope of the law. The question is then whether the circumstance makes the act relevantly different from acts covered by the law.

This pattern remains as one species of *metalepsis* in its extended form. But a second species is added, in which the defendant's response is a claim that the prosecution is invalid under some law, and the prosecution counters by arguing that the defendant has interpreted or applied the law incorrectly. The question is then whether the defendant's interpretation or application of the law is correct.

The law invoked in this second species may take one of two forms. If a double jeopardy rule is successfully invoked, the case is killed off entirely. If, however, the law specifies conditions of procedural validity (for example, who is qualified to act as prosecutor, or which court has jurisdiction), it may still be possible for the case to be reopened under different circumstances (for example, by another prosecutor, or in a different court).

Terminologically, the two species are variously distinguished as non-documentary *metalepsis* and documentary *metalepsis* (as in Hermogenes), or as *metalepsis* and *paragraphe*. In the Hermogenean terminology, the issue of *metalepsis* as a whole equates to *paragraphe*; documentary *metalepsis* may then be described as a 'complete *paragraphe*'—a phrase variously explained as marking a contrast with non-documentary *metalepsis* or with the head *paragrophikon*. In the alternative terminology 'complete *paragraphe*' may be applied to double jeopardy *paragraphe*, by which the case is killed off entirely, as against the other kinds of *paragraphe*, which leave open the possibility that the case will be reopened, and are therefore incomplete.

this appears paradoxical, consider Quintilian 5.13.45-50). It makes sense always to practise addressing both questions in exercises, even if this will sometimes not be necessary in reality.

A successful incomplete *paragraphe* may therefore be followed by another trial in which the primary case is heard. But there is no general assumption that a *paragraphe* (of any kind) requires two distinct hearings or two distinct verdicts. The expectation is that both the question arising from the *paragraphe* and the question arising from the primary case will be argued in a single hearing; even a successful *paragraphe* may involve both questions being argued, since its success will not necessarily be known until a verdict is given at the end of a hearing in which both questions have been argued. But the theorists do not give the impression of a uniform practice, and the variables they identify are not all of the same kind. Whether or not the primary case is addressed may depend on a speaker's tactical choice, but speakers may also have to work to avoid (or, on the other side, achieve) an imposed termination. The consistency of the picture given by the theorists is thus an unresolved question.

2. Theory and practice: *paragraphe* in contemporary courts

I suggested earlier that the development which gave *metalepsis* its documentary and non-documentary species was a puzzling anomaly in terms of the logic of issue-theory. It is hard to see any rationale for this innovation internal to issue-theory.⁴⁷ I therefore wish to explore the possibility that the theoretical development had an external rationale. In transcripts of proceedings in Roman courts, preserved mainly on Egyptian papyri, an intervention announced by the formula *παράγρομαι* is relatively common as a manoeuvre to pre-empt or disrupt the opposition's case. My suggestion is that *metalepsis* in its extended form brings together the various patterns of argument that may develop from such an intervention; by extending the scope of *metalepsis* in this way rhetoricians were adapting the theory pragmatically in the light of contemporary court practice. This is a suggestion which I have made briefly and tentatively elsewhere;⁴⁸ here I want to test it in the light of the survey of the theoretical discussion in §1.

In AD 216 the representative of a Syrian village arrived in Antioch to pursue a dispute between the villagers and a local businessman about an allegedly usurped priesthood in their Temple of Zeus. Finding Caracalla in residence, he petitioned him to hear the case (which would normally have gone before the governor). Caracalla agreed; and he apparently found in favour of the villagers, since they had a transcript of the court proceedings inscribed on the temple wall.⁴⁹ Although the names of the advocates have become garbled in the preamble, they appear to be two of the most distinguished orators in the empire; presumably, advocates

⁴⁷ One possible factor is the attraction that may have been exercised by an older terminology, in which *metalepsis* was specifically concerned with challenges to the validity of proceedings (see the sources cited in n.3 above). But if that attraction was powerful enough to provide a sufficient explanation of the development we are concerned with, the original form of the thirteen-issue system becomes difficult to explain.

⁴⁸ Heath (2004a), which includes more extended discussion of the cases from papyri mentioned below (as well as other cases in which *paragraphe* is not used); the Dmeir inscription will be discussed in Heath (2004b) §9.7.

⁴⁹ SEG 17.759. See Kunkel (1953); Lewis (1968); Crook (1995) 91-5; Puech (2002) 131-8, 330-6.

were assigned from the emperor's entourage once he had undertaken to hear the case. Proceedings begin with Aristaenetus, for the defence, entering a *paragraphe*: a case that has not been heard in the lower court cannot be appealed. This argument is questionable: although it was unusual to take a case directly to the emperor, it is not clear that it was strictly irregular. On the other hand, the emperor would certainly have been entitled to refer the case to the governor. So when Aristaenetus portrays the petition as an unscrupulous ambush at the end of a busy day of legal business, he may be trying to present Caracalla with a respectable pretext for retracting his agreement to hear the case. That he thinks this worth trying suggests that he believed (as presumably the plaintiff did when he presented the petition in the first place) that it would be more advantageous for the defence if the case were heard by the governor. Since the transcript is incomplete, we can only guess the reason for this. But one possible explanation would be that there were technical weaknesses in the plaintiffs' case: a judge at a lower level, whose decisions were subject to appeal, would have had less freedom than the emperor to waive legal technicalities. In fact, Caracalla rejects the *paragraphe* and the primary case proceeds. If he had upheld the *paragraphe*, the primary case would have been adjudicated by the governor in a separate hearing. So this is analogous to the theorists' 'incomplete *paragraphe*': the defendant does not reject the primary case entirely, but the court in which it is being brought; the primary case can still be heard elsewhere. If my interpretation is correct, the *paragraphe* in this case is a tactical move attempting to shift the case to a court in which the plaintiffs would be disadvantaged.

One might compare the device by which the sophist Heliodorus managed to get out of a difficult situation when appearing before Caracalla as advocate on behalf of his city (Philostratus *VS* 625f.). The case was called while his colleague was ill and before he had completed his own preparations, so he entered a *paragraphe* against the case, on the grounds that he would have to plead alone without imperial authority. Here, obviously, the purpose of the incomplete *paragraphe* (based on the person of the advocate for the plaintiff—though it is the advocate himself who entered the *paragraphe*!) was to have the case deferred to another hearing, at which his side would be better prepared. Caracalla was greatly impressed, presumably at least in part by the technical ingenuity of the paradox, and upheld the *paragraphe*. The time allocated for the trial was given over to a declamation instead. It should be noted that Heliodorus, as well as being entrusted with his city's representation, was appointed *advocatus fisci*; we should not succumb in his case to the stereotype image of the impractical sophist, detached from the realities of the courts.⁵⁰

Early in AD 250 the prefect of Egypt heard a case in which the council of Arsinoe continued an attempt to coerce villagers into undertaking civic liturgies to which they had been nominated.⁵¹ Part of the hearing is concerned with a *paragraphe* on behalf of the villagers, who claim that the council meeting at which the nominations were made was not validly convened. The prefect seeks to

⁵⁰ I argue against this stereotype more generally in Heath (2004b) §9.4.

⁵¹ *SB* 7696; Crook (1995) 98f. See Skeat and Wegener (1935).

establish who convened the council—a conjectural question. If it had been established that the meeting had not been validly convened, there would have been no need for further argument; the appointments would have been invalid and the case against the villagers void. Thus this *paragraphe* is complete, in the sense that its success would have disposed of the primary case entirely. Once the prefect is satisfied that the council meeting was validly convened, attention turns to the primary case. The villagers cite a decision of the emperor Severus that explicitly exempts villagers from civic liturgies; the prefect challenges the council's advocates to match it ('You read me a law too'), but they can come up with nothing better than a weak argument from letter and intent.

In AD 339 Nilus, acting for his wife and sister-in-law, brought a case against the heirs of Atisis about the ownership of some land—evidently unproductive land, since both parties *denied* that they owned it (presumably wishing to avoid the tax liability).⁵² After some initial formalities, the plaintiffs' advocate is interrupted by the advocate for the defence, who has a *paragraphe*: the law says that 'if a period of forty years passes with someone in possession of property, no one is to proceed in any way against the property or put an end to the longstanding possession'. This turns a law designed to protect the rights of possessors into a tool for pinning them down, a clever manoeuvre which leaves the plaintiffs' advocate completely at a loss. The magistrate takes the initiative in trying to test the chronological claim; but since the defence has no documentary evidence of a transfer of title, and the plaintiffs' advocate appears not to have been briefed on the dates (the *paragraphe* was clearly unexpected), his enquiries are inconclusive. So the hearing moves on to the primary case—quite literally: the plaintiffs' advocate merely continues his interrupted opening speech, asserting his clients' original position as if the *paragraphe* had never been raised. In the end the magistrate finds in favour of the defence, referring to the law cited in the *paragraphe* as well as to evidence that the plaintiffs had effectively acknowledged possession of the land by accepting rent for it.

The investigation of the chronology initiated by the magistrate in this case is a conjectural question; it tests a factual presupposition of the *paragraphe* (that the plaintiffs have possessed the land for forty years). A nimbler advocate on the plaintiffs' side might also have produced an argument from letter and intent, to the effect that the defence's clever move is an abuse of the law;⁵³ that would have given a straightforward example of documentary *metalepsis* in which the prior question follows a legal issue. Since the investigation of the chronology fails to disconfirm the presupposition of the *paragraphe*, and no legal argument is produced to counter it, the magistrate could presumably have upheld the *paragraphe* and terminated the hearing at this point. In the event the hearing does proceed to the primary question (which is also conjectural). The inconclusive outcome of the chronological investigation makes the continuation of the hearing

⁵² P.Col. VII 175 (= SB 12692); Crook (1995) 104-7. The new material published in Kramer and Hagedorn (1982) is important: it shows, crucially, that the heirs of Atisis (not, as previously supposed, the villagers) were the defendants.

⁵³ He would have got a sympathetic hearing for this argument if Crook had been presiding: (1995) 106.

inevitable, and the magistrate might in any case have thought it desirable to allow the plaintiffs to have their say, despite an unanswered *paragraphe*, simply to ensure that they are (and are seen to have been) fairly treated. When he eventually gives his verdict the magistrate does uphold the *paragraphe*; by then his confidence that the defence was telling the truth about the chronology has been strengthened, since the Nilus spectacularly exposes his own mendacity in the course of the argument about the primary case.

Since the corpus of useable texts is very limited it is not surprising that I have no example of non-documentary *metalepsis*. But it is easy to envisage, in the light of the proceedings already mentioned, what such an example would be like. After the initial formalities, the presentation of the prosecution's case would be pre-empted by the defence's παραγράφομαι, and the presentation of a law which (the defence claims) licenses the act on which the charge is based. The opposing advocate, if he had no way to dispute the interpretation of the law (which would lead into documentary *metalepsis*), would have to argue that the act is relevantly different from what the law licenses because of the circumstances.

With regard to documentary *metalepsis* even the limited corpus of useable texts has given us analogies to the theorists' complete and incomplete *paragraphe*, the primary case heard in the same hearing or deferred to a separate hearing, and *paragraphe* raising a conjectural question. We have also seen that the way a case is conducted results from the interaction of decisions made by the advocates in the presentation of the case and by the presiding magistrate in the exercise of the considerable discretion allowed by the procedure of *cognitio extra ordinem*—in which, of course, the advocates will wish to influence him. Once a *paragraphe* has been stated it might be upheld, curtailing the hearing, or rejected, so that the hearing continues to consider the primary case; but it might also be left in suspension, and in this case too the primary case will be heard, though the ultimate verdict may rest in whole or in part on an adjudication of the *paragraphe*. So what at first sight seems like inconsistency in the theorists as to whether or not, and at whose discretion, the primary case is argued as well as the *paragraphe* seems in the light of this evidence to reflect faithfully the fluidity of procedure in contemporary courts.

The convergence between practice and theoretical discussion is striking, and is evidence that the rhetorical theorists were not engaged in a wholly isolated academic activity. It should be emphasised that this convergence has nothing to do with attempts to establish connections between declamatory laws and real law.⁵⁴ From the point of view of an advocate, laws are simply resources to exploit (or sometimes obstacles to overcome) in making one's case. In this respect they are on a par with the facts of the case, or with the communal values that may allow the facts to be characterised in various ways (an assault as legitimate retaliation or excusable loss of self-control, for example). The advocate's distinctive expertise is not knowledge of the laws, but the ability to deal with whatever factors arise in a given case, whether they are facts, witness statements, laws, or assumptions on the part of the audience. Rhetorical theory contributes to the development of that

⁵⁴ As, notably, in Bonner (1949). Contrast Crook (1993); (1995) 163-5; Winterbottom (1982) 64f.

ability by helping the advocate to understand the patterns of argumentation that are available. Issue-theory is concerned with the basic large-scale patterns of argumentation. When *metalepsis* was expanded, this brought together under a single category the diverse patterns of argumentation characteristic of the ways in which cases may develop after the defence's παραγράφοι; it is this important aspect of contemporary court practice, rather than the inner logic of issue-theory, that made the modified classification convenient.

3. The sources of the Hermogenes scholia

3.1 Introduction

The scholia printed in *RG* 5 appear on internal evidence to be an abbreviated version of a continuous commentary, which the superscription and a subheading (117.12) identify as Sopater's. *RG* 4, a compilation of extracts from a variety of sources, has been dubbed the 'three-man commentary' because the superscription and the attributions of individual sections identify Syrianus, Sopater and Marcellinus as its main sources, although a number of other sources are named sporadically (including Porphyry, Metrophanes, Maior, Epiphanius, Athanasius, and an unidentified Polemo). There are many close (sometimes verbatim) correspondences between passages in *RG* 5 and *RG* 4, sometimes allowing us to correct corruption or abridgement in *RG* 5 from *RG* 4, and *vice versa*. So it is an easy inference that the three-man commentary is derived in part from the commentary by Sopater that underlies *RG* 5. However, closer investigation shows that this explanation is inadequate. *RG* 5 and the sections of *RG* 4 attributed to Sopater both contain passages that have no parallel in the other. It is true that the section-attributions in *RG* 4 are unreliable (even after one has corrected Walz's errors,⁵⁵ the manuscript attributions are often unhelpful and erratic); so some of the sections attributed to Sopater might be misattributed. Moreover, some of the differences might be the result of different selections from the common source. But these considerations do not fully resolve the problem. In *RG* 4 material shared with *RG* 5 is sometimes closely integrated with other, inconsistent material, and there is sometimes evidence that the shared material has been adapted to fit the additional material. We have seen evidence of this in an earlier section (§1.9). For this reason the source of *RG* 4 is sometimes described as a redacted version of the commentary that was the source of *RG* 5.⁵⁶ I shall argue, however, that a more radical solution is required.

It has been argued that the commentary that underlies *RG* 5 was already an inconsistent compilation of material from different sources; so I begin by explaining why I do not find this argument persuasive (§3.2). I then turn to the source-critical analysis of *RG* 4, using as a test-case the scholia concerned with *metalepsis*. (I shall concentrate on the discussion of *metalepsis* in the introductory survey of the issues and on the introduction to the detailed treatment of *metalepsis*

⁵⁵ Rabe (1909) 588 and Kowalski (1940-6) 42, (1947) 60, 62 have provided corrections from their collations of Par. 2923 (Py).

⁵⁶ Gloeckner (1901) 2: 'a compilatore quodam ... amplificatum et aliorum technicorum doctrina depravatum'; cf. Gloeckner (1927) 1003f.

itself. I shall not examine the scholia on the division of *metalepsis* into heads.) First I show that the Sopater sections in *RG* 4 draw on at least one commentary in addition to the Sopater of *RG* 5 (§3.3). An analysis of the corresponding parts of the scholia in *RG* 7 reveals a second source used in the Sopater sections of *RG* 4 (§3.4). That in turn leads to a suggestion about the identity of the Sopater of *RG* 4 (§3.5).

3.2 Sopater (*RG* 5)

Sopater often disagrees with Hermogenes, and often agrees with him. Gloeckner catalogues such passages, and concludes that Sopater was using two sources, supporters of Minucianus and Hermogenes respectively.⁵⁷ Gloeckner's diagnosis is in my view based on a false assumption about the approach to be expected in such a commentary: the evidence for the third-century commentators on Minucianus and Hermogenes (Porphyry, Metrophanes and Menander) suggests that an eclectic and critical approach was characteristic of the tradition of commentary on rhetorical treatises from the start. But it is worth looking more closely at four passages which Gloeckner singles out as providing direct evidence for the conflation of different sources. None of them, in my view, support his thesis.

(i) Gloeckner takes the repetition of Minucianus' etymology of *στάσις* as a doublet indicating two sources ('p.76, 23: Minuciani etymologia verbi *στάσις* exhibetur quam p. 77, 13 coniunctam cum aliis repetitam reperies'). But there is nothing here which allows us to draw source-critical conclusions. When Hermogenes refers (35.9) to 'the so-called issues', Sopater (76.22-30) explains the 'so-called' by noting that Hermogenes does not accept Minucianus' etymology. When Hermogenes says, a little later (35.17-19), that 'the question of the origin of the term "issue" ... is one I leave for others to argue out', Sopater repeats the point, with a longer list of possible etymologies (77.11-22). The apparent doublet in Sopater is thus prompted by a feature of the text on which he is commenting.

(ii) In 159.26-160.11⁵⁸ Sopater summarises and rejects the view of 'some theorists', who divide the issue of definition into three classes; but from 160.12 onwards he proposes three classes, which Gloeckner finds indistinguishable from those just rejected ('quae ... non a qualitibus modo ... reiectis quicquam differunt'). Hence he infers that at 160.12 Sopater changes from a source who rejects to a source who accepts classes of this kind ('genera ad Minuciani morem inventa'). In fact, there is a difference in principle between the classes rejected and those accepted; Sopater is thus rejecting one principle of classification and endorsing another. His objection to the first set of classes is that they do not

⁵⁷ Gloeckner (1901) 71-6.

⁵⁸ Text: comparison of 5.159.25-161.19 with 4.578.29-581.1 reveals some corruptions (e.g. at 159.26 read ὅρον for λόγον: cf. 4.578.30) and abridgements in *RG* 5, which at some points is unintelligible when read alone; but the additional matter at 4.580.16-31 is redactional. At 5.159.33 ~ 4.579.4 the example of κατὰ κρίσιν has apparently dropped out, and the following words (τούς τε κατὰ αἵτησιν καὶ τοὺς κατὰ ἀμφισβήτησιν) are opaque; this is not the only indication that the text of Sopater's commentary available to deutero-Sopater had already suffered significant corruption (see e.g. Appendix 1 n.1, on *RG* 5.110.19-23 ~ 4.284.11-14).

correspond to any difference in division (that is, each uses the same sequence of heads of argument); so they are not classes in a sense relevant to issue theory (160.1-11).⁵⁹ By contrast, the set which he approves does correlate with differences in division. The existence of two claimants in τὸ κατὰ ἀμφισβήτησιν requires one of two different divisions, neither identical with that of τὸ κατὰ ἀξίωσιν (160.14-32); and τὸ κατὰ κρίσιν has subdivisions which correspond to classes distinguished by Hermogenes himself (161.14-18). From Sopater's point of view, therefore, the classes he accepts have a significant methodological difference from those he rejects.

(iii) In the discussion of the head of definition in counterposition Gloeckner identifies a doublet ('de eadem agitur materia') at 175.12-32 and 176.1-12. In fact, this is all a single, coherent exposition:⁶⁰

τότε ἐμπίπτει ὁ ὅρος, ὅταν τὸ ὄνομα τῆς γραφῆς μὴ ἀκόλουθον ᾖ τῷ ἐγκλήματι (ἐὰν δὲ ἀκόλουθον ᾖ, οὐκ ἐμπεσεῖται), καὶ ὅταν διάφορα πράγματα ὑπὸ τὸ αὐτὸ ἀνάγηται ὄνομα. ἐπὶ μὲν γὰρ τοῦ στρατηγοῦ τοῦ καθελόντος τὰ τεῖχη καὶ κρινομένου δημοσίων ἀδικημάτων, ἐμπεσεῖται. οὐ γὰρ μόνον τὸ τεῖχος ἀνελεῖν ἐστὶν δημόσιον ἀδίκημα, ἀλλὰ καὶ τὸ ναῦς προδοῦναι, καὶ πόλιν ἀπολέσαι συμμαχίδα, τὸ ἡττηθῆναι ἐν στρατοπέδῳ καὶ πολλὰ ἕτερα· οὐκ ἔστιν οὖν ἀκόλουθον τὸ ὄνομα τῷ ἐγκλήματι. ἐπὶ δὲ τοῦ ἀριστέως τοῦ τὸν υἱὸν πορνεύοντα ἀποσφάζαντος καὶ κρινομένου φόνου οὐκ ἐμπεσεῖται· οὐ γὰρ οἷόν τέ ἐστὶν εἰπεῖν οὐ τοῦτο φόνος. [μὴ] ἐμπεσόντος δὲ τοῦ ὅρου καὶ τὰ ἀκόλουθα τῷ ὅρῳ, καθὼς ὁ τεχνικός φησιν, ἐμπεσεῖται. ἐστὶ δὲ κατὰ Μινουκιανὸν ἀνθορισμὸς καὶ συλλογισμὸς· μέχρι γὰρ τούτου, ὅταν τάττωσιν ὅρον, ἴσεται, τούτῳ τῷ λόγῳ, ὅτι τὸν ἅπαξ συλλογισάμενον καὶ εἰς ταῦτὸν ἐνεγκόντα τὴν τε τοῦ φεύγοντος πρότασιν καὶ τὴν ἑαυτοῦ περιττὸν ἕτερον τιθέναι. ὁ δὲ Ἑρμογένης ὅταν εἴπῃ καὶ τοῖς ἐπομένοις βούλεται καὶ <τὸ πρὸς τι καὶ> τὴν πληκτικότητα τίθεσθαι, καθὼς ἐν ἀντιλήψει εἰρήκαμεν, [καὶ τοῖς ἐπομένοις τῷ ὅρῳ] τούτῳ τῷ λόγῳ χρώμενος, ὅτι οὐ μόνον ἀποδείξεως ἀλλὰ καὶ δεινώσεως χρεῖα· ὁ μὲν οὖν ἀνθορισμὸς καὶ συλλογισμὸς τὴν ἀπόδειξιν κατασκευάζει, τὸ δὲ πρὸς τι καὶ ἡ πληκτικότης τὸ μέγεθος τοῦ ἀδικήματος, ὃ ἐστὶ τῆς δεινώσεως. ὁ οὖν Μινουκιανὸς οὐκ ἀνεχόμενος ἐκβῆναι τοῦ ἀγῶνος τὸν σκοπὸν, ὃ ἐστὶν ἀπόδειξιν, ἀφ' οὗ συναγάγῃ τῷ συλλογισμῷ τὴν τε τοῦ διώκοντος πρότασιν καὶ τὴν τοῦ φεύγοντος, οὐδὲν ἕτερον προστίθῃσιν. ὁ δὲ Ἑρμογένης ὅταν εἴπῃ καὶ τοῖς ἐπομένοις τῷ ὅρῳ καὶ τὸ πρὸς τι καὶ τὴν πληκτικότητα προστίθῃσιν, ἵνα μετὰ τὴν ἀπόδειξιν καὶ ὄγκον ἐμποιῇ τῷ πράγματι.

Definition is relevant when the name of the suit is not entailed by the charge (when it is entailed, it will not be relevant), and when a variety of things are subsumed under the same name. In the case of the general who demolishes the city walls and is charged with harming the public interest, it will be relevant, since it is not only destroying the wall that harms the public interest, but also betraying ships, destroying an allied city, being defeated on campaign, and many other things; so the name is not entailed by the charge. But in the case of the hero who kills his son for prostituting himself and is charged with homicide it

⁵⁹ For this principle see e.g. Syr. 153.17-20. But contrast *RG* 7.233.18-22.

⁶⁰ Text: in 175.24 μὴ makes no sense and must be deleted (it has arisen from οὐκ ἐμπεσεῖται in the preceding sentence); for my supplement in 175.31 cf. 178.10; in 176.1 the intrusive lemma should be removed to restore the continuity of Sopater's exposition.

will not be relevant; for one cannot claim that this is not a homicide. When definition is relevant, the concomitants of definition (as the theorist says) will also be relevant. According to Minucianus these are counterdefinition and assimilation; that is as far as he goes when they prescribe definition, on the grounds that once he has assimilated and shown the identity of the defendant's premise and his own, it is superfluous to add anything else. But when Hermogenes refers to the concomitants he means to include relative importance and importance as well, as we have said in counterplea, on the grounds that one needs not just demonstration but also amplification. Counterdefinition and assimilation establish the demonstration, relative importance and importance the magnitude of the crime, which is a matter of aggravation. So Minucianus, not tolerating departure from the aim of the argument, which is demonstration, once he has brought together the defendant's premise and that of the prosecutor, adds nothing more; but Hermogenes, when he says 'and the concomitants of definition' adds relative importance and importance, so that after the demonstration he can give the act added weight.

The positions of Minucianus and Hermogenes are summarised and their rationale explained in parallel form (τούτω τῷ λόγῳ 175.27f., 176.1f.). One might feel that the repetitive summation at 176.5-12 is somewhat laboured, but the recapitulation covers both 175.26-30 and 176.1-5, so is no evidence of a combination of two sources.

(iv) The fourth example comes from the discussion of the head of presentation in letter and intent. Gloeckner sees the juxtaposition of praise and criticism of Hermogenes, apparently with respect to the same point, as evidence of pro- and anti-Hermogenean sources ('Plane duorum auctorum perlucet vestigia in p.197 ... ubi v. 17 Hermogenes laudatur (καλῶς), v. 22 vituperatur (κακῶς), quae iudicia secum pugnantia leviter consuta sunt verbis: εἰδέναι δὲ καὶ τοῦτο χρή (v. 21)'). In fact, the argument is single, consistent and nuanced. The text is as follows (*RG* 5.197.17-29):

καλῶς πάνυ προσέθηκεν ἐν αὐτῷ εἰπεῖν *προβολῇ ῥητοῦ*, ἀποδιῦστας τὰς νομικὰς καὶ τὰς λογικὰς. κάκει μὲν γάρ ἐστι προβολή, ἀλλ' ἡ προβολή ἀδικήματός ἐστιν ἐξ ἀγράφου⁶¹ εὐθυνομένου γενομένη. ἐνταῦθα δὲ ἡ προβολή ἐξ ἐγγράφου ἐστίν. εἰδέναι δὲ καὶ τοῦτο χρή, ὅτι κακῶς εἶπεν *προβολῇ ῥητοῦ*. ἐχρῆν γὰρ εἰπεῖν τῇ ἀπ' αὐτοῦ τοῦ ῥητοῦ. οὐδὲ γὰρ αὐτὸ τὸ ῥητὸν προβαλλόμεθα, ἀλλὰ τὸ ἔγκλημα τὸ διὰ ῥητὸν γενόμενον. ὅταν οὖν λέγῃ *προβολῇ ῥητοῦ*, ἐνδεῶς ὀρίζεται τὸ κεφάλαιον· οὐδὲ γὰρ αὐτὸ μόνον τὸ ῥητὸν προβαλλόμεθα (ποία γὰρ ἂν εἴη χρεία τοῖς γε ἐγνωκόσι τὸ ῥητὸν προτείνειν;), ἀλλὰ τὸ ἔγκλημα τὸ ἀπὸ τοῦ ῥητοῦ.

He made an excellent addition in saying 'presentation of the verbal instrument', distinguishing the legal and the logical issues. There is a presentation in the latter as well, but the presentation is of the crime, and arises from something non-documentary being subjected to scrutiny. But here the presentation is from the document. But one must also recognise that he was wrong to say 'presentation of the verbal instrument': he should have said 'based on the verbal

⁶¹ ἐγγράφου cod.: cf. *RG* 4.802.6 ('Sopater') ~ *RG* 7.637.2. The latter is from the 'patchwork' source (cf. §3.3): 7.636.24-637.7 ~ *RG* 4.801.22-802.2 (Syrianus) + 802.3-14 (Sopater). There is also a parallel at *RG* 4.813.24-814.5, in an eclectic section headed καὶ ἄλλως ἀνωνόμου (813.17, cf. 795.3, 845.19).

instrument itself'. We do not, in fact, present the actual verbal instrument, but the charge that arises through the verbal instrument. So when he says 'presentation of the verbal instrument' his definition of the head is inadequate: we do not present just the verbal instrument itself (what need would there be to put forward the verbal instrument to people who are familiar with it?), but the charge that arises from the verbal instrument.

So Hermogenes was in one respect right to speak of a 'presentation of the verbal instrument', distinguishing presentation in letter and intent from presentation in logical issues (which is a presentation of the facts). However, in another respect he was wrong to say this; it would have been better to say 'presentation *based on* the verbal instrument', since it is not the legal instrument as such that is presented, but the infringement that arises on the basis of the legal instrument. It is possible that epitomisation and paraphrase have here helped to give pedantry the appearance of inconsistency. The progression of the argument is perhaps easier to see in a parallel passage, attributed to Sopater, in *RG* 4.802.3-13:

ζητοῦμεν δὲ τί δὴ ποτε προβολὴν ῥητοῦ τὴν προβολὴν ταύτην ὠνόμασιν. ἐροῦμεν οὖν ὡς ἀποδιῶστας τὰς νομικὰς ἀπὸ τῶν λογικῶν τοῦτό φησιν. ἔστι γὰρ ἄλλη προβολὴ ἐξ ἀδικήματος ἀγράφου γινομένη, ἢ τις οὐκ ἔστι τῶν νομικῶν. ἐνταῦθα γὰρ ἐξ ἐγγράφου ἢ προβολή. διὸ προσέθηκε καὶ ῥητοῦ. ἔδει δὲ ἐμφατικώτερον τὸν Ἑρμογένην περὶ τοῦτου εἰπεῖν οὕτως, *προβολῇ τῇ ἀπὸ ῥητοῦ*. οὐδὲ γὰρ αὐτὸ τὸ ῥητὸν προβάλλονται, ὃ δίδωσι νοεῖν ἢ τοῦ τεχνικοῦ λέξις, ἀλλὰ τὸ ἔγκλημα τὸ διὰ τὸ ῥητὸν γινόμενον, ἄλλως τε δὲ καὶ ὅτι οὐδὲ χρεῖαν ἔχομεν τοῖς ἐγνωκόσι αὐτὸ τὸ ῥητὸν προτείνειν, ἀλλὰ τὸ ἔγκλημα τὸ ἀπὸ τοῦ ῥητοῦ.

We ask why they call this presentation a presentation of the verbal instrument. Well, we shall say that he says this distinguishing the legal from the logical issues. There is another kind of presentation that arises from a non-documentary crime, which does not belong to the legal issues. For here the presentation is from the document. Hence he added 'of the verbal instrument'. But Hermogenes should have spoken more clearly about this, as follows: 'presentation *based on* the verbal instrument.' They do not put forward the verbal instrument itself, as the theorist's phrasing suggests, but the charge that arises through the verbal instrument, especially since we have no need to put forward the verbal instrument itself to people who are familiar with it, but the charge based on the verbal instrument.

Although it is possible that the parallel preserves Sopater's original phrasing more faithfully in places, I suspect that its greater clarity is at least in part the result of deliberate adaptation of an original that was felt to be somewhat opaque and abrupt. This brings us to the question of the relationship between the two bodies of scholia attributed to Sopater.

3.3 The 'three-man commentary' (*RG* 4)

The following tables list the manuscript attributions of the sections in the 'three-man commentary' concerned with the issue *metalepsis*, and records parallels in *RG* 5. The text is presented *in extenso*, along with the parallels, in Appendix 4.

First, the part of the introductory survey of the issues that is concerned with *metalepsis*:

275.30	Συριανοῦ καὶ Σωπάτρου	276.21-277.8 ~ 5.109.29-110.15
278.6	Μαρκελλίνου	
281.14	Συριανοῦ καὶ Σωπάτρου	282.17-24 ~ 5.110.24-8 283.2-8 ~ 5.110.28-111.2 284.11-17 ~ 5.110.19-24 284.26-285.4 ~ 5.111.6-13
285.18	Μαρκελλίνου	
287.26	Συριανοῦ καὶ Σωπάτρου	289.7-24 ~ 5.111.15-30 290.12-16 ~ 5.116.26-30 290.18-27 ~ 5.117.2-9 290.30-291.4 ~ 5.112.11-17 291.4-6 ~ 5.112.9-10
291.14	Μαρκελλίνου	

All the sections attributed to ‘Syrianus and Sopater’ are partially paralleled in Sopater, but the parallels are incomplete. Moreover, while the material attributed to Marcellinus in these sections is internally self-consistent, there are many inconsistencies in the sections attributed to ‘Syrianus and Sopater’. These facts would be explicable if the ‘Syrianus and Sopater’ sections conflated material from the two named sources. But the material that is not paralleled in Sopater is not paralleled in Syrianus either, and the structure of Syrianus’ exposition in fact precludes such parallels: he reserves the definition and discussion of individual issues entirely to the main section, and so has no material to contribute to the three-man commentary in this part of the introductory survey. At this stage, therefore, the three-man commentary must be drawing on only two of its three main sources, and the inconsistencies in the ‘Syrianus and Sopater’ must be internal to the source identified as Sopater. This is consistent with the evidence already observed (§1.9) that ‘Sopater’ in *RG* 4 contains material derived from the Sopater of *RG* 5, with adaptations that are not always consistently carried through, and also material not paralleled in, and inconsistent with, Sopater.⁶² So the source identified as Sopater *RG* 4 is not simply another recension or redacted version of the Sopater of *RG* 5, but a separate commentary. To distinguish it from the Sopater of *RG* 5 I shall call this commentary ‘deutero-Sopater’.

Analysis of the introduction to the detailed treatment of *metalepsis* points to the same conclusion:

766.20	Συριανοῦ	769.5-770.13 ~ Syrianus 2.157.4-160.25
774.1	Σωπάτρου	774.1-5 ~ 5.190.2-7

⁶² See Heath (2003a) 157f., on Porphyry F6, for inconsistencies regarding the elements of circumstance in what I then still regarded as a heavily redacted version of Sopater (see also 162f., on F9).

		774.11-15 ~ 5.190.9-12
774.15	Συριανοῦ	
775.26	Σωπάτρου	
776.7	Μαρκελλίνου	
776.14	Συριανοῦ	776.23-777.1 ~ 5.190.19-30 777.1-8 cf. 5.190.30-191.5
777.9	Σωπάτρου	
777.23	Σωπάτρου	
781.12	Σωπάτρου ⁶³	781.12-26 ~ 5.191.5-18 781.26-31 ~ 5.191.26-30
781.32	Μαρκελλίνου	
782.19	Μαρκελλίνου	

The first section is attributed to ‘Syrianus’, and for the most part runs parallel to an independent recension of Syrianus.⁶⁴ The only question here is the status of the introductory portion, which is not paralleled. In some cases it is possible (or even probable) that the absence of a parallel for material in the ‘Syrianus’ sections of *RG* 4 is due to abbreviation in the other recension. But in this instance the reference to ‘the present issue’ (766.20f.) is suspect, since Syrianus believes that *metalepsis* and *paragraphe* are separate issues. The section beginning at 774.15 is not secured by a parallel, and the attribution is again rendered suspect by the assumption of two species rather than two issues. The section beginning at 776.14 is certainly misattributed, since the parallels are in *RG* 5. It is possible that the misattribution here and in 774.15 arose from an assumption that the sources should alternate (this error is extended in the misattribution of 781.12 in Walz). ‘Sopater’ here will again be deutero-Sopater.

3.4 *RG* 7

The anonymous collection of scholia in *RG* 7 includes a number of enthusiastic references to a rhetorician named Paul. We also have prolegomena which explain how Paul had set the author the task of systematically defending Hermogenes against his critics (*PS* 238.2-14 = *RG* 7.34.11-35.1). It is a reasonable inference that these prolegomena introduced the commentary which contained the tributes to Paul. Keil argued that the author was John of Caesarea, working early

⁶³ cod. (Rabe (1909) 589): Συριανοῦ Walz.

⁶⁴ Syrianus’ commentary is preserved in continuous form in Marcianus gr. 433, as well as in the extracts in the ‘three-man commentary’. Where the two run parallel, the extracts in *RG* 4 show that the independent version, though generally fuller, is sometimes abbreviated (see Appendix 1). It is important to realise that Rabe’s edition (1893) does not present all the evidence for Syrianus: he uses the *RG* 4 parallels as a check on the text, but does not include material from Syrianus preserved only in *RG* 4.

in the fifth century; not all of his inferences are convincing, but the overall thesis is plausible.⁶⁵

The following table lists references to Paul, and passages which have parallels in *RG* 4, in the sections concerned with *metalepsis*. It will be observed that many sections are a patchwork of extracts, sometimes very short, taken from the three-man commentary and reorganised. All three of the main sources of three-man commentary are drawn on, so this patchwork was made out of our compilation.⁶⁶ The text of the patchwork is presented, along with the parallels, in Appendix 6; the rest of the text is presented in Appendix 5.

<i>RG</i> 7	Paul	<i>RG</i> 4
231.2-4		
231.4-7		275.30-276.4 ('Syrianus and Sopater')
231.8-232.3		
232.4-233.3		276.21-26, 277.1-8 ('Syrianus and Sopater'); 278.10-26, 278.29-279.3, 4.279.9-17 ('Marcellinus')
233.4-237.24	235.15	
237.25-239.11		284.11-17 ('Syrianus and Sopater'); 279.23-8, 279.20-23, 279.33-280.4 ('Marcellinus'); 281.16-24, 281.25-7 ('Syrianus and Sopater'); 277.9-20 ('Syrianus and Sopater'); 285.30-286.9, 285.27-9 ('Marcellinus'); 282.23-5 ('Syrianus and Sopater')
239.12-28		
239.29 – 240.21		286.9-12 ('Marcellinus'); 285.4-9 ('Syrianus and Sopater'); 282.31-283.2, 282.26-9 ('Syrianus and Sopater'); 286.12-14 ('Marcellinus'); 285.8-9 ('Syrianus and Sopater'); 286.14-15 ('Marcellinus'); 283.24-30 ('Syrianus and Sopater')
240.22-241.13		
241.14-28		287.26-288.1, 288.20-31 ('Syrianus and Sopater')
616.12-22		776.7-10 ('Marcellinus'); 775.26-776.1, 774.1-11 ('Sopater')
616.23-619.11		
619.12-15		

⁶⁵ Keil (1907); see Stegemann (1949). For John see *PS* 375.3 app., *RG* 6.243.12.

⁶⁶ But not necessarily from a text identical with ours, since abridgement and paraphrase are commonplace in the transmission of scholia. So, for example, at 7.232.4 ~ 4.276.21, comparison with 5.109.31-110.3 suggests that *RG* 4 preserves deutero-Sopater less fully than the patchwork.

619.16-22		777.1-8 ('Syrianus', incorrectly)
619.23-622.22	619.23	7.620.2-621.11 cf. 778.23-779.21 ('Sopater')
622.23-624.16		777.23-778.1, 778.16-18, 779.20-29 ('Sopater'), 769.5-770.6 ('Syrianus' = Syr. 157.9-17), 780.1-7, 778.23-779.19, 780.21-2, 781.12-21 ('Sopater'); 781.32-782.2, 782.3-13 ('Marcellinus')
624.17-627.2	624.21, 29	7.626.18-26 cf. 4.780.22-29 ('Sopater')

It will be observed that two of the sections which include references to Paul also show parallels to deuterio-Sopater, but in these instances there is no trace of the patchwork technique evident elsewhere. These two passages merit more careful attention.

RG 7.626.18-26 ~ 4.780.22-29 are concerned with Metrophanes' theory of distinctive heads in *paragraphe* (§1.5). The correspondence between them is clearly not coincidental. They agree in regarding the proposed heads as *epicheiremes*, as against Georgius, who regards them as heads of purpose. Moreover, they describe the parties as the defendant (φεύγων) and accuser (κατήγορος)—that is, they follow the terminology under which the roles are inverted, so that the prosecutor in the primary case becomes the defendant in the *paragraphe* (see §1.4); Georgius follows a different convention, describing them as the accuser (κατηγορῶν) and the party bringing the *paragraphe* (παραγραφόμενος) respectively. However, in *RG* 4 the argument ἐκ τοῦ ἀποβησομένου, in which (as *RG* 7 and Georgius agree) the party bringing the *paragraphe* warns of the bad consequences of allowing the primary case to go forward, has become the commonplace argument *against* the party bringing the *paragraphe* that recourse to this device reveals a lack of confidence in the primary case (see §1.4). That is, in *RG* 4 the accuser (κατήγορος) who uses this argument has been confused with the accuser in the primary case; the inversion of roles has been overlooked. Deuterio-Sopater's version of the testimonium to Metrophanes has arisen from a misunderstanding of John's version.

At 7.619.23-30 John makes an emphatic assertion of Paul's originality. That assertion would be completely false if the extensive parallels in the following discussion were due to John's dependence on deuterio-Sopater. Comparison of the two texts tends to support the inference that it is deuterio-Sopater who is dependent.⁶⁷ The overall structure of John's exposition, though complex, is coherent, and the discussion makes good sense in relation to the commented text (this passage has already been touched on in §1.9). Hermogenes says that in *paragraphe* the prior question follows one of the legal issues, or sometimes definition. John identifies a problem (619.30-620.2): it is commonly accepted that the prior question in *paragraphe* may be letter and intent, ambiguity, conjecture or

⁶⁷ In this section John is explicitly following his teacher Paul: the possibility cannot be entirely excluded that deuterio-Sopater is not dependent on John himself, but on a commentary by Paul that was also used by John.

definition; so why does Hermogenes omit conjecture? He goes on to argue (620.2-621.10) that Hermogenes is right, since strictly speaking the prior question cannot be conjectural, but must be legal. How, then, can Hermogenes refer to definition? Further argument resolves that problem (621.10-27). Then John notes that he has contradicted the commonly accepted view, endorsed by himself elsewhere, that the prior question can be conjectural, and he resolves this problem too (621.27-622.22). The discussion in deuterio-Sopater, by contrast, is less faithful to Hermogenes' text and shows signs of using adapted material (which we know, from the comparison with Sopater, fits this author's *modus operandi*). He begins by asserting that the prior question may be legal, definition or conjecture (4.777.23-6), and gives examples of definition (777.26-778.16) and conjecture (778.16-18). Then he poses the question of why Hermogenes only briefly touches on these (778.18-23)—a less accurate formulation of the problem than John's, who is concerned with Hermogenes' *omission* of conjecture but is not worried by the fact that he does no more than touch on definition. Deuterio-Sopater's reply at first runs parallel to John's (778.23-779.21 ~ 7.620.2-621.11), except that he adds a reference to definition where John mentions only conjecture (778.24 *vs* 7.620.4), and to conjecture where John mentions only definition (779.21 *vs* 7.621.11). At that point the two discussions diverge (though it is worth noting that in what follows definition is mentioned, but not conjecture: 779.21-780.9).

This section of deuterio-Sopater is in turn exploited in the following section of *RG* 7 (622.23-624.16). That means that material which deuterio-Sopater derived from John was subsequently included in the patchwork, with the result that 7.623.11-624.6 ~ 7.620.2-621.10. Such a doublet seems hard to reconcile with the active editorial effort that created 622.23-624.16 out of material from *RG* 4; but it could easily arise from a minimally adaptive combination of pre-existing sources. It does not seem likely, therefore, that the compiler of *RG* 7 was responsible for the patchwork. Rather, the patchwork was one of the pre-existing commentaries which he used, alongside commentaries by John and others.⁶⁸

3.5 The identity of deuterio-Sopater

Why does the three-man commentary attribute the extracts from the source I have dubbed deuterio-Sopater to Sopater? The simplest explanation is that the compiler of deuterio-Sopater was himself called Sopater, so that he was a homonym of the author of the commentary in *RG* 5 on which he drew. This proliferation of rhetoricians named Sopater may seem implausible at first sight; but there were three rhetoricians named Hermagoras,⁶⁹ and the name Sopater was not uncommon. Moreover, there is a plausible candidate.

According to the biography by Zacharias, Severus, the future bishop of Antioch, studied in Alexandria in the 480s with the sophists John 'the shorthand

⁶⁸ Including (at least) Georgius: Schilling (1903) 681-3, Kowalski (1939).

⁶⁹ Heath (2002a).

writer' (ὁ σημειογράφος) and Sopater.⁷⁰ The following observations support the identification of this Sopater as deuterio-Sopater:

(i) His date is consistent with my argument that deuterio-Sopater made use of John of Caesarea.

(ii) Fifth-century Alexandria gave rise to at least one other commentary on Hermogenes: Georgius is identified in the superscription to his lectures on Hermogenes as an Alexandrian sophist.⁷¹

(iii) The distinctive title (= *notarius*) given to Severus' other teacher makes it likely that he is identical with the writer on issue-theory cited simply as ὁ σημειογράφος in Christophorus and Nilus.⁷² The fragments of ὁ σημειογράφος are all concerned with the definition and distinction of issues, which suggests the further probability that he is the sophist John of Alexandria who wrote a theoretical work on the characteristics of and differences between the issues (τεχνικοὶ κανόνες πῶς δεῖ γινῶναι τὰς στάσεις καὶ ποία τούτων πρὸς ἀλλήλας διαφορά) reported by Janus Lascaris.⁷³ If so, then a contemporary of Sopater also working in Alexandria wrote on issue-theory. Defining and distinguishing the issues was, inevitably, a constant concern for issue-theorists: we have seen that there was a problem about the relation between *metalepsis* and *antilepsis* (n. 7), and that Epiphanius wrote *On the similarity and difference of the issues* in the fourth century (n.13). Sopater has an extensive section on this subject in the first part of his commentary (*RG* 5.113.4-117.11); deuterio-Sopater makes use of it, but in an eclectic way and with much additional material (see e.g. *RG* 4.289.4-290.28 in Appendix 4). It is a matter of pure conjecture how far this might reflect the influence of John ὁ σημειογράφος. I note, however, that Sopater *RG* 4.227.18-228.1 argues against 'some' who say that the practical issue can be concerned with the past: this view is asserted by ὁ σημειογράφος (Christophorus fol. 68v). According to Christophorus (fol. 102) ὁ σημειογράφος, Phoebammon and Sopater all accepted an opinion of Menander on the difference between transference and mitigation;⁷⁴ this view is found in both Sopater (*RG* 5.101.14-21) and deuterio-Sopater (*RG* 4.246.1-5), but since Phoebammon also dates to the late fifth or sixth century the reference is perhaps more likely to be to deuterio-Sopater.

(iv) We probably have other traces of this Sopater's activity. John of Sicily (*RG* 6.455.29-456.4) attributes to 'Theon and Sopater' the view that *antirrhetis* constitutes a fourth class of oratory, alongside judicial, deliberative and epideictic. This view is found in the hypothesis to Aelius Aristides' *On the Four*, but it is not consistent with the discussion in Sopater's prolegomena to Aristides. It is

⁷⁰ Zacharias *Life of Severus* 11f. Kugener (I depend on Kugener's French version of a work that is extant only in a Syriac translation: σημειογράφος is inferred from the Syriac *smgrpws*). Gloeckner (1927) 1006 rules Severus' teacher out of consideration; but his argument assumes that the Sopater of *RG* 4 is the same as the Sopater of *RG* 5.

⁷¹ Georgius: Schilling (1903); Rabe (1908b); Duffy (1980) 265-8.

⁷² ὁ σημειογράφος: Rabe (1895) 246f.; Schilling (1903) 730 (read '79v' for '75v'); for references in Nilus see Gloeckner (1901) 9 ('Aba semeiografo' in Romano (1989) 259 arises from a misreading of the layout of Gloeckner's table).

⁷³ Rabe (1931) lxvii.

⁷⁴ See Heath (2004b) §4.2, on Menander F13. Phoebammon: Stegmann 1941.

therefore probable that the hypothesis derives from the work of a rhetorician named Sopater who is not identical with the Sopater of the prolegomena. There are independent grounds for dating both Theon's *Progymnasmata* and the fragments of Sopater's *Progymnasmata* preserved by John of Sardis to the fifth century. The late fifth-century Alexandrian Sopater is a plausible identification for the author of both the work on Aristides and the *Progymnasmata*.⁷⁵

3.6 Conclusions

The conclusions of this enquiry can be summarised as follows:

- (i) Sopater's commentary, preserved in an abridged version in *RG* 5, was an integrated composition.
- (ii) Material adapted from Sopater, John and other unidentifiable sources was combined to create deuterio-Sopater, a less coherent compilation. Deuterio-Sopater should not be used as evidence for the Sopater of *RG* 5 in the absence of a parallel (although, where the texts do run parallel, deuterio-Sopater may help to improve the text of Sopater).
- (iii) Deuterio-Sopater may be the Sopater who is known to have taught in Alexandria in the late fifth century.
- (iv) Extracts from deuterio-Sopater were combined with extracts from Marcellinus, Syrianus and others to make the three-man commentary.
- (v) Subsequently extracts from the three-man commentary were rearranged and recombined to make a new patchwork compilation.
- (vi) This patchwork compilation and John, together with material from other sources, were combined to make *RG* 7.

I have, of course, been working only from a limited sample. It is possible that these conclusions would need to be modified if the analysis were extended to take account of other sections of the published scholia. The extensive unpublished scholia might also lead to modification of these conclusions. Gloeckner's analysis of the *RG* 7 scholia identifies alternating parallels to Nilus, from which only extracts have been published, and to the unpublished *ἐκλογαὶ σχολίων κατ' ἐπιτομὴν ἐξ ἀνεπιγράφοις εἰς τὸ Περὶ στάσεων Ἑρμογένους* in Vδ (Vaticanus 2228).⁷⁶ In the samples which Gloeckner uses, some of the material which he identifies as parallel to Vδ appears in *RG* 4; this implies that the Vδ scholia are, or are related to, the patchwork compilation.⁷⁷ But with so much of the evidence unpublished, conclusions on the structure of the tradition can only be provisional. The present study does suggest, however, that the published evidence (despite the dreadful state of Walz's text) allows significant progress to be made.

⁷⁵ The argument of this paragraph is presented in more detail in Heath (2003b).

⁷⁶ Gloeckner (1921). For a description of the manuscript see Rabe (1908a) 128-30.

⁷⁷ Cf. Gloeckner (1921) 6.

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Appendix 1: Syrianus

The text is based on Rabe (1893); unattributed emendations are his. Parallel passages in *RG* 4 are presented in the right-hand column.

περὶ μεταλήψεως

[151.2] τὴν δὲ μετάληψιν ὁ μὲν Ἑρμογένης τελευταίαν τάττει πασῶν τῶν στάσεων λέγων αἰτίας τάσδε· πρώτην μὲν ὅτι ἐν τε ταῖς λογικαῖς καὶ ἐν ταῖς νομικαῖς ἐμπίπτει στάσεις, εἰκότως οὖν τὴν τε ἄγραφον καὶ τὴν ἔγγραφον ποιότητα πρῶτον ἐξεταστέον, τουτέστι τὰς τε λογικὰς καὶ νομικὰς, ἐν αἷς εὐρίσκεται, καὶ τελευταῖον ἐπάγειν τὸν περὶ τῆς μεταλήψεως λόγον· δευτέραν δὲ τήνδε, ὅτι αἱ μὲν ἄλλαι στάσεις τὸ εἶ ἔστιν ἢ τί ἔστιν ἢ ποῖόν τί ἔστι σημαίνουσιν (τὸ μὲν εἶ ἔστιν ὁ στοχασμός, τὸ δὲ τί ἔστιν ὅρος, τὸ δὲ ποῖόν τί ἔστιν αἱ λοιπαί), ἡ δὲ μετάληψις τῷ πεπραγμένῳ φανερῷ ὄντι καὶ ὁμολογουμένῳ συγχωροῦσα ἐν τι τῶν περιστατικῶν αἰτιᾶται μορίων. οἱ δὲ μεταγενέστεροι σὺν φιλοσοφίᾳ τοὺς περὶ τῶν στάσεων διεξεληθόντες λόγους ἐπὶ ταῖς ἀντιθετικαῖς τάττουσι τὴν μετάληψιν, πρῶτον μὲν διότι τῶν πέντε δικαιολογικῶν στάσεων μία αὕτη λυτική ἐστὶν ἡ μετάληψις, εἰκότως οὖν τὴν ἐπ' ἐκείναις δέχεται τάξιν, ὅπως ἂν γνῶμεν ποίας ὑπάρχουσα φύσεως τηλικαύτην ἰσχὺν διὰ τῶν μεθόδων ἐπιδείκνυται ὥς μόνη τὰς πέντε λύειν· ἔπειτα δὲ καὶ τῶν παλαιῶν τεχνογράφων οἱ πλείονες ταύτην αὐτὴ τὴν τάξιν ἀποδεδώκασιν· τρίτον δὲ πολλῷ ἂν ἄμεινον εἶη καθ' ἑαυτὴν πρῶτον ἐξετάσαι τὴν οὐσίαν αὐτῆς, ἵνα μὴ ἐν ταῖς νομικαῖς περὶ ταύτης τι λέγειν ἐπιχειροῦντες τὴν τῶν προκειμένων διακόπτωμεν διδασκαλίαν.

[152.3] τινὲς μὲν οὖν τῶν τεχνογράφων ὑπὸ τὴν ποιότητα τὴν μετάληψιν ἀνάγουσι, τινὲς δὲ οὐ. ἄμεινον δὲ τάττειν ὑπὸ τὴν ποιότητα· εἰ γὰρ καὶ τὸ εἶ ἔστιν ἔγνωσται ἐν αὐτῇ καὶ τὸ τί ἔστιν, ἥδη δὲ καὶ τὸ ποῖόν τί ἔστιν, ὥς ἐπὶ τῆς ἀνελοῦσης τὸν τύραννον ἱερείας, ἀλλ' οὖν διὰ τὸ ἐν τοιῷδε τόπῳ τὸ πρᾶγμα συμβῆναι ζητοῦμεν πότερον ἔννομον ἢ παράνομον τὸ πεπραγμένον.

[152.11] ἔτι δὲ οἱ μὲν ὥς μίαν στάσιν παραλαμβάνουσι τὴν μετάληψιν, τὸ μὲν αὐτῆς ἄγραφον, τὸ δὲ ἔγγραφον λέγοντες· οἱ δὲ ἄμεινον φάσκοντες δύο τε αὐτὴν λέγουσι περιέχειν στάσεις καὶ πλείστον ἀλλήλων διεστάναι ταύτας, πρῶτον μὲν τῷ ὀνόματι (ἡ μὲν γὰρ ἄγραφος μετάληψις καλεῖται ὁμωνύμως τῷ γένει, ἡ δὲ ἔγγραφος παραγραφὴ)· ἔπειτα τοῖς ὅροις τε καὶ τῇ διαιρέσει τῶν κεφαλαίων (ὧν δὲ διάφοροι οἱ ὅροι, τούτων ἐξ ἀνάγκης καὶ τὰ ὀριστὰ διάφορα)· ἔπειτα ἡ μὲν ἐκ τοῦ φεύγοντος γνωρίζεται, ἡ δὲ ἐκ τοῦ κατηγοροῦ· καὶ ἡ μὲν τῶν λογικῶν ἐστὶν, ἡ δὲ τῶν νομικῶν. εἰ δὲ αἱ τέσσαρες ἀντιθετικαὶ τοῖς αὐτοῖς σχεδὸν διαιρούμεναι κεφαλαίοις πλὴν ἑνὸς τοῦ ἐκάστης οἰκείου, πᾶσαι τε ἐκ τοῦ φεύγοντος γνωρίζονται, διάφοροι παρὰ πάντων ἐνομήθησαν εἶναι στάσεις, πόσῳ πλέον αὐταὶ τοσοῦτοις ἀλλήλων ὥς ἔφαμεν διαφέρουσαι; κοινωνοῦσι δὲ ἀλλήλαις τῷ τε ὑπὸ τὸ αὐτὸ γένος ἀνάγεσθαι, τὴν μετάληψιν, καὶ τῷ ἐκ τῶν περιστατικῶν μορίων ποιεῖσθαι τὴν παραγραφὴν· ἀλλ' ἐν μὲν τῇ ἀγράφῳ ὁ διώκων κέχρηται τῷ περιστατικῷ μορίῳ εἰς παραγραφὴν, ἐν δὲ τῇ ἐγγράφῳ ὁ φεύγων.

[153.3] πρῶτον δὲ ἡμῖν ὁ λόγος γιγνέσθω περὶ τῆς ἀγράφου μεταλήψεως ὡς ἀπλουστέρας τε καὶ ταῖς λογικαῖς ὥς ἔτι μελετῶμεν ὥκειωμένης.

[153.7] μετάληψις τοίνυν ἐστὶ στάσις πολιτικοῦ πράγματος τῶν ἐπὶ μέρους, καθ' ἣν ὁ κατήγορος συγχωρῶν τῷ πεπραγμένῳ ἔν τι τῶν περὶ τὸ πρᾶγμα περιστατικῶν μεταλαμβάνει μορίων.

[153.11] διαφέρει δὲ τῶν ἀντιθετικῶν ἡ μετάληψις, ὅτι αἱ μὲν ἐκ τῶν φευγόντων ἡ δὲ ἐκ τοῦ κατηγόρου γνωρίζεται, καὶ αἱ μὲν τὰ πεπραγμένα <ὑπεύθυνα ἔχουσι, ἡ δὲ αὐτὸ μὲν τὸ πεπραγμένον> ἀνεύθυνον ἔχει, τῶν δὲ περὶ τὸ πεπραγμένον τι περιστατικῶν μορίων ἐν αὐτῇ μεταλαμβάνεται.

[153.17] ἡ δὲ μετάληψις εἰς εἶδη οὐ διαιρεῖται. οὐδεμίαν γὰρ εἰδοποιὸν διαφορὰν ὧν πολλάκις ἔφαμεν ἐπιδέχεται τὰ ὑπ' αὐτὴν ἀναγόμενα ζητήματα, ἀλλὰ πάντα τὰς αὐτὰς ἐπιδέχεται διαιρέσεις.

[153.21] τρόποι δὲ εἰσι τῶν μεταληπτικῶν προβλημάτων πέντε· κατὰ τόπον, κατὰ πρόσωπον, κατὰ χρόνον, κατὰ τρόπον, κατ' αἰτίαν. κατὰ τόπον μὲν, οἶον· ἰέρεια μύουσα τύραννον ἀπέκτεινεν ἐν ἱερῷ καὶ κρίνεται ἀσεβείας· τῷ γὰρ πράγματι συγχωροῦντες ὡς καλῶς γεγονότι (φημὶ δὴ τῇ τυραννοκτονίᾳ) τόπον αἰτιώμεθα. κατὰ πρόσωπον δέ· πένης καὶ πλούσιος ἐχθροί, κατεγνώσθη θανάτου παρὰ τοῦ δήμου ὁ πένης, παρεδόθη τῷ δημίῳ, πείσας ὁ πλούσιος ταλάντῳ τὸν δήμιον αὐτὸς λαβὼν ἀπέκτεινε καὶ κρίνεται φόνου. τὸ μὲν γὰρ πρᾶγμα κἀνταῦθα δίκαιον ἀναιρεθῆναι τὸν κατεγνωσμένον, τὸ δὲ πρόσωπον οὐ δικαίως εἵργασται τὸν μὴ προσήκοντα φόνον. κατὰ χρόνον δέ· νόμος τὸν μοιχὸν καὶ τὴν μεμοιχευμένην ἀναιρεῖσθαι παραχρήμα, καταλαβὼν τις μοιχὸν ἐπὶ τῇ γυναικὶ τὸν μὲν ἀπέκτεινεν, ὕστερον δὲ χρόνῳ τὴν γυναῖκα εὐρὼν ἐπὶ τοῦ τάφου τοῦ μοιχοῦ κλαίουσαν ἀνεῖλε καὶ κρίνεται φόνου· οὐδὲν γὰρ ἔχοντες αἰτιᾶσθαι τοῦ πράγματος τὸν χρόνον ἐπιμεμόμεθα. κατὰ τρόπον δέ· νόμος τὸν μοιχὸν ἀναιρεῖσθαι, καταλαβὼν τις ἐν τῇ οἰκίᾳ μοιχὸν ἀποκλείσας ἐνέπρησε τὴν οἰκίαν καὶ συγκατέφλεξε τὸν μοιχὸν καὶ κρίνεται φόνου· μόνος γὰρ ὁ τρόπος ἐνταῦθα τῆς ἀναιρέσεως ἀφορμὴν παρέχει τῆς κατηγορίας. κατ' αἰτίαν δέ· νόμος τὸν μοιχὸν φονεύειν ἢ χρήματα πράττεσθαι, καταλαβὼν τις ἐπὶ τῇ γυναικὶ μοιχὸν ὑποσχομένου τοῦ μοιχοῦ τρία τάλαντα δώσειν ἀφῆκεν, ὕστερον παρ' ἐχθροῦ τοῦ μοιχοῦ λαβὼν ἑξ τάλαντα παρέδωκεν ἐκείνῳ τὸν μοιχὸν καὶ κρίνεται φόνου αἰτίας.

[154.24] ἄξιον δὲ ζητῆσαι τῆς κατὰ πρόσωπον μεταλήψεως καὶ τῆς κατὰ νόμον ἀντιλήψεως τίς ἡ διαφορά· ἐν ἑκατέρᾳ γὰρ οὐκ ἀδίκως ὁ πεφονευμένος ἀνηρῆσθαι δοκεῖ. φάμεν οὖν ὅτι ἐν μὲν τῇ ἀντιλήψει ἔνδοξόν πῶς ἐστὶ τὸ πεπονθὸς πρόσωπον (τρισυριστέως γὰρ νίδος ἀνηρημένος), ἐν δὲ τῇ μεταλήψει κατεγνωσμένον ἐστὶ τὸ πεπονθὸς πρόσωπον· καὶ ἐν μὲν τῇ κατὰ νόμον ἀντιλήψει αὐτὸ τὸ πρᾶγμα ὡς οὐ δεόντως εἵργασμένον καταιτιώμεθα (οὐ γὰρ φόνῳ τὴν πορνείαν ἰᾶσθαι δίκαιον ἀλλ' ὕβρει πληγαῖς ἀτιμία καὶ τοῖς τοιοῦτοις), ἐν δὲ τῇ κατὰ πρόσωπον μεταλήψει τό γε πεπραγμένον συγχωροῦντες γεγενῆσθαι καλῶς τὸ πεποιηκὸς πρόσωπον αἰτιώμεθα (οὐ γὰρ τὸν ἐχθρὸν ἀλλὰ τὸν δήμιον ἐχρῆν ἀποκτείνειν τὸν πένητα).

[155.12] ἔνιοι δὲ φασὶ καὶ τόδε τὸ ζήτημα κατὰ πρόσωπον εἶναι μετάληψιν· ἀπεστάλη πρὸς Φίλιππον Αἰσχίνης περὶ εἰρήνης πρεσβευτής, τελευτήσαντα καταλαβὼν ἐκείνον Ἀλεξάνδρῳ συνέθετο περὶ τῆς εἰρήνης, ἐπανελθὼν

κρίνεται παραπρεσβείας. ἐπειδὴ δὲ τὸ πρόσωπον οὐκ ἐστὶ κατεγνωσμένον, μᾶλλον ἂν ὀρικὸν εἴη.

[155.18] διαιρεῖται δὲ κεφαλαίοις ἢ μετάληψις τοῖς αὐτοῖς οἷσπερ ὁ ὅρος καὶ ἡ ἀντίληψις πλὴν σφόδρα ὀλίγων. ὥσπερ γὰρ αἱ ἀντιθετικαὶ τοῖς αὐτοῖς διαιροῦνται σχεδὸν πλὴν τῆς τάξεως καὶ⁷⁸ τοῦ οἰκείου ἐκάστης κεφαλαίου, οὕτω καὶ αὗται. κεφάλαια δ' οὖν μεταλήψεως ἐστὶ τάδε· προβολὴ τοῦ κατηγοροῦ, παραγραφικὸν τοῦ φεύγοντος ἀντιληπτικῶς εἰσαγόμενόν τε καὶ πλατυνόμενον, μετάληψις τοῦ κατηγοροῦ, συλλογισμῶ τοῦ φεύγοντος, ὅρω τοῦ κατηγοροῦ, γνώμη τοῦ νομοθέτου, πηλικότητι, πρὸς τι κοινῶς (τὴν δὲ πηλικότητα καὶ τὸ πρὸς τι ποτὲ μὲν ἐξετάσουσιν ὡς δεῖ, ποτὲ δὲ καὶ παραλείψουσιν ὡς παρέλκοντα διὰ τὸ σφόδρα τοῦ πράγματος ὁμολογημένον), ἀντιθέσει ἀντεγκληματικῇ, ἀεὶ ἐν μεταλήψει ἐμπίπτουσι, λύσει μεταληπτικῇ.

[156.7] ζητοῦσι δὲ τινες τίτι διαφέρει ἀντέγκλημα μεταλήψεως, εἴ γε ἐν ἀμφοτέραις τὸ πεπονθὸς κατέγνωσται πρόσωπον. ἐροῦμεν οὖν ὅτι ἐν μὲν ἀντεγκλήματι ἀδίκημά ἐστὶ τὸ ὑπὸ τοῦ φεύγοντος πραχθέν, ἐν δὲ μεταλήψει αὐτὸ μὲν τὸ γεγονὸς⁷⁹ οὐκ ἐστὶν ἀδίκημα, διὰ δὲ τι τῶν περιστατικῶν ὡς ἀδίκημα εὐθύνεται.

[156.13] ἰστέον δὲ ὅτι πᾶν ἐνθύμημα καὶ πᾶν εἰκὸς καὶ σημεῖον τῆς κατὰ τὰς στάσεις ῥητορικῆς λύεται τῷ καὶ τὴν ὕλην ἐνδεχομένην εἶναι. τεκμήρια δὲ αὐτῆς τινὰ ἄλυστά ἐστιν, ὡς κατὰ τὸν Αἰσχίνην τὸν ἐπὶ τῷ προδεδοκέναι τὸν Κερσοβλέπτην κρινόμενον, διόπερ καὶ ἐν τοῖς ἀσυστάτοις αὐτὸ τετάχαμεν ὡς κατὰ τὸ τεκμήριον δῆλον. ἡ μέντοι ἀληθινὴ ῥητορικὴ τὴν αὐτὴν ὕλην ἔχουσα τῇ φιλοσοφίᾳ (φημὶ δὴ τὴν ἀναγκαίαν) ἀναγκαίους ἔχει καὶ τοὺς λόγους. οὐ γὰρ τὸ νομιζόμενον ἐκείνη σκοπεῖ δίκαιον καὶ συμφέρον καὶ καλόν, ἀλλὰ τὰ ὄντως ὄντα καὶ ἀμιγῆ, διόπερ καὶ ἀντιρρήσεων ἐπὶ τοῖς ἀναγκαίοις λόγοις ἐστὶν ἐλευθέρα.

[4.783.25] ἡ μετάληψις διαιρεῖται κεφαλαίοις τοῖς αὐτοῖς οἷσπερ ὁ ὅρος καὶ ἡ ἀντίληψις πλὴν σφόδρα ὀλίγων. ὥσπερ γὰρ αἱ ἀντιθετικαὶ τοῖς αὐτοῖς διαιροῦνται σχεδὸν πλὴν τάξεως καὶ τοῦ οἰκείου κεφαλαίου, οὕτω καὶ αὗται. κεφάλαια δ' οὖν μεταλήψεως ἐστὶ τάδε· προβολὴ τοῦ κατηγοροῦ, παραγραφικὸν τοῦ φεύγοντος ἀντιληπτικῶς εἰσαγόμενόν τε καὶ πλατυνόμενον, μετάληψις τοῦ κατηγοροῦ, συλλογισμὸς τοῦ φεύγοντος, ὅρος τοῦ κατηγοροῦ, γνώμη νομοθέτου, πηλικότης, πρὸς τι, κοινά (τὴν δὲ πηλικότητα καὶ τὸ πρὸς τι ποτὲ μὲν ἐξετάσουσιν ὡς δεῖ, ποτὲ δὲ καὶ παραλείψουσιν ὡς παρέλκοντα διὰ τὸ σφόδρα τοῦ πράγματος ὁμολογημένον)· ἔτι διαιρεῖται καὶ τοῖσδε, ἀντιθέσει ἀντεγκληματικῇ, ἀεὶ ἐν μεταλήψει ἐμπίπτουσι, λύσει μεταληπτικῇ.

[4.784.9] ζητοῦσι δὲ τί διαφέρει ἀντέγκλημα μεταλήψεως, εἴγε ἐν ἀμφοτέραις κατέγνωσται τὸ πρόσωπον. ἐροῦμεν οὖν ὅτι ἐν μὲν ἀντεγκλήματι ἀδίκημά ἐστὶ τὸ ὑπὸ τοῦ φεύγοντος πραχθέν, ἐν δὲ μεταλήψει αὐτὸ μὲν τὸ γεγονὸς οὐκ ἐστὶν ἀδίκημα, διὰ δὲ τι τῶν περιστατικῶν ὡς ἀδίκημα εὐθύνεται.

⁷⁸ καὶ del. Rabe.

⁷⁹ γένος cod.

περὶ παραγραφῆς

[157.2] ἔπεται τῇ μεταλήψει ὁ περὶ τῆς παραγραφῆς λόγος εἰκότως, εἴ γε ὑπὸ τὸ αὐτὸ γένος ἄμφω τελοῦσι τὴν μετάληψιν·

[157.4] ὅτι γὰρ ἑτέρα στάσις ἐστὶν ἡ παραγραφή τῆς μεταλήψεως πρόδηλον ἔκ τε τῶν ἤδη περὶ αὐτῶν εἰρημένων ἐν τῇ μεταλήψει, καὶ ἔτι ἔκ τοῦ τὴν μετάληψιν ἓνα μόνον ἐπιδέχεσθαι ἀγῶνα, τὴν δὲ παραγραφὴν δύο, τὸν τε τῆς εὐθυδικίας καὶ τὸν δι' ὃν ἡ παραγραφή, οἷον· ἐγράψατο Τίμαρχος Αἰσχίνην παραπρεσβείας, ὁ δὲ ἐταίρησιν ἐγκαλὼν αὐτῷ παραγράφεται τὴν δίκην. ἐνταῦθα ἕτερος μὲν ἐστὶν ὁ ἀγὼν ὁ τῆς παραπρεσβείας, ἕτερος δὲ ὁ τῆς ἐταιρήσεως, καὶ πρότερος μὲν εἰσάγεται ὁ τῆς ἐταιρήσεως ἀγὼν, στάσεως ὢν διὰ τὸ ἀμάρτυρον στοχαστικῆς κατὰ παραγραφὴν⁸⁰, μετὰ δὲ τὸ ἡττηθῆναι διὰ τῆς παραγραφῆς Τίμαρχον ὁ τῆς παραπρεσβείας ἀγὼν εἰσάγεται, στοχαστικῆς ὢν καὶ αὐτὸς στάσεως.

[157.18] ὠνόμασται δὲ παραγραφή ἀπὸ τοῦ παραγράφειν καὶ ἐκβάλλειν τὸν φεύγοντα τὸν περὶ τοῦ πράγματος ἀγῶνα. τὸ γάρτοι παραγράφειν ἐναντίον ἐστὶ τῷ ἐγγράφειν· εἰ οὖν τὸ ἐγγράφειν εἰσάγειν ἐστὶν εἰς τὸν δῆμον καὶ καθιστάναι δημότην, εἰκότως τὸ παραγράφειν ἐκβάλλειν ἐστί, καὶ ἀπὸ τούτου καὶ ἡ παραγραφή ἡ ἐκβάλλουσα τὴν εὐθυδικίαν.

[157.24] ὅρος δὲ ἐστὶ τῆς παραγραφῆς οὗτος· στάσις πολιτικοῦ πράγματος τῶν ἐπὶ μέρους, καθ' ἣν ὁ φεύγων ἐνίσταται περὶ τοῦ μὴ εἰσαγώγιμον εἶναι τὴν δίκην.

[158.3] τῆς δὲ παραγραφῆς ἡ μὲν ἐστὶ τελεία, ἡ δὲ ἀτελής. καὶ τελεία μὲν ἐστὶν ἡ πάντη τὴν τε εὐθυδικίαν καὶ τὸν ἀγῶνα παρακρουομένη, ἀτελής δὲ ἡ μέρος τι καταιτιωμένη

[769.5] ὅτι γὰρ ἑτέρα στάσις ἐστὶν ἡ παραγραφή τῆς μεταλήψεως πρόδηλον

ἐκ τοῦ τὴν μετάληψιν ἓνα μόνον ἐπιδέχεσθαι ἀγῶνα, τὴν δὲ παραγραφὴν δύο, τὸν τε τῆς εὐθυδικίας καὶ τὸν δι' ὃν ἡ παραγραφή, οἷον· ἐγράψατο Τίμαρχος Αἰσχίνην παραπρεσβείας, ὁ δὲ ἐταίρησιν ἐγκαλὼν αὐτῷ παραγράφεται τὴν δίκην. ἐνταῦθα γὰρ ἕτερος μὲν ἐστὶν ἀγὼν ὁ τῆς παραπρεσβείας, ἕτερος δὲ ὁ τῆς ἐταιρήσεως,

στάσεως ὢν διὰ τὸ ἀμάρτυρον στοχαστικῆς κατὰ παραγραφὴν, μετὰ δὲ τὸ ἡττηθῆναι διὰ τῆς παραγραφῆς Τίμαρχον ὁ τῆς παραπρεσβείας ἀγὼν εἰσάγεται, στοχαστικῆς ὢν καὶ αὐτὸς στάσεως.

[770.6] ὠνόμασται δὲ παραγραφή ἀπὸ τοῦ παραγράφειν καὶ ἐκβάλλειν τὸν ἀγῶνα τὸν περὶ τοῦ πράγματος τὸν φεύγοντα. τὸ γάρτοι παραγράφειν ἐναντίον ἐστὶ τῷ ἐγγράφειν· εἰ οὖν τὸ ἐγγράφειν εἰσάγειν ἐστὶν εἰς τὸν δῆμον καὶ καθιστάνειν δημότην, εἰκότως τὸ παραγράφειν ἐκβάλλειν ἐστί, καὶ ἀπὸ τούτου καὶ ἡ παραγραφή ἡ ἐκβάλλουσα τὴν εὐθυδικίαν ἐλέχθη.

[770.13] ὅρος δὲ τῆς παραγραφῆς οὗτος· στάσις πολιτικοῦ πράγματος τῶν ἐπὶ μέρους· καθ' ἣν ὁ φεύγων ἐνίσταται περὶ τοῦ μὴ εἰσαγώγιμον εἶναι τὴν δίκην.

[770.15] τῆς δὲ παραγραφῆς ἡ μὲν ἐστὶ τελεία, ἡ δὲ ἀτελής. καὶ τελεία μὲν ἐστὶν ἡ πάντη τὴν εὐθυδικίαν καὶ τὸν ἀγῶνα παρακρουομένη, ἀτελής δὲ ἡ μέρος τι καταιτιωμένη

⁸⁰ περιγραφὴν cod.

τῶν περιστατικῶν, οἷον χρόνον ἢ
τόπον ἢ πρόσωπον.

[158.7] διὰ δὲ τὰς τοιαύτας παραγραφὰς ἔδοξέ τιςιν ἡ αὐτὴ εἶναι τῇ μεταλήψει ἢ παραγραφῇ ὡς παραπλησίως ἐκείνῃ ἐκ τῶν περιστατικῶν κινουμένη τόπων. τὸ δὲ οὐκ ἀξιοχρεὼν ἐστὶ πρὸς τὸ κοινωνεῖν· πολλὰ γὰρ ἕτερα ὡς ἔφαμεν ἐστὶ τὰ χωρίζοντα αὐτὰς ἀπ' ἀλλήλων.

[158.13] γίνεται δὲ ἡ παραγραφή κατὰ στοχασμόν, κατὰ ὅρον, κατὰ πραγματικὴν, κατὰ ῥητὸν καὶ διάνοιαν, κατὰ ἀντινομίαν, καὶ πάντως τοῖς κεφαλαίοις τῆς ἐμπιπτούσης διαιρεθῆσεται στάσεως. καὶ ἔστι κατὰ στοχασμόν μὲν ὡς <ὁ> ἐπὶ Τιμάρχῳ ἀγών, οἷον· νόμος τὸν ἡταιρηκότα μὴ λέγειν, ἐγράψατο Τίμαρχος Αἰσχίνην παραπρεσβείας, ὁ δὲ τὴν ἐταίρησιν ἐγκαλῶν παραγράφεται·

κατὰ ὅρον δέ, οἷον· δις περὶ τῶν αὐτῶν μὴ εἶναι δίκας, ἰέρεια προαγωγείας ἀλοῦσα ἐκρίθη καὶ ἡφείθη, καὶ πάλιν φεύγει ἀσεβείας, ἡ δὲ παραγράφεται. ἐνταῦθα γὰρ εἰ ἡ προαγωγή τῇ ἀσεβείᾳ ταῦτόν ἐστι ζητεῖται.

κατὰ δὲ πραγματικὴν, ὡς τόδε· νόμος τὸν ἀντιλέγοντα νόμῳ τινὶ εἴσω τριάκοντα ἡμερῶν ἀντιλέγειν· πένης καὶ πλούσιος ἐχθροί, ἐπέμφθη πρεσβευτὴς ὁ πένης, παρὰ τὴν ἀποδημίαν τοῦ πένητος <ὁ πλούσιος> τέθεικε νόμον τὸν ὑπὲρ πέντε τάλαντα <μὴ> κεκτημένον μὴ πολιτεύεσθαι, ἐπανελθὼν ὁ πένης μετὰ δύο μῆνας ἀντιλέγειν βούλεται, ὁ δὲ παραγράφεται· κατὰ δὲ ῥητὸν καὶ διάνοιαν· δις περὶ τῶν αὐτῶν μὴ εἶναι δίκας· φόνου κρινόμενός τις ἀπέφυγεν, ὕστερον χρωμένῳ αὐτῷ ἀνείλεν ὁ θεός, ἀνδροφόνοις οὐ χρῶ, καὶ πάλιν φεύγει φόνου, ὁ δὲ παραγράφεται. κατὰ δὲ ἀντινομίαν· νόμος τὸν στρατηγὸν μὴ ἔχειν δίκας, καὶ νόμος τὸν ἔμπορον εἴσω τριάκοντα ἡμερῶν δικάζεσθαι· ἔμπορος ἔχων πρὸς στρατηγὸν πράγματα βούλεται δικάζεσθαι, ὁ δὲ παραγράφεται.

[159.12] ἀπλῶς τε εἰπεῖν, ἥ δ' ἂν

τῶν περιστατικῶν, οἷον χρόνον ἢ
τόπον ἢ πρόσωπον.

[770.20] γίνεται δὲ ἡ παραγραφή κατὰ στοχασμόν, κατὰ ὅρον, κατὰ πραγματικὴν, κατὰ ῥητὸν καὶ διάνοιαν, κατὰ ἀντινομίαν, καὶ πάντως τοῖς κεφαλαίοις τῆς ἐμπιπτούσης διαιρεθῆσεται στάσεως. καὶ ἔστι κατὰ στοχασμόν μὲν ὡς ὁ ἐπὶ Τιμάρχῳ ἀγών, οἷον· νόμος τὸν ἡταιρηκότα μὴ λέγειν, ἐγράψατο Τίμαρχος Αἰσχίνην παραπρεσβείας, ὁ δὲ τὴν ἐταίρησιν αὐτῷ ἐγκαλῶν παραγράφεται.

κατὰ ὅρον δέ, οἷον· δις περὶ τῶν αὐτῶν μὴ εἶναι δίκας, ἰέρεια προαγωγείας ἀλοῦσα ἐκρίθη καὶ ἡφείθη, καὶ πάλιν φεύγει ἀσεβείας, ἡ δὲ παραγράφεται. ἐνταῦθα γὰρ εἰ ἡ προαγωγή τῇ ἀσεβείᾳ ταῦτόν ἐστι ζητεῖται.

κατὰ δὲ ῥητὸν καὶ διάνοιαν, οἷον· δις περὶ τῶν αὐτῶν δίκας μὴ εἶναι· φόνου κρινόμενός τις ἀπέφυγεν, ὕστερον χρωμένῳ ἀνείλεν ὁ θεός, ἀνδροφόνοις οὐ χρῶ, καὶ πάλιν φεύγει φόνου, ὁ δὲ παραγράφεται. κατὰ δὲ ἀντινομίαν, οἷον· νόμος τὸν στρατηγὸν μὴ ἔχειν δίκας, καὶ νόμος τὸν ἔμπορον εἴσω τριάκοντα ἡμερῶν δικάζεσθαι· ἔμπορος ἔχων πρὸς στρατηγὸν πράγματα βούλεται δικάζεσθαι, ὁ δὲ παραγράφεται.

[772.4] ἀπλῶς δὲ εἰπεῖν, ἥ δ' ἂν

συνεπιπλέκεται στάσει ἢ
παραγραφῇ, ταύτης καὶ τὰ
κεφάλαια λήψεται.

[159.14] καὶ ποτὲ μὲν ὁ τῆς
εὐθυδικίας ἀγὼν εἰσάγεται καὶ ἰδίᾳ
μετὰ τοῦτον ὁ τῆς παραγραφῆς, ποτὲ
δὲ ἅμα συνεισάγονται οἱ ἀγῶνες ὅ
τε τῆς παραγραφῆς καὶ ὁ τῆς
εὐθυδικίας.

[159.18] ἵνα δ' ἔτι σαφέστερον περὶ
τελείας καὶ ἀτελοῦς παραγραφῆς
διεξέλθωμεν, ἰστέον ὅτι τέλειαι μὲν
εἰσι παραγραφαὶ <αἱ> ἐπὶ
κεκριμένοις ἤδη τοῖς ἐγκλήμασι
γιγνόμεναι καὶ πάντῃ τὴν
εὐθυδικίαν ἐκβάλλουσιν, ὥς ἡ περὶ
τοῦ ἀνδροφόνου τοῦ δεύτερον
κρινομένου καὶ τῆς ἱερείας. ἐν
τούτοις γὰρ οὐδ' ὅτιον πρὸς τὸ
ἐπιφερόμενον ἔγκλημα ὁ φεύγων
ἀπολογεῖται, περὶ δὲ τοῦ μὴ ἐξεῖναι
κρίσιν αὐτὸν ὑπέχειν δεύτερον περὶ
τῶν αὐτῶν τὴν πᾶσαν ποιεῖται
δικαιολογίαν. ἀτελεῖς δὲ εἰσιν ὅταν
τοῦ ῥητοῦ βοηθοῦντος τῷ φεύγοντι
<καθ'> ἓν τι τῶν περιστατικῶν
μορίων ἢ παραγραφῇ γίγνηται, ἢ
πρόσωπον ἡμῶν παραγραφομένων,
ὥς ἐπὶ Τιμάρχου, ἢ χρόνον, ὥς ἐπὶ
τοῦ πένητος τοῦ μετὰ τὰς τριάκοντα
ἡμέρας ἀντιλέγειν βουλομένου, ἢ
τόδε τὸ δικαστήριον, ἢ τι ἄλλο τῶν
περιστατικῶν. ἀτελεῖς δὲ αὐτάς
φαιμεν, τῷ μὴ τέλειον ἐκβάλλειν τὴν
εὐθυδικίαν ὥσπερ αἱ τέλειαι, ἀλλ'
ἀγωνιζομένης τῆς ἐπὶ τῷ ἀγῶνι
κρίσεως δι' ἓν τι τῶν εἰρημένων
παραγράφεσθαι. ὁ γὰρ Αἰσχίνης ὁ
διὰ τὴν τοῦ προσώπου ποιότητα τὸν
τῆς παραπρεσβείας ἀγῶνα
παραγραψάμενος, ἀγωνισάμενος
πρὸς Τίμαρχον καὶ νικήσας οὐδὲν
ἦττον ὑπὸ Δημοσθένους ἐγράφη
παραπρεσβείας καὶ τὴν ἐπὶ ταύτῃ
δίκην εἰσήλθεν. εἰκότως οὖν
ἀτελεῖς αἱ τοιαῦται καλοῦνται
παραγραφαί, ὥς πάντῃ τὴν
εὐθυδικίαν ἐκβάλλειν οὐ δυνάμεναι,

συνεπιπλέκεται στάσει ἢ
παραγραφῇ, ταύτης καὶ τὰ
κεφάλαια λήψεται.

[772.6] ἵνα δέ τι σαφέστερον περὶ
τελείας καὶ ἀτελοῦς διεξέλθωμεν
παραγραφῆς, ἰστέον ὅτι τέλειαι μὲν
εἰσι παραγραφαὶ αἱ ἐπὶ
κεκριμένοις ἤδη τοῖς ἐγκλήμασι
γιγνόμεναι καὶ πάντῃ τὴν
εὐθυδικίαν ἐκβάλλουσιν, ὥς ἡ περὶ
τοῦ ἀνδροφόνου τοῦ δεύτερον
κρινομένου καὶ τῆς ἱερείας. ἐν
τούτοις γὰρ οὐδ' ὅτιον πρὸς τὸ
ἐπιφερόμενον ἔγκλημα ὁ φεύγων
ἀπολογεῖται, περὶ δὲ τοῦ μὴ ἐξεῖναι
κρίσιν αὐτὸν ὑπέχειν δεύτερον περὶ
τῶν αὐτῶν τὴν πᾶσαν ποιεῖται
δικαιολογίαν. ἀτελεῖς δὲ εἰσιν ὅταν
τοῦ ῥητοῦ βοηθοῦντος τοῖς φεύγουσι,
καθ' ἓν τι τῶν περιστατικῶν μορίων
ἢ παραγραφῇ γίγνηται, ἢ τὸ
πρόσωπον ἡμῶν παραγραφομένων,
ὥς ἐπὶ Τιμάρχου, ἢ χρόνον, ὥς ἐπὶ
τοῦ πένητος τοῦ μετὰ τὰς τριάκοντα
ἡμέρας ἀντιλέγειν βουλομένου, ἢ
τόδε τὸ δικαστήριον, ἢ τι ἄλλο τῶν
περιστατικῶν. ἀτελεῖς δὲ αὐτάς
φαιμεν, τῷ μὴ τέλειον ἐκβάλλειν τὴν
εὐθυδικίαν ὥσπερ αἱ τέλειαι, ἀλλ'
ἀγωνιζομένης τῆς ἐπὶ τῷ ἀγῶνι
κρίσεως δι' ἓν τι τῶν εἰρημένων
παραγράφεσθαι. ὁ γὰρ Αἰσχίνης
διὰ τὴν τοῦ προσώπου ποιότητα τὸν
τῆς παραπρεσβείας ἀγῶνα
παραγραψάμενος, ἀγωνισάμενος
πρὸς Τίμαρχον καὶ νικήσας οὐδὲν
ἦττον ὑπὸ Δημοσθένους ἐγράφη
παραπρεσβείας καὶ τὴν ἐπὶ ταύτῃ
δίκην εἰσήλθεν. εἰκότως οὖν
ἀτελεῖς καλοῦνται,
ὥς πάντῃ τὴν
εὐθυδικίαν ἐκβάλλειν οὐ δυνάμεναι,

ἀλλὰ κἂν ὁ δεῖνα μὴ ἐπεξέλθῃ τῇ
 γραφῇ, ἢ χρόνος ἢ τόπος
 παραχρήμα τῷ φεύγοντι βοηθήσῃ,
 διαδέξεται⁸¹ πάντως αὐτὸν ὁ τῆς
 εὐθυδικίας ἄγων καὶ γραφὴν τις
 ἄλλος ἐπὶ τοῖς αὐτοῖς ἐγκλήμασιν
 ἀποθήσεται <κατ' αὐτοῦ, καὶ
 δικαστήριον ἕτερον εὑρεθήσεται>
 παρ' ᾧ κυρίως τὰς περὶ τῶν
 ἐγκαλουμένων κρίσεις ὑπομενεῖ, ὥς
 εἴ τις παρὰ τοῖς θεσμοθέταις
 Ἀθήνησιν ὑπὲρ ἱερῶν εὐθυνόμενος
 παραγράψοιτο τὴν δίκην λέγων
 παρὰ τῷ βασιλεῖ μᾶλλον δίκαιος
 εἶναι κρίνεσθαι περὶ τῶν τοιούτων.

ἀλλὰ κἂν ὁ δεῖνα μὴ ἐπεξέλθῃ τῇ
 γραφῇ, ἢ χρόνου ἢ τόπου
 παραχρήμα τῷ φεύγοντι βοηθοῦντος,
 διαδέξεται πάντως αὐτὸν ὁ τῆς
 εὐθυδικίας ἄγων, καὶ γραφὴν τε
 ἄλλος ἐπὶ τοῖς ἐγκλήμασιν
 ἀποθήσεται κατ' αὐτοῦ, καὶ
 δικαστήριον ἕτερον εὑρεθήσεται
 παρ' ᾧ κυρίως τὰς περὶ τῶν
 ἐγκαλουμένων κρίσεις ὑπομενεῖ, ὥς
 εἴ τις παρὰ τοῖς θεσμοθέταις
 Ἀθήνησιν ὑπὲρ ἱερῶν εὐθυνόμενος
 παραγράψοιτο τὴν δίκην λέγων
 παρὰ τῷ βασιλεῖ μᾶλλον δίκαιος
 εἶναι κρίνεσθαι περὶ τῶν τοιούτων.

[160.26] μὴ λανθανέτω δὲ ἡμᾶς ὥς ἔνιοί φασιν ἴδια κεφάλαια τὴν
 παραγραφὴν ἔχειν τό τε κατὰ ἐπαγγελίαν καὶ τὸ κατὰ ἔκβασιν καὶ τὸ ἐκ
 παραδειγμάτων. ταῦτα δὲ ὥς πολλάκις εἴρηται κοινὰ παντός ἐστι
 ζητήματος, ὥστε ἴδια μὲν οὐκ ἔχει, τοῖς δὲ τῆς συμπλεκόμενης στάσεως
 <ὡς> καὶ ἄνω ἔφαμεν διαιρεθήσεται κεφαλαίοις.

[161.7] ἔστι δὲ καὶ τότε τὸ ζήτημα παραγραφὴ κατὰ στοχασμόν· νόμος ἐπὶ
 ἀδίκῳ κρίσει ἐπικαλεῖσθαι τοὺς δημάρχους καὶ νόμος τὸν <μὴ>
 ὁμολογήσαντα κακοῦργον εἴσω τριάκοντα ἡμερῶν δεδέσθαι παρὰ τοῖς
 ἄρχουσιν, εἴτα ἀπάγεσθαι· ἦρα τις κόρης, προσήλθε τῷ πατρὶ αὐτῆς, ὁ δὲ
 οὐκ ἔδωκε, καὶ δεύτερον προσήλθεν, ὁ δὲ οὐδ' οὕτως δέδωκεν· εὕρηται ἡ
 παῖς πεφονευμένη, καὶ παρεστὼς ὁ παῖς ἐπερωτώμενος οὐκ ἔφησεν
 ἀνηρηκέναι τὴν παῖδα, ἐδέδετο κατὰ τὸν νόμον· ἱερόσυλοι μεταξὺ
 ἐάλωσαν, βασανιζόμενοι ἄλλα τε ἐξεῖπον καὶ ὅτι αὐτοὶ εἶψαν οἱ
 πεφονευκότες τὴν κόρην· παρελθούσης τῆς προθεσμίας ἀπάγειν οἱ ἄρχοντες
 τὸν παῖδα βούλονται, οἱ δὲ οἰκεῖοι αὐτοῦ ἐπικαλοῦνται τοὺς δημάρχους, οἱ
 δὲ παραγράφονται.

⁸¹ διαλέξεται cod.

Appendix 2: Sopater *Division of Questions*

The text is based on *RG* 8, revised in the light of the collation of C reported in Innes and Winterbottom (1988), and the conjectures which they propose *ad loc.* Unattributed conjectures are theirs.

245.22-247.7

διαίρεται ἡ μετάληψις παραγραφικῶ, ἀναγκαίῳ ὄντι καὶ ἀεὶ ἐμπίπτοντι, αὐτῇ τῇ μεταλήψει, ὀρικοῖς κεφαλαίοις, κατασκευάζουσι τὴν μετάληψιν ἢ ἀνασκευάζουσι, μιᾷ τῶν λογικῶν, μεταλήψει δευτέρῳ ἐὰν ἐμπίπτῃ, ἐπιλόγῳ. οἷον τὸ παραγραφικόν ἐστιν· οὐκ ὀφείλω κρίνεσθαι, μοιχὸν ἢ κατάδικον ἢ προδότην ἢ τινα τοιοῦτον ἀνελών. εἴτα ἡ μετάληψις· ἄλλ' οὐ σοὶ δέδοται, ἢ ἄλλ' οὐ νῦν σοὶ δέδοται ἀναιρεῖν, ἢ ἄλλ' οὐκ ἐνθάδε σοὶ δέδοται ἀναιρεῖν, ἢ τι τοιοῦτον, οἷος ἂν⁸² ὑπάρχη ὁ τρόπος τῆς μεταλήψεως, ἢ κατὰ χρόνον ἢ πρόσωπον ἢ τόπον ἢ ἀφορμὴν (οἷον οὐ διὰ χρήματα ἀναιρεῖν). εἴτα τὴν μετάληψιν κατασκευάσεις τοῖς ὀρικοῖς κεφαλαίοις· ὥσπερ γὰρ ἐν τῷ ὄρῳ τὴν πρότασιν τοῦ ὅρου τὰ ἐξῆς κεφάλαια κατασκευάζει καὶ ἀνασκευάζει <οἷαν> ἂν⁸³ ἔχη ἢ ὕλη τοῦ μελετωμένου πλάσματος, εἴτε χρεῖα τοῦ κατασκευάζειν εἴη εἴτε τοῦ ἀνατρέπειν τὰς προτάσεις τὰς ὀρικὰς, οὕτω καὶ ἐν τῇ μεταλήψει κατασκευάσεις τοῖς ὀρικοῖς κεφαλαίοις, ὄρῳ, συλλογισμῶ, πηλικότητι. οἷον τῆς μεταλήψεως οὔσης, οὐ σοὶ δέδοται ἀναιρεῖν, κατασκευάσεις αὐτὴν οὕτω τοῖς ὀρικοῖς· ὄρῳ, ἕτερόν ἐστι τὸ τὸν δῆμιον ἀνελεῖν ἢ σέ· καὶ συλλογισμῶ, ὅτι οὐκ ἔστιν ἴσον τὸ τὸν δῆμιον ἀνελεῖν καὶ σέ ἀνελεῖν· καὶ πηλικότητι, ὅτι δεινόν ἐστι τὸ ὑπὸ σοῦ ἀναιρεθῆναι ἐχθροῦ ὄντος, οὐδὲν δὲ τὸ ὑπὸ τοῦ δημίου. ὁ δὲ ἀντιλέγων ἦτοι ὁ φεύγων ἀνασκευάζων τὴν μετάληψιν ὁμοίως τοῖς ὀρικοῖς τόποις οὕτω χρήσεται· ὄρῳ, οὐδὲν διαφέρει τὸ ὑπ' ἐμοῦ ἢ τοῦ δημίου ἀναιρεθῆναι· εἴτα τῷ πηλίκῳ, ὅτι οὐδὲν ἐστι τοῦτον τὸν τρόπον ἢ ἐκεῖνον ἀναιρεθῆναι· εἴτα τῷ συλλογισμῶ, καὶ ἴσον ἐστὶ τὸ ὑπ' ἐμοῦ καὶ τοῦ δημίου ἀναιρεθῆναι. μετὰ τὴν κατασκευὴν τῆς μεταλήψεως ἔστι μία τῶν λογικῶν· πάντως γὰρ κατὰ μίαν τούτων ἐστὶν ἡ μετάληψις, ἣν ἐὰν εὖρης ῥᾶστα τὴν ἀντίθεσιν εὐρήσεις τὴν ἐμπίπτουσαν, οἷον ἢ ἀντεγκληματική ἐστίν, ὥς ἐπὶ τῶν ἀνελόντων μοιχόν, καὶ ἐρεῖς ὅτι ἄξιός ἦν τοῦ ἀναιρεθῆναι· ἢ κατὰ ὅρον ἐστίν, ὥς ἐπὶ τῆς ἱερείας τῆς μυσούμενον ἀνελούσης τύραννον· ἐρεῖ γὰρ ὅτι οὐδὲ τύραννος ἦν οὗτος ὁ μυσούμενος, καὶ ἐκτὸς ὧν δορυφόρων καὶ αὐτῆς <τῆς> ἀκροπόλεως καὶ σχήματος τυραννικοῦ· ἢ κατὰ στοχασμόν, ἢ τινα ἄλλην στάσιν. εἴτα μετὰ τὴν τοιαύτην ἀντίθεσιν πίπτει πάλιν μεταληπτική, οὐκ ἀναγκαίως δέ, οἷον ἔδει σε ἀνακοινώσασθαι τῷ δήμῳ, ἔδει κατηγορεῖν, ἔδει ἀναμεῖναι, ἢ τι τοιοῦτον, πρὸς τὴν ἐμπίπτουσαν ὕλην (ὑποδείγματος γὰρ εἵνεκα καὶ χαρακτήρος ταῦτα προεῖρηται). μετὰ ταῦτα ἐπίλογος. ἴδωμεν οὖν ἐπὶ προβλήματος τὴν διαίρεσιν.

⁸² ἐὰν codd.

⁸³ ἐὰν codd.

267.30-269.2

ἡ παραγραφικὴ ἐν μὲν ἔχει τὸ κύριον ὄνομα, συνέζευκται δὲ καὶ κατὰ τὴν εὐθυδικίαν πάντως ἄλλη τινί, ἢ μιᾷ τῶν λογικῶν ἢ μιᾷ τῶν νομικῶν. γνώριμος δὲ ἐστὶν οὐκ ἐκ τοῦ προσκεῖσθαι <τὸ> παραγράφεται (μὴ γὰρ τοῦτο μόνον ἴδιον αὐτῆς εἶναι νομίσῃ τις), ἀλλ' ἐκ τοῦ δις περὶ τῶν αὐτῶν μὴ εἶναι κρίσιν, ἥτοι δις περὶ τοῦ αὐτοῦ μὴ κρίνεσθαι, ἢ μὴ δις διδόναι τιμωρίαν, ἢ <μὴ> δις περὶ τοῦ <αὐτοῦ> τι ποιεῖν ἀναγκάζεσθαι, ἢ τι τοιοῦτον. τοῦτο γὰρ μόνον παρατηρεῖν ἄξιον, εἰ ἐπὶ τῷ αὐτῷ πράγματι ποιῆσαι τι δεύτερον ὁ φεύγων ἢ δις παθεῖν ἀναγκάζεται. ὥς ἂν μὴ τοῦτο μὲν ἢ προηγουμένως, ὑπάρχη δὲ προσκείμενον μόνον τὸ παραγράφεται, οὐχ ἔξει τὸν οἰκεῖον χαρακτήρα ἢ παραγραφή, οἷον ὡς ἐπ' ἐκείνου τοῦ πλάσματος· τῷ ἀτίμῳ μὴ μετεῖναι δίκης καὶ εἰς τὰς τῶν ὀρφανῶν δίκας οἱ ἐπίτροποι εἰσίστησαν· ἐπιτροπεύων τις ὀρφανοῦ ἡτιμώθη, ἐγράψατό τις ὡς ὑβριστὴν τὸν ὀρφανόν· ὁ ἐπίτροπος ἀξιοῖ λέγειν ὑπὲρ αὐτοῦ τὴν δίκην, ὁ δὲ παραγράφεται. τοῦτο γὰρ τὸ ζήτημα ἔστιν μὲν ἀντινομία· τὸ γὰρ παραγράφεται κεῖται ἐνταῦθα ἀντὶ τοῦ ἀντιλέγει ἢ κωλύει, αὐτὸς δὲ οὗτος ὁ δοκῶν παραγράφεσθαι οὔτε ὡς γενομένης ἤδη κρίσεως περὶ τῆς ὑβρεως παραγράφεται, οὔτε τιμωρία τις ἐπὶ τούτῳ δευτέρα παρηκολούθησεν, οὔτε εἰ ὁ ἐπίτροπος παρεγράφετο, ἐπὶ τῇ ὑβρεὶ ταύτῃ τῇ νῦν κρινουμένη ἄτιμος ἂν ἦν γενόμενος, ὥστε δύνασθαι παραγράφεσθαι· οὔτε ὅλως ἐπὶ τῇ νῦν παρούσῃ γραφῇ φαίνεται τις γενομένη πρώτη ἢ τιμωρία ἢ κρίσις ἢ τι τοιοῦτον. ὥστε ἐκ τούτου δῆλον ὅτι τινὲς ἡμαρτον τῶν τεχνογράφων, εἰπόντες ὅτι γνωρίζεται ἡ παραγραφή ἐκ τοῦ προσκεῖσθαι ὅτι παραγράφεται· διὸ προσήκει⁸⁴ μὴ τούτῳ προσέχειν, ἀλλὰ τῷ τῆς παραγραφῆς ἰδίῳ, τῷ εἰ δὲ τίς τι περὶ τοῦ αὐτοῦ γίνεσθαι συμβέβηκεν.

⁸⁴ προσήκε codd.

Appendix 3: Sopater (RG 5)

The text is based on Walz. Unattributed conjectures are my own.

RG 5.109.27-112.19

τὴν δὲ μετάληψιν οὐκέτι ὁμοίως, ἀλλ' ὅταν ζήτησις ᾗ περὶ τοῦ εἰ δεῖ τὸν ἀγῶνα εἰσελθεῖν.

[109.29] ἐνταῦθα μέγιστόν ἐστι τοῦ τεχνικοῦ πταῖσμα. οὐδὲ γὰρ πᾶσα μετάληψις περὶ τοῦτ' ἐστίν, ἀλλ' ἡ ἔγγραφος. τῆς γὰρ μεταλήψεως (ὡς καὶ αὐτὸς ἐπάγει) εἶδη δύο, ἡ μὲν ἔγγραφος, ἡ δὲ ἄγραφος, ἡ πᾶσα εὐθυδικία ἐστὶ καὶ οὐ περὶ εἰσαγωγῆς ἔχει τὴν ζήτησιν ἀλλὰ περὶ τῆς τοῦ πράγματος περιστάσεως. ἐὰν γὰρ εἴπω, ἐξέστω τὸν μοιχὸν καὶ τὴν μοιχευομένην ἀποκτείνει, Ὁρέστης ἀπέκτεινε μοιχευομένην, καὶ κρίνεται, οὐ περὶ εἰσόδου ἐστὶν ἡ ζήτησις ἀλλὰ περὶ αὐτῆς τῆς εὐθυδικίας μεταλαμβάνεται ἐκ τοῦ προσώπου, ὅτι σε παῖδα ὄντα οὐκ ἐχρῆν φονεῦσαι. ἐχρῆν οὖν μὴ οὕτως ὀρίσαι, ἀλλ' εἰπεῖν 'τὴν μετάληψιν οὐκέτι ὁμοίως ἐπιγνωσόμεθα, ἔστι γὰρ αὐτῆς ἡ ζήτησις περὶ τοῦ τὸν ἀγῶνα εἰσελθεῖν ἢ περὶ τινος τῶν περιστατικῶν', ἵνα καὶ τὴν ἄγραφον περιέλαβε τὴν ἔχουσαν περὶ εὐθυδικίας τὴν ζήτησιν, μεταλαμβανομένην δὲ ἀπὸ τινος τῶν περιστατικῶν, καὶ τὴν ἔγγραφον τὴν τελείαν οὖσαν ἀπαγωγὴν τῆς εὐθυδικίας.

[110.15] ὅτι δὲ διαφέρει παραγραφὴ παραγραφικοῦ ἐν τῷ περὶ διαιρέσεως τοῦ στοχασμοῦ ἀναγκαῖον εἰπεῖν. εἰ γὰρ κἀκεῖνο δοκεῖ ἀπαγωγῆς εἶναι τῆς εὐθυδικίας, ἀλλὰ τὴν ἀκριβῆ αὐτοῦ διαφορὰν ἐκεῖσε ἐροῦμεν.

[110.19] εἰδέναι δὲ χρὴ ὡς πᾶσα ἡ παραγραφὴ (ἥτις ἐστὶ καὶ ἔγγραφος μετάληψις· μεταλαμβάνεται γάρ)⁸⁵ εἶδη ἔχει δύο, ὥσπερ καὶ ἡ πραγματική, ἡ μὲν ἔγγραφος, ἡ δὲ ἄγραφος. καὶ ἡ μὲν ἄγραφος ὁμωνύμως τῷ γένει μετάληψις καλεῖται, ἡ δὲ ἔγγραφος παραγραφὴ καλεῖται (παρ' ἐνίων δὲ ἔγγραφος μετάληψις).

[110.24] ἡ μὲν ἔγγραφος αὕτη μετάληψις κατὰ δύο στάσεις μελετᾶται, μίαν μὲν τὴν προτέραν τὴν νομικὴν, ἥτις ἂν ἐμπέσοι, ἑτέραν δὲ τὴν εὐθυδικίαν, ἥτις ἐκ τῆς φύσεως τοῦ πράγματος ἀναφύεται. οἷον δ' ἐπὶ τῆς παραγραφῆς τῆς ὑπὲρ Φορμίωνος στοχαστικῆ ἀνεφύη ἡ δευτέρα, ἡ τῆς⁸⁶ εὐθυδικίας ζήτησις, πότερον χρεωστέῃ τὴν ἐνθήκην τῆς τραπέζης Φορμίων ἢ οὐ· ἐπὶ δὲ τῆς⁸⁷ πρὸς Πανταίνετον μεταστατικῇ⁸⁸, ἐπὶ Εὐεργον τοῦ Μνησιβούλου⁸⁹

⁸⁵ Although this reading is supported by RG 4.284.11-14, it makes no sense to say that παραγραφὴ, equated with ἔγγραφος μετάληψις, has two classes, ἔγγραφος and ἄγραφος. One might have expected simply πᾶσα μετάληψις εἶδη ἔχει δύο ... (and μεταλαμβάνεται γάρ would make sense at the end of this paragraph); but πᾶσα παραγραφὴ εἶδη ἔχει δύο ... is conceivable in view of Hermogenes 42.11, and would make the corruption easier to account for. I do not think the text can be reconstructed with any confidence.

⁸⁶ ἥτις cod.

⁸⁷ τῇ cod.

⁸⁸ μεταστατικῇ cod.

⁸⁹ ἐπὶ εὐεργέτου μὲν ἢ Εὐβοῦλου cod. 'Mnesibulus' is a misrecollection of Nicobulus (perhaps under the influence of references to Mnesicles in the speech). For this passage cf. 191.12-18, and RG 4.283.2-8.

μετάγοντος <τὴν αἰτίαν> τῆς τε εἰς τὸ διπλοῦν ἐγγραφῆς καὶ τῆς τοῦ μετάλλου ἐπηρείας⁹⁰.

[111.3] ὁμολόγηται οὖν αὐτὸ τοῦτο, ὅτι ἡ μὲν πρώτη ζήτησις ἡ περὶ τῆς παραγραφῆς κατὰ μίαν τῶν νομικῶν ἔχει τὴν ζήτησιν, ἡ δὲ ἑτέρα εὐθυδικία οὐ κεχωρισμένην⁹¹ τινὰ ἀλλ' ἀπὸ τῆς φύσεως τοῦ πράγματος.

[111.6] τὸ μὲν παράδειγμα ὃ τέθεικεν⁹² αὐτὸς ὀνομάζει εἶναι ῥητὸν καὶ διάνοιαν τὸ τοῦ ἀνδροφόνου κακῶς νομισθέν. ἀλλ' ἐπειδὴ τὴν καθ' ὁμωνυμίαν ἀμφιβολίαν ἠγνόησεν, εἰκότως καὶ ἐνταῦθα πεπλάνηται. ἐστὶ γὰρ ἡ πρώτη ζήτησις κατὰ ἀμφιβολίαν, πότερον δίκας λέγει τὰς τιμωρίας ἢ αὐτὸ τὸ δικάσασθαι. οὐδὲ γὰρ ἡ τοῦ ῥητοῦ διάνοια ζητεῖται, ἀλλ' αὐτὸ τὸ ὄνομα τί σημαίνει.

ἡ δὲ ἄγραφος ἐστὶ μὲν ἀπαγωγή τῆς εὐθυδικίας.

[111.15] ἔμεινεν ἐπὶ τοῦ παΐσματος ὁμοίως. παντελῶς γὰρ οὐκ ἔστιν ἀπαγωγή τῆς εὐθυδικίας ἡ ἄγραφος, ἀλλ' εὐθυδικία ταύτη εἰσαγώγιμος. εἰ μὲν γὰρ ἐρεῖ ὅτι διαβολὴ γίνεται ἀπ' ἀρχῆς τῆς εὐθυδικίας, ἐν ἀρχῇ τοῦ φεύγοντος ἐπὶ τὴν ἐξουσίαν καταφεύγοντος, καὶ ἐν ἀντιλήψει τοῦτο συμβαίνει καὶ ἐν στοχασμῷ· καὶ καθόλου ἐν οἷς τί ἐστὶν ἐπταισμένον τῶν περιστατικῶν διαβολὴ ἐστὶ τοῦ ἀγῶνος, οὐ μὴν διὰ τοῦτο ἀπαγωγή τῆς εὐθυδικίας τελεία, ὥσπερ καὶ ἐν τῇ διαιρέσει τῆς ἀντιλήψεως αὐτὸ πρῶτον κεφάλαιον ἔθηκεν τὰ μόρια τοῦ δικαίου καὶ τὸ πρόσωπον δεύτερον, ἀμφοτέρω παραγραφικοῦ τάξιν ἔχοντα, οὐκ ἐπειδὴ διαβάλλουσι τῇ τοῦ παραγραφικοῦ τάξει ἀμφοτέρω τὰ κεφάλαια, ἐν τῇ ἀντιλήψει ἤδη καὶ ἀπαγωγή⁹³ ἐστὶ τῆς εὐθυδικίας. καὶ τὸ παραγραφικὸν δὲ τοῦ στοχασμοῦ ὅταν ἐμπέσῃ διαβολὴν ποιεῖ τοῦ ἀγῶνος, ἀλλ' οὐκ ἤδη ἀπαγωγή τῆς εὐθυδικίας ὁ στοχασμός. μέγιστον οὖν αὐτῷ παΐσμα τὸ νομίσαι τὴν ἔγγραφον καὶ τὴν ἄγραφον τὴν αὐτὴν ἔχειν⁹⁴ φύσιν.

ἀλλὰ περὶ τι τῶν περὶ τὸ πᾶγμα τῶν περιστατικῶν λέγει, ὃ καὶ ἐπάγει ὅταν τὸ μὲν πᾶγμα συγχωρῶμεν, ἐν δὲ τούτων αἰτιώμεθα μεταλαμβάνοντες.

[112.5] εἰ συγχωροῦμεν τὸ πᾶγμα, πῶς ἀπαγωγή ἐστὶ τῆς εὐθυδικίας; ἐν γὰρ τῇ ἀπαγωγῇ τῆς εὐθυδικίας ὅλως οὐ συγχωροῦμεν τὸ πᾶγμα, ὡς μαρτυρεῖ ἡ πεῖρα τῶν παραγραφῶν τῶν παρὰ τοῖς ῥήτορσι μεμελετημένων. οὔτε γὰρ ὁ Αἰσχίνης συνεχώρησε τῷ Τιμάρχῳ τὸ πᾶγμα, ἀλλ' ὀρθὸν ἐξέβαλε τὸ πρόσωπον, ὡς αἱ παρὰ Δημοσθένει παραγραφαὶ οὐ συγχωροῦσι τὸ πᾶγμα, ἀλλὰ τὴν ζήτησιν ἔχουσι περὶ τοῦ εἰ δεῖ εἰσελθεῖν. διὸ καὶ ἀντιστρέφουσι τὸν ἀγῶνα. τὸν γὰρ φεύγοντα πρῶτον ποιοῦσι λέγειν κατηγοροῦ τάξιν ἔχοντα, ὡς καὶ ὁ Δημοσθένης ἐν τῷ κατὰ Στεφάνου· [οὐ]⁹⁵ προλαβὼν δὲ τὸ πρότερος λέγειν διὰ τὸ παραγραφὴν ἀγωνίζεσθαι. ἤγουν συγχωροῦμεν τὸ πᾶγμα, οὔτε ἀντιστρέφομεν τὸν ἀγῶνα οὔτε ἀπαγωγή ἐστὶ τῆς εὐθυδικίας τελεία.

⁹⁰ ἐμπειρίας cod.

⁹¹ χωρισμένην cod.: corr. Walz.

⁹² ὅτε ἔθηκεν cod. (ὅτε ἔθηκεν Walz).

⁹³ ἀγωγή cod.

⁹⁴ ἔχει cod.: corr. Walz.

⁹⁵ del. Walz: cf. Dem. 45.6.

RG 5.190.1-192.19

[190.2] καὶ περὶ στάσεως τῆς μεταλήψεως διάφορος παρὰ τῶν παλαιῶν ἔκδοσις δέδοται. οἱ μὲν γὰρ αὐτὴν τελευταίαν πασῶν τάττουσιν, ὡς πάσης περιέχουσιν καὶ ὡς ἐπιπτουσῶν⁹⁶ τῶν ἄλλων ἐν αὐτῇ στάσεων· οὐδέποτε γὰρ παραγραφή μόνη μελετᾶται, ἀλλὰ τὸ μὲν νομικὸν ζήτημα κατὰ μίαν τῶν νομικῶν στάσεων, τὸ δὲ δεύτερον, καθ' ἣν ἂν ἐμπέσῃ τῶν λογικῶν, ὡς ἐφεξῆς ἐροῦμεν. οἱ δὲ πρώτην αὐτὴν τάττουσιν διὰ τὴν αὐτῆς⁹⁷ φύσιν· εἰ γὰρ τὸ περὶ τοῦ <εἰ> ὅλως δεῖ εἰσελθεῖν τὸν ἀγῶνα ζήτημα πρῶτόν ἐστιν, ἀναγκαίως πρώτη ὀφείλει τάττεσθαι ἢ αὐτὸ⁹⁸ τοῦτο ζητοῦσα. ἢ δὲ αἰτία δι' ἣν ὁ Ἑρμογένης μέσσην αὐτὴν ἔταξεν ἢ αὐτὴ ἐστὶ τῇ πραγματικῇ· διὸ καὶ ἀκόλουθοι ἀλλήλων ἐτάγησαν. αἱ γὰρ δύο μόναι στάσεις αὗται καὶ νομικαὶ καὶ λογικαὶ εἰσιν· ἀμφοτέρων συμμετέχουσαι, μέσαι ἐτάγησαν. καὶ ἡ μὲν αἰτία τῆς τάξεως αὕτη.

ἡ δὲ μετάληψις πάλιν, ἡ μὲν ἔγγραφος, ἡ δὲ ἄγραφος.

[190.15] ἐζήτῃται καὶ ἱκανὸν ζήτημα τί δήποτε ἐν πάσῃ στάσει πρῶτον τὰ κεφάλαια τάξας καὶ διελὼν καὶ διδάξας⁹⁹ οὕτω τὰ εἶδη μεμήνυκεν, ἐν μόνῃ δὲ τῇ μεταλήψει τὰ εἶδη πρῶτον εἴρηκεν καὶ οὕτως τὰ κεφάλαια. ἐροῦμεν ὅτι ἐν πάσῃ στάσει τὰ εἶδη τῶν στάσεων τὰ αὐτὰ ἔχει κεφάλαια, ἐν μόνῃ δὲ μεταλήψει διάφορα ἔχει τὰ κεφάλαια. ἢ τε γὰρ πραγματικὴ καὶ ἡ ἔγγραφος καὶ ἡ ἄγραφος τὰ αὐτὰ ἔχει καὶ αἱ λοιπαὶ στάσεις, μόνῃ δὲ ἡ μετάληψις ἕτερα· εἴη τε ὁμώνυμος μετάληψις καὶ ἡ παραγραφή· διὸ ἀναγκαῖον ἦν πρῶτον διελεῖν τὰ εἶδη, ἵνα τὰ ἐκάστης ἴδια κεφάλαια ἀποδῶ.

[190.30] καὶ τοῦτο δὲ ἐζήτῃται, τί δήποτε περὶ τῆς παραγραφῆς πρῶτον διαλαμβάνει, καὶ οὐ περὶ τῆς μεταλήψεως, ἡ δὲ τὸ ὄνομα ἔχει τοῦ γένους. λέγομεν ὅτι εἰρήκαμεν ὡς ἐν πάσαις ταῖς στάσεσιν αἱ ἄτεχνοι πίστεις τῶν ἐντέχνων ἰσχυρότεραί εἰσιν. ἐπειδὴ οὖν ἡ μὲν παραγραφή ἐξ ἐγγράφου¹⁰⁰ διίσχυρίζεται, ἡ δὲ μετάληψις ἐξ ἀγράφου, εἰκότως πρώτην ἔταξε καὶ τὸν περὶ αὐτῆς πρῶτον διαλαμβάνει λόγον.

[191.5] ἡ μὲν οὖν παραγραφή ἐκβολὴ ἐστὶ τελεία τῆς εὐθυδικίας καὶ τὸν ἀγῶνα ἀντιστρέφει. δύο δὲ ἔχει ζητήματα τὰ πάντως μελετώμενα, καὶ τὸ μὲν πρῶτον ζήτημα κατὰ μίαν τῶν νομικῶν πασῶν ἐξετασθήσεται, τὸ δὲ ἕτερον, ὅπερ καὶ ἐπαγόμενόν ἐστιν, ἡ εὐθυδικία, ὅπερ καθ' ἑτέραν τὴν ἐμπίπτουσιν στάσιν μελετηθήσεται (οὐδὲ γὰρ ἀποφύνασθαι κατὰ ποίαν δυνατόν), ὡς ἡ ὑπὲρ Φορμίωνος παραγραφή τὸ μὲν [οὖν]¹⁰¹ πρῶτον νομικὸν ἔχει ζήτημα, τὸ δεύτερον στοχαστικόν, πότερον εἶχεν ἐνθήκην τὰ εἴκοσι τάλαντα ὁ Πασίων ἢ οὐ, καὶ ἡ πρὸς Πανταίνετον παραγραφή τὸ μὲν πρῶτον ἔχει ζήτημα νομικόν, τὸ δὲ δεύτερον μεταστατικόν, τοῦ Μνησιβούλου ἐπὶ Εὐέργου¹⁰² ἀνάγοντος τὰ γεγενημένα. καὶ ὡς ἐπὶ τούτου· νόμος μὴ εἶναι κατὰ πατρὸς γραφὰς πλὴν παρανοίας· ἔθετο τὸν τοῦ

⁹⁶ ὑποπιπτουσῶν cod.: cf. RG 4.774.3.

⁹⁷ αὐτὴν cod.: cf. RG 4.774.12.

⁹⁸ αὐτὴ cod.: cf. RG 4.774.15.

⁹⁹ δεῖξας cod.: cf. RG 4.776.24.

¹⁰⁰ ἀγράφου cod.: corr. Carawan.

¹⁰¹ Cf. RG 4.781.21.

¹⁰² Εὐέργου cod.: cf. RG 4.781.26.

πένητος παῖδα ὁ πλούσιος, καὶ εὖρηται δολοφονηθεὶς ὁ πένης, κατηγορεῖ τοῦ πλουσίου ὁ παῖς φόνου, ὁ δὲ παραγράφεται κατὰ τὸν νόμον τὸν κελεύοντα μὴ εἶναι δίκας κατὰ πατρός. ἐνταῦθα τὸ μὲν <πρῶτον> ζήτημά ἐστι κατὰ ῥητὸν καὶ διάνοιαν, ποῖον παῖδα λέγει τὸν θετὸν ἢ τὸν φυσικόν, τὸ δὲ ἕτερον στοχαστικόν, πότερον ἐφόνευσεν ἢ οὐ.

[191.26] ἐν πάσῃ δὲ παραγραφῇ εἰδέναι χρή ὅτι τὸ μὲν πρῶτον περὶ αὐτοῦ ἐστι¹⁰³ τοῦ εἰσαχθῆναι <τὸν ἀγῶνα> τὸ ζήτημα, τὸ δὲ δεύτερον περὶ τῆς εὐθυδικίας τοῦ παρακειμένου πράγματος, πλὴν μόνης τῆς κατὰ Τιμάρχου παραγραφῆς. ἐκείνη γὰρ μόνη τὴν εὐθυδικίαν οὐκ ἔχει· καὶ ὁ τὸν λόγον ἐξηγούμενος τὴν αἰτίαν ἐρεῖ.

ἔστι δὲ ὅτε ὀριστικῶς τέμνεται τὸ πρότερον ζήτημα.

[192.2] τοῦτο ἡγνόησεν· οὐδέποτε γὰρ ὀριστικῶς τέμνεται, ἀλλὰ τὸν συλλογισμὸν ἐστὶ μία τῶν νομικῶν. ταῦτα τὸν ὅρον εἶναι ἐνόμισεν, ὡς ἐπὶ τούτου τοῦ ζητήματος· μεираκίον ὠραῖον ἦτησε τύραννος ἐξ ἀστυγείτονος πόλεως, οὐ δέδωκεν ἢ πόλις, ἐξῆλθεν αὐτὸ τὸ μεираκίον πρὸς τὸν τύραννον, ἀπιόντος αὐτοῦ τετελεύτηκεν, μετὰ ταῦτα πολιτεύεται· καὶ κατηγοροῦντά τις αὐτὸν παραγράφεται ὡς ἡταιρηκότα. ἐνταῦθα μὲν πρῶτον ζήτημα νομίζει ὀριστικὸν εἶναι διὰ τὸ πεπρᾶχθαι αὐτῷ τὸ ἐξελθεῖν μηδὲ ἔταιρῆσαι, καὶ κακῶς εἰδὼς ὅτι εἰ μὲν κατηγορία ἦν τοῦ μεираκίου ὅρος ἦν ἢ στάσις, ἐνταῦθα δὲ οὐκ ἀνέχεται φεύγων τι κατασκευάσαι τέλειον ἢ ἀτελές, ἀλλὰ συλλογισμῷ χρήται λέγων ταῦτόν εἶναι τὸ ἐξελθεῖν τῷ πεποιηκέναι. ἀδύνατον οὖν ὅρον γενέσθαι τὸ πρῶτον ζήτημα· εἰ γὰρ ἐστὶν ὅλως ἢ παραγραφῇ ἢ ἔγγραφος ἀπὸ ῥητοῦ ἔχουσα τὴν ζήτησιν, ὁ ὅρος δὲ οὐκ ἔγγραφος, στάσις οὐκ ἂν εἴη ποτὲ παραγραφῇ ἀπὸ ὅρου. καὶ περὶ μὲν παραγραφῆς ταῦτα.

¹⁰³ ἐπὶ cod.: cf. *RG* 4.781.27f.

Appendix 4: the ‘three-man commentary’

The text is based on *RG* 4, tacitly revised in the light of Kowalski’s collations of *Py* (1940-6, 1947). Unattributed conjectures are my own. The sources of deutero-Sopater in Sopater (*RG* 5, without the corrections proposed in Appendix 3) and John of Caesarea (*RG* 7) are presented in the right-hand column.

RG 4.275.23-293.6

τὴν δὲ μετάληψιν οὐκ ἔθ’ ὁμοίως, ἀλλ’ ὅταν ἡ ζήτησις ἢ περὶ τοῦ εἰ δεῖ τὸν ἀγῶνα εἰσελθεῖν· ἐν γὰρ τῇ μεταλήψει οὔτε εἰ ἔσται τι προηγουμένως ζητήσεις, καθάπερ ἐν στοχασμῷ, οὔτε τί ἐστι καθάπερ ἐν ὄρῳ· οὔτε ὁποῖόν τί ἐστιν, ὥς ἐν ταῖς λοιπαῖς, ἀλλ’ αὐτὸ τοῦτο εἰ δεῖ ζητῆσαί τι τούτων, παραγραφή γάρ ἐστι, δύο δὲ αὐτῆς εἶδη. ἡ μὲν γάρ ἐστιν ἔγγραφος, ἀπὸ ρητοῦ τινος λαμβάνουσα τὴν ζήτησιν, ἡ δὲ ἄγραφος.

Συριανοῦ καὶ Σωπάτρου

[275.30] τὴν μετάληψιν τελευταίαν ἔταξεν Ἑρμογένης καὶ δι’ ἕτερα μὲν, μάλιστα δὲ διὰ ταῦτα. αἱ μὲν γὰρ ἄλλαι στάσεις περὶ τὸ πρᾶγμα καταγινόμεναι ἤτοι ἄρνησιν ἔχουσι τοῦ κρινομένου πράγματος, ἢ τὸ μὲν ὁμολογοῦσι τὸ δ’ οὐ, ἢ τι τῶν τοιούτων. ἡ μετάληψις δὲ οὐδὲ ἀπολογίας ἀξιοῖ τὸν κατήγορον, ἀλλ’ ὅμως ἐκβολὴν ποιεῖται τοῦ πράγματος.

[276.4] αὕτη δ’ ἡ στάσις λαμβάνει τὴν σύστασιν ἀπὸ τῶν ἀνωτάτω δύο στάσεων. εἰρήκαμεν γὰρ ὅτι τὸ φανερόν καὶ τέλειον πρᾶγμα διαιρεῖται εἰς τε τὰς λογικὰς καὶ τὰς νομικὰς. ἔχει οὖν ἡ μετάληψις τὴν σύστασιν ἀπ’ ἀμφοτέρων τούτων, ἀπὸ τε τῶν λογικῶν καὶ τῶν νομικῶν· διὸ καὶ αὐτὴν τὴν ποιότητα διάφορον ἔσχευ. ἡ μὲν γὰρ ἔγγραφος ἐστίν, ἥτις καὶ μετάληψις καὶ παραγραφή λέγεται, ἡ δ’ ἄγραφος, ἥτις καὶ κυρίως μετάληψις. ὥσπερ δὲ τὴν παραγραφὴν ὁμωνύμως μετάληψιν ἔφαμεν, οὕτω δύναται ἂν τις καὶ τὴν μετάληψιν καλέσαι παραγραφὴν. ἔχει δὲ αὕτη ὡς ἔφαμεν τὴν μὲν ἔγγραφον ἀπὸ τῶν νομικῶν, τὴν δὲ ἄγραφον ἀπὸ τῶν λογικῶν, ὥστε εἰκότως μετὰ τὰ ἀποτελοῦντα τὸ ἀποτελεσμα.

[276.17] τριῶν δὲ οὓσων τῶν ποιουσῶν τὴν στάσιν, ὑπάρξεως, ιδιότητος, ποιότητος, οὐδενὸς τούτων μετέχει ἡ μετάληψις, ἀλλὰ τὴν ζήτησιν ἔχει περὶ τοῦ εἰ δεῖ τὸν ἀγῶνα εἰσελθεῖν, ὥς καὶ αὐτὸς φησιν ὁ τεχνικός.

[276.21] μέμφονται δὲ αὐτόν τινες ὡς πᾶσαν τὴν μετάληψιν περὶ τοῦ εἰ δεῖ τὸν ἀγῶνα εἰσελθεῖν ἀποφηνάμενον εἶναι· μόνης γὰρ φασὶ τῆς ἔγγραφου εἶναι τοῦτο,

ἡ γὰρ ἄγραφος
οὐ περὶ εἰσαγωγῆς ἔχει τὴν
ζήτησιν, ἀλλὰ περὶ τῆς τοῦ
πράγματος περιστάσεως.
ἐὰν γὰρ ἢ νόμος τὸν μοιχὸν ἐξεῖναι
ἀποκτινύνει καὶ τὴν μοιχευομένην,
καταλάβοι δὲ τις τὴν μητέρα

[5.109.29] ἐνταῦθα μέγιστόν ἐστι τοῦ
τεχνικοῦ παῖσμα, οὐδὲ γὰρ πᾶσα
μετάληψις περὶ τοῦτ’ ἐστίν,
ἀλλ’
ἡ ἔγγραφος. τῆς γὰρ μεταλήψεως (ὡς
καὶ αὐτὸς ἐπάγει) εἶδη δύο, ἡ μὲν
ἔγγραφος,
ἡ δὲ ἄγραφος, ἡ πᾶσα εὐθυδικία ἐστὶ,
καὶ οὐ περὶ εἰσαγωγῆς ἔχει τὴν
ζήτησιν, ἀλλὰ περὶ τῆς τοῦ
πράγματος περιστάσεως.
ἐὰν γὰρ εἴπω, ἐξέστω τὸν μοιχὸν καὶ
τὴν μοιχευομένην ἀποκτείνει,
Ὅρεσθης ἀπέκτεινε

μοιχευομένην, καὶ ἀποκτεῖνοι, εἴτα
διὰ τοῦτο κρίνοιτο,
οὐ περὶ εἰσόδου ἐστὶν ἡ ζήτησις
ἐνταῦθα ἀλλὰ περὶ αὐτῆς τῆς
εὐθυδικίας. μεταλαμβάνεται γὰρ ἀπὸ
τοῦ προσώπου, ὅτι παῖδα ὄντα οὐκ
ἐχρῆν φονεῦσαι.
ἐχρῆν οὖν διὰ ταῦτα οὕτως ὀρίσασθαι
καὶ εἰπεῖν· τὴν δὲ μετάληψιν οὐκέτι
ὁμοίως ἐπιγνωσόμεθα, ἔστι γὰρ
ἡ ζήτησις ἢ περὶ τοῦ τὸν ἀγῶνα
εἰσελθεῖν ἢ περὶ τινων τῶν
περιστατικῶν. οὕτω γὰρ ἂν καὶ τὴν
ἄγραφον περιελάμβανε τὴν
περὶ τὴν εὐθυδικίαν τὴν ζήτησιν
ἔχουσαν, μεταλαμβανομένην δὲ ἀπὸ
τινος τῶν περιστατικῶν, καὶ τὴν
ἔγγραφον τελείαν οὔσαν
ἀπαγωγὴν τῆς εὐθυδικίας.

μοιχευομένην,
καὶ κρίνεται,
οὐ περὶ εἰσόδου ἐστὶν ἡ ζήτησις
ἀλλὰ περὶ αὐτῆς τῆς
εὐθυδικίας. μεταλαμβάνεται ἐκ
τοῦ προσώπου, ὅτι σε παῖδα ὄντα οὐκ
ἐχρῆν φονεῦσαι.
ἐχρῆν οὖν μὴ οὕτως ὀρίσαι,
ἀλλ' εἰπεῖν· τὴν μετάληψιν οὐκέτι
ὁμοίως ἐπιγνωσόμεθα, ἔστι γὰρ αὐτῆς
ἡ ζήτησις περὶ τοῦ τὸν ἀγῶνα
εἰσελθεῖν ἢ περὶ τινος τῶν
περιστατικῶν, ἵνα καὶ τὴν
ἄγραφον περιέλαβε τὴν ἔχουσαν
περὶ εὐθυδικίας τὴν ζήτησιν,
μεταλαμβανομένην δὲ ἀπὸ
τινος τῶν περιστατικῶν, καὶ τὴν
ἔγγραφον τὴν τελείαν οὔσαν
ἀπαγωγὴν τῆς εὐθυδικίας.

[277.8] πῶς δὲ αὕτη τῆς εὐθυδικίας ἐπάγει καὶ τί ἐστὶν εὐθυδικία λεκτέον.
εὐθυδικία τοίνυν ἐστὶ τὸ κατευθῦ τῆς δίκης ἰέναι, καὶ μὴ μόνον ἀπὸ τοῦ
νόμου προβάλλεσθαι ἄδειαν ἀλλὰ καὶ τὴν ἀπὸ τῶν πραγμάτων ἀπολογίαν
ποιεῖσθαι, ὥς ἔστι παρὰ πᾶσι τοῖς ἀρχαίοις εὐρεῖν ῥήτορσιν, οἷον ὥς ἐφ'
οὐ λέγει ὁ τεχνικὸς ὑποδείγματος· ἐλκόμενος εἰς ἀπολογίαν τοῦ μὴ
πεποικέναι τὸν φόνον προβαλεῖται μὲν τὸν νόμον τὸν μὴ ἐξεῖναι δις περὶ
τῶν αὐτῶν διαγορεύοντα ἀγωνίζεσθαι, προσθήσει δὲ καὶ τὴν εὐθυδικίαν
λέγων οὕτως, ὅτι εἰ καὶ μὴ νόμος ἐξαιρεῖται με τοῦ κινδύνου, οὐδ' οὕτως
ὑπεύθυνός εἰμι τιμωρία· οὐ γὰρ ἔδρασα φόνον, καὶ ταύτη καὶ τὴν πρὶν
ἀπέφυγον δίκην. ἀλλὰ περὶ μὲν τούτων ἐπὶ τοσοῦτον.

[277.20] ἰστέον δὲ ὥς τελευταίαν πασῶν ἔταξε τὴν μετάληψιν, καίτοι δοκῶν
τοῖς οἰκείοις μάχεσθαι κανόνσι. λέγει γὰρ ὅτι ὅπου δ' ἂν εὐρεθῇ τὸ
παραγραφικὸν πρῶτον ἐκεῖνο εἶναι δεῖ, πλὴν εἰ μὴ τι κωλύει (ἐνίοτε γὰρ
ἐξ ἀνάγκης καὶ ἡ τάξις αὐτοῦ διαλλάττεται)· οὐκοῦν χρή καὶ τὴν
παραγραφὴν πρῶτην γενέσθαι τῶν στάσεων. πρὸς οὓς φαμέν ὅτι καλῶς
ἄγαν ὁ τεχνογράφος ταύτην τὴν τάξιν ἐτήρησεν. οὐ γὰρ ἐνὴν μαθεῖν τὴν
μετάληψιν εἰ μὴ πρῶτον ἔγνωμεν δι' ὧν γίνεται μετάληψις. πῶς γὰρ
ἐδυνάμεθα γινῶναι ὅτι οὐ δύναται πρᾶγμα μελετηθῆναι καθ' οἷαν δὴ ποτε
στάσιν μὴ πρότερον τὰς στάσεις μεμαθηκότες; ἄλλως τε καὶ ὅτι οὐδέποτε
ἐκτὸς στάσεως μελετᾶται, ἀλλὰ ἀνάγκη τὴν παραγραφὴν τὴν εὐθυδικίαν
ἔχειν, παραγραφὴ δὲ ἡ μετάληψις, οἷον· ἐγράψατο Τίμαρχος Αἰσχίνην
παραπρεσβείας, καὶ παραγράφεται αὐτὸν κατὰ τὸν νόμον τὸν κελεύοντα
τὸν ἐταιροῦντα μὴ λέγειν. καὶ γὰρ ἐνταῦθα ἡ πρώτη ζήτησις ἐστὶν εἰ δεῖ
εἰσιέναι τὸν ἀγῶνα.

Μαρκελλίνου

[278.6] καλῶς ὁ τεχνικὸς τελευταίαν ἔθηκε τὴν μετάληψιν, ἐπειδὴ καὶ
ἐσχάτη τῶν ἄλλων τῇ δυνάμει τυγχάνει. οὐ γὰρ περὶ τοῦ πράγματος ἔχει
τὴν ζήτησιν, ἀλλὰ περὶ μόνην τὴν περίστασιν στρέφεται, ὡμολογημένου
τοῦ πράγματος.

[278.10] χαρακτηρίζει δὲ αὐτὴν δι' ὧν καὶ νομίζει ἐν ἧ φησιν οὐ ζητοῦμεν οὐδὲν τῶν προειρημένων. τριῶν γὰρ οὐσῶν, ὡς ἐμνήσαμεν, τῶν ἄνω ζητήσεων, εἰ ἔστι, τί ἔστιν, ὁποῖόν τί ἔστιν, ἐν τῇ μεταλήψει τούτων οὐδὲν ζητεῖται οὐδὲ ἐξετάζεται, ἀλλ' εἰ δεῖ τούτων τῶν ἐν τούτοις ζητουμένων ἢ τῇ κατ' οὐσίαν ἐξετάσει ἢ τῇ κατὰ ιδιότητα ἢ τῇ κατὰ ποιότητα εἰσενεχθῆναί τι.

[278.17] ὅθεν τινὲς λέγουσιν ὡς πρώτην αὐτὴν ἔδει ταχθῆναι, ἐπειδὴ παραγράφει τὸν ἀγῶνα, πεφύκασι δὲ πάντες οἱ ἄνθρωποι ἐν ταῖς προτεθείσαις δίκαις αὐτὸ τοῦτο σπουδάζειν, τὸ μὴδὲ εἰσελθεῖν ἀλλὰ παραγράφεσθαι τὸν ἀγῶνα. ἀλλὰ λέγομεν ὅτι τῶν λεγόντων πρώτην δεῖν τάττεσθαι τὴν μετάληψιν ὥσπερ ὑποτεμνόμενος τοὺς λόγους ὁ τεχνικός ὅρα πῶς ἀσφαλῶς ὥριστο, εἰ δεῖ τι τούτων εἰσενεχθῆναι φήσας. ἀδύνατον δὲ τούτων ἦν τι παραγράφεσθαι μήπω μαθόντας ὅλως, τί ταῦτά ἐστι, τῆς οὐσίας ἢ τῆς ιδιότητος ἢ τῆς ποιότητος, ὥστε δεῖ πρῶτον μαθεῖν ἂ παραγράφεται ἢ μετάληψις· πρὶν γὰρ εἰδέναι ἀγνοοῦμεν ὅ τι παραγραφώμεθα οὔτε εἰ ἔστι τι προηγούμενον.

[278.29] τινὲς ἐκ τούτου κινηθέντες φασὶν ὅτι εἰ καθόλου τρία ἐστὶ τὰ ζητούμενα, ὡς φθάσαντες εἰρήκαμεν, τούτων δὲ οὐδὲν ἐστὶν ἢ μετάληψις, οὐκ ἂν εἴη στάσις. ἀλλὰ φαμὲν ὡς καθόλου οὐκ ἀνεῖλεν αὐτὴν, ἀλλὰ προηγουμένως φησὶ περὶ τούτων οὐκ ἔχει τὴν ζήτησιν. ἔπειτα εἰ καὶ μὴ περὶ τούτων ἔχει τὴν ζήτησιν, λέγομεν δὲ τὴν περίστασιν αὐτῆς εἶναι ἰδίαν, οὐκ ἄρα ἔξω ζητήσεως ἐστὶν οὐδὲ ἀσύστατον, ἀλλὰ μέρος καὶ ἢ μετάληψις τῆς ποιότητος· ζητοῦμεν γὰρ καὶ ἐν αὐτῇ εἰ τοῦτο δίκαιον τὸ παραγράφεσθαι τὴν δίκην ἢ καὶ τὸ εἰσελθεῖν εἰς δίκην. μικρὸν δὲ ὅμως μέρος ποιότητός ἐστι, διὸ καὶ τρύγα αὐτὴν καλοῦσι ποιότητος.

[279.9] καλῶς δὲ προσέθηκε τὸ προηγούμενος. ἐν γὰρ τῇ ἐγγράφῳ μεταλήψει, ἣν καὶ καλοῦμεν παραγραφὴν, ἐμπίπτει πάντως καὶ δεύτερον ζήτημα παρὰ τὸ τῆς γραφῆς κατὰ μίαν τῶν ἄλλων στάσεων, οὐ μὴν προηγουμένως ἀλλ' ἐν δευτέρῳ λόγῳ. δύο γὰρ ὡς ἐπὶ τὸ πλεῖστον ἐν παραγραφῇ τὰ ζητούμενα, ὧν τὸ μὲν πρότερον ἔχει τὴν παραγραφὴν, ἀπαγωγὴν οὖσαν τῆς εὐθυδικίας, τὸ δὲ δεύτερον κατὰ μίαν τῶν προειρημένων στάσεων.

[279.19] ζητῆτόν δὲ πῶς μετάληψις καὶ ἡ ἔγγραφος, καὶ ποῖαν ἀναίρεσιν¹⁰⁴ ἔχουσα τῆς κατηγορίας. λέγομεν ὅτι ἐκ τῶν αὐτῶν περιστατικῶν ὁμοίως γίνονται ἡ ἔγγραφος καὶ ἡ ἄγραφος. διαφέρει δὲ, ὅτι ἡ μὲν παντελῶς ἐκβάλλει τὸν ἀγῶνα δι' ἐνὸς τῶν περιστατικῶν ἐν τῷ νόμῳ κειμένου, ἡ δὲ δεχομένη τὴν ἐξουσίαν τοῖς περιστατικοῖς πάλιν κέχρηται. ἀμφοτέρω δὲ τὰ εἶδη μεταλήψεις εἰσὶν, μεταλαμβάνει γὰρ ἐκάστη τὴν περίστασιν· καὶ γὰρ ὁ νόμος ἀπὸ περιστατικοῦ τινος. ἀλλὰ μὴν καὶ ἀμφοτέρω πάλιν παραγραφαί· παραγράφεται γὰρ ἡ μὲν φανερώς, ἡ δὲ τὴν ἐξουσίαν τῆς πράξεως καθάπερ τὴν κατηγορίαν ἐκβάλλουσα. ἀλλ' ἡ μὲν παραγραφή περὶ τὸ ῥητόν ἔχει τὴν ζήτησιν, ἡ δὲ οὐ· οὐ γὰρ ἰσχύει τῷ ῥητῷ. διὰ τοῦτο καὶ μετάληψις γίνεται, παραχωροῦσα μὲν τοῦ ῥητοῦ, ἰσχυριζομένη δὲ τῇ περιστάσει· ὅθεν καὶ τὴν προσηγορίαν ἰδίαν κέκτηται.

[279.33] ἰστέον δὲ, ὅτι ἡ μὲν ἔγγραφος τελείως ἐκβάλλει τὸν ἀγῶνα ἐν πρώτοις καὶ προηγούμενος, ἡ δὲ ἄγραφος ἢ ἀπὸ τοῦ κατηγοροῦ

¹⁰⁴ αἴρεσιν cod.: cf. 280.15.

γνωριζομένη δέχεται μὲν τὴν εὐθυδικίαν, ἐκβάλλει δὲ τοῖς περιστατικοῖς. φασὶ δὲ γίνεσθαι ποτε τὴν ἄγραφον καὶ ἀπὸ τοῦ φεύγοντος, ὡς ἐπὶ τὸ πλεῖστον δὲ ἀπὸ τοῦ κατηγοροῦ ἐστίν· καὶ αὐτὴ ἢ ἀπὸ τοῦ φεύγοντος δέχεται τὴν εὐθυδικίαν.

[280.6] *παραγραφή γάρ ἐστι.* παραδόξως ὁ τεχνικὸς τὴν μετάληψιν ὅλην παραγραφὴν ἐκάλεσε, καὶ τὸ ἴδιον τῆς ἐγγράφου κοινὸν ἀμφοτέρων πεποιήται τῶν εἰδῶν.

[280.9] ζητητέον δὲ διατί ἡ παραγραφή ὄνομα ἄλλο ἔσχε παρὰ τὸ γένος, ἄλλως καλουμένου τοῦ γένους. ἡ γὰρ πραγματικὴ οὐχ οὕτως· ὁμοίως γὰρ καὶ ἡ ἐγγράφος καὶ ἄγραφος πραγματικὴ. ἀλλὰ ῥητέον ὅτι ἀμφοτέραι μὲν ἀπὸ ῥητοῦ ὥρμηνται, καὶ ἡ ἄγραφος καὶ ἡ ἐγγράφος· ἀλλ' ἐπειδὴ ἡ μὲν ἰσχύει τῷ ῥητῷ πλεόν, καθάπαξ ἀναίρεσιν ἔχουσα τοῦ ἀγῶνος, ἡ δὲ οὐ δύναται τῷ ῥητῷ, διὰ τοῦτο καὶ ὄνομα ἴδιον εἴληφεν. γνωστέον οὖν ὡς καὶ ἀμφοτέραι παραγραφαί εἰσι καὶ ἀμφοτέραι πάλιν μεταλήψεις. ἐν μὲν τῇ ἐγγράφῳ μεταλαμβάνει ὁ φεύγων τὸν νόμον οὐ μόνον ὡς περιστατικόν ἀλλ' ὅτι καὶ αὐτὸς ὁ νόμος ἀπὸ παραστατικοῦ τὴν σύστασιν εἴληφεν· ἐν δὲ τῇ ἀγράφῳ δῆλον ὡς αὐτὴν τὴν περίστασιν ἔχει τὴν ἰσχύν, ὅθεν κυρίως καὶ τὸ ὄνομα τοῦ γένους αὕτη ἐκληρώσατο. ἀλλ' ὅμως ἐκεῖ μὲν ὁ φεύγων, ἐνταῦθα δὲ ὁ κατήγορος μεταλαμβάνων παραγράφεται. εἰκότως οὖν ἐκάτεραι τὴν προσηγορίαν ἐσχήκασιν, ἡ μὲν μετάληψις ὁμωνύμως τῷ γένει καλουμένη, ἡ¹⁰⁵ δὲ [ἄγραφος] ἀπὸ τοῦ πράγματος οὗ ποιεῖ ἰδίαν δεξαμένη προσηγορίαν παρὰ τὸ γένος· ὅλον γὰρ παραγράφεται τὸν ἀγῶνα, ἔχει δὲ καὶ τὸ τοῦ γένους ἀπὸ περιστατικοῦ τινος παραγραφομένη τὴν κρίσιν. ἔστι μὲν οὖν ἐκατέρων ἴδιον τὸ περιστατικόν.

[280.30] εἰ δὲ διαφέρειν δοκεῖ ἀλλήλων τὰ εἶδη, τουτέστι τὰ μέρη, οὐδὲν θαυμαστόν. τοῦτο γὰρ καὶ ἐν ταῖς ἄλλαις στάσεσιν εὐρίσκομεν, καὶ ὄνομα ἴδια δέχονται. διὸ καὶ στοχασμὸς προκατασκευαζόμενος καὶ ἀπὸ γνώμης, καὶ ἐν ὄρῳ δὲ ἀντονομάζων καὶ κατὰ σύλληψιν. ἴδιον δὲ ὡς εἰρήκαμεν παραγραφῆς τὸ κατασκευάζειν ὡς οὐ δεῖ ἐπὶ τούτοις καθίσαι δικαστήριον. εἰ δέ τις λέγοι ὅτι οὐ μεταλήψεως τοῦτο ἀλλὰ μόνης παραγραφῆς, λέγομεν ὅτι κοινόν, ἐπειδὴ καὶ αὕτη ἀπὸ ῥητοῦ τινος ἄρχεται, οὐ μὴν ἔτι τὸν αὐτὸν τρόπον.

καὶ ἡ μὲν ἐγγράφος ἐστὶν ἀπαγωγὴ τῆς εὐθυδικίας κατὰ παραγραφὴν ἀπὸ ῥητοῦ τινος, περὶ οὗ ἡ ζήτησις, οἷον δις περὶ τῶν αὐτῶν δίκας μὴ εἶναι· φόνου κρινόμενός τις ἀπέφυγεν· ὕστερον αὐτῷ χρωμένῳ ἀνείλεν ὁ θεός· ἀνδροφόνους οὐ χρώ· καὶ πάλιν φεύγει· κατὰ ῥητὸν καὶ διάνοιαν ἡ πρώτη ἐξέτασις· εἴθ' ἔπεται τὸ στοχαστικόν.

Συριανοῦ καὶ Σωπάτρου

[281.14] τεχνολογητέον πρῶτον τὴν παραγραφὴν κατὰ μέρος. γίνεται τοίνυν παραγραφή ὅταν εἰς ἀπολογίαν ἐλκόμενος νόμον προβάληται, καθ' ὃν φησι δεῖν μὴ ὑποκεῖσθαι κατηγορίᾳ, ὡς ἐφ' οὗ παρατίθεται ὑποδείγματος. καὶ οὕτω μὲν γίνεται πᾶσα παραγραφή. ἐπειδὴ δὲ πᾶς χρώμενος τούτῳ τῷ τρόπῳ τῆς ἀπολογίας ὑποπτος πρὸς τοὺς δικαστὰς γίνεται ὡς οὐ τοῖς δικαίοις θαρρῶν (εἰ γὰρ ἔρρωτο προσήκουσι λογισμοῖς, τί ἔδει τὸν κατήγορον ἢ τὴν κατηγορίαν ἐκβάλλειν;), διὰ τοῦτο ἡ τέχνη τοῦτο

¹⁰⁵ cod. εἰ.

παραμυθουμένη ἐφεῦρε τὴν εὐθυδικίαν. τίς δὲ αὕτη καὶ ὅπως χρηστέον αὐτῇ προεῖρηται.

[281.25] ἰστέον δὲ ὡς οὐκ ἀνάγκη πανταχοῦ ταῖς εὐθυδικίας χρησθαι, ἀλλὰ δίδωσι μὲν ἢ τέχνη, ὅπη μέντοι ἐμπίπτει καὶ ὁ καιρὸς ἐπιτρέπει χρηστέον, ὥσπερ ἐν τῷ κατὰ Τιμάρχου ὁ Αἰσχίνης ἐχρήσατο· παραλέλοιπε γὰρ τὴν εὐθυδικίαν. καὶ τὸ αἷτιον· ἐπειδὴ δύο πρὸς τὴν κατηγορίαν ἐνέστησαν Τίμαρχος καὶ Δημοσθένης, τῷ μὲν τὴν παραγραφὴν ἀντέθηκε, Δημοσθένης δὲ τὴν εὐθυδικίαν ἐφύλαξεν. εἰ γὰρ ἐν τῷ κατὰ Τιμάρχου ἐχρήσατο τῇ εὐθυδικίᾳ, προηγουμένως ταύτην ποιούμενος, ἤμβλυνε τὴν πρὸς Δημοσθένει ἀπολογίαν. ἐπειράθησαν δὲ τινες τὸν κατὰ Τιμάρχου μὴδ' ὅλως παραγραφὴν εἰπεῖν, ἀλλὰ στοχασμόν· οὗς ἐπειδὴν ἐλέγξωμεν ἀπὸ τῆς τῶν νόμων ἀναγνώσεως ὡς οὐκέτι στοχασμός, φασὶν ὅτι προκατασκευῆς ἔνεκεν τοὺς νόμους ἀναγινώσκει. ἀλλὰ καὶ τούτῳ ἀντιτίθεμεν, ὅτι οὐδεὶς κατηγορούμενος ἀντικατηγορεῖν δύναται μὴ πρότερον ἀπολογησάμενος· καὶ ὅτι μὲν ὁ Τίμαρχος κατηγόρησε παντὶ τῷ δήλῳ ἐκ τε τῶν ἱστορικῶν καὶ ἐξ ὧν ὁ Δημοσθένης φησὶν· *τὸν μὲν ἀνῆρθε τῶν ἐπὶ τὰς εὐθύναις ἐλθόντων*. εἰ τοίνυν κατηγόρησεν ὁ Τίμαρχος, οὐδαμοῦ δὲ πρὸς τὴν κατηγορίαν Αἰσχίνης ἀπήντησε, δηλὸν ὡς παραγραφὴ ἂν εἴη, παραγραφὴ μέντοι κατὰ στοχασμόν· στοχαστικῶς γὰρ ζητεῖται τὰ περὶ τῆς ἐταιρήσεως.

[282.17] ἰστέον δὲ καὶ τοῦτο, ὡς ἢ ἐγγραφὸς αὕτη μετάληψις, ἥτις καὶ παραγραφὴ κυρίως καλεῖται, παρώθησίς τις οὖσα τῆς γραφῆς.

κατὰ δύο στάσεις ἀεὶ μελετᾶται. καὶ γὰρ ἢ μὲν πρώτη ζήτησις, ἢ περὶ τῆς παραγραφῆς, κατὰ μίαν τῶν νομικῶν ἔχει τὴν ζήτησιν (ἀπὸ νόμου γὰρ ἀεὶ ἢ παραγραφῇ), ἢ δὲ ἑτέρα, ἢ τῆς εὐθυδικίας, ἐκ τῆς φύσεως τοῦ πράγματος ἀναφυομένη,

καθ' ἣν ἂν ἐμπέσῃ στάσιν μελετᾶται· κατὰ γὰρ πάσας τὰς στάσεις ἢ εὐθυδικία, στοχασμόν φημι καὶ ὅρον καὶ ἐξῆς. διὰ τοι τοῦτο χρὴ διαιροῦντα ζητεῖν μετὰ τὴν παραγραφὴν ὑπὸ τίνα τῶν στάσεων ἀνάγεται ἢ εὐθυδικία, καὶ κατὰ τὰ ταύτης κεφάλαια διαιεῖν τὸ ζήτημα, περὶ οὗ ἢ παραγραφῇ. ὡς γὰρ ἔφαμεν, κατὰ πάσας τὰς στάσεις ἢ εὐθυδικία εὐρίσκεται πλὴν τῆς μεταλήψεως τῆς ἐγγράφου τε καὶ ἀγράφου· πῶς γὰρ οἷον τε στάσιν εὐρεθῆναι ἐν τῇ αὐτῇ στάσει;

ὑποδείγματος δὲ χάριν, οἷον ἐπὶ τῆς παραγραφῆς τῆς ὑπὲρ Φορμίωνος στοχαστικῆ ἀνεφύῃ εὐθυδικία (ζητεῖ γὰρ πότερον χρεωστῇ τὴν ἐνθήκην τῆς τραπέζης Φορμίων ἢ οὐ), ἐπὶ δὲ τῆς πρὸς Πανταίνετον, μεταστατικῆ (περὶ Εὐεργον τὸν Μνησιβούλου μεταγενομένης τῆς αἰτίας, τῆς τε κατὰ διπλοῦν τῆς γραφῆς καὶ τῆς

[5.110.24]

ἢ μὲν ἐγγραφὸς αὕτη μετάληψις

κατὰ δύο στάσεις μελετᾶται,

μίαν μὲν τὴν προτέραν τὴν νομικὴν, ἥτις ἂν ἐμπέσοι,

ἑτέραν δὲ τὴν εὐθυδικίαν, ἥτις ἐκ τῆς φύσεως τοῦ πράγματος ἀναφύεται.

οἷον δ' ἐπὶ τῆς παραγραφῆς τῆς ὑπὲρ Φορμίωνος στοχαστικῆ ἀνεφύῃ ἢ δευτέρα, ἥτις εὐθυδικίας ζήτησις, πότερον χρεωστῇ τὴν ἐνθήκην τῆς τραπέζης Φορμίων ἢ οὐ. ἐπὶ δὲ τῇ πρὸς Πανταίνετον, μεταστατικῇ ἐπὶ εὐεργέτου μὲν ἢ Εὐβούλου μετάγοντος, τῆς τε εἰς τὸ διπλοῦν ἐγγραφῆς, καὶ τῆς

τοῦ Μετέλλου ἐπηρείας)·

τοῦ μετάλλου ἐμπειρίας.

[283.8] στοχαστική δὲ εὐθυδικία καὶ ὡς ἐν τῷ κατὰ Τιμάρχου· ζητεῖται γὰρ ἐκεῖ εἰ ἡταίρηκε Τιμαρχος. κατὰ δὲ ὅρον· ἐνώπιόν τις τῆς μητρὸς ἀπέκτεινε τοὺς υἱεῖς ἐκ καταδίκης νόμου, ἐξέθανεν ἢ μήτηρ καὶ κρίνεται ὁ ἀποκτείνας αἰτίας θανάτου· ζητεῖται γὰρ μετὰ τὴν παραγραφὴν εἰ τοῦτό ἐστιν αἰτία θανάτου. κατὰ δὲ πραγματικὴν, οἷον· πλούσιος καὶ πένης ἐχθροὶ τὰ πολιτικά, πρεσβεύοντος τοῦ πένητος ἔγραψεν ὁ πλούσιος τὸν εἶσω πέντε ταλάντων κεκτημένον οὐσίαν μὴ πολιτεύεσθαι, νόμου ὄντος μέχρι ἐνιαυτοῦ ἄκυρα εἶναι τὰ ψηφίσματα· ἐμβραδύναντος τοῦ πένητος τῇ πρεσβείᾳ κεκύρωται ὁ νόμος· μετὰ ταῦτα ἐπανελθὼν κρίνει τὸν πλούσιον παρανόμων καὶ παραγράφεται ὁ πλούσιος τὴν ὑπὸ τοῦ νόμου προβαλλόμενος προθεσμίαν καὶ ὡς ἐκπέπτωκε ταύτης. καὶ λοιπὸν ἡ εὐθυδικία κατὰ πραγματικὴν, οἷον εἰ δίκαιος, εἰ συμφέρων ὁ νόμος. εἰσὶ καὶ κατὰ τὰς λοιπὰς στάσεις εὐθυδικίαι.

[283.24] χρὴ δὲ γινώσκειν ὡς τῆς παραγραφῆς ἡ μὲν τελεία ἐστίν, ἡ δ' ἀτελής, τελεία μὲν ὅτε τοῦ πράγματός ἐστι παραγραφή, ὡς ἐπὶ τοῦ φεύγοντος φόνου καὶ λέγοντος ὅτι ἐκρίθη (ἐν τούτῳ γὰρ οὔτε τὸν κατηγοροῦντα οὔτ' ἄλλον τινὰ δέχεται· λέγει γὰρ ὅτι οὔτε σοὶ οὔτ' ἄλλῳ τινὶ δικάζομαι περὶ τούτου)· ἀτελής δὲ γίνεται ὅτε προσώπου μόνου γίνεται παραγραφή· λέγει γὰρ ὅτι σοὶ μὲν οὐ δικάζομαι, ἐτέρῳ δὲ τῷ βουλομένῳ, ὥσπερ Αἰσχίνης τὸν Τιμαρχὸν παραγραφάμενος πρὸς Δημοσθένην ἡγωνίσαστο περὶ τῶν κατηγορουμένων.

[284.2] δέον δὲ καὶ τοῦτο προσθεῖναι, ὡς ἐν ταῖς παραγραφαῖς ἐὰν μὲν ἔχωμεν ἰσχυροτέρας τὰς ἀποδείξεις τῆς εὐθυδικίας, ὀλίγα χρὴ εἰπόντας ἡμᾶς περὶ τῆς παραγραφῆς εὐθὺς χωρεῖν ἐπὶ τὸν λόγον τῆς εὐθυδικίας (ὅπερ καὶ Δημοσθένης ποιεῖ ἐν ταῖς παραγραφαῖς), ἵνα μὴ δοκῶμεν φεύγοντες τὴν εὐθυδικίαν τῇ παραγραφῇ κεχρησθαι. ἐὰν δὲ ἀσθενῶμεν κατὰ τὴν εὐθυδικίαν, μένειν δεῖ τῷ νόμῳ τῆς παραγραφῆς κατασκευάζοντας τὸ μὴ δεῖν εἰσαγώγιμον εἶναι τὴν δίκην καὶ τὴν εὐθυδικίαν.

[284.11] ἀλλὰ καὶ τοῦτο μὴ ἀγνοεῖν προσήκεν, ὡς πᾶσα παραγραφή, ἥτις ἐστὶ καὶ ἔγγραφος μετάληψις (μεταλαμβάνεται γάρ), εἶδη ἔχει δύο, ὥσπερ καὶ πραγματικῆς· ἡ μὲν ἔγγραφος, ἡ δὲ ἄγραφος. καὶ ἡ μὲν ἔγγραφος παραγραφή καλεῖται (παρ' ἐνίων δὲ ἔγγραφος μετάληψις), ἡ δὲ ἄγραφος ὁμωνύμως τῷ γένει μετάληψις.

[5.110.19] εἰδέναι δὲ χρὴ, ὡς πᾶσα παραγραφή, ἥτις ἐστὶ καὶ ἔγγραφος μετάληψις (μεταλαμβάνεται γάρ), εἶδη ἔχει δύο, ὥσπερ καὶ ἡ πραγματικὴ· ἡ μὲν ἔγγραφος, ἡ δὲ ἄγραφος. καὶ ἡ μὲν ἄγραφος ὁμωνύμως τῷ γένει μετάληψις καλεῖται, ἡ δὲ ἔγγραφος παραγραφή καλεῖται (παρ' ἐνίων δὲ ἔγγραφος μετάληψις).

[284.17] διὸ καὶ ζητεῖται πῶς ὥσπερ ἐνταῦθα τὴν μετάληψιν διεῖλεν εἰς ἔγγραφον καὶ ἄγραφον, καὶ ἐκατέραν ἐτεχνολόγησε διελὼν πρότερον· καὶ γὰρ καὶ αὕτη καὶ ἔγγραφός ἐστι καὶ ἄγραφος. φαμὲν οὖν ὡς ἐν τῇ πραγματικῇ οὐδὲ μία τῆς διαιρέσεως ἀνάγκη ἢ τῆς τεχνολογίας· ἀμφοτέρω γὰρ τὰ τῆς πραγματικῆς εἶδη μίαν καὶ τὴν αὐτὴν ἔχει τεχνολογίαν· οἷς γὰρ ἡ ἔγγραφος διαιρεῖται κεφαλαίοις, τούτοις καὶ ἡ ἄγραφος. ἐνταῦθα δὲ οὐχ οὕτως, ἐκάτερον δὲ εἶδος ἰδίῳις διαιρεῖται κεφαλαίοις, καὶ διενήνοχεν ἀλλήλων.

[284.26] οἷον δις περὶ τῶν αὐτῶν δίκας μὴ εἶναι. τὸ μὲν παράδειγμα τοῦ τεχνικοῦ εὖ ἔχει, τὸ δὲ εἰπεῖν κατὰ ῥητὸν καὶ διάνοιαν ἔστιν ἡ πρώτη ἐξέτασις ἔσφαλται. τοῦτο δὲ ἔπταισεν ἀγνοήσας τὴν καθ' ὁμωνυμίαν ἀμφιβολίαν, τοῦ μὲν λέγοντος δίκας εἶναι τὰς κρίσεις, τοῦ δὲ τὰς τιμωρίας.

ἔστι γὰρ ἡ πρώτη ζήτησις κατὰ ἀμφιβολίαν, οἷον πότερον δίκας λέγει τὰς τιμωρίας ἢ αὐτὸ τὸ δικάζεσθαι. οὐδὲ γὰρ ἡ τοῦ ῥητοῦ διάνοια ζητεῖται, ἀλλ' αὐτὸ τὸ ὄνομα τί σημαίνει.

[285.4] ἐπλανήθησαν δέ τινες ἀφ' ὧν εἶπεν ὁ τεχνικός, εἴτα ἔπεται τὸ στοχαστικόν, ὅτι κατὰ μόνον στοχασμὸν ἡ εὐθυδικία μελετᾶται. οὐκ ἔστι δέ, ἀλλ' ὡς προαποδέδεικται κατὰ τὰς ἄλλας στάσεις. ἐνταῦθα δὲ ἡ μὲν παραγραφή ἐξ ἀμφιβολίας, ἡ δὲ εὐθυδικία κατὰ στοχασμόν.

[285.9] ἄλλοι δὲ καλῶς εἰρηκέναι φασὶ τὸν τεχνικὸν κατὰ ῥητὸν καὶ διάνοιαν· λέγοντος γὰρ τοῦ φεύγοντος, φησί, νόμον εἶναι δις περὶ τῶν αὐτῶν δίκας μὴ εἶναι, ὁ κατήγορος λέγει ὅτι τοῦτο εἴρηκεν ὁ νόμος περὶ τῶν εὐτελῶν πραγμάτων καὶ τῶν ἐν χρήμασιν ἀγώνων, οὐ περὶ τῆς κοινῆς σωτηρίας, οὐ περὶ μεγάλων πραγμάτων. στοχαστικὴ δὲ ἡ εὐθυδικία· ἀπὸ γὰρ τῆς τοῦ θεοῦ φωνῆς καὶ μαρτυρίας ἐξετάζομεν, ὡς οὗτος ἀνδροφόνος.

Μαρκελλίνου

[285.18] ἀπαγωγὴν φησι τὴν ἐκβολὴν τῆς τοῦ πράγματος κρίσεως, ὅπερ ἴδιον τῆς ἐγγράφου μεταλήψεως, τὸ φάσκειν μὴδὲ τὴν ἀρχὴν δεῖν κρίνεσθαι περὶ οὗ ἡ ζήτησις. χαρακτηριστικώτατον δὲ τοῦτο τῆς παραγραφῆς, τὸ εἶναι τὴν ἰσχὺν ἀπὸ τινος ὀρμημένην ῥητοῦ καὶ περὶ αὐτὸ γίνεσθαι τὴν ζήτησιν.

[285.23] νόμος περὶ τῶν αὐτῶν δίκας. ὁρᾷς ὅτι ἐνταῦθα ὁ φεύγων οὐκ εὐθὺς ἀπολογήσεται περὶ τοῦ ἐγκλήματος, ἀλλὰ καθάπαξ ἀνελεῖν τὴν κρίσιν ἐξ ἀρχῆς πειράσεται. παρατηρητέον δὲ ὡς διπλὴ τις ἡ τοιαύτη στάσις, τουτέστιν ἡ ζήτησις· δύο γὰρ ἐν ταύτῃ τὰ ζητήματα, καὶ τὸ μὲν πρῶτον, εἰ μὴ δεῖ κρίνεσθαι τὴν ἀρχὴν ἐπὶ τούτοις. ἔστι δὲ κατὰ ῥητὸν καὶ διάνοιαν ἡ πρώτη ζήτησις, τοῦ μὲν φεύγοντος ἐνταῦθα προτεινομένου τὸ ῥητὸν, τοῦ δὲ κατηγοροῦ τὴν διάνοιαν. λέξει γὰρ ἔχειν μὲν οὕτω τὸν νόμον, οὐ μὴν ἐπὶ τούτοις (οἷον οὐκ ἐπὶ τῶν οὕτω μεγάλων καὶ δεινῶν, ἀλλ' ἐπὶ τῶν εὐτελῶν ἀπαξ κρίνεσθαι προστάττει· ἐπὶ μὲν γὰρ τούτων καὶ τὴν μίαν ἐξέτασιν ἀρκεῖν ἡγήσατο, ἐπὶ δὲ τῶν μειζόνων καὶ πλείονας). ἄλλοι δὲ κατὰ ἀμφιβολίαν τὴν πρώτην εἰρήκασιν γίνεσθαι· ὁμωνύμως γὰρ τὰς δίκας νοεῖσθαι καὶ τὰς τιμωρίας, οἷον τιμωρεῖσθαι μὲν δεύτερον κωλύει, κρίνεσθαι δὲ δεύτερον οὐ κωλύει.

[286.9] εἴτα ἔπεται τὸ στοχαστικόν. τὸ ἕτερόν φησι ζήτημα τὸ τῆς εὐθυδικίας, ὃ ἔστι τοῦ πράγματος ἡ ἐξέτασις, ὅπερ ἐξ ἀρχῆς παρεγράψατο. οὐ πάντως δὲ ἐπὶ πάσης παραγραφῆς στοχαστικόν, ἀλλ' ἐνταῦθα μὲν

[5.111.6]

τὸ μὲν παράδειγμα, ὅτε ἔθεικεν αὐτὸς, ὀνομάζει εἶναι ῥητὸν καὶ διάνοιαν τὸ τοῦ ἀνδροφόνου κακῶς νομισθέν. ἀλλ' ἐπειδὴ τὴν καθ' ὁμωνυμίαν ἀμφιβολίαν ἡγνόησεν, εἰκότως καὶ ἐνταῦθα πεπλάνηται.

ἔστι γὰρ ἡ πρώτη ζήτησις κατὰ ἀμφιβολίαν, πότερον δίκας λέγει τὰς τιμωρίας ἢ αὐτὸ τὸ δικάσασθαι. οὐδὲ γὰρ ἡ τοῦ ῥητοῦ διάνοια ζητεῖται, ἀλλ' αὐτὸ τὸ ὄνομα τί σημαίνει.

στοχαστικόν, ἐκάστοτε δὲ πρὸς τὸ προκείμενον. στοχαστικόν δὲ λέγει οὐ κεφάλαιον, ἀλλὰ ζήτημα.

[286.15] τινὲς δὲ τὸ προσὸν χρῶμα τῷ φεύγοντι ἀγνοοῦντες, ὅτι λοξίας ὁ θεὸς διὰ τὸ καὶ λοξὰ καὶ <ἀ>σαφῆ εἶναι τὰ μαντεύματα, λογιζόμενοι δὲ μόνον ὅτι βαρεῖ αὐτὸν ἢ φωνὴ τοῦ θεοῦ, οὐ γὰρ ἄνθρωπός φησιν ὁ κατηγορὸς, ἀσύστατον εἶναι τὸ ζήτημα ὥθησαν· οὐ γὰρ ψεύδεταί φησιν ὁ θεός. ἔπειτα δὲ χρώματος κατηγορήσει· λέξει γὰρ ὅτι αὐτὸ τοῦτο τὸν θεὸν ἠρώτησα, εἰ μέτεστι τοῖς ἀνδροφόνους τοῦ μαντείου καὶ ἔχρησέ μοι· καὶ ἄλλως, ὅτι οὐ περὶ ἐμοῦ εἶπεν, ἀλλὰ φοβῆσαι τοὺς ἄλλους βουλόμενος, ὥστε φυλάττεσθαι φονεύειν, καὶ πάλιν, ὅτι οὐκ ἀνδροφόνος ἐγώ· ἢ γὰρ ἂν οὐδὲ αὐτὸ τοῦτο ἔχρησέ μοι. ἀλλ' ἐρεῖ ὁ ἕτερος· διατί δὲ μὴ ἄλλω, ἀλλὰ σοὶ τοῦτο ἔχρησεν; εὐπορήσει δὲ καὶ πρὸς τοῦτο ὁ φεύγων. ἐρεῖ γὰρ· ἥδει με ὑπονοηθέντα καὶ ἐζήτει με τῆς τοιαύτης αἰτίας ἀπολύσασθαι.

[286.29] ζητητέον δὲ πῶς αἰεὶ τοῦ πρώτου ζητήματος χαρακτηρίζοντος τὴν στάσιν, ἐνταῦθα ἢ πρώτη ἐξέτασις κατὰ ῥητὸν καὶ διάνοιαν, καίτοι μὴ οὕσης τῆς στάσεως ῥητοῦ καὶ διανοίας ἀλλὰ παραγραφῆς. καὶ λέγομεν ὡς ὁμολογουμένου ὅτι παραγραφὴ ἐστίν, οὐκ εἴρηκεν· καθὼς δὲ ἡ παραγραφὴ τὴν ἐξέτασιν ἔχει, λέγω δὴ κατὰ ῥητὸν καὶ διάνοιαν, τοῦτ' εἴρηκεν ὅτι ἡ παραγραφὴ ῥητὸν ἔχει, ἀναγκαιῶς δὲ καὶ διάνοιαν· ἐπειδὴ τὸ ῥητὸν διάνοια λέγεται, ὅταν περὶ αὐτὸ ἡ ζήτησις ἢ· πρῶτον δὲ εἴρηκεν, ὡς πρὸς τὸ στοχαστικόν.

[287.8] ζητητέον δὲ καὶ τοῦτο, πῶς δύο ζητημάτων ὄντων ἐν τῇ παραγραφῇ, ἐξ ἑνὸς τῇ στάσει τὴν ἐπωνυμίαν δέδωκεν. πρόδηλος δὲ ἡ λύσις· τὸ γὰρ προκείμενον χαρακτηρίζει τὴν στάσιν· ἀμέλει καὶ ἐν στοχασμῷ ἐμπίπτει ἀντίληψις, καὶ ἐν ταῖς ἀντιθετικαῖς βίαιος ὅρος, καὶ ἐν τῷ ὄρω συλλογισμός, ἀλλ' οὔτε τὸν στοχασμὸν διὰ τοῦτο εἴποις ἀντίληψιν, οὔτε τὸν ὅρον συλλογισμόν, οὔτε τὰς ἀντιθετικὰς ὅρον.

ἡ δὲ ἄγραφος ἐστὶ μὲν ἀπαγωγὴ τῆς εὐθυδικίας καὶ αὐτὴ κατὰ παραγραφὴν ἀπὸ ῥητοῦ· τὴν δὲ ζήτησιν οὐ περὶ τὸ ῥητὸν ἔχει, ἀλλὰ περὶ τι τῶν περὶ τὸ πᾶγμα, τόπον, ἢ χρόνον, ἢ πρόσωπον, ἢ αἰτίαν ἢ τρόπον· ὅταν τὸ μὲν πᾶγμα συγχωρῶμεν, ἐν δὲ τι τούτων αἰτιώμεθα δῆπου μεταλαμβάνοντες· οἷον ἐξῆν ἀποκτινύναι καὶ τὸν μοιχὸν καὶ τὴν μοιχευομένην· τὸν μοιχὸν ἀποκτείνας τις μόνον, χρόνῳ ὕστερον ἐπὶ τῷ τάφῳ τοῦ μοιχοῦ δακρύνουσαν εὐρὼν ἀπέκτεινε τὴν γυναῖκα καὶ φόνου φεύγει· τὸν γὰρ τόπον ἐνταῦθα καὶ τὸν χρόνον αἰτιώμεθα δῆπουθεν.

Συριανοῦ καὶ Σωπάτρου

[287.26] ἐν ταύτῃ τῇ μεταλήψει ἥτις ὁμώνυμός ἐστι τῷ οἰκείῳ γένει περὶ τοῦ ποῖόν τί ἐστὶ ζητοῦμεν. λέγομεν γὰρ μεταλαμβάνοντες ὡς οὐ δικαίως γέγονεν ὁ φόνος ἐνταῦθα, ἢ ἀπὸ τοῦδε τοῦ προσώπου, ὡς ἐπὶ τοῦ τὴν μητέρα μοιχευομένην ἀνελόντος, ἢ ἐν τῷ νῦν χρόνῳ ἢ ἀπὸ τινος τῶν περιστατικῶν. παρωθεῖται μὲν γὰρ καὶ αὕτη τὴν γραφὴν, οὐκ ἀπὸ τοῦ νόμου δέ, ἀλλ' ἀπὸ τῶν περιστατικῶν.

[288.3] γίνεται δὲ ἡ μετάληψις ἀπὸ τοῦ κατηγοροῦ, ἢ δὲ παραγραφῇ ἀπὸ τοῦ φεύγοντος. ὁ γὰρ φεύγων ἐστὶν ὁ νόμος ἐκβάλλων τὸν ἄγωνα καὶ τὴν εὐθυδικίαν. διὸ καὶ ταύτῃ διαφέρει τῆς παραγραφῆς ἢ μετάληψις· ἢ μὲν γὰρ ἐστὶν ἀπὸ τοῦ φεύγοντος, ἢ παραγραφῇ, ἢ δὲ ἀπὸ τοῦ διώκοντος, ἢ μετάληψις.

[288.9] πλὴν ἀκριβέστερον τεχνολογητέον καὶ αὐτήν. ἡ γὰρ μετάληψις γίνεται μὲν ἀπὸ ῥητοῦ, οὐ μέντοι περὶ ῥητοῦ τὴν ζήτησιν ἔχει, ὡς ἡ ἔγγραφος, ἀλλὰ μόνου τοῦ νόμου γίνεται προβολή. οἷον· νόμος τὸν μοιχὸν ἀναιρεῖσθαι, ἐνέπρησέ τις μετὰ μοιχοῦ τὴν οἰκίαν καὶ κρίνεται. ἐνταῦθα γὰρ τὸν νόμον προβάλλεται καθ' ὃν ἔδει κολάζειν τὸν μοιχόν, ἀλλ' οὔτι γε περὶ τὸν νόμον ἡ ζήτησις· ὁμολογεῖ γὰρ καὶ ὁ κατήγορος, μέμφεται δὲ μόνον τὸν τρόπον, ὅτι οὐχ οὕτως ἔδει κολάζειν.

[288.17] καὶ ἀπλῶς εἰπεῖν γίνεται ἡ μετάληψις ἐκ τῶν περιστατικῶν, ὅταν ἡ πρόσωπον ἢ πρᾶγμα ἢ τρόπον ἢ χρόνον ἢ τόπον ἢ αἰτίαν μεταλαμβάνοντες ἐγκαλῶμεν. πρόσωπον μὲν ὡς ἐπὶ τοῦ τὴν μοιχευομένην ἀνελόντος μητέρα. πρᾶγμα δὲ ὡς ἐπὶ τῆς ἱερείας τῆς μυούσης τὸν τύραννον καὶ ἀποκτεινάσης· οὐ γὰρ ἐχρῆν ἀποκτείνειν· τὸ πρᾶγμα γὰρ μεταλαμβάνοντες ἐγκαλοῦμεν (ἐν τούτῳ δὲ τῷ ζητήματι καὶ ἀπὸ τοῦ προσώπου γίνεται μετάληψις· οὐ γὰρ ἐξῆν ἱερείαν οὔσαν ἀποκτείνειν· καὶ ἀπὸ τοῦ χρόνου· παρὰ γὰρ τὸν καιρὸν τῆς μύσεως· καὶ ἀπὸ τόπου· ἐν ἱερῷ γὰρ ἀθέμιτον φόνος). τρόπον δὲ ὡς ἐπὶ τοῦ καταφλέξαντος σὺν τῷ μοιχῷ τὴν οἰκίαν· ὁ τρόπος γὰρ ἐνταῦθα μέμφεται τῆς τιμωρίας. τόπον δὲ καὶ χρόνον, ὡς ἐφ' οὗ ὁ τεχνικὸς παρατίθεται ὑποδείγματος (καὶ ἐν ταύτῃ γὰρ τῇ μεταλήψει φημί ὁ κατήγορος προβάλλεται τι τῶν τοιούτων, καθ' ἣν ἡ στάσις γίνεται). αἰτίαν δὲ ὡς ἐπὶ τούτου· νόμος τὸν μοιχὸν ἢ χρήμασιν ἢ θανάτῳ ζημιοῦσθαι, εὐρών τις μοιχὸν χρήμασιν αὐτὸν ἐζημίωσεν, εἰλήφει παρ' ἐχθροῦ αὐτοῦ διπλάσια, καὶ ὑπαντήσας αὐτῷ ἐν ὁδῷ ἀπέρριψε τὰ χρήματα καὶ ἀπέκτεινε καὶ κρίνεται (ἐνταῦθα γὰρ ἡ αἰτία μεταλαμβάνεται, ὅτι οὐκ ἔδει ἐπὶ χρήμασιν αὐτὸν ἀποκτείνειν· δύναται δὲ καὶ ἀπὸ τοῦ χρόνου μεταληφθῆναι).

[289.7] ἰστέον δὲ ὡς ἔπαισε καὶ ἐνταῦθα ὁ τεχνικὸς ἐπειπὼν, ἐπὶ τῆς μεταλήψεως λέγω, ἀπαγωγὴν αὐτὴν εἰπὼν τῆς εὐθυδικίας.

παντελὴς γὰρ οὐκ ἔστιν ἀπαγωγή τῆς εὐθυδικίας ἢ ἔγγραφος, ἀλλ' ἡ εὐθυδικία ταύτης εἰσαγώγιμος. εἰ μὲν γὰρ ἐρεῖ ὅτι διαβολὴ γίνεται ἀπ' ἀρχῆς τῆς εὐθυδικίας, εὐθὺς γὰρ ἐν ἀρχῇ ὁ φεύγων ἐπὶ τὴν ἐξουσίαν καταφεύγει, τοῦτο ἐροῦμεν καὶ ἡμεῖς, ὅτι καὶ ἐν ἀντιλήψει συμβαίνει καὶ ἐν στοχασμῷ

(ἐρεῖ γὰρ κάκεῖ ὁ φεύγων, ἐπ' ἐξουσίας αὐτῷ εἶναι τὸ παρεστάναι)· καὶ καθόλου ἐν οἷς τί ἐστι τῶν περιστατικῶν, διαβολὴ ἐστι τοῦ ἀγῶνος· οὐ μὲν διὰ τοῦτο ἀπαγωγή ἐστι τῆς εὐθυδικίας τελεία· ἀμέλει αὐτὸς ὁ τεχνικὸς ἐν τῇ διαιρέσει τῆς ἀντιλήψεως πρῶτον κεφάλαιον θήσκει τὰ μόρια τοῦ δικαίου καὶ τὸ πρόσωπον, ἄπερ ἄμφω παραγραφικοῦ

[5.111.15] ἔμεινεν ἐπὶ τοῦ πταίσματος ὁμοίως.

παντελὴς γὰρ οὐκ ἔστιν ἀπαγωγή τῆς εὐθυδικίας ἢ ἔγγραφος, ἀλλ' ἡ εὐθυδικία ταύτης εἰσαγώγιμος. εἰ μὲν γὰρ ἐρεῖ ὅτι διαβολὴ γίνεται ἀπ' ἀρχῆς τῆς εὐθυδικίας, ἐν ἀρχῇ τοῦ φεύγοντος ἐπὶ τὴν ἐξουσίαν καταφεύγοντος, καὶ ἐν ἀντιλήψει τοῦτο συμβαίνει καὶ ἐν στοχασμῷ·

καὶ καθόλου ἐν οἷς τί ἐστιν ἐπταισμένον τῶν περιστατικῶν διαβολὴ ἐστι τοῦ ἀγῶνος, οὐ μὲν διὰ τοῦτο ἀπαγωγή τῆς εὐθυδικίας τελεία, ὥσπερ καὶ ἐν τῇ διαιρέσει τῆς ἀντιλήψεως αὐτὸ πρῶτον κεφάλαιον ἔθηκεν τὰ μόρια τοῦ δικαίου καὶ τὸ πρόσωπον δεύτερον, ἀμφοτέρω παραγραφικοῦ

τάξιν ἐπέχει, ἀλλ' οὐκ

ἤδη

καὶ ἀπαγωγή ἐστὶ τῆς εὐθυδικίας·
ἀλλ' οὐδὲ τὸ ἐν στοχασμῷ
παραγραφικὸν οὕτως,
ἀλλὰ μόνον διαβολὴ τοῦ
ἀγῶνος.

τάξιν ἔχοντα, οὐκ ἐπειδὴ διαβάλλουσι
τῇ τοῦ παραγραφικοῦ τάξει ἀμφοτέρω
τὰ κεφάλαια, ἐν τῇ ἀντιλήψει ἤδη
καὶ ἀγωγή ἐστὶ τῆς εὐθυδικίας·
καὶ τὸ παραγραφικὸν δὲ τοῦ
στοχασμοῦ ὅταν ἐμπέσῃ,
διαβολὴν ποιεῖ τοῦ
ἀγῶνος, ἀλλ' οὐκ ἤδη ἀπαγωγή τῆς
εὐθυδικίας ὁ στοχασμός.
μέγιστον οὖν αὐτῷ πταῖσμα τὸ
νομίσαι τὴν ἔγγραφον καὶ τὴν
ἄγραφον τὴν αὐτὴν ἔχειν φύσιν.

[289.24] τί οὖν, ἴσως ἐρεῖ τις, μετάληψις ἀντιλήψεως διαφέρει, εἴγε καὶ ἐν ἀντιλήψει ὁ φεύγων τῆς ἐξουσίας ἀντιλαμβάνεται καὶ ἐν μεταλήψει; φαιδρὸν οὖν ὅτι ἐν μὲν ἀντιλήψει οὐ πάντῃ ὁμολόγηται ἡ ἐξουσία, ἀλλ' ἀμφισβητεῖται, ταύτῃ καὶ ὁ κατηγορὸς πολὺς ἄνω καὶ κάτω ἐκβάλλειν ταύτην πειρώμενος· ἐν δὲ τῇ μεταλήψει ὁ κατηγορὸς τῷ φεύγοντι παραχωρῶν τῆς ἐξουσίας ἀπὸ τινος τῶν περιστατικῶν ἐνίσταται καὶ τούτῳ πρὸς αὐτὸν διαμάχεται. ἔτι κάκεῖνο ἂν τις εἴποι διάφορον, ὅτι ἐν μὲν τῇ ἀντιλήψει ἀπὸ τοῦ παθόντος πειρᾶται ποιεῖν τὴν ἀντίρρησην, λέγων μὴ ἐξεῖναι τρισαριστέα φονεύειν, ἐν δὲ μεταλήψει πρὸς τὸν δράσαντα μόνον ἀγωνίζεται, λέγων οὐ κατὰ τὸ δέον πεποιηκέναι, τοῦναντίον ὁμολογῶν ἄξιως τὸν παθόντα ὑπομεμενηκέναι τὴν κόλασιν, ὡς ἐπὶ τοῦ ζητήματος τοῦ κατὰ τὴν ἰερείαν, ἢ μυοῦσα τὸν τύραννον ἀπέκτεινε καὶ κρίνεται φόνου. ἐνταῦθα γὰρ ὁ κατηγορὸς ὅτι μὲν αὐτῇ οὐ δίδωσι τὴν ἐξουσίαν ὁ νόμος ἐναντιοῦται, οὐδ' ὅτι οὐκ ἦν ἄξιος ἀναιρεθῆναι ὁ τύραννος· τοῦτο δὲ μόνον μάχεται λέγων, οὐκ ἔδει ἰερείαν οὔσαν, οὐκ ἔδει μυοῦσαν τὸν φόνον ἐργάσασθαι.

[290.12] ἔτι καὶ τοῦτο διαφέρουσιν, ὅτι ἐν μὲν ἀντιλήψει ἀκόλουθόν ἐστὶ τὸ ὄνομα τῆς γραφῆς τῷ πεπραγμένῳ, ἐν δὲ τῇ μεταλήψει ἕτερον τὸ ὄνομα τοῦ ἐγκλήματος. ἐν γὰρ τῷ ἀριστεῖ φόνου γεγονότος φόνος κρίνεται·

ἐν δὲ τῇ μεταλήψει
φόνου γεγονότος ἕτερον τὸ κρινόμενον·
οὐ γὰρ ὁ φόνος τῆς ἰερείας
κατηγορεῖται, ἀλλὰ τὸ ἀπαίσιον.

[290.18] ἔτι κοινωνεῖ μετάληψις
συλλογισμῷ, ὡς ἐπὶ τούτου· μοιχὸν
τις λαβὼν ἀπέκτεινεν
οὐπω τοῦ τιμήματος τοῦ κατὰ τὸν
μοιχὸν κειμένου, καὶ εἰσενεγκὼν
νόμον ἐκύρωσεν ἐξεῖναι τὸν μοιχὸν
ἀποκτινύναι, πεφώραται
προαποκτείνας
καὶ κρίνεται. δοκεῖ μὲν εἶναι
συλλογισμὸς τῷ συλλογίζεσθαι τὸν
φεύγοντα καὶ λέγειν μηδὲν διαφέρειν,

[5.116.26] διαφέρει δὲ, ὅτι ἴδιον μὲν ἀντιλήψεως τὸ ἀκόλουθον ἔχειν τὸ ὄνομα τῆς γραφῆς τῷ πεπραγμένῳ, μεταλήψεως δὲ τὸ ἕτερον εἶναι τὸ ὄνομα τοῦ ἐγκλήματος. ἐν γὰρ τῷ ἀριστεῖ φόνον ποιήσας φόνου κρίνεται, διὸ ἀντίληψις,
ἐν δὲ τῇ μεταλήψει ...

[5.117.2] ἔτι δὲ ἡ μετάληψις κοινωνεῖ
τῷ συλλογισμῷ, ὡς ἐπὶ τούτου· μοιχὸν
τις λαβὼν ἀπέκτεινεν

καὶ κρίνεται. δύναται δοκεῖν εἶναι
συλλογισμὸς, τῷ συλλογίζεσθαι τὸν
φεύγοντα καὶ λέγειν μηδὲν διαφέρειν

εἴτε νῦν εἴτε ἄλλοτε ἀνήρηται, ὅτε ὁ νόμος δίδωσί μοι τὸ ἀναιρεῖν. οὐκ ἔστι δέ, ἀλλὰ πολὺ διαφέρει. καὶ γὰρ ἐν μὲν τῷ συλλογισμῷ ὁ μὲν φεύγων τὸ ῥητὸν προβάλλεται, ὁ δὲ κατήγορος τὴν ὁμοιότητα, ἐν δὲ μεταλήψει τοῦναντίον ὁ φεύγων τὸν συλλογισμόν καὶ τὴν ὁμοιότητα, ὁ δὲ κατήγορος τὸ ῥητὸν προβάλλεται. μετάληψις οὖν ἐστὶν ἀπὸ καιροῦ μεταλαμβανομένη.

[290.28] ἐντεῦθεν δῆλον ὡς ἡ μὲν παραγραφὴ τελεία ἐστὶν ἐκβολὴ τοῦ ἀγῶνος, ἡ μέντοι μετάληψις οὐκ ἔστι τελεία ἐκβολὴ τῆς εὐθυδικίας.

[290.30] καὶ τοῦτο ἀπὸ τῶν Δημοσθένους παραγραφῶν φανερόν. οὐ γὰρ συγχωροῦσι τὸ πρᾶγμα, ἀλλὰ τὴν ζήτησιν ἔχουσι περὶ τοῦ εἰ δεῖ εἰσελθεῖν. διὸ καὶ ἀντιστρέφουσι τὸν ἀγῶνα. τὸν γὰρ φεύγοντα πρῶτον ποιοῦσι λέγοντα καὶ κατηγοροῦ τάξιν ἐπέχοντα, ὡς ἐν τῷ κατὰ τοῦ Στεφάνου Δημοσθένης φησί· *προλαβὼν δέ μου διὰ τὸ πρότερος λέγειν παραγραφὴν ἀγωνίζεσθαι*. ὡσαύτως καὶ Αἰσχίνης ἐν τῷ κατὰ Τιμάρχου παραγραφικῷ ὄντι οὐ συγχωροῦσι τὸ πρᾶγμα.

εἴτε νῦν εἴτε ἄλλοτε ἀνήρηται, ὅτε ὁ νόμος ἐδίδου μοι τὸ ἀνελεῖν. ἀλλ' αὕτη ἡ διαφορὰ, ὅτι ἐν μὲν τῷ συλλογισμῷ ὁ μὲν φεύγων τὸ ῥητὸν προβάλλεται, ὁ δὲ κατήγορος τὴν ὁμοιότητα.

[5.112.11] ὡς αἱ παρὰ Δημοσθένει παραγραφαὶ οὐ συγχωροῦσι τὸ πρᾶγμα, ἀλλὰ τὴν ζήτησιν ἔχουσι περὶ τοῦ εἰ δεῖ εἰσελθεῖν. διὸ καὶ ἀντιστρέφουσι τὸν ἀγῶνα. τὸν γὰρ φεύγοντα πρῶτον ποιοῦσι λέγειν κατηγοροῦ τάξιν ἔχοντα, ὡς καὶ ὁ Δημοσθένης ἐν τῷ κατὰ Στεφάνου· [οὐ] *προλαβὼν δὲ τὸ πρότερος λέγειν διὰ τὸ παραγραφὴν ἀγωνίζεσθαι*.

[5.112.9] οὔτε γὰρ ὁ Αἰσχίνης συνεχώρησε τῷ Τιμάρχῳ τὸ πρᾶγμα, ἀλλ' ὀρθὸν ἐξέβαλε τὸ πρόσωπον.

εἰ δὲ ἡ μετάληψις συγχωρεῖ, οὐ τελεία ἐστὶν ἀπαγωγὴ τῆς εὐθυδικίας, ἀλλ' ὁ κατήγορος μεταλαμβάνων τι τῶν περιστατικῶν πειράται τὸ ἐκ τοῦ νόμου συγχωρούμενον διαβάλλειν. διὸ καὶ μετάληψις ἐκλήθη καὶ τῇ παραγραφῇ συνήθη. ὡς γὰρ ἐκείνη ἐκβάλλει τὴν εὐθυδικίαν ἐκ τοῦ νόμου, οὕτω καὶ ἡ μετάληψις ἀπὸ τῶν περιστατικῶν διαβάλλει τὸ ἐκ τοῦ νόμου συγχωρηθέν.

Μαρκελλίνου

[291.14] ὅτι παραγραφὴ καὶ ἡ ἄγραφος σαφῶς ἐνταῦθα ἐδήλωσεν, εἰπὼν κατὰ παραγραφὴν ἀπὸ ῥητοῦ, οὐκέτι δὲ περὶ ῥητὸν, ἐπειδὴ μὴ ἰσχύει, δηλονότι τῷ ῥητῷ· ἢ γὰρ ἂν φανερώς ἦν ἔγγραφος. ἐδήλωσε καὶ τὴν διαφορὰν αὐτοῦ πρὸς τὴν ἔγγραφον εἰπὼν, οὐκέτι δὲ τὴν ζήτησιν περὶ τὸ ῥητὸν ἔχει ἀλλὰ τρόπον τινὰ παραγράφεται ἐκβάλλουσα τὴν ἐξουσίαν τῆς πράξεως. κέχρηται μὲν γὰρ κἀνταῦθα ὁ φεύγων τῷ ῥητῷ, ἀποστὰς δὲ ταχέως τοῦ ῥητοῦ ἐπὶ τὸ πρᾶγμα μετέρχεται. τοιγάρτοι καὶ ὁ κατήγορος τὸ γεγεννημένον κατὰ νόμον ὁμολογῶν γενέσθαι ἔν τι τῶν περιστατικῶν αἰτιάσεται, ὥστε τὴν χρεῖαν μόνον ἐνταῦθα παρεχόμενοι οὐκ ἐμμένονεν αὐτῷ. ἐν δὲ τῇ ἐγγράφῳ ἐνδιατρίβομεν αὐτῷ τῷ ῥητῷ. τὸ δ' αἴτιον ὅτι ἐν μὲν τῇ ἐγγράφῳ τὸ ῥητὸν ἀντικρυς εἰς τὴν ἀπαγωγὴν τῆς εὐθυδικίας τείνει, διὸ καὶ τὴν πλείστην χορηγίαν ἔχοντες ἐξ αὐτοῦ εἰκότως ἐνδιατρίβομεν αὐτῷ ἀγωνιζόμενοι, ἐν δὲ τῇ ἀγράφῳ τοιοῦτον μὲν οὐδὲν

ἔχομεν τοῦ πεπραγμένου παρὰ τοῦ νόμου. ἐκ δὲ τῶν παραδειγμάτων ἔσται φανερόν τὸ εἰρημένον. δις περὶ τῶν αὐτῶν δίκας μὴ εἶναι· ὁρᾷς ὅτι φανερώς ὁ νόμος ἀναιρεῖ τὴν κρίσιν; τῆς ἀγράφου παράδειγμα· ἱέρεια μούμενον ἀπέκτεινε τύραννον, καὶ φεύγει ἀσεβείας. μὴ ἀντικρυς ὁ νόμος ἐνταῦθα πρὸς τὴν κρίσιν ἐναντιούμενος φαίνεται; τοῦ μὲν γὰρ ἀνελεῖν τὸν τύραννον τὴν ἐξουσίαν προβάλλεται, οὐ μὴν μὴ κρίνεσθαι τὸν ἐν ἱερῷ φονεύσαντα κεκώλυκεν.

[292.8] καὶ ἄλλως· ἡ μὲν ἔγγραφος τοῦ ἐνὸς ἔχοντος τὸ ῥητὸν τὴν διάνοιαν παρέχει τῷ ἐναντίῳ, ὥστε μερίζονται ὁ μὲν τὸ ῥητὸν, ὁ δὲ τὴν διάνοιαν. ἐν δὲ μεταλήψει μόνον ἐστὶ τὸ ῥητὸν, τοῦ ἅπαξ χρωμένου εἴτε τοῦ φεύγοντος εἴτε τοῦ κατηγοροῦ, οὐκέτι δὲ ἔχει τούτου τὴν διάνοιαν ὁ ἐνάντιος, ἀλλὰ καὶ συνομολογεῖ ὅτι ἔξεστιν, αἰτιᾶται δὲ ἀπὸ τινος τῶν περιστατικῶν. εἴ τις δὲ ζητοῖ τι διαφέρει τῶν νομικῶν ἢ ἔγγραφος, λεκτέον ὅτι ἐκεῖ μὲν ἐστὶν ἡ ζήτησις εἰ κατὰ νόμον τὸ πραχθέν, ἐνταῦθα δὲ εἰ δεῖ ὅλως εἰσελθεῖν τὸν ἀγῶνα.

[292.18] ζητητέον δέ, ἐπειδὴ καὶ τελείαν εἶπεν εἶναι παραγραφὴν ἐν τοῖς ἐξῆς, ποία μὲν τελεία, ποία δὲ ἀτελής. οἱ μὲν οὖν τὴν ἄγραφον εἰρήκασιν ἀτελεῖ, ἐπειδὴ ἄρχεται μὲν ἀπὸ ῥητοῦ οὐκ ἐκβάλλει δὲ κρίσιν, τελείαν δὲ τὴν ἔγγραφον. ἀλλὰ λέγομεν οὐ περὶ τῆς ἀγράφου νῦν ὁ λόγος. ἔτι τοίνυν παραγραφὴ τελεία ἢ παντελῶς ἐκβάλλουσα τὴν εὐθυδικίαν ὥς οὐκ εἰσαγωγίμον, ὥς ὁ πλούσιος, ἀτελής δὲ ἢ μὴ ἐκβάλλουσα μὲν, αἰτιωμένη δὲ πρόσωπον, ὥς ἐν τῷ κατὰ Τιμάρχου· οὐ γὰρ ἐκβάλλει καθόλου τὴν κρίσιν, ἀλλὰ τὸ πρόσωπον αἰτιᾶται, ὅτι σοι οὐ προσήκει κατηγορεῖν μου, ἀμέλει πρὸς Δημοσθένην ἀπελογήσατο.

[292.29] τινὲς δὲ παράδειγμα εἰρήκασιν τῆς ἀγράφου μεταλήψεως ἀπὸ τοῦ φεύγοντος, ἐπειδὴ εἰρήκαμεν ὅτι γίνεται σπανίως μετάληψις ἀπὸ τοῦ φεύγοντος, τοιοῦτο· νόμος τὸν βιασάμενον κόρην Ἀθήνησι χιλίας διδόναι, καὶ νόμος ἐν Λακεδαίμονι τὸν βιασάμενον θανάτῳ ζημιοῦσθαι· βιασάμενός τις Ἀθήνησι κατέβαλε τὰς χιλίας, ἐπανελθὼν εἰς Λακεδαίμονα κρίνεται κατὰ τὸν ἐκεῖ νόμον, καὶ παραγράφεται ἀπὸ τόπου ὁ φεύγων.

RG 4.766.20-783.18

Συριανοῦ

[766.20] ἴδια καὶ γνωστικώτατα τῆς παρούσης στάσεως ἐν μὲν τὸ τὰ εἶδη πρὸ τῶν κεφαλαίων διδάσκειν, ἕτερον δὲ τὸ δύο ἔχειν ζητήματα τέλεια κατὰ διαφόρους τεμνόμενα στάσεις, ἐπειδὴ καὶ οἱ συνεζευγμένοι στοχασμοὶ καὶ οἱ διπλοὶ ὅροι καὶ αἱ ἀντιλήψεις δύο ἔχουσι ζητήματα, ἀλλ' οὐ κατὰ δύο στάσεις, ἀλλὰ κατὰ μίαν καὶ τὴν αὐτήν. εἰς δύο δὲ τὴν μετάληψιν διεῖλεν.

[769.5] ὅτι γὰρ ἑτέρα στάσις ἐστὶν ἡ παραγραφὴ τῆς μεταλήψεως, πρόδηλον
 ...¹⁰⁶

Σωπάτρου

[774.1] ἐν τῇ μεθόδῳ τελευταίαν
 ἔταξεν Ἑρμογένης τὴν μετάληψιν,

[5.190.2] καὶ περὶ στάσεως τῆς
 μετάληψεως διάφορος παρὰ τῶν

¹⁰⁶ The rest of this section = Syrianus 157.4-160.24 (see Appendix 1).

ὥς πάσας περιέχουσιν, ἅτε
ἐμπιπτουσῶν τῶν ἄλλων στάσεων ἐν
αὐτῇ· οὐδέποτε γὰρ παραγραφή
μόνη μελετᾶται, ἀλλὰ τὸ μὲν
ἔγγραφον ζήτημα κατὰ μίαν τῶν
νομικῶν,

ὥς αὐτίκα δῆλον ἔσται,
τὸ δὲ ἄγραφον, καθ' ἣν ἂν ἐμπέσῃ
τῶν λογικῶν.

[774.6] πάσαις γὰρ ὥσπερ ἀντιπᾶσχει
ἢ μετάληψις, ταῖς τε λογικαῖς καὶ
νομικαῖς, ἐνταῦθα δὲ μεταξὺ τῶν τε
λογικῶν καὶ τῶν νομικῶν, ἐπειδὴ
ἀμφοτέρων μετέχει, τῶν μὲν νομικῶν
κατὰ τὴν παραγραφὴν, τῶν δὲ
λογικῶν κατὰ τὴν εὐθυδικίαν.

[774.11] εἰσὶ δὲ οἱ τὴν μετάληψιν
πρώτην τάττουσι διὰ τὴν αὐτῆς
φύσιν· εἰ γὰρ τὸ εἰ ἔστι πρῶτόν
ἐστι, φασίν,¹⁰⁷ αὕτη δὲ περὶ τοῦ εἰ
ὅλως δεῖ εἰσελθεῖν τὸν ἀγῶνα τὴν
ζήτησιν ἔχει, ἀναγκαίως
πρώτη ὀφείλει αὕτη τάττεσθαι, ὥς
αὐτὸ τοῦτο ζητοῦσα.

ἡ μετάληψις πάλιν ἢ μὲν ἔγγραφός ἐστιν, ἢ δὲ ἄγραφος.

Συριανοῦ

[774.15] πῶς τῆς πραγματικῆς διαιρουμένης, τῷ ἐγγράφῳ φημὶ καὶ ἀγράφῳ,
οὐ γέγονε διάφορος κλήσις (πραγματικὴ γὰρ ἑκατέρῳ εἶδει τὸ ὄνομα), ἐπὶ
δὲ μεταλήψεως τῇ διαφορᾷ προσηγορία κεῖται; ἢ μὲν γὰρ ἔγγραφος
παραγραφή καλεῖται, ἢ δὲ ἄγραφος μετάληψις. φαμὲν οὖν ὅτι ἐν μὲν τῇ
πραγματικῇ οὐδὲν καινότερον γίνεται, πλὴν ὅτι τὸ νομικὸν προσέρχεται
κεφάλαιον, ἐν δὲ τῇ μεταλήψει τὰ πράγματα μεταπίπτει· καὶ λοιπὸν τῇ
τῶν πραγμάτων μεταπτώσει καὶ ἡ προσηγορία ἀλλοιοῦται. ἢ μὲν οὖν
ἔγγραφος ἴδιον ὄνομα ἔσχε παραγραφῆς διὰ τὸ ἰσχυρὸν αὐτῆς· ἐστὶ γὰρ
νόμου ἀνάγνωσις ἐκβάλλουσα τὴν εὐθυδικίαν. μὴ ταραττέτω δὲ σε τὰ
τοιαῦτα ὀνόματα. ἐστὶ γὰρ εὐθυδικία μὲν ἢ τοῦ πράγματος αὐτοῦ ἐξέτασις
περὶ οὗ ἢ κατηγορία, εἴτε φόνος ἢ τὸ κατηγορούμενον, εἴτε ἱεροσυλία, εἴτε
μοιχεία, εἴτε ἄλλο τι· παραγραφή δὲ ἢ ταύτης ἐκβολή, ὅταν μὴδὲ
εἰσαγωγίμον εἶναι τὸν ἀγῶνα τῷ κατηγορῶ λέγῃ ὁ φεύγων· καὶ εὐθυδικίας
μὲν πέρας τὸ ἀλῶναι τὸν φεύγοντα, παραγραφῆς δὲ τὸ εἰσελθεῖν τὴν δίκην
ἢ μή. ἐν μὲν οὖν ταῖς ἄλλαις στάσεσιν ἀπάσαις τὴν κρίσιν ὁ φεύγων
καταδεχόμενος ἀπολύσασθαι τὴν κατηγορίαν διὰ τῆς ἀπολογίας ἐπείγεται,
ἐν δὲ τῇ παραγραφῇ τὸ πρότερον ἴσταται, τὸ μὴ δεῖν εἰσελθεῖν τὴν κρίσιν.

παλαιῶν ἔκδοσις δέδοται. οἱ μὲν
γὰρ αὐτὴν τελευταίαν πασῶν
τάττουσιν,
ὥς πάσης περιέχουσιν καὶ ὥς
ὑποπιπτουσῶν τῶν ἄλλων ἐν αὐτῇ
στάσεων· οὐδέποτε γὰρ παραγραφή
μόνη μελετᾶται, ἀλλὰ τὸ μὲν
νομικὸν ζήτημα κατὰ μίαν τῶν
νομικῶν στάσεων, τὸ δὲ δεύτερον,
καθ' ἣν ἂν ἐμπέσῃ τῶν λογικῶν,
ὥς ἐφεξῆς ἐροῦμεν.

οἱ δὲ πρώτην αὐτὴν
τάττουσιν διὰ τὴν αὐτὴν
φύσιν· εἰ γὰρ τὸ
περὶ τοῦ
ὅλως δεῖ εἰσελθεῖν τὸν ἀγῶνα
ζήτημα πρῶτόν ἐστιν, ἀναγκαίως
πρώτη ὀφείλει τάττεσθαι ἢ
αὐτὴ τοῦτο ζητοῦσα.

¹⁰⁷ φησὶν cod.: corr. Walz.

[775.11] ἡ μὲν οὖν ἔγγραφος τοιαύτη, ἡ δὲ ἄγραφος ὁμωνύμως τῷ γένει καλεῖται μετάληψις, ἥτις τὸ μὲν πρᾶγμα συγχωρεῖ, μέμφεται δὲ ἓν τι τῶν περὶ τὸ πρᾶγμα, χρόνον τυχὸν ἢ πρόσωπον ἢ τι τῶν ἄλλων. ἀλλ' εἰ τοῦτο ἐστὶ, καὶ ἡ μὲν ἔγγραφος παντελῶς ἐκβάλλει τὸν ἄγωνα, ἡ δὲ ἄγραφος συγχωρεῖ, καὶ ἔστιν ἡ μὲν ἔγγραφος ἀπὸ τοῦ φεύγοντος, ἡ δὲ ἄγραφος ἀπὸ τοῦ κατηγόρου γνωρίζεται, ταῦτα δὲ πλεῖστον ἀλλήλων διέστηκε, κατὰ τί κοινὸν ἄμφω μετάληψις ἐκλήθη; φαμέν οὖν ὥς εἰ καὶ πλεῖστον ἀλλήλων κεχώρισται τὰ εἶδη, ἀλλ' οὖν καὶ κοινωνεῖ. αὐτίκα τοίνυν ὁ φάσκων δις περὶ τῶν αὐτῶν μὴ εἶναι δίκας καὶ τοῦτο ἰσχυρίζομενος ἐνὶ τῶν περιστατικῶν ἰσχυρίζεται (χρόνῳ γάρ· εἰ δὲ τοῦτο, εἰκότως καὶ ἡ παραγραφὴ μετάληψις λέγεται, ὥς μεταλαμβάνουσά τι τῶν περιστατικῶν.

Σωπάτρου

[775.26] εἰ ἐν τῇ μεταλήψει ἀεὶ ἀπὸ ρητοῦ ἡ ζήτησις, τίνος χάριν τὴν μὲν ἔγγραφον, τὴν δὲ ἄγραφον ἐκάλεσεν; ἡ τοίνυν διαφορὰ αὕτη ἐστίν, ὅτι ἐν μὲν τῇ ἀγράφῳ ἀποστάντες τοῦ ρητοῦ (οὐ γὰρ ἰσχύομεν αὐτῷ χρῆσθαι) περὶ τοῦ πράγματος ποιούμεθα τὴν πᾶσαν ζήτησιν, ἐν δὲ τῇ ἐγγράφῳ ἄνω καὶ κάτω περὶ αὐτὸ στρεφόμεθα τὸ ρητὸν· καὶ ἐν μὲν τῇ ἀγράφῳ συγχωρουμένου τοῦ ρητοῦ συνίσταται ἡ ζήτησις, ἓν τι τῶν περιστατικῶν μεταλαμβάνοντος τοῦ διώκοντος, ἐν δὲ τῇ ἐγγράφῳ τῷ ρητῷ ἐξ ἀνάγκης ἀμφοτέροι χρήσονται, καὶ περὶ αὐτὸ ἔσται ἡ ἀντιλογία· εἰ γὰρ μὴ συγχωρηθεῖ παρὰ τοῦ ἑτέρου, πᾶσα ζήτησις ἀναιρεθήσεται.

Μαρκελλίνου

[776.7] προειπὼν περὶ πραγματικῆς ὅτι διττὴ ἐστὶ, κατὰ ἀκολουθίαν ἐπήγαγεν ἡ μετάληψις πάλιν, ἡ μὲν ἔγγραφος, ἡ δὲ ἄγραφος, τὸ πάλιν εὐλόγως προσθεὶς πρὸς τὰ προειρημένα.

καὶ ἡ μὲν ἔγγραφος τελεία τέ ἐστὶ παραγραφὴ, καὶ τὸ πρότερον ζήτημα περὶ μίαν εὐρίσκεται τῶν νομικῶν στάσεων, περὶ ὧν αὐτίκα λέξομεν, ὥς εἴρηται.

Συριανοῦ

[776.14] ζητοῦσι πῶς δύναται ἡ μετάληψις παραγραφὴ λέγεσθαι. ὅτι γὰρ παραγραφὴ καὶ αὕτη κέκληται δῆλον ἂν ὧν Ἑρμογένης φησὶν. καὶ ἡ μὲν ἔγγραφος τελεία τέ ἐστὶ παραγραφὴ, ὥς καὶ τῆς μεταλήψεως παραγραφῆς μὲν καὶ αὐτῆς λεγομένης, ἀτελοῦς δέ. ἐροῦμεν ὥς εἰκότως καὶ ταύτην παραγραφὴν ὁ τεχνογράφος καλεῖ, ἀτελῇ μέντοι, ἐπειδὴ ἄρχεται μὲν καὶ αὕτη ἀπὸ τοῦ ρητοῦ, οὐκ ἀγωνίζεται δὲ περὶ αὐτό· οὐδὲ γὰρ ἰσχύει. ἔνθεν ἀφίσταται μὲν τοῦ ρητοῦ, παρὰ δὲ τὴν περιστάσιν ποιεῖται τὴν ζήτησιν.

[776.23] διατί δὲ ἐν πάσῃ στάσει πρῶτον τὰ κεφάλαια τάξας καὶ διελὼν καὶ διδάξας οὕτω τὰ εἶδη μεμήνυκεν, ἐν μόνῃ δὲ μεταλήψει τὰ εἶδη πρῶτον εἴρηκε καὶ οὕτω τὰ κεφάλαια; ὅτι ἐπὶ μὲν τῶν ἄλλων στάσεων προδιδάσκεται τὰ κεφάλαια τῶν εἰδῶν (πάντα γὰρ ἐν ἐκείναις τὰ εἶδη ἐκάστης τοῖς

[5.190.19] ἐζήτῃται καὶ ἱκανὸν ζήτημα, τί δήποτε ἐν πάσῃ στάσει πρῶτον τὰ κεφάλαια τάξας καὶ διελὼν καὶ δεῖξας οὕτω τὰ εἶδη μεμήνυκεν, ἐν μόνῃ δὲ τῇ μεταλήψει τὰ εἶδη πρῶτον εἴρηκεν καὶ οὕτως τὰ κεφάλαια. ἐροῦμεν, ὅτι ἐν πάσῃ στάσει τὰ εἶδη τῶν στάσεων τὰ

αὐτοῖς τέμνεται κεφαλαίοις), ἐν
μόνῃ δὲ μεταλήψει ἕτερα ἔχει.

ἢ τε ὁμώνυμος τῷ γένει μετάληψις
καὶ ἡ παραγραφὴ. διὸ ἀναγκαῖον ἦν
πρῶτον τὰ εἶδη, εἴθ' οὕτω τὰ
κεφάλαια διδάξαι.

αὐτὰ ἔχει κεφάλαια, ἐν
μόνῃ δὲ μεταλήψει διάφορα ἔχει τὰ
κεφάλαια. ἢ τε γὰρ πραγματικὴ καὶ
ἡ ἔγγραφος καὶ ἡ ἄγραφος τὰ αὐτὰ
ἔχει καὶ αἱ λοιπαὶ στάσεις, μόνη δὲ
ἡ μετάληψις ἕτερα.

εἴη τε ὁμώνυμος μετάληψις
καὶ ἡ παραγραφὴ. διὸ ἀναγκαῖον ἦν
πρῶτον διελεῖν τὰ εἶδη, ἵνα τὰ
ἐκάστης ἴδια κεφάλαια ἀποδῶ.

[777.1] πρῶτον δὲ τὸν περὶ τῆς παραγραφῆς ποιεῖται λόγον. καίτοιγε ἐχρῆν
τὸ ὁμώνυμον τῷ γένει πρῶτον διδάξαι. ἀλλ' ἐπειδὴ ἡ μὲν παραγραφὴ ἀπὸ
ῥητοῦ τὸ κράτος ἔχει καὶ περὶ τοῦτο τὴν πᾶσαν σπουδὴν, ὅπερ ἄτεχνος
πίστις, ἡ δὲ μετάληψις οὐκ ἀπὸ ῥητοῦ ἀλλ' ἀπὸ τινος τῆς περὶ τὸ ῥητὸν
περιστάσεως, ὃ τῆς ἐντέχνου πίστεως, εἰκότως καὶ ἡ παραγραφὴ τῆς
μεταλήψεως προτετίμηται.

Σωπάτρου

[777.9] τελείαν παραγραφὴν τὴν ἔγγραφον ἐκάλεσεν ἀντιδιαστέλλων πρὸς τὸ
κεφάλαιον τοῦ ἐν στοχασμῷ παραγραφικοῦ, εἰ βούλει δὲ καὶ πρὸς τὴν
μετάληψιν· ὥς γὰρ ἤδη εἴρηται αὕτη οὐ τελεία ἐστὶ παραγραφὴ, ἀλλ'
ἄρχεται μὲν ἀπὸ ῥητοῦ, οὐκ ἀγωνίζεται δὲ περὶ αὐτό, περὶ δέ τι τῶν
περιστατικῶν ἀγωνιζομένη διαβάλλει ἀλλ' οὐκ ἐκβάλλει τὸν ἀγῶνα, οἶον
ὅτι οὐκ ἔξεστί σοι κατηγορεῖν ἀτίμῳ ὄντι, ὥσπερ ἐν τῷ κατὰ Τιμάρχου
Αἰσχίνης τὸ πρόσωπον παραγράφεται ὥς ἄτιμον· πόρνον γὰρ αὐτὸ λέγει.
καὶ πάλιν, οὐκ ἔξεστί σοι κατηγορεῖν μου ἐπὶ τοῦδε τοῦ δικαστηρίου, ὥς
ἐν τῷ κατὰ Ἀνδροτίωνος, ὅτι οὐκ ὀφείλεις μου ἐνταῦθα κατηγορεῖν, ἀλλὰ
παρὰ τοῖς θεσμοθέταις.

ἔστι δὲ ὅτε ὀρικῶς τέμνεται τὸ πρότερον ζήτημα.

Σωπάτρου

[777.23] σημειωτέον ὅτι ἡ παραγραφὴ οὐ μόνον κατὰ μίαν τῶν νομικῶν
ἐξετάζεται κατὰ τὸ πρότερον ζήτημα, τουτέστιν τὴν παραγραφὴν, ἀλλὰ καὶ
ὀριστικῶς καὶ στοχαστικῶς.

[777.26] ὀριστικῶς μὲν οὕτω νόμος τὸν ἡταιρηκότα μὴ πολιτεύεσθαι,
Τίμαρχος ἡταιρηκῶς καὶ διδάσκων γράμματα κωλύεται. ζητεῖται γὰρ
ἐνταῦθα εἰ ταῦτόν τῷ πολιτεύεσθαι τὸ γράμματα διδάσκειν. καὶ πάλιν
νόμος περὶ τῶν αὐτῶν δίκας μὴ εἶναι, ἐάλω ἱερεία προαγωγείας κριθεῖσα,
ἢ λω ἡ αὐτὴ πάλιν ὕστερον, καὶ κρίνεται ἀσεβείας. ἐνταῦθα γὰρ ζητοῦμεν
εἰ ἡ προαγωγεία τῆς ἱερείας ἀσεβεία τυγχάνει. ἀτελὲς γὰρ ἐστὶ τὸ
κρινόμενον (οὐ γὰρ ταῦτόν προαγωγεία καὶ ἀσεβεία), διὸ καὶ κρινόμενη
λέξει· πρῶτον μὲν δις περὶ τῶν αὐτῶν δίκας μὴ εἶναι. ὁ δὲ κατήγορος
ἄλλην εἶναι κρίσιν λέγει προαγωγείας καὶ οὐ τὴν αὐτὴν τῇ ἀσεβείᾳ, ὥστε
οὐ περὶ τῶν αὐτῶν ἡ κρίσις. ζητεῖται οὖν πρῶτον εἰ ὁ νόμος ὁ κωλύων δις
εἶναι περὶ τῶν αὐτῶν κρίσεις τοῦτο λέγει, πότερον περὶ τοῦ αὐτοῦ
πράγματος μὴ εἶναι δίκας δύο, ἢ δις περὶ τῶν αὐτῶν μὴ ποιεῖσθαι κρίσεις
διαφόρους. ἔπειτα δέ, εἰ ταῦτόν ἀσεβεία καὶ προαγωγεία· καὶ γὰρ καὶ τὸ
παραγραφικὸν ὀρικῶς ἐξετάζεται, ἥτοι ἡ τοῦ νόμου διάνοια, καὶ ἡ
εὐθυδικία ὡσαύτως.

[778.16] στοχαστικῶς δέ, ὥς τὸ κατὰ Τιμάρχου· ζητοῦμεν γὰρ εἰ Τίμαρχος ἠταίρηκεν ἢ μή.

[778.18] διότινες ἠπόρησαν διατί καὶ κατὰ ταύτας τὰς στάσεις γινομένων τῶν παραγραφῶν ὁ Ἑρμογένης οὔτε πλατύτερον περὶ τούτων ἐδίδασκεν, ἀλλ' ὅσον ἐπιμνησθῆναι μόνον, καὶ κατὰ μόνας τὰς νομικὰς ἀπεφάνετο, οὐχὶ δὲ καὶ κατὰ ἄλλην τὴν παραγραφὴν ἐξετάζεσθαι.

ἐροῦμεν οὖν ὥς ἀκριβῶς θεωροῦντι οὔτε κατὰ στοχασμὸν οὔτε κατὰ ὅρον γίνεται ἡ παραγραφή, διὸ οὐδὲ αὐτὸς πλατέως εἶπεν περὶ αὐτοῦ. σκοπῶμεν δὲ οὕτω· παντὶ ῥητῷ δεῖ τινὰ ὑποκεῖσθαι περιστάσιν, εἰ μέλλοι ἐν ὑποθέσει ἀλλὰ μὴ ἐν θέσει λαμβάνεσθαι. ὅταν μὲν γὰρ αὐτὸ ἐφ' ἑαυτοῦ <τὸ ῥητὸν> ἀμφισβητῇται, θετικὴ γίνεται ἡ κατ' αὐτὸ¹⁰⁸ ἐξέτασις, κατὰ νόμου εἰσφοράν, οἷον εἰ δημηγορητέον τοῖς τὰ πατρῶα κατεδιδόκοσι.

παντὸς τοίνυν ῥητοῦ περιστάσιν τινὰ ἔχοντος, εἰ μὲν κατ' ἄμφω γένοιτο ἡ ἀμφισβήτησις, κατὰ τὸ ῥητὸν καὶ κατὰ περιστάσιν, νομικὴ πάντως ἀναφαίνεται στάσις, ὥς ἐπὶ τοῦ ξένου τοῦ ἐπὶ τὸ τεῖχος ἀνελθόντος. ἐνταῦθα γὰρ νόμος μὲν τὸ μὴ ἀνιέναι, περιστάσις δὲ τὸ ἀνελθόντα ἡριστευκέναι· ἀμφισβητεῖται γὰρ ἐκάτερον. ὁ γὰρ νόμος περὶ παντὸς διαγορεύει ξένου, ὁ δ' ἀνελθὼν ἡδίκησε τὸν νόμον παραβάς.

[7.619.27] πάντων γὰρ ἐξῆς ὑποδραμόντων τὸ χωρίον καὶ τοσοῦτον μόνον ἐπιμνησθέντων ὥς γίνεται ποτε καὶ κατὰ στοχασμὸν παραγραφὴ, αὐτὸς ἐπλάτυνέ τε τὴν ἀπορίαν καὶ ἀδύνατον οὐ κατέλιπεν. εἰ γὰρ κατὰ τὴν κοινὴν ἀπάντων παράδοσιν γίνεται κατὰ τέσσαρας ἡ παραγραφὴ στάσεις, κατὰ ῥητὸν καὶ διάνοιαν καὶ ἀμφιβολίαν, καὶ ὅρον καὶ στοχασμὸν, παραλιπεῖν δοκεῖ ὁ τεχνικὸς τὴν κατὰ στοχασμὸν παραγραφὴν, οὐ μέμψεως ἀπηλλάχθαι.

ῥητέον δὲ ὥς ἀκριβῶς ἀναθεωροῦντι κατὰ στοχασμὸν οὐκ ἂν ποτε εἴη παραγραφὴ· ὁ καὶ αὐτὸς διαθρήσας τὸ τοιοῦτον εἶδος παρήκε. σκοπῶμεν γὰρ οὕτως· παντὶ ῥητῷ δεῖ τινὰ ὑποκεῖσθαι περιστάσιν, εἰ μέλλει ἐν ὑποθέσει ἀλλὰ μὴ ἐν θέσει λαμβάνεσθαι. ὅταν γὰρ αὐτὸ ἐφ' ἑαυτοῦ τὸ ῥητὸν ἀμφισβητῇται, θετικὴ γίνεται ἡ κατ' αὐτὸ ἐξέτασις, κατὰ νόμου εἰσφοράν, οἷον εἰ δημηγορητέον τοῖς τὰ πατρῶα κατεδιδόκοσιν, εἰ πολιτευτέον τοῖς ἡταιρικόσι. παντὸς τοίνυν ῥητοῦ ἔχοντός τινὰ ὑποκειμένην περιστάσιν, εἰ μὲν κατ' ἄμφω γίνεται ἡ ἀμφισβήτησις, καὶ κατὰ τὸ ῥητὸν καὶ κατὰ τὴν παράστασιν νομικὴ πάντως ἀναφανεῖται ἡ στάσις· οἷον νόμος μὴ ἀνιέναι ξένον ἐπὶ τὸ τεῖχος· ἀνελθὼν τις ἡρίστευσε καὶ ὑπάγεται τῷ νόμῳ, ἐνταῦθα γὰρ νόμος μὲν μὴ ἀνιέναι ἐπὶ τὸ τεῖχος, περιστάσις δὲ τὸ ἀνελθόντα ἡριστευκέναι· καὶ ἀμφισβητεῖται ἐκάτερον, ὁ μὲν νόμος, εἰ περὶ πάντων διαγορεύει, ὁ ἀνελθὼν εἰ ἡδίκησε καὶ παρέβη τὸν νόμον. ὁμοίως καὶ ἐπὶ τοῦ συλλογισμοῦ· νόμος τὸν ἐκ πόρνης μὴ λέγειν· ἐκ πόρνου τις γενόμενος λέγειν

¹⁰⁸ κατὰ ταὐτὸ cod.

ὅλως δὲ περὶ πάσης ζητήσεως νομικῆς, εἰ μὲν περὶ ῥητοῦ μὴ ἀμφισβητῶμεν, περὶ δὲ μόνης τῆς περιστάσεως, λογικὴν ποιήσομεν στάσιν, οἷον· νόμος τὸν φονέα κολάζεσθαι, εὐρέθη τις ἐπ' ἐρημίας ξιφῆρης νεοσφαγεῖ σώματι παρεστηκῶς καὶ κρίνεται φόνου. δῆλον γὰρ ὅτι στοχαστικὸν τὸ ζήτημα, περὶ τὴν περίστασιν οὐ περὶ τοῦ ῥητοῦ τῆς ζητήσεως οὔσης· ὁμολόγηται γὰρ τὸ ῥητόν. προαγάγωμεν τοίνυν τῇ παραγραφῇ τὸν λόγον. ὅτι μὲν οὖν περὶ μόνον τὸ ῥητόν οὐκ ἔχει τὴν ζήτησιν καταφανές· θετικὴ γὰρ ἂν ἐφαίνετο¹⁰⁹. ἀλλ' οὐδὲ περὶ γυμνὴν τὴν περίστασιν· λογικῆς γὰρ τοῦτο γένεσις στάσεως, πᾶσα δὲ παραγραφὴ ἔγγραφος. λείπεται ἄρα καὶ κατὰ τὸ ῥητόν καὶ τὴν περίστασιν γίνεσθαι ἐν αὐτῇ τὴν ἀμφισβήτησιν. ὅπου δὲ ταῦτα, νομικὴ ἢ στάσις, ὥστε καὶ ἡ παραγραφὴ.

ἀλλ' εἰ ταῦτα, πῶς φησιν ὁ τεχνικὸς ὅτι ἔσθ' ὅτε ὀριστικῶς τέμνεται καὶ στοχαστικῶς; ἐροῦμεν ὅτι

καθὸ μὲν ἀπὸ ῥητοῦ ἔχει πᾶσα παραγραφὴ τὴν ἀρχήν, ἀπὸ νόμου πάντως λαμβάνεται καὶ νομικῇ ὑποπίπτει στάσει, καὶ κατὰ τοῦτο ὕγιής ὁ Ἑρμογένους κανὼν, ὅτι ἡ ἔγγραφος κατὰ μίαν τῶν νομικῶν ἐξετάζεται· κατὰ δὲ πλατυνομένη ἐν τῇ κατὰ ῥητόν καὶ διάνοιαν τῆς ἐξετάσεως στάσει ὀριστικῶς ἐργάζεται, λέγεται κατὰ ὅρον ἐξετάζεσθαι, τουτέστι τοῦ ῥητοῦ καὶ τῆς διανοίας ὀρικῶς πλατυνομένου. ἴδωμεν καὶ ἐπὶ ὑποδειγμάτων τὰ λεγόμενα. νόμος τὸν ἀλόντα προαγωγείας ἄτιμον εἶναι, ἀλούς τις προαγωγείας εἰσῆλθεν εἰς τὸ ἱερὸν καὶ κρίνεται ἀσεβείας. καὶ πάλιν· δις περὶ τῶν αὐτῶν δίκας μὴ εἶναι, γραψάμενος δημοσίων ἀδικημάτων Μειδίαν Δημοσθένης καὶ ἐλὼν κρίνει αὐτὸν καὶ ὕβρεως. ἐν τούτοις γὰρ ἀμφοτέροις τοῖς προβλήμασι χρωμένων τῶν παραγραφομένων τῷ ῥητῷ, ἐξετάζουσι τὴν διάνοιαν οἱ διώκοντες ὀριστικῶς, οἷον εἰ ἡ προαγωγεία ἀσέβεια, καὶ εἰ τὸ δις νῦν τε καὶ πρότερον ἢ δύο φησί, καὶ εἰ

κωλύεται.

καὶ ὅλως τὸν αὐτὸν τρόπον ἐπὶ τῆς νομικῆς· εἰ δὲ περὶ τοῦ ῥητοῦ μὲν μὴ ἀμφισβητοῖμεν, περὶ μόνης δὲ τῆς περιστάσεως, τοῦτο λογικῆς δῆπουθεν στάσεως, οἷον· νόμος ἀποτυμπανίζεσθαι τὸν φονέα, εὐρέθη τις ἐπ' ἐρημίας ἐπὶ νεοσφαγεῖ σώματι ξίφος κατέχων, καὶ κρίνεται, φησίν. δῆλον γὰρ ὅτι στοχαστικὸν τὸ ζήτημα, τοῦ μὲν ῥητοῦ παντελῶς ὁμολογουμένου, περὶ δὲ τὴν περίστασιν τῆς ὅλης συνισταμένης ζητήσεως.

προσάγομεν τοίνυν ἐπομένως τῇ παραγραφῇ τὸν λόγον. ὅτι μὲν οὖν περὶ μόνον τὸ ῥητόν οὐκ ἂν ἔχοι τὴν ζήτησιν καταφανές· θετικὸν γὰρ εἶναι τὸ τοιοῦτον ἐφάσκει. ἀλλ' οὐδὲ μὴν περὶ τὴν περίστασιν μόνην· τοῦτο γὰρ ταῖς λογικαῖς παρείπετο, πᾶσα δὲ παραγραφὴ ἔγγραφος. λείπεται ἄρα καὶ περὶ τὸ ῥητόν καὶ τὴν περίστασιν γίνεσθαι ἐν αὐτῇ τὴν ἀμφισβήτησιν. ὅπου δὲ περὶ ἀμφοῖν ἡ ζήτησις, νομικὴν γενέσθαι στάσιν ὁ λόγος ἀποδεικνύει· ὥστε πᾶσα παραγραφὴ κατὰ νομικὴν εὐρεθήσεται στάσιν. πῶς οὖν ὁ τεχνικὸς προσετίθει, ὡς ἔστιν ὅτε καὶ ὀρικῶς; καὶ ἐροῦμεν ὡς ...

¹⁰⁹ ἀνεφαίνετο cod.: cf. RG 7.524.2

ταὐτὸν ὕβρις καὶ δημόσιον· οὐκ ἄτοπον γὰρ καὶ δυσὶ χρήσθαι κατὰ ταὐτὸν παραγραφικοῖς, ὥς καὶ ὁ τεχνίτης.

[780.9] τίνος δὲ χάριν ἐν παραγραφῇ ἐκβάλλοντες τὴν εὐθυδικίαν μεμνήμεθα πάλιν αὐτῆς; φαμέν οὖν ὥς ἐν μὲν τοῖς πλάσμασι δύο ζητήσεις δεῖ ποιεῖσθαι, μίαν μὲν τὴν περὶ αὐτῆς τῆς παραγραφῆς, ἑτέραν δὲ τὴν περὶ τῆς εὐθυδικίας. ἐν δὲ τοῖς ἀληθινοῖς ἀγῶσι τότε δεῖ μεμνήσθαι καὶ ἀγωνίζεσθαι τὴν εὐθυδικίαν μετὰ τὴν παραγραφὴν ὅταν μὴ οἶόν τε ἄνευ τῆς εὐθυδικίας κατασκευάσαι τὴν παραγραφὴν, ὥς καὶ Δημοσθένης ἐν τῇ πρὸς Πανταίνετον παραγραφῇ· κελεύει γὰρ ὁ νόμος, φησί, τοὺς ἄφεςιν καὶ ἀπαλλαγὴν δεδοκότας μὴ δικάζεσθαι· οὐ γὰρ οἶόν τε ἐγένετο κατασκευάσαι τὴν παραγραφὴν εἰ μὴ ἔδειξε διὰ μαρτύρων ὅτι ἔδωκεν¹¹⁰ ἄφεςιν καὶ ἀπαλλαγὴν.

[780.21] δεῖ δὲ εἰδέναι ὅτι ἡ ἔγγραφος αὕτη ἴδια κεφάλαια οὐκ ἔχει. ὁ δὲ Μητροφάνης φησὶν ὅτι ἔχει τό τε κατ' ἐπαγγελίαν καὶ τὸ ἐκ τοῦ ἀποβησομένου, τοῦ μὲν φεύγοντος μὴ προσδεχομένου κατὰ παραγραφὴν μεγάλα ἐπαγγελλομένου δεικνύειν ἀδικοῦντα τὸν ἀντίδικον, τοῦ δὲ κατηγοροῦ μὴ ἂν ἐπὶ τὴν παραγραφὴν ἐλθεῖν λέγοντος, εἰ τοῖς δικαίοις ἐθάρρει.

ἀλλὰ φαμέν ὥς οὐκ ἔστι παραγραφῆς ἴδια κεφάλαια ταῦτα, ἀλλ' ἐπιχειρήματα μόνα.

τὸ δὲ μετὰ τὴν παραγραφὴν καθ' ἑτέραν τινὰ διαιρεθήσεται τῶν λογικῶν στάσεων· οἷον τὸν ἀντιλέγοντα νόμῳ εἴσω τριάκοντα ἡμερῶν δέον ἀντιλέγειν πρὶν οὐ κυρωθῆναι· μετὰ ταῦτα δὲ μὴ ἐξέστω· πρεσβεύοντος τοῦ πένητος, ὁ πλούσιος ἐχθρὸς ὧν ἐσήνεγκεν νόμον, τὸν εἴσω πέντε ταλάντων οὐσίαν κεκτημένον μὴ πολιτεύεσθαι μηδὲ λέγειν· ἐπανήκε μετὰ τὰς τριάκοντα ἡμέρας ὁ πένης, καὶ ἀντιλέγειν βούλεται τῷ νόμῳ· ἢ προτέρα ζήτησις κατὰ ῥητὸν καὶ διάνοιαν γίνεται· πότε καὶ τίσιν εἴσω τριάκοντα ἡμερῶν προστάττει ἀντιλέγειν ὁ νόμος· καὶ ὅτι οὐ τοῖς πρεσβεύουσιν οὐ τοῖς ἀποῦσι· καὶ ὅσα ἄλλα, ἢ δευτέρα δὲ κατὰ τὴν πραγματικὴν, εἰ νόμιμον τὸ εἰσενεχθὲν γράμμα, εἰ δίκαιον, καὶ τὰ ἐξῆς.

Σωπάτρου¹¹¹

[781.12] δύο αἰεὶ ζητήματά ἐστι περὶ τὴν ἔγγραφον μετάληψιν, τὸ μὲν

[7.626.17] κεφαλαίοις δὲ ἰδίῳις, καθάπερ ἄνωτέρῳ ἔφην, οὐ τέμνεται, εἰ καὶ τὰ μάλιστα ὁ Μητροφάνης αὐτῇ διδόναι ἐπιχειρεῖ τό τε κατ' ἐπαγγελίαν καὶ τὸ ἐκ τοῦ ἀποβησομένου, τοῦ μὲν φεύγοντος, εἰ μὴ προσδέξαιντο τὴν παραγραφὴν ἐπαγγελλομένου συχνὰ ἡδικοκότα τὸν ἀντίδικον ἐξελέγξαι, τοῦ δὲ κατηγοροῦ μὴ ἂν ἐπὶ τὴν παραγραφὴν ἐλθεῖν λέγοντος, εἴπερ μὴ ἐντεῦθεν δεινότατον ἀπάντων ἀποβαῖνον ἑώρα, τὸ παρρησίας τοὺς κακοήθεις ἐπιλαμβάνεσθαι. χρή δὲ τὰ τοιαῦτα οὐ κεφάλαια ἐπιχειρήματα δὲ οἶεσθαι μάλλον.

[5.191.5] ἡ μὲν οὖν παραγραφὴ ἐκβολὴ ἐστὶ τελεία τῆς εὐθυδικίας καὶ τὸν ἀγῶνα ἀντιστρέφει. δύο δὲ ἔχει ζητήματα τὰ πάντως μελετώμενα, καὶ τὸ μὲν πρῶτον

¹¹⁰ ἔδειξεν cod.

¹¹¹ cod.: Συριανοῦ Walz.

κατ' ἐκβολὴν τοῦ ἀγῶνος, τὸ δὲ κατ' ἐϋθυδικίαν, ἐν ᾧ τοῦ πράγματος ἡ ζήτησις. πρῶτον οὖν καλεῖ τὸ τῆς ἐκβολῆς, ὃ δὴ καὶ κυρίως παραγραφὴ. αὕτη δὲ, φησί, κατὰ μίαν τῶν νομικῶν ἐξετασθήσεται· ἐπειδὴ γὰρ ἐν αὐτῇ ἐστὶν ἡ τῶν ἐμπίπτόντων ῥητῶν ἐξέτασις, ἀναγκαίως κατὰ μίαν τῶν νομικῶν στάσεων διαιρεῖται. τὸ δὲ ἕτερον, ὃ καὶ ἐπαγόμενόν ἐστιν ἥτοι ἡ ἐϋθυδικία, καθ' ἑτέραν δὴ τινα τῶν λογικῶν,

ὡς ἡ ὑπὲρ Φορμίωνος παραγραφὴ τὸ μὲν πρῶτον νομικὸν ἔχει ζήτημα, τὸ δὲ δεύτερον στοχαστικόν, πότερον εἶχεν ἐν θήκῃ τὰ εἴκοσι τάλαντα ὁ Πασίων ἢ οὐ· ἡ δὲ πρὸς Πανταίνετον· τὸ μὲν πρῶτον νομικόν, τὸ δὲ δεύτερον μεταστατικόν, τοῦ Μνησιβούλου ἐπὶ Εὐέργου ἀνάγοντος τὰ γεγενημένα.

[781.26] ὥσπερ ἐν πάσῃ παραγραφῇ τὸ μὲν πρῶτον περὶ αὐτοῦ ἐστὶ ζήτημα τοῦ εἰσαχθῆναι τὸν ἀγῶνα, τὸ δὲ δεύτερον περὶ τῆς ἐϋθυδικίας τοῦ προκειμένου πράγματος, πλὴν μόνῃς τῆς κατὰ Τιμάρχου παραγραφῆς· ἐκείνη γὰρ μόνῃ τὴν ἐϋθυδικίαν οὐκ ἔχει.

Μαρκελλίνου

[781.32] λογικαὶ μὲν εἰσιν ἐν αἷς περὶ πράγματος ἡ ζήτησις, καὶ πάντα ᾧ¹¹² περὶ ἀγράφων ἐξετάζεται.

[782.2] ἐνταῦθα δέ, φησιν, ἡ προτέρα ζήτησις κατὰ ῥητὸν καὶ διάνοιαν· χρήσεται γὰρ ὁ μὲν πλούσιος τῷ ῥητῷ, ὁ δὲ πένης τῇ διανοίᾳ λέγων ὅτι ἄχρι τριάκοντα ἡμερῶν εἶπεν κατηγορεῖν τοὺς ἐπιδημοῦντας, οὐ τοὺς ἀποδημοῦντας, καὶ μάλιστα δημοσίας ἔνεκα χρείας, ὥσπερ καὶ γὰρ τῆς πρεσβείας χάριν ἁπῶν οὐκ ἐδυνάμην ἐντὸς τῆς προθεσμίας κατηγορεῖν· ἡ δευτέρα δὲ κατὰ πραγματικὴν, εἰ νόμιμον εἰσενεγκεῖν. ταῦτα γὰρ πραγματικῆς ἴδια, ὡς ἐν τῷ πρὸς Λεπτίνην, ὡς ἐν τῷ κατὰ Ἀριστοκράτους,

ζήτημα

κατὰ

μίαν τῶν νομικῶν πασῶν ἐξετασθήσεται,

τὸ δὲ ἕτερον, ὅπερ καὶ ἐπαγόμενόν ἐστιν, ἡ ἐϋθυδικία, ὅπερ καθ' ἑτέραν τὴν ἐμπίπτουσαν στάσιν μελετηθήσεται· οὐδὲ γὰρ ἀποφύνασθαι κατὰ ποίαν δυνατὸν, ὡς ἡ ὑπὲρ Φορμίωνος παραγραφὴ· τὸ μὲν οὖν πρῶτον νομικὸν ἔχει ζήτημα, τὸ δεύτερον στοχαστικόν, πότερον εἶχεν ἐνθήκῃ τὰ εἴκοσι τάλαντα ὁ Πασίων ἢ οὐ, καὶ ἡ πρὸς Πανταίνετον παραγραφὴ τὸ μὲν πρῶτον ἔχει ζήτημα νομικόν, τὸ δὲ δεύτερον μεταστατικόν, τοῦ Μνησιβούλου ἐπὶ Εὐέργου ἀνάγοντος τὰ γεγενημένα· καὶ ὡς ἐπὶ τούτου ...

[5.191.26] ἐν πάσῃ δὲ παραγραφῇ εἰδέναι χρὴ ὅτι τὸ μὲν πρῶτον περὶ αὐτοῦ ἐπὶ τοῦ εἰσαχθῆναι τὸ ζήτημα, τὸ δὲ δεύτερον περὶ τῆς ἐϋθυδικίας τοῦ παρακειμένου πράγματος, πλὴν μόνῃς τῆς κατὰ Τιμάρχου παραγραφῆς. ἐκείνη γὰρ μόνῃ τὴν ἐϋθυδικίαν οὐκ ἔχει· καὶ ὁ τὸν λόγον ἐξηγούμενος τὴν αἰτίαν ἐρεῖ.

¹¹² om. cod. (τὰ s.l.): corr. Walz.

καὶ καθόλου ἔνθα ἂν ἔχωμεν παρανόμων γραφήν, οὐ μόνον δὲ ἔνθα ἔχομεν νόμον, ἀλλὰ καὶ ψήφισμα· μικρὸν γάρ τι διαφέρει νόμος ψηφίσματος.

ἐμπέπτωκε δὲ ἐνταῦθα καὶ δευτέρον τι ὡς παραγραφικόν· οἷον οὐκ ἔχων τὰ πέντε τάλαντα οὐ δύνασαι λέγειν· δῆλον δὲ, ὡς καὶ πρὸς τοῦτο ἀπαντήσεται τῇ φύσει τοῦ πράγματος· ἔτι γὰρ τῆς ζητήσεως οὔσης περὶ τοῦ εἰ χρή δοκιμασθῆναι αὐτὸν, οὐχ οἷόν τε ἤδη ὡς κυρίῳ χρῆσθαι.

Μαρκελλίνου

[782.19] πιθανότητος ἔχεται τὸ λεγόμενον. οὐ γὰρ δὴ ἰσχυρὸν οὐδὲ ἀγωνιστικὸν τὸ παραγραφικόν, ἐκ τῆς προβολῆς δὲ παραγράφεται, λέγων ὅτι οὐκ ἔξεστί σοι πολιτεύεσθαι μὴ ἔχοντι τὰ πέντε τάλαντα. διὰ τοῦτο δὲ οὐκ ἀγωνιστικὸν τοῦτο, ἐπειδὴ ἀνόητον τὸ τοῖς ἀμφιβάλοις ῥητοῖς ὡς κυρίοις κεχρῆσθαι, ἀλλ' ὀλίγον πως πιθανόν, ὡς ἐπὶ τοῦ Λεπτίνου νόμου· ἐκεῖ γὰρ δοκεῖ πως τῇ προθεσμίᾳ κεκυρώσθαι, εἰ καὶ ἀμφίβολόν ἐστιν ὁ νόμος. χρήσεται μὲν οὖν τῷ προειρημένῳ παραγραφικῷ ὁ φεύγων ἐνταῦθα, οὐ μὴν ἐνδιατρίψει· οὐ γὰρ ἰσχὺν ἱκανήν, ὅπερ εἶπον, ἔχει, πιθανὸν δὲ πως ὀλίγον ἐστίν. πάνυ δὲ ἀκριβῶς καὶ ὁ τεχνικός, ἐπειδὴ ὥσπερ ἐν μεταλήψει ἀπὸ τῶν περιστατικῶν ὁ διώκων τὴν ἀντίθεσιν ποιεῖται, ὡς παραγραφικόν αὐτὸ εἶπεν, ἐπειδὴ χρόνῳ μόνον ἐκυρώθη ὁ νόμος, οὐ κρίσει δικαστῶν· εἰ γὰρ ἦν κρίσει κεκυρωμένος, παραγραφή ἐγίνετο δι' αὐτοῦ τελεία καὶ οὐ παραγραφικόν. ἔστι δὲ τὸ παραγραφικόν τοῦτο τοιοῦτον· οὐκ ἔχων, φησὶ, τὰ πέντε τάλαντα οὐ δύνασαι λέγειν· ὁ γὰρ νόμος κωλύει σε λέγειν ἐνδεῶς ἔχοντα τῶν πέντε ταλάντων. ὁ δὲ λύσει ταῦτα τὸν χρόνον μεταλαβών, ὅτι ἔτι ἀμφιβόλου ὄντος εἰ χρή κύριον εἶναι τὸν νόμον πῶς δυνατὸν ὡς κυρίῳ χρῆσθαι; κατὰ φύσιν δὲ τοῦ πράγματος τὴν τοιαύτην εἶπεν γενέσθαι λύσιν, δι' ᾧ φησὶν· *δῆλον δὲ ὡς καὶ πρὸς τοῦτο ἀπαντήσεται τῇ φύσει τοῦ πράγματος*, ὅτι οὐκ ἐξ ἐπιχειρημάτων οὐδὲ κατασκευῆς περιττῆς, ἀλλ' ἐξ αὐτῶν τῶν ὑποκειμένων εἴληπται.

Appendix 5: *RG* 7 (omitting the ‘patchwork’ source)

The text is based on *RG* 7. Unattributed conjectures are my own.

RG 7.231.1-241.28

[231.2] α. τελευταία ἢ μετάληψις διὰ τὸ μὴ περὶ τὸ πρῶγμα τὴν ζήτησιν ἔχειν, ἀλλ’ ὁμολογουμένου τοῦ πράγματος παρὰ μόνην τὴν περίστασιν στρέφεσθαι.

[231.8] β. περὶ τῶν προρρηθεισῶν στάσεων ὅπως διαγινώσκονται εἴρηκεν ὅτι ζητούντων ἡμῶν εἰ ἔστιν ἢ τί ἐστιν ἢ ὁποῖόν τί ἐστιν, οἶον τὴν ὑπαρξιν, τὴν ιδιότητα, τὴν ποιότητα, τὴν δὲ μετάληψιν οὐχ ὁμοίως ἔφη διαγινώσκεσθαι, ἀλλ’ ὅταν ζητῆται εἰ τὸν ἄγωνα δεῖ εἰσελθεῖν ὅλως. μήτε γὰρ τὸ εἰ ἔστι ζητεῖσθαι, ὥσπερ ἐν στοχασμῷ, μήτε τὸ τί ἐστιν, ὡς ἐν ὄρω, μήτε τὸ ὁποῖόν τί ἐστιν, ὥσπερ ἐν ταῖς λοιπαῖς τῶν στάσεων, ἀλλ’ αὐτὸ τοῦτό φησιν, εἰ δεῖ εἰσαχθῆναι τὸν περὶ τούτων ἄγωνα. παραγραφὴ γάρ ἐστιν ἡγουν παραίτησις καὶ παρωθισμὸς τοῦ ἀγῶνος.

[231.18] μετάληψις δὲ εἴρηται ὅτι κατ’ ἐνστασιν εἰσάγεται καὶ ἀντιπαράστασιν, καθάπερ ἢ μετάληψις τὸ κεφάλαιον, ὥσπερ ἐπὶ τοῦ παρεστῶτος τῷ νεοσφαγεῖ σώματι τοῦ κρινομένου λέγοντος ἀντιληπτικῶς ὅτι ἐξῆν μοι παρίστασθαι, μεταληπτικῶς ὁ κατήγορος ἀντικαθίσταται, λέγων ὅτι οὐκ ἐξῆν σοι, ὅπερ ἐστὶν ἡ ἐνστασις· εἶτα ὅτι εἰ καὶ ἐξῆν, ἀλλ’ οὐχ οὕτω, ξίφος κατέχοντα καὶ ἡμαγμένον τὰς χεῖρας, ὅπερ ἐστὶν ἡ ἀντιπαράστασις. οὕτω καὶ ἡ μετάληψις, ἡ στάσις, πρῶτον μὲν παραγραφὴ διωθουμένη τὸν ἄγωνα ἐνστατικῶς (ἐνθεν καὶ παραγραφὴ λέγεται), εἶτα δεχομένη πάλιν ἀντιπαραστατικῶς ἀγωνίζεται, ὡς ἐπὶ τῶν παραδειγμάτων ἐν τοῖς ἐφεξῆς σαφέστερον δηλωθήσεται.

[233.4] ε. διδάξας τὸν ὅρον τῆς μεταλήψεως, ὅτι παραγραφὴ ἐστὶν εἰ δεῖ τὸν ἄγωνα εἰσελθεῖν τὸν περὶ τοῦ εἰ ἔστιν ἢ τί ἐστιν ἢ ὁποῖόν τί ἐστιν (τοῦτο γὰρ ὅρος τῆς μεταλήψεως), διδάσκει καὶ περὶ τῶν ταύτης εἰδῶν καινόν τι πρῶγμα ποίων, ὅπερ οὐδεμία τῶν ἄλλων πεποίηκε στάσεων, πρὶν ἢ προθεῖναι τὴν περὶ τῶν κεφαλαίων διαίρεσιν διδάσκει περὶ εἰδῶν. ἀλλ’ ἐπειδὴ τὰ εἶδη τῆς μεταλήψεως ἰδίους ἑκάστον τέμνεται κεφαλαίοις¹¹³, ὡς ἐν τῇ διαίρεσει τούτων εἰσόμεθα, τούτου ἕνεκα καὶ τάξεως αὐτὰ τῆς μετὰ τῶν στάσεων ἡξίωσεν.

[233.13] ἀλλ’ ἐνταῦθα ἕτερόν τι πάλιν ἀνεφύη ἄπορον, ὡς εἶγε ἰδίους τέμνεται κεφαλαίοις ἑκάτερον εἶδος τῆς μεταλήψεως, πῶς οὐ στάσις εἶναι τούτων ἑκάστον καὶ νομίζεσθαι λέγεται, ἀλλ’ ὡς εἶδη ἡμῖν παρὰ τοῦ τεχνικοῦ παραδεδόνται. ἐντεῦθεν οὖν ἔστιν ἐπιγνῶναι ὅτι ὥσπερ οὐ στάσιν τὴν αὐτὴν ἢ ταυτότης τῶν κεφαλαίων ποιεῖ, οὕτως οὐδὲ ἡ ἑτερότης ἑτερότητα στάσεων, ἀλλ’ ἡ τοῦ ὅρου ταυτότης ἢ ἑτερότης, αὕτη ταυτότητα στάσεων ἢ ἑτερότητα στάσεων κατεργάζεται· καὶ διὰ ταῦτά φησιν ὅτι δύο δὲ αὐτῆς εἶδη.

[233.23] εἰπὼν δὲ τὴν ποσότητα τῶν εἰδῶν, ὅτι δύο, μέτεισιν καὶ ἐπὶ τὴν τούτων ποιότητα, λέγων ὅτι ἡ μὲν ἔγγραφός ἐστιν, ἡ δὲ ἄγραφος.

¹¹³ κεφάλαιον cod.

[233.25] τὸ ἔγγραφον ἐνταῦθα εἶδος τῆς μεταλήψεως τοῦ ἀγράφου προτίθησι, τοῦναντίον τῆς κατὰ τὴν διαίρεσιν τῶν λογικῶν τε καὶ νομικῶν στάσεων ἐνδεικνύμενος τάξεως. ἐκεῖ μὲν γὰρ διὰ τῆς διαιρετικῆς μεθόδου τὰς στάσεις παραδίδους τῇ διαιρετικῇ ἐπόμενος φύσει τὰς λογικὰς ὡς ἀπλουστέρας τῶν νομικῶν προηγόρευσεν. ἐνταῦθα δὲ ὡς ἤδη τὴν φύσιν τῶν στάσεων παραδίδους καὶ περὶ τῶν ὑπ' αὐτὰς εἰδῶν τὸν λόγον ποιούμενος τὴν ἔγγραφον ὑλωδεστέραν καὶ παχυτέραν τῆς ἀγράφου προτέθεικεν.

[234.4] ἐπεὶ δὲ καὶ αἱ νομικαὶ ἐξ ἐγγράφων εἰσὶν, ἵνα τὴν πρὸς ἐκείνας δεῖξη διαφορὰν ἐπήνεγκε· καὶ ἡ μὲν ἔγγραφός ἐστιν ἀπαγωγή τῆς εὐθυδικίας κατὰ παραγραφὴν ἀπὸ ῥητοῦ τινος, περὶ οὗ ἡ ζήτησις. ἐκεῖναι, φησί, κατ' εὐθὺ χωροῦσι τῆς εὐθυδικίας, καὶ περὶ αὐτῆς αὐτίκα καὶ κατ' ἀρχὰς ἀγωνίζονται· ἡ δὲ ἔγγραφος μετάληψις καὶ παραγραφὴ διωθῆται τὸν ἀγῶνα καὶ ἀποκρούεται, καὶ μὴ δεῖν αὐτὸν εἰσαχθῆναι πρότερον ἀγωνίζεται· εἴτα ἐπειδὴν δι' ὅλης στάσεως τῆς ἀπὸ ῥητοῦ κατὰ μίαν τῶν νομικῶν ἐξεταζομένης δεῖξη τὸ κατ' αὐτὸν ὁ κατηγορούμενος μὴ δεῖν τὸν ἀγῶνα εἰσενεχθῆναι, κατὰ περιουσίαν χωρεῖ καὶ ἐπὶ τὴν εὐθυδικίαν αὐτήν, καθ' ὅποτέραν ἂν ἐμπίπτη τῶν στάσεων, ἀγωνιζόμενος κἀνταῦθα ἀνεύθυνον ἑαυτὸν ἀποδείξει καὶ καταδίκης ἀνώτερον. ἀπὸ δὲ τοῦ παραδείγματος σαφέστερον δειχθήσεται τὸ λεγόμενον.

[234.20] εἴη ἂν ἀκριβῶς διαφορὰ ἀντιλήψεως καὶ μεταλήψεως αὕτη, τὸ ἐν μὲν τῇ ἀντιλήψει τὸ πεπονθὸς πρόσωπον λαμπρὸν εἶναι, τὸ δὲ ἀδικῆσαν¹¹⁴ εὐτελές, ὥσπερ ἐπὶ τοῦ ζωγράφου τοῦ προτιθέντος ἐπὶ λιμένος τὰ ναυάγια (ἡδίκηται μὲν γὰρ ἡ πόλις, ὁ δὲ ἀδικήσας ζωγράφος), καὶ ὁ ἀνελὼν τὸν τρισαριστέα μοιχὸν εὐρὼν ἀριστέα ἀνεῖλεν εὐεργέτην τῆς πόλεως, λαμπρὸν τὸ πρόσωπον καθ' ὑπερβολήν. ἐν δὲ τῇ μεταλήψει οὐχ οὕτως, ἀλλὰ τὸ μὲν πεπονθὸς εὐτελές καὶ τοῦ ταῦτα παθεῖν ἅπερ ἔπαθεν ἄξιον ὡς εἰπεῖν, τὸ δὲ πρᾶξαν λαμπρόν. καὶ αὕτη μὲν ἡ διαφορὰ ἐνθα πάθος τι καὶ ἄδικος πρᾶξις ὑπόκειται. ἐνθα δὲ μὴ τοῦτο (ὡς ἐν ἐκείνῃ τῇ ἀντιλήψει· Κλέωνος ἐπαγγελλομένου τὰ περὶ Πύλον, Ἀλκιβιάδης ἐγέλα, καὶ κρίνεται ὕβρεως) ἑτέρα ἐστὶ διαφορὰ ἢ κατὰ Πορφύριον· ἐν μὲν γὰρ τῇ ἀντιλήψει ὅλον τὸ πρᾶγμα συγκεχώρηται, ἐν δὲ τῇ μεταλήψει οὐχ ὅλον, οἷον τὸ γελᾶν Ἀλκιβιάδην κατὰ πάντα συγκεχώρηται καὶ χρόνον καὶ τόπον, τὸ δὲ ἀποκτινύναι τὸν πένητα κατάκριτον ὄντα οὐ συγκεχώρηται πάντῃ. καὶ ἡ Ἀντιπάτρου δὲ οὐ παραδεχθήσεται, λεγόντων ἡμῶν ὡς κατὰ τὸ πρόβλημα ἔπαισε, μᾶλλον δὲ ἐφ' ἅπασι τοῖς εἰρημένοις. κατὰ Παῦλον δὲ τὸν ἡμέτερον ἀκριβεστέραν διαφορὰν προσθετέον, ὅτι ἡ μὲν μετάληψις ἀπὸ νόμου τινὸς αἰεὶ λαμβάνεται, ἡ δὲ ἀντίληψις ἢ ἀπὸ ἔθους ἢ ἀπὸ φύσεως ἢ ἀπὸ νόμου. πρὸς μὲν οὖν τὸ ἀπὸ φύσεως καὶ ἔθους οὐδὲ μία ἂν γένοιτο κοινωνία ὅλως, πρὸς δὲ τὸ ἀπὸ νόμου, ἐνθα κοινοῦσι μόνον, ἀπόχρη [οῦν] ἡ Πορφυρίου διαφορὰ. ἐπιστάσεως δὲ ἄξιον, μήποτε ἐπὶ τῶν κατὰ νόμον ἀντιλήψεων πάντως λυπηρὰ ἔπεται ἐκβασις, ἐπὶ δὲ τῶν ἐχόντων πρᾶξιν ἐκβάσαν ἢ κατὰ τὰ πεπονθότα πρόσωπα διαφορὰ πάνυ ἔρρωται.

[235.25] ἄλλαι μὲν παρ' ἄλλων τάξεις τῇ μεταλήψει ἀπεδόθησαν, ὁ δὲ Ἑρμογένης καλῶς ποιῶν πασῶν αὐτὴν ἐν τῇ μεθόδῳ μετατάττει, οὐ τοσοῦτον πρὸς τὴν φύσιν ἀπιδὼν ὅσον πρὸς τὴν διδασκαλίαν ἀναγκαῖον. ἐπεὶ γὰρ οὐχ οἷόν τε τὴν παραγραφὴν καθ' αὐτὴν εἶναι ποτε, ἀλλὰ δεῖ

¹¹⁴ ἀδικῆσαι cod.

πάντως ἑτέρας ἔχειν στάσεως συμπλοκήν, οἷον παραγραφὴ κατὰ τὸν στοχασμόν, παραγραφὴ κατὰ τὸν ὅρον καὶ κατὰ ῥητὸν καὶ διάνοιαν· ἐπεὶ οὖν δεῖ πάντως ἑτέραν αὐτῇ συνυπάρχειν στάσιν εὐλόγως ἐκεῖνο προδιεξήλθεν, ἵν' ὅταν τὴν συμπλεκομένην τῇ παραγραφῇ στάσιν ἀκούωμεν μηδὲν ταραττώμεθα πρὸς τὴν ἄγνοιαν. οὕτως οὖν ἐν μὲν τῇ μεθόδῳ τάττει αὐτὴν μετὰ πάσας, ἐν δὲ τῇ διαιρέσει μέσσην· οὐκέτι γὰρ ὁ προειρημένος λόγος ἐκώλυνεν ἤδη τὰς στάσεις ἐπισταμένων ἡμῶν.

[236.11] μετάληψις λέγεται ὅτι μεταλαμβάνει ἀπὸ τοῦ πράγματος ἕτερόν τι τῶν περὶ τὸ πρᾶγμα, τουτέστι τῶν περιστατικῶν, καὶ περὶ αὐτοῦ ποιεῖται τὴν ζήτησιν· καὶ παραγραφὴ ὁμοίως, ὅτι παραγράφει καὶ παραχαράττει τὸ πρᾶγμα ἢ τι τῶν περὶ τὸ πρᾶγμα, φημι τῶν περιστατικῶν. μία γοῦν αὕτη τοῦτου συγγένεια, καθὼς διαγράφει αὐτῶν ἑκάτερον τὸ πρᾶγμα· ὥστε εἰ ἔργον ἀμφοτέρων ἓν, καὶ τὸ πρᾶγμα αὐτῶν διαφόρως ἐφ' ἑκατέρας ταχθήσεται. ἔστι δὲ καὶ ἑτέρα κοινωνία· ἀμφω γὰρ ἀπὸ ῥητοῦ τινος ἄρχεσθαι βούλονται. ἀλλ' ἐπειδὴ κοινωνίας αὐτῶν διεξήλθομεν, καθ' ἃς καὶ τὸ ὄνομα καὶ τὸ πρᾶγμα κοινὸν ἔξουσιν, ἀναγκαῖον καὶ τινὰς διαφορὰς προσθεῖναι, ὅπως μὴ παντελῶς ἐν καὶ τὸ αὐτὸ νομισθεῖεν. διαφέρει τοίνυν ἀλλήλων πρῶτον μὲν τῷ τὴν μετάληψιν ἄρχεσθαι ἀπὸ ῥητοῦ καὶ εὐθέως αὐτοῦ ἀφίστασθαι, τὴν δὲ παραγραφὴν περὶ αὐτῶν καταγίνεσθαι. ἔπειτα ἢ μὲν παραγραφὴ ἔχει πρόδηλον τὴν ἐαυτῆς φύσιν (μόνη γὰρ αὕτη τῶν στάσεων οὐδὲ μίαν περὶ τὴν εὔρεσιν ἔχει τὴν ζήτησιν· ὁ γὰρ λέγων τὸ πρόβλημα προστίθῃσι καὶ τὸ παραγραφικὸν καὶ δηλοῖ τὴν στάσιν ἅμα τῷ προβλήματι προενέγκασθαι), ἢ δὲ μετάληψις οὐχ οὕτως, ὥσπερ οὐδὲ αἱ ἄλλαι τῶν στάσεων.

[237.18] ὁ δὲ χρόνος διαιρεῖται εἰς τὸ μὴ νῦν, εἰς τὸ μηκέτι, εἰς τὸ μήπω. τοῦ μὴ νῦν παράδειγμα· νόμος ἐν ἱερομηνίᾳ μηδένα δικάζεσθαι, κατηγορεῖ τις ἐν ἱερομηνίᾳ τινὸς ὡς ἡσεβηκότος, ὁ δὲ παραγράφει αὐτόν. κατὰ γε τὸν ἐνεστώτα χρόνον παραγράφει, οὐκ ἀποσειόμενος παντελῶς τὴν κατηγορίαν, ἀλλὰ πρὸς τὸ παρὸν ἐκβάλλων. τοῦ δὲ μηκέτι παράδειγμα· δύο πλούσιοι πένητι καθεστήκασιν ἐχθροὶ τὰ πολιτικά, ἐπὶ πρεσβείαν ἐξελεθόντος τοῦ πένητος εὐρέθη ὁ υἱὸς νεκρὸς ἀσκύλευτος, καὶ ἀντεγκαλοῦσιν ἀλλήλοις οἱ πλούσιοι, ἀπέφυγον ἀμφοτέρω, καὶ ἐπανελθὼν ὁ πένης βούλεται κρίνειν αὐτούς, οἱ δὲ παραγράφονται αὐτόν κατὰ τὸν νόμον τὸν κελεύοντα δις περὶ τῶν αὐτῶν μὴ κρίνεσθαι. ἐνταῦθα γὰρ τὴν κατηγορίαν παντελῶς παραγράφονται, μὴ οἷόν τε εἶναι περὶ τούτων κρίνεσθαι τοῦ λοιποῦ, ἐφ' οἷς ἤδη ἐκρίθησαν. τοῦ δὲ μήπω ἐκεῖνο ἔστω ἡμῖν παράδειγμα· νόμος τριάκοντα ὕστερον ἡμερῶν εἰσιέναι τὴν δίκην, δύο πένητες ἐγράψαντο πλούσιον, εὐρέθη ὁ ἕτερος αὐτῶν νεκρὸς ἀσκύλευτος, καὶ ὁ ἕτερος πρὸ τῶν λ' ἡμερῶν τὴν δίκην ἀξιοῖ κρίνεσθαι. τοῦτο γὰρ οὐ παντελῶς ἀλλὰ κατὰ τὸ μήπω παρῆναι τὸν καιρὸν τῆς προόδου παραγραφῆς· ἀναμένειν γὰρ αὐτόν ἀξιώσει τὸν προσήκοντα χρόνον.

[239.12] Θ. τὸ μὲν οὖν παραδειγματικὸν πρόβλημα τοιοῦτόν ἐστιν, ἐφ' ᾧ καὶ φόνου κρινόμενος ὁ κατηγορούμενος ἐπὶ τὸν νόμον καταφεύγει, καὶ δι' αὐτοῦ τὸν περὶ τοῦ φόνου διωθεῖται ἄγων, μὴ δεῖν περὶ τῶν αὐτῶν αὐθις κρίνεσθαι λέγων, ὁ δὲ κατήγορος τῆς τοῦ ῥητοῦ διανοίας ἀντέχεται, τότε λέγειν τὸν νόμον μὴ παλινδικεῖν ἐνιστάμενος, ὅτε μὴ τὸ θεῖον κατηγορεῖ, ὅτε οὐ χρησμῶ τὰ τῆς μαιφονίας ἐλέγχεται, ὅτε μὴ αὐτὸς ὁ Πύθιος κατὰ στόμα προσαπαντᾷ τῷ φονεύσαντι· νῦν δὲ διὰ τῶν λοιπῶν τῆς στάσεως κεφαλαίων τῆς ζητήσεως προϊούσης μετὰ τὸν ἀπαρτισμὸν τῆς παραγραφῆς

τὰ τῆς εὐθυδικίας εἰσάγεται κατὰ τὸν στοχασμὸν μελετώμενα, ἀντὶ σημείων λαμβανομένων τῶν τοῦ Πυθίου ῥημάτων, εἰρηκότος ὅτι ἀνδροφόνους οὐ χρώ, καὶ τούτων στοχαστικῶς ἐξεταζομένων, καὶ τοῦ μὲν ὑπ' εὐθύνην τὸν κατηγορούμενον ἄγοντος, τοῦ δὲ εὐθύνης ἑαυτὸν ὑπεξάγοντος.

[240.22] ια. περὶ τῆς ποιότητος τῆς ἐγγράφου μεταλήψεως εἰρηκῶς νῦν καὶ περὶ τῆς ἀγράφου, ὅποια τίς ἐστίν, διαλέγεται, ὅτι ἐστὶν ἀπαγωγή μὲν τῆς εὐθυδικίας καὶ αὕτη κατὰ παραγραφὴν ἀπὸ ῥητοῦ, οὐχ ἴσταται δὲ περὶ τὸ αὐτὸ ῥητόν (ἦ γὰρ ἂν οὐδὲν τῆς ἐγγράφου διέφερε μεταλήψεως, παραγραφὴ καὶ αὕτη οὖσα), ἀλλ' ἀφισταμένη τοῦ ῥητοῦ περὶ τι τῶν περιστατικῶν καταγίνεται καὶ εἰς αὐτὸ περιίσταται, ἐν ταύτῃ καὶ τὴν ἐγγραφὸν ὁμοῦ μετάληψιν καὶ τὰς νομικὰς διαφεύγουσα, τὴν μὲν ὡς μετὰ τοῦ ῥητοῦ καὶ τῆς παραγραφῆς ἀποχωροῦσαν καὶ πρὸς τὴν εὐθυδικίαν μεταχωροῦσαν εἰ καὶ πρὸς βραχὺ παραγράφει, τὰς δὲ ὡς τοῦ ῥητοῦ μεθισταμένη καὶ πρὸς τι τῶν περιστατικῶν ἀποκλίνουσα, τόπον ἢ χρόνον ἢ πρόσωπον καὶ τὰ ἐξῆς, καὶ τούτων ἑνὸς μεταλαμβάνουσα καὶ περὶ αὐτὸ τὴν δύναμιν τοῦ ἀγῶνος συνάγουσα.

[241.7] ιβ. παραδείγματι τὸ πᾶν ἐσαφήνισε. καὶ γὰρ ἐπὶ τοῦ δοθέντος προβλήματος τὸ μὲν πρᾶχθὲν συγχωροῦμεν τὸν νόμον αἰδούμενοι, τὸν μοιχὸν καὶ τὴν μοιχευομένην ἀναιρεῖσθαι κελεύοντα, τὸν τόπον δὲ καὶ τὸν χρόνον μεταλαμβάνοντες αἰτιώμεθα, ὅτι οὐκ ἐξῆν ἐπὶ τοῦ τάφου φονεῦειν, οὐδὲ χρόνῳ ὕστερον τῆς γυναικὸς κατατρέχειν. τοσαῦτα καὶ περὶ τῆς μεταλήψεως.

RG 7.616.12-627.2

[616.23] α. ὅτι μὲν οὖν εἰκότως τὴν μέσσην εἵληφε τάξιν ἢ τε πραγματικὴ καὶ ἡ μετάληψις μικταὶ καθεστηκυῖαι, ἐδήλωσεν ἐν τῇ πραγματικῇ· δεῖ γὰρ τὸ μικτὸν μέσον εἶναι τούτων, ἀφ' ὧν ἔχει τὴν μίξιν.

[617.2] νυνὶ δὲ λεκτέον ἀνθ' ὅτου τῆς πραγματικῆς μετετάγη, τοῦ αὐτοῦ λόγου ἐπ' ἀμφοτέρων διήκοντος. εἴη δ' ἂν τῆς τοιαύδε πράξεως αἴτιον ἢ τῆς παραγραφῆς πρὸς τὰς νομικὰς πλείστη συγγένεια· τὸ μὲν γὰρ τῆς πραγματικῆς ἐγγραφὸν καθ' ὁμοιότητα γίνεται τῶν νομικῶν, ἔχον καὶ ἰδίᾳ κεφάλαιον (φημὶ δὴ τὰ περὶ τὸ νόμιμον)· τὸ δὲ τῆς μεταλήψεως, τουτέστιν ἡ παραγραφὴ, κατὰ νομικὴν τε γίνεται ὡς ἐπὶ τὸ πλείστον, καὶ ἰδίῳ οὐ χρήται τὸ παράπαν, ἀλλὰ τῆς πραγματικῆς κεφαλαίοις. εἰ δὲ λέγοι τις καὶ κατὰ στοχασμὸν γίνεσθαι πολλάκις καὶ κατὰ ὅρον παραγραφὴν, καὶ τοῖς ἐκείνων χρήσθαι αὐτὴν κεφαλαίοις, ἀληθὴς ὁ λόγος· οὐ μὴν δεῖ ζητεῖν εἰ γίνεται καὶ καθ' ἑτέραν, ἀλλ' ὡς οὐ κατὰ νομικὴν γίνεται, δεικνύτω· ἀλλ' ἔρεῖ τις καὶ τὴν πραγματικὴν προῖέναι ποτὲ κατὰ νομικὴν στάσιν, ὅτε ἐγγραφὸν ἐστὶν δηλονότι. καὶ ἔγωγε σύμφημι, καὶ ἔδωκα ἐν τῇ μεθόδῳ τούτου παράδειγμα, ἔνθα περὶ τῆς παραγραφῆς διελεγόμην. ἀλλ' ἢ μὲν πραγματικὴ διακεκριμένη φαίνεται, ὥστε καὶ ἰδίῳ, ὡς ἔφην, χρήσθαι κεφαλαίοις, τὴν δὲ νομικὴν ἔξωθεν πρὸς κατασκευὴν ἑαυτῆς λαμβάνειν· ἢ δὲ παραγραφὴ συμπλέκεται παντελῶς τῇ νομικῇ, καὶ ὅλως οὐδενὶ οἰκείῳ ἀλλὰ τοῖς ἐκείνης ἐρείδεται κεφαλαίοις.

[617.25] ἄξιον δὲ ἐπιστάσεως τίνα τρόπον πρὸ τῆς ἀπαριθμήσεως τῶν κεφαλαίων εὐθύς ἐν ἀρχῇ περὶ τῶν εἰδῶν τεχνολογεῖ, ἐπὶ τῶν ἄλλων οὐχ οὕτως ποιεῖν εἰωθώς. τοῦτο δὲ εὐαπόλυτον. ἐπεὶ γὰρ ἐν τῇ μεταλήψει

διαφόρῳ παντελῶς χρήται διαιρέσει τὰ εἶδη, πρότερον εἰκότως περὶ αὐτῶν διέλαβεν ἵνα ἑκατέρῳ τὴν προσήκουσαν τῶν κεφαλαίων διαίρεσιν ἀπονείμῃ, ἐπεὶ τοι εἰ πρῶτον ἀπηριθμήσατο τὰ κεφάλαια, ἀνεχαιτίζετο ἂν ὁ λόγος αὐτῷ πυνθανομένων ἡμῶν, ποίου εἶδους ἐστὶ τὰ ἐκτεθειμένα.

[617.6] β. ἔχομεν πρῶτον περὶ τῆς τάξεως ἀπορεῖν, ἀνθ' ὅτου προτέραν ἔταξε τὴν παραγραφὴν. ἡ δὲ ζήτησις, οἶμαι, οὐ τῶν εὐλύτων, οὐδὲ παρ' ἑτέροις πρό γε ἡμῶν ἥρξατο. τίνα οὖν τὰ τῆς ἀπορίας ἤδη λεκτέον. εἰ διὰ τὸ μικτὰς εἶναι τὴν μετάληψιν τε καὶ τὴν πραγματικὴν μέσας ἔταξεν, ἐπειδὴ τὸ μὲν αὐτῶν ταῖς λογικαῖς, τὸ δὲ ταῖς νομικαῖς κοινωνεῖ, ἐχρῆν δῆπου προτέραν τετάχθαι τὴν ἄγραφον μετάληψιν τῆς ἐγγράφου, ὥστε πλησιάζειν ταῖς νομικαῖς τὸ ἐγγραφον τῆς μεταλήψεως, ὃ καὶ τὴν κοινωνίαν ἔχει πρὸς αὐτάς· καὶ ὅλως ὃν τρόπον αἱ λογικαὶ πρὸ τῶν νομικῶν, τὸν αὐτὸν ἐχρῆν καὶ τὴν ἄγραφον τετάχθαι πρὸ τῆς ἐγγράφου. διήκει δὲ ἡ ζήτησις καὶ ἐπὶ τὴν πραγματικὴν. ῥητέον δὲ ὡς οὐ τοσοῦτον εἴωθεν ὁ τεχνικὸς ἀποβλέπειν εἰς τὴν φυσικὴν ἀκολουθίαν, ὅσον εἰς τὸ τῆς διδασκαλίας ἀναγκαῖον. ἐπεὶ οὖν ὁ διαιρετικὸς λόγος ἀπαιτεῖ πρῶτά γε τὰ σύντομον ἔχοντα τὴν διδασκαλίαν, δεύτερον δὲ τὰ πλείονος δεόμενα λόγου, εὐλόγως τὴν παραγραφὴν πρὸ τῆς μεταλήψεως παρέλαβεν. ἡ μὲν γὰρ οἰκείους κεφαλαίοις ἐχρῆτο ἡ μετάληψις, καὶ περὶ ἐκάστου ἀναγκαῖως ὑπῆρχε διαλαβεῖν· ἡ δὲ παραγραφὴ ἑτέρας ἐτέμνετο στάσεως κεφαλαίοις. τί οὖν ἐπὶ τῆς πραγματικῆς ἂν φαίμεν; ἡ¹¹⁵ δῆλον ὡς κἀκεῖσε τὸ τῆς διδασκαλίας σαφὲς τὴν τοιάνδε τάξιν κατήπειγε. τῆς γὰρ ἐγγράφου πραγματικῆς ἴδιον τὸ νόμιμον ἔχειν κεφάλαιον, τῶν δὲ ἄλλων κοινῶν ἀμφοτέραις καθεστώτων, εἰ μὲν τὰ τῆς ἐγγράφου πρότερον ἔφραζεν, οὐκ ἂν συμπεριέλαβε καὶ τὸ τῆς ἐγγράφου ἰδίωμα· ἐν ᾧ δὲ καὶ περὶ τῆς ἐγγράφου διαλέγεται, κοινῇ τὰ ἀμφοῖν περιλαμβάνει κεφάλαια.

[619.3] τοῦτο δὲ πολλοὶ μὲν καὶ ἄλλοι, διαφερόντως δὲ Ἀθανάσιος ἀπορεῖ, πῶς τελείαν ἔφη τὴν παραγραφὴν. ὁρῶμεν γὰρ ὡς τῶν παραγραφῶν αἱ μὲν τέλειαι, αἱ δὲ ἀτελεῖς· τέλειαι μὲν ὅταν αὐτὸ τὸ πρᾶγμα καθάπαξ ἐκβάλλωσιν, ἀτελεῖς δὲ ὅταν τὸ μὲν πρᾶγμα συγχωρῶσιν, ἀπὸ τινος δὲ τῶν περιστατικῶν τὸν ἄγωνα παραγράφονται, ὡς ἐν τῷ κατὰ Τιμάρχου Αἰσχίνου. λυθήσεται δὲ ἡ ἀπορία ὡς ἐν συγκρίσει τῆς μεταλήψεως λαμβανομένου τοῦ χωρίου. πρὸς γὰρ ἐκείνην ἀφορῶν τελείαν ἔφη τὴν παραγραφὴν· ὅπως γὰρ ἂν ἀτελὴς ὑπάρχη παραγραφὴ, τελειωτέρα ἐστὶ μεταλήψεως, εἴγε ἡ μὲν τοῦ ἀγῶνος ἔχει ἐκβολὴν εἴτε τοῦ ὑποκειμένου εἴτε καθάπαξ τοῦ πράγματος, ἡ δὲ ἀγωνίζεται μεταλαμβάνουσά τι τῶν περιστατικῶν.

[619.12] γ. τὴν μετάληψιν διελὼν, ὡς ἔφαμεν, εἰς τὸ ἐγγραφον καὶ ἄγραφον, φησὶν ὅτι ἡ ἐγγραφος μιᾶ τῶν νομικῶν ὑποπίπτει καὶ κατ' αὐτὴν διαιρεθήσεται, ἥς τὴν διαίρεσιν ἀναβάλλεται ἐν ταῖς νομικαῖς παραδιδόναι.

[619.23] δ. ἐνταῦθα γενόμενος ὁ ἡμέτερος Παῦλος τάχα ἂν δικαίως ὁμηρίζων ἔφη·

νῦν αὖτε σκοπὸν ἄλλον, ὃν οὐπω τις βάλεν ἀνὴρ, / εἵσομαι αἴκε τύχοιμι.

¹¹⁵ ἡ cod.

πάντων γὰρ ἐξῆς ὑποδραμόντων τὸ χωρίον καὶ τοσοῦτον μόνον ἐπιμνησθέντων ὡς γίνεται ποτε καὶ κατὰ στοχασμὸν παραγραφῇ, αὐτὸς ἐπλάτυνέ τε τὴν ἀπορίαν καὶ ἀδύνατον οὐ κατέλιπεν. εἰ γὰρ κατὰ τὴν κοινὴν ἀπάντων παράδοσιν γίνεται κατὰ τέσσαρας ἢ παραγραφῇ στάσεις, κατὰ ῥητὸν καὶ διάνοιαν καὶ ἀμφιβολίαν, καὶ ὅρον καὶ στοχασμὸν, παραλιπεῖν δοκεῖ ὁ τεχνικὸς τὴν κατὰ στοχασμὸν παραγραφῇ, οὐ μέμψεως ἀπηλλάχθαι.

[620.2] ῥητέον δὲ ὡς ἀκριβῶς ἀναθεωροῦντι κατὰ στοχασμὸν οὐκ ἂν ποτε εἴη παραγραφῇ· ὁ καὶ αὐτὸς διαθρήσας τὸ τοιοῦτον εἶδος παρήκε. σκοπῶμεν γὰρ οὕτως· παντὶ ῥητῷ δεῖ τινα ὑποκεῖσθαι περιστάσιν, εἰ μέλλει ἐν ὑποθέσει ἀλλὰ μὴ ἐν θέσει λαμβάνεσθαι. ὅταν γὰρ αὐτὸ ἐφ' ἑαυτὸ τὸ ῥητὸν ἀμφισβητῇται, θετική γίνεται ἢ κατ' αὐτὸ ἐξέτασις, κατὰ νόμου εἰσφοράν, οἷον εἰ δημηγορητέον τοῖς τὰ πατρῷα κατεδιδροκόσιν, εἰ πολιτευτέον τοῖς ἡταιρηκόσι. παντὸς τοίνυν ῥητοῦ ἔχοντός τινα ὑποκειμένην περιστάσιν, εἰ μὲν κατ' ἄμφω γίνεται ἢ ἀμφισβήτησις, καὶ κατὰ τὸ ῥητὸν καὶ κατὰ τὴν περιστάσιν¹¹⁶, νομικὴ πάντως ἀναφανεῖται ἢ στάσις, οἷον νόμος μὴ ἀνιέναι ξένον ἐπὶ τὸ τεῖχος, ἀνελθὼν τις ἡρίστευσε καὶ ὑπάγεται τῷ νόμῳ. ἐνταῦθα γὰρ νόμος μὲν μὴ ἀνιέναι ἐπὶ τὸ τεῖχος, περιστάσις δὲ τὸ ἀνελθόντα ἡρίστευκέναι· καὶ ἀμφισβητεῖται ἐκάτερον, ὁ μὲν νόμος, εἰ περὶ πάντων διαγορεύει, ὁ <δὲ> ἀνελθὼν εἰ ἡδίκησε καὶ παρέβη τὸν νόμον. ὁμοίως καὶ ἐπὶ τοῦ συλλογισμοῦ· νόμος τὸν ἐκ πόρνης μὴ λέγειν, ἐκ πόρνου τις γενόμενος λέγειν κωλύεται. καὶ ὅλως τὸν αὐτὸν τρόπον ἐπὶ τῆς νομικῆς. εἰ δὲ περὶ τοῦ ῥητοῦ μὲν μὴ ἀμφισβητοῖμεν, περὶ μόνης δὲ τῆς περιστάσεως, τοῦτο λογικῆς δήπουθεν στάσεως, οἷον· νόμος ἀποτυμπανίζεσθαι τὸν φονέα, εὐρέθη τις ἐπ' ἐρημίᾳ ἐπὶ νεοσφαγεῖ σώματι ξίφος κατέχων, καὶ κρίνεται φόνου¹¹⁷. δῆλον γὰρ ὅτι στοχαστικὸν τὸ ζήτημα, τοῦ μὲν ῥητοῦ παντελῶς ὁμολογουμένου, περὶ δὲ τὴν περιστάσιν τῆς ὅλης συνισταμένης ζητήσεως. προσάγωμεν¹¹⁸ τοίνυν ἐπομένως τῇ παραγραφῇ τὸν λόγον. ὅτι μὲν οὖν περὶ μόνον τὸ ῥητὸν οὐκ ἂν ἔχοι τὴν ζήτησιν καταφανές· θετικὸν γὰρ εἶναι τὸ τοιοῦτον ἐφάσκομεν. ἀλλ' οὐδὲ μὴν περὶ τὴν περιστάσιν μόνην· τοῦτο γὰρ ταῖς λογικαῖς παρείπετο, πᾶσα δὲ παραγραφῇ ἔγγραφος. λείπεται ἄρα καὶ περὶ τὸ ῥητὸν καὶ τὴν περιστάσιν γίνεσθαι ἐν αὐτῇ τὴν ἀμφισβήτησιν. ὅπου δὲ περὶ ἀμφοῖν ἢ ζητήσις, νομικὴν γενέσθαι στάσιν ὁ λόγος ἀποδεικνύει, ὥστε πᾶσα παραγραφῇ κατὰ νομικὴν εὐρεθήσεται στάσιν.

[621.10] πῶς οὖν ὁ τεχνικὸς προσετίθει, ὡς ἔστιν ὅτε καὶ ὀρικῶς, καὶ ἐροῦμεν ὡς κἂν ταῖς τοιαύταις παραγραφαῖς, λέγω ταῖς ὀρικῶς προφερομέναις, ἀνάγκη ῥητὸν καὶ διάνοιαν ὑποκεῖσθαι, εἴτα πλατύνεσθαι ταύτην ὀρικῶς· καὶ γὰρ τὸ ὀρικὸν κεφάλαιον ἐμπίπτει πάντως ἐν τῇ κατὰ ῥητὸν καὶ διάνοιαν. ὡς οὖν εἰς τὴν πρώτην ἐργασίαν ἀπιδὼν προσέθηκε τὸ ἔστιν ὅτε ὀρικῶς, ἀντὶ τοῦ ἔστιν ὅτε τοῦ ῥητοῦ καὶ τῆς διανοίας ὀρικῶς πλατυνομένου. ἀμέλει τοι οὐκ εἶπεν ὡς ἔστιν ὅτε κατὰ ὅρον λαμβάνεται, ἀλλὰ ὀρικῶς, φησὶν, τέμνεται· καὶ ὅλως, ἵνα μὴ μακρολογῶ, πλείστη συμπλοκὴ ὅρου καὶ ῥητοῦ <καὶ> διανοίας. τοιγαροῦν πᾶσα ἀνάγκη ἐν ὅρῳ ὑποκεῖσθαι καὶ ῥητὸν καὶ διάνοιαν· τί γὰρ ἕτερόν ἐστιν ἢ γνώμη τοῦ

¹¹⁶ παράστασιν cod.: cf. RG 4.778.32

¹¹⁷ φησὶν cod.: cf. RG 4.779.10 ~ 7.623.29.

¹¹⁸ προσάγωμεν cod.: cf. RG 4.779.13.

νομοθέτου, ἥτις ἐστὶν κεφάλαιον ὀρικόν, καὶ αὖ πάλιν ἐν ῥητῷ καὶ διανοίᾳ τὸ ὀρικόν κεφάλαιον; τὸ μὲν οὖν παρὰ τῷ τεχνικῷ χωρίον οὕτω πάσης ἐκαθάρθη ζητήσεως, ὀρθῶς τε καὶ ἀκριβῶς ἔχειν ἀποδειχθέν.

[621.27] ἐπεὶ δὲ πολλοῖς τε καὶ ἄλλοις καὶ ἡμῖν νῦν αὐτοῖς ἐναντιοῦσθαι ἐδόξαμεν, παρεθέμεθα γὰρ ἐν τῇ μεθόδῳ καὶ κατὰ στοχασμὸν παραγραφὴν, ἀναγκαῖον οἶμαι καὶ περὶ τούτου ποιήσασθαι τινα λόγον. ἀκριβεῖ μὲν οὖν θεωρία οὐκ ἂν γένοιτο κατὰ στοχασμὸν παραγραφὴν, ἑτέρῳ μέντοι λόγῳ παρελήφθη καὶ τὸ τοιοῦτον εἶδος ὑπὸ τῶν τεχνικῶν. ἐπεὶ γὰρ κατενόησαν παραγραφὴν τινα, αὐτὴν μὲν ἐφ' ἑαυτῆς ἀπηρτισμένην καὶ ὑποκειμένον ἔχουσιν, στοχαστικῆς δὲ τινος ἔξωθεν ὑποθέσεως κατασκευασθείσης, χώραν καὶ αὐτὴν λαμβάνουσιν, ἵνα μὴ διεσπασμένη γίνηται ἢ ὑπόθεσις, τῆς μὲν παραγραφῆς ἰδίᾳ, τῆς δὲ στοχαστικῆς ὑποθέσεως ἔξωθεν λαμβανομένης ἅμφω συνέπλεξαν ὀνομάσαντες παραγραφὴν κατὰ στοχασμὸν. ἔστω δὲ ἡμῖν ὡς ἐπὶ παραδείγματος ὁ κατὰ Τιμάρχου. ἡ μὲν οὖν παραγραφὴ ὅτι οὐχ εἰσαγώγιμος ἡ δίκη, οὐ γὰρ ἐφεῖται λέγειν τοῖς ἡταιρικῶσιν, ἡ δὲ στοχαστικὴ ζήτησις εἰ Τιμαρχος ἡταίρηκε. μένει τοίνυν ἡ παραγραφὴ ὥσπερ ψιλὴ τις πρότασις φαινομένη ἄπορος λόγου, καὶ οὐχ ἔχουσιν καθ' ὅτου ἂν ἐνεχθῇ, εἴπερ μὴ ἀποδειχθεῖν πρότερον τὸ στοχαστικὸν ζήτημα· ἐπεὶ οὖν ἀποδεικνυμένου τούτου φέρεται εὐθύς ἡ παραγραφὴ κατὰ τοῦ ὑποκειμένου, διὰ τοῦτο συμπλέκειν ὤφθησαν δεῖν ἀμφοτέρω.

[622.5] πρὸς δὲ τούτοις ἐν τῇ κατὰ φύσιν ἀμφισβητουμένη παραγραφῇ διπλῶς ἔφαμεν τὴν ἀμφισβήτησιν ἀνάγκη γενέσθαι, καὶ συμπεπλεγμένην ἀπὸ τοῦ ῥητοῦ καὶ τοῦ ὑπευθύνου τῷ ῥητῷ, τουτέστι τῆς περιστάσεως· καὶ προηγείται μὲν τὰ τοῦ ῥητοῦ, ἔπεται δὲ ἀκολούθως τὰ περὶ τοῦ εὐθυνομένου. ἐπὶ τοίνυν τῶν στοχαστικῶν λεγομένων παραγραφῶν, ἐπειδὴ ἡπορήσαμεν τῶν τὰ προτερεύοντα μέρη τῆς ζητήσεως ποιουσῶν, τουτέστι τῶν περὶ αὐτὸ τὸ ῥητόν, ἐν οἷς καὶ ἡ κυρία τῆς παραγραφῆς ἀμφισβήτησις γίνεται, μετελήφαμεν ἀντ' ἐκείνων τὰ δεύτερα τοῦ περὶ εὐθυνομένου, καὶ τὴν τῶν προτέρων τάξιν ἀποδιδόντες αὐτοῖς ἐπὶ τὴν παραγραφικὴν συνάγομεν ἀμφισβήτησιν αὐτά, οὐ κατὰ φύσιν, ἀλλ' ὥσπερ ἰώμενοι τὴν ἔλλειψιν τῶν κυριωτέρων, καὶ ἀποχρώμενοι τοῖς εὐρεθείσιν, ἀμωσγέπως κοινωνοῦσι τῷ προκειμένῳ κατὰ ζήτησιν. οὕτω μὲν οὖν ταῦτα ἐπελυσάμεθα.

[622.21] ἔτι δὲ κἀκεῖνο ζητητέον, ὥς τριῶν τοῦλάχιστον ἐν ἐκάστη παραγραφῇ ὑποκειμένων, πῶς αὐτὸν ἔφη τὸ πρότερον ζήτημα ὡς ἐπὶ δυοῖν. ἀλλὰ δῆλον ὅτι ἡ παραγραφὴ τε καὶ ἡ στάσις καθ' ἣν γίνεται ὡς ἐν λαμβάνεται ζήτημα· αὐτὴ γὰρ καθ' ἑαυτὴν ἀσύστατος ἡ παραγραφὴ· πρὸς δὲ βλέπων ἄγαν ὀρθῶς ὁ τεχνικὸς ἐχρήσατο.

[624.17] ζ. τὸ δὲ μετὰ τὴν παραγραφὴν, τουτέστιν ἡ εὐθυδικία, κατὰ λογικὴν, φησί, γίνεται. περιφανὲς δ' οἶμαι τὸ ἐντεῦθεν ὑφορμοῦν, πλείστον γε δῆπουθεν εἰς ἀπορίαν τὴν ἄρτι ἡμῖν ἀπολελυμένην παρενεγκὸν ζήτησιν, ὥστ' εἰ μὴ τῆς Παύλου ἐπέτυχε δεξιώσεως, τάχα ἂν μέχρι παντὸς ἔμενεν ἄλυτον. πῶς γὰρ κατὰ μίαν γίνεται τῶν λογικῶν ἡ εὐθυδικία; ἔγνωμεν γὰρ ὡς ἡ παραγραφὴ πᾶσαν ἐκβάλλειν δύναται στάσιν, οὐ λογικὴν μόνον, ἀλλὰ καὶ νομικὴν, καὶ ἀπλῶς εἰπεῖν, ἅπασαν, ὅπου γε δὴ καὶ αὐτὴ ἑαυτήν, καθάπερ ὑπεσχόμην, καὶ δέδωκα ἐν τῇ μεθόδῳ παραγραφῆς κατὰ παραγραφὴν παράδειγμα. τοιαῦτα μὲν οὖν τὰ τῆς ἀπορίας. τὸ δὲ ῥητορικῆς

ἄγαλμα Παῦλος ὡδί πως τὸ χωρίον ἐκάθηρε τῆς ζητήσεως. ὁ τεχνικός, φησίν, βαθυτέρας ἀπτόμενος θεωρίας οὐχ ἀπλῶς τὸ νομικὸν ἢ τὸ λογικὸν παρέδραμεν, οὐ γὰρ ἐκ τῶν κατασκευαστικῶν οὐδὲ ἐκ τῆς ἐτέρων συμπλοκῆς λαμβάνομεν τὰς λογικὰς ἢ τὰς νομικὰς, ἢ¹¹⁹ ὅλως τὰς φύσεις τῶν στάσεων, ἀλλ' ἐκ τοῦ σκοποῦ καὶ τοῦ τέλους ἐφ' ὃ ρέπουσι· τοῦτο δὲ ἐστὶ τὸ κατασκευαζόμενον. οὕτω γὰρ καὶ πραγματικῆς δέδωκεν ἐν τῇ μεθόδῳ παράδειγμα, τὴν ὅλην κατασκευὴν στοχαστικὴν διαλαμβανούσης. δῶμεν τοίνυν τίς ὁ σκοπὸς τῆς παραγραφῆς. ἢ¹²⁰ δῆλον ὅτι ἡ τοῦ ἀγῶνος ἐκβολή. τὴν ἐαυτῆς ἄρα φύσιν ἀποβάλλει ἡ εὐθυδικία παρά τι καὶ περίεργος καθεστηκυῖα τό γε ἐπὶ τῇ προκειμένῃ ζητήσει· ἕτερον γὰρ τὸ ζητούμενον, τουτέστιν <εἰ> εἰσαγωγίμος ἢ δίκη. ὅπου γε πολλάκις καὶ χωρὶς τῆς εὐθυδικίας προάγεται ἡ παραγραφή, ὡς ἔχει ὁ κατὰ Τιμάρχου Αἰσχίνου. ἐπεὶ οὖν ἀπέβαλε τὴν ἐαυτῆς φύσιν ἡ εὐθυδικία, κἂν τὰ μάλιστα νομικὴ ἐτύγχανεν οὔσα, οὐκέτι τὴν διαφορὰν ταύτην παρατηρεῖν οἷα τε ἦν, φησί, τὴν καθ' ἣν ὠνομάζετο νομικὴ, ἀλλ' εἰς τὸ γενικὸν ἐνέπιπτε λογικὴ γενομένη· πᾶσα γὰρ στάσις λογικὴ κατὰ τὸ γενικώτερον, ἐπεὶ καὶ αὕτη ἡ ρητορικὴ περὶ τὴν ζήτησιν γίνεται νομικὴ. ὥστε πᾶσα μὲν νομικὴ σαφὲς ὅτι καὶ λογικὴ, οὐκ εἴ τις δὲ λογικὴ, αὕτη πάντως καὶ νομικὴ. ἀποστᾶσα δ' οὖν, ὅπερ ἔφην, τῆς οἰκείας φύσεως εὐθὺς ἐλέγετο λογικὴ· εἰ γὰρ καὶ νομικὴν τινα λάβοιμεν ἐν τῇ εὐθυδικίᾳ, ὡς λογικὴν αὕτην διαιρήσομεν, παραλιπόντες τοὺς νόμους, ἐπεὶ βραχεῖαν ποιούμεθα τὴν περὶ αὐτῆς ἐξέτασιν, ὅσον τὴν καθ' ἡμῶν ἀπόνοιαν τῶν δικαστῶν ἀποτρίψασθαι, ἵνα μὴ δοκῶσιν ἀπορία τῶν δικαίων ἵεναι ἡμᾶς ἐπὶ τὴν παραγραφήν. διόπερ ὁ πάνσοφος Ἑρμογένης τὸ μετὰ τὴν παραγραφήν ζήτημα ἔφη κατὰ τινα διαιρεῖσθαι τῶν λογικῶν στάσεων.

[625.31] *ἐμπέπτωκε δὲ ἐνταῦθα καὶ δευτέρον τι ὡς παραγραφικόν* ἐπελάβετό τις αὐτοῦ ὡς οὐκ ὀρθῶς παραγραφικόν εἰπόντος· τελεία γάρ, φησίν, ἐμπέπτωκε παραγραφή, ἐκβάλλουσα τὸν ἀγῶνα, ὅτι οὐκ ἔχων τὰ πέντε τάλαντα οὐ δύνασαι λέγειν. ἐπεικῶς δὲ τοῦτο ἡλίθιον· ἡ μὲν γὰρ παραγραφή ὁμολογούμενον ἔχειν βούλεται τὸ ρήτόν, τοῦτο δὲ ἀμφιβάλλεται· αὐτὸ γὰρ τοῦτό ἐστὶ τὸ ζητούμενον, πότερον ἄκυρον εἶναι δεῖ τὸν νόμον ἢ κύριον. διὸ οὐδὲ τὸ παραγραφικὸν ἄντικρυς αὐτὸ ἀπεφάνετο, ἀλλ' ὡς παραγραφικόν· καὶ γὰρ τὸ παραγραφικὸν ἐθέλει ἐξ ὁμολογουμένου τινὸς ἄρχεσθαι.

[626.11] *η. τουτέστιν ἀπ' αὐτῆς λυθήσεται τῆς περιστάσεως*, ὅτι περὶ αὐτοῦ τῆς ζητήσεως ἔτι καθεστηκυῖας οὐχ οἷόν τε ἤδη ὡς κυρίῳ χρῆσθαι. ἐμνήσθη δὲ τῆς λύσεως αὐτοῦ οὐχ ἀπλῶς, ἀλλ' ἐπεὶ οὐδὲ ὡς κεφάλαιον οὐδὲ ὡς στάσις ἐνέπιπτεν· ἐκεῖνα γὰρ φανεράν ἔχει τὴν λύσιν.

[626.16] ἡ μὲν οὖν φύσις παντελῶς ἐπιδέδεικται τῆς παραγραφῆς. κεφαλαίοις δὲ ἰδίοις, καθάπερ ἄνωτέρω ἔφην, οὐ τέμνεται, εἰ καὶ τὰ μάλιστα ὁ Μητροφάνης αὐτῇ διδόναι ἐπιχειρεῖ τό τε κατ' ἐπαγγελίαν καὶ τὸ ἐκ τοῦ ἀποβησομένου, τοῦ μὲν φεύγοντος, εἰ μὴ προσδέξαιντο τὴν παραγραφήν ἐπαγγελλομένου συχνὰ ἡδίκηκότα τὸν ἀντίδικον ἐξελέγξαι, τοῦ δὲ κατηγοροῦ μὴ ἂν ἐπὶ τὴν παραγραφήν ἐλθεῖν λέγοντος, εἴπερ μὴ ἐντεῦθεν δεινότατον ἀπάντων ἀποβαίνειν ἑώρα, τὸ παρησιᾶς τοὺς κακοήθεις

¹¹⁹ ἢ cod.

¹²⁰ ἢ cod.

ἐπιλαμβάνεσθαι. χρή δὲ τὰ τοιαῦτα οὐ κεφάλαια ἐπιχειρήματα δὲ οἶεσθαι μάλλον.

[626.27] θ. λύσει, φησὶ, ταῦτα τὸν χρόνον μεταλαβὼν, ὅτι ἔτι ἀμφιβόλου ὄντος εἰ χρή κύριον εἶναι τὸν νόμον, πῶς δυνατὸν ὥς κυρίῳ χρήσθαι. κατὰ φύσιν δὲ τοῦ πράγματος τὴν τοιαύτην εἶπε γενέσθαι λύσιν, δι' ᾧ φησιν. δῆλον δὲ ὡς καὶ πρὸς τοῦτο ἀπαντήσεται τῇ φύσει τοῦ πράγματος, ὅτι οὐκ ἐξ ἐπιχειρημάτων, οὐδὲ κατασκευῆς περιττῆς, ἀλλ' ἐξ αὐτῶν τῶν ὑποκειμένων.

Appendix 6: RG 7 (the ‘patchwork’ source)

The text is based on RG 7. Unattributed conjectures are my own. Passages from RG 4 illustrating the sources of the ‘patchwork’ are presented in the right-hand column.

RG 7.231.1-241.28

[231.2] α. τελευταία ἢ μετάληψις διὰ τὸ μὴ περὶ τὸ πρᾶγμα τὴν ζήτησιν ἔχειν, ἀλλ’ ὁμολογουμένου τοῦ πράγματος περὶ¹²¹ μόνην τὴν περιστάσιν στρέφεσθαι.

[231.4] αἱ μὲν γὰρ ἄλλαι στάσεις ἢ ἄρνησιν ἔχουσι τοῦ κρινομένου πράγματος, ἢ τὸ μὲν ὁμολογοῦσι τὸ δ’ οὐ, ἢ τι τῶν τοιούτων· αὕτη δὲ οὐδὲ ὁμολογίας ἀξιοῖ τὸν κατήγορον.

[232.4] γ. μέμφονται αὐτόν τινες ὡς πᾶσαν τὴν μετάληψιν περὶ τοῦ εἰ δεῖ τὸν ἀγῶνα εἰσελθεῖν ἀποφηνάμενον. δύο γὰρ τῆς μεταλήψεως¹²² ὄντων εἰδῶν, τῆς μὲν ἐγγράφου, τῆς δὲ ἀγράφου, μόνης τῆς ἐγγράφου τὸ εἰρημένον ἐστίν· ἢ γὰρ ἄγραφος οὐ περὶ εἰσαγωγῆς ἔχει τὴν ζήτησιν, ἀλλὰ περὶ τῆς τοῦ πράγματος περιστάσεως. ἔδει οὖν οὕτως ὀρίσασθαι·

τὴν δὲ μετάληψιν οὐκέτι ὁμοίως ἐπιγνωσόμεθα, ἀλλ’ ὅταν ἢ ζήτησις ἢ περὶ τοῦ τὸν ἀγῶνα εἰσελθεῖν ἢ περὶ τινος τῶν περιστατικῶν. οὕτως γὰρ ἂν καὶ τὴν ἄγραφον περιελάμβανεν.

[232.14] δ. χαρακτηρίζει αὐτὴν δι’ ὧν καὶ νομίζει·

τριῶν γὰρ οὐσῶν

[4.275.30] αἱ μὲν γὰρ ἄλλαι στάσεις περὶ τὸ πρᾶγμα καταγιγνώμεναι ἢ τοι ἄρνησιν ἔχουσι τοῦ κρινομένου πράγματος, ἢ τὸ μὲν ὁμολογοῦσι τὸ δ’ οὐ, ἢ τι τῶν τοιούτων. ἢ μετάληψις δὲ οὐδὲ ἀπολογίας ἀξιοῖ τὸν κατήγορον.

[4.276.21] μέμφονται δὲ αὐτόν τινες ὡς πᾶσαν τὴν μετάληψιν περὶ τοῦ εἰ δεῖ τὸν ἀγῶνα εἰσελθεῖν ἀποφηνάμενον εἶναι·

μόνης γὰρ φασὶ τῆς ἐγγράφου εἶναι τοῦτο· ἢ γὰρ ἄγραφος οὐ περὶ εἰσαγωγῆς ἔχει τὴν ζήτησιν, ἀλλὰ περὶ τῆς τοῦ πράγματος περιστάσεως ... [omission] ἐχρῆν οὖν διὰ ταῦτα οὕτως ὀρίσασθαι καὶ εἰπεῖν· τὴν δὲ μετάληψιν οὐκέτι ὁμοίως ἐπιγνωσόμεθα, ἔστι γὰρ ἢ ζήτησις ἢ περὶ τοῦ τὸν ἀγῶνα εἰσελθεῖν ἢ περὶ τινος τῶν περιστατικῶν. οὕτω γὰρ ἂν καὶ τὴν ἄγραφον περιελάμβανε τὴν περὶ τὴν εὐθυδικίαν τὴν ζήτησιν ἔχουσαν, μεταλαμβανομένην δὲ ἀπὸ τινος τῶν περιστατικῶν, καὶ τὴν ἐγγραφον τελείαν οὖσαν ἀπαγωγὴν τῆς εὐθυδικίας.

[4.278.10] χαρακτηρίζει δὲ αὐτὴν δι’ ὧν καὶ νομίζει ἐν ἧ φησιν οὐ ζητοῦμεν οὐδὲν τῶν προειρημένων. τριῶν γὰρ οὐσῶν, ὡς ἐμνήσαμεν,

¹²¹ παρὰ cod.

¹²² ἀντιλήψεως cod.

τῶν ζητήσεων, εἴ ἐστι, τί ἐστι, καὶ
ὁποῖόν τί ἐστιν, οὐδέν, φησί, τούτων
ἐν τῇ μεταλήψει ζητοῦμεν,
ἀλλ' εἰ δεῖ τούτων

εἰσενεχθῆναί τι.

[232.17] καὶ τίνες λέγουσι πρώτην
αὐτὴν ταχθῆναι, ἐπειδὴ
παραγράφει τὸν ἀγῶνα,
σπουδάζουσι δὲ πάντες ἄνθρωποι
αὐτὸ τοῦτο,
οὐδὲ εἰσελθεῖν ἀλλὰ
παραγράφει τὸν ἀγῶνα. ἀλλὰ
πρὸς τοῦτο

ἀσφαλῶς ὠρίσατο,
εἰ δεῖ τούτων εἰσενεχθῆναι
φήσας. ἀδύνατον δὲ τούτων ἦν τι
παραγράφεσθαι μὴ μαθόντας
ὅλως, τί ταῦτά ἐστιν.
[232.23] καὶ φασὶ τινες
ὅτι ἐπεὶ τρία εἰσὶ τὰ
ζητούμενα,
τούτων δὲ οὐδέν ἐστιν ἡ μετάληψις,
οὐκ ἂν εἴη στάσις. ἀλλ'
οὐκ ἀνείλεν αὐτὴν καθόλου, ἀλλὰ
προηγουμένως φησὶ περὶ τούτων οὐκ
ἔχει τὴν ζήτησιν.

[232.27] καλῶς δὲ προσέθηκε τὸ
προηγουμένως. ἐν γὰρ τῇ ἐγγράφῳ
μεταλήψει, ἦν καὶ καλοῦμεν
παραγραφὴν, ἐμπίπτει πάντως καὶ
δεύτερον ζήτημα παρὰ τὸ τῆς
γραφῆς κατὰ μίαν τῶν ἄλλων
στάσεων, οὐ μὴν προηγουμένως,
ἀλλ' ἐν δευτέρῳ λόγῳ. δύο
ἐν παραγραφῇ τὰ
ζητούμενα, ὧν τὸ μὲν πρότερον ἔχει
τὴν παραγραφὴν, ἀπαγωγὴν οὖσαν
τῆς εὐθυδικίας, τὸ δὲ δεύτερον κατὰ
μίαν τῶν προειρημένων στάσεων.

[237.25] ζ. πᾶσα, φησί, παραγραφὴ,
ἥτις ἐστὶ καὶ ἔγγραφος μετάληψις
(μεταλαμβάνεται γάρ), εἶδη ἔχει
δύο· ἡ μὲν
γὰρ ἐστὶν ἔγγραφος, ἡ δὲ ἄγραφος

τῶν ἄνω ζητήσεων, εἴ ἐστι, τί ἐστιν,
ὁποῖόν τί ἐστιν, ἐν τῇ μεταλήψει
τούτων οὐδέν ζητεῖται, οὐδὲ
ἐξετάζεται, ἀλλ' εἰ δεῖ τούτων τῶν
ἐν τούτοις ζητούμενων ἢ τῇ κατ'
οὐσίαν ἐξετάσει ἢ τῇ κατὰ ιδιότητα
ἢ τῇ κατὰ ποιότητα εἰσενεχθῆναί τι.
[4.278.17] ὅθεν τινὲς λέγουσιν ὡς
πρώτην αὐτὴν ἔδει ταχθῆναι, ἐπειδὴ
παραγράφει τὸν ἀγῶνα, πεφύκασιν δὲ
πάντες οἱ ἄνθρωποι ἐν ταῖς
προτεθείσαις δίκαις αὐτὸ τοῦτο
σπουδάζειν, τὸ μὴδὲ εἰσελθεῖν ἀλλὰ
παραγράφεσθαι τὸν ἀγῶνα. ἀλλὰ
λέγομεν ὅτι τῶν λεγόντων πρώτην
δεῖν τάττεσθαι τὴν μετάληψιν
ὥσπερ ὑποτεμνόμενος τοὺς λόγους ὁ
τεχνικὸς ὅρα πῶς ἀσφαλῶς ὠρίσατο,
εἰ δεῖ τι τούτων εἰσενεχθῆναι
φήσας. ἀδύνατον δὲ τούτων ἦν τι
παραγράφεσθαι μήπω μαθόντας
ὅλως, τί ταῦτά ἐστι ... [omission]
[4.278.29] τινὲς ἐκ τούτου κινηθέντες
φασὶν ὅτι εἰ καθόλου τρία ἐστὶ τὰ
ζητούμενα, ὡς φθάσαντες εἰρήκαμεν,
τούτων δὲ οὐδέν ἐστιν ἡ μετάληψις,
οὐκ ἂν εἴη στάσις. ἀλλὰ φαμέν ὡς
καθόλου οὐκ ἀνείλεν αὐτὴν, ἀλλὰ
προηγουμένως φησὶ περὶ τούτων οὐκ
ἔχει τὴν ζήτησιν ... [omission]

[4.279.9] καλῶς δὲ προσέθηκε τὸ
προηγουμένως. ἐν γὰρ τῇ ἐγγράφῳ
μεταλήψει, ἦν καὶ καλοῦμεν
παραγραφὴν, ἐμπίπτει πάντως καὶ
δεύτερον ζήτημα παρὰ τὸ τῆς
γραφῆς κατὰ μίαν τῶν ἄλλων
στάσεων, οὐ μὴν προηγουμένως,
ἀλλ' ἐν δευτέρῳ λόγῳ. δύο γὰρ ὡς
ἐπὶ τὸ πλεῖστον ἐν παραγραφῇ τὰ
ζητούμενα, ὧν τὸ μὲν πρότερον ἔχει
τὴν παραγραφὴν, ἀπαγωγὴν οὖσαν
τῆς εὐθυδικίας, τὸ δὲ δεύτερον κατὰ
μίαν τῶν προειρημένων στάσεων.

[4.284.11] ἀλλὰ καὶ τοῦτο μὴ ἀγνοεῖν
προσηκέν, ὡς πᾶσα παραγραφὴ,
ἥτις ἐστὶ καὶ ἔγγραφος μετάληψις
(μεταλαμβάνεται γάρ), εἶδη ἔχει
δύο, ὥσπερ καὶ πραγματικῆς· ἡ μὲν
ἔγγραφος, ἡ δὲ ἄγραφος.

ὥσπερ καὶ πραγματική. καὶ ἡ μὲν
ἔγγραφος κυρίως παραγραφὴ
καλεῖται, καταχρηστικῶς δὲ καὶ
ἔγγραφος μετάληψις, ἡ δὲ ἄγραφος
λέγεται μὲν κυρίως ὁμωνύμως¹²³ τῷ
γένει μετάληψις· λέγεται δὲ ὁμως
καταχρηστικῶς καὶ παραγραφή.

[237.25] ἀμφοτέρω οὖν τὰ εἶδη
μετάληψις ἐστὶ· μεταλαμβάνει γὰρ
ἐκάστη τὴν περιστάσιν· καὶ γὰρ ὁ
νόμος ἀπὸ περιστατικοῦ τινος. ἀλλὰ
μὴν καὶ ἀμφοτέρω πάλιν¹²⁴
παραγραφαί· παραγράφεται γὰρ ἡ
μὲν φανερώς, ἡ δὲ τὴν ἐξουσίαν τῆς
πράξεως καθάπερ τὴν κατηγορίαν
ἐκβάλλουσα.

καὶ κατὰ τοῦτο διαφέρει, ὅτι ἡ μὲν
παντελῶς ἐκβάλλει τὸν ἄγωνά,·

ἡ δὲ δεχομένη τὴν
ἐξουσίαν τοῖς περιστατικοῖς
κέχρηται.

καὶ γνωρίζεται ἡ μὲν ἀπὸ τοῦ
φεύγοντος, ἡ ἔγγραφος,
ἡ δὲ ἀπὸ τοῦ διώκοντος, ἡ ἄγραφος·

γίνεται δὲ αὕτη
σπανίως ἀπὸ τοῦ
φεύγοντος.

[238.11] ζ. ἀπαγωγή, τουτέστιν ἐκβολή
τῆς τοῦ πράγματος κρίσεως· εἰς
ἀπολογίαν γὰρ ἐλκόμενος νόμον
προβάλλεται, καθ' ὃν φησι δεῖν μὴ
ὑποκεῖσθαι κατηγορίᾳ.

ἀλλ' ἐπειδὴ
ὑποπτοὶ ἐκ τούτου γινόμεθα πρὸς
τοὺς δικαστὰς, ὥς οὐ τοῖς δικαίοις
θαρροῦντες,

καὶ ἡ μὲν
ἔγγραφος παραγραφὴ
καλεῖται (παρ' ἐνίων δὲ ἔγγραφος
μετάληψις), ἡ δὲ ἄγραφος
ὁμωνύμως τῷ
γένει μετάληψις.

[4.279.23] ἀμφοτέρω δὲ τὰ εἶδη
μετάληψις εἰσὶν· μεταλαμβάνει γὰρ
ἐκάστη τὴν περιστάσιν· καὶ γὰρ ὁ
νόμος ἀπὸ περιστατικοῦ τινος. ἀλλὰ
μὴν καὶ ἀμφοτέρω πάλιν
παραγραφαί· παραγράφεται γὰρ ἡ
μὲν φανερώς, ἡ δὲ τὴν ἐξουσίαν τῆς
πράξεως καθάπερ τὴν κατηγορίαν
ἐκβάλλουσα ...

[4.279.20] διαφέρει δὲ, ὅτι ἡ μὲν
παντελῶς ἐκβάλλει τὸν ἄγωνα δι'
ἐνὸς τῶν περιστατικῶν ἐν τῷ νόμῳ
κειμένου, ἡ δὲ δεχομένη τὴν
ἐξουσίαν τοῖς περιστατικοῖς πάλιν
κέχρηται.

[4.279.33] ἰστέον δὲ, ὅτι ἡ μὲν
ἔγγραφος τελείως ἐκβάλλει τὸν
ἄγωνα ἐν πρώτοις καὶ
προηγούμενως,

ἡ δὲ ἄγραφος ἡ ἀπὸ τοῦ κατηγοροῦ
γνωριζομένη δέχεται μὲν τὴν
εὐθυδικίαν, ἐκβάλλει δὲ τοῖς
περιστατικοῖς. φασὶ δὲ γίνεσθαι
ποτε τὴν ἄγραφον καὶ ἀπὸ τοῦ
φεύγοντος ...

[4.281.16] ... ὅταν εἰς
ἀπολογίαν ἐλκόμενος νόμον
προβάληται, καθ' ὃν φησι δεῖν μὴ
ὑποκεῖσθαι κατηγορίᾳ, ὥς ἐφ' οὗ
παρατίθεται ὑποδείγματος. καὶ οὕτω
μὲν γίνεται πᾶσα παραγραφὴ.
ἐπειδὴ δὲ πᾶς χρώμενος τούτῳ τῷ
τρόπῳ τῆς ἀπολογίας ὑποπτος πρὸς
τοὺς δικαστὰς γίνεται, ὥς οὐ τοῖς
δικαίοις θαρρῶν (εἰ γὰρ ἔρρωτο
προσήκουσι λογισμοῖς, τί ἔδει τὸν
κατήγορον ἢ τὴν κατηγορίαν

¹²³ ὁμωνυμῶς cod.

¹²⁴ πάλαι cod.

ἐφεῦρεν ἡμῖν ἡ τέχνη τὴν
εὐθυδικίαν.

ἀλλ' οὐ πανταχοῦ ταύτη χρηστέον,
ἀλλ' ὅπου
ὁ καιρὸς
ἐπιτρέπει.

[238.17] εὐθυδικία δέ ἐστι τὸ
κατευθὺ τῆς δίκης ἰέναι, καὶ μὴ
μόνον ἀπὸ τοῦ νόμου προβάλλεσθαι
ἄδειαν ἀλλὰ καὶ τὴν ἀπὸ τῶν
πραγμάτων ἀπολογίαν ποιεῖσθαι,

οἷον ἐφ' οὗ λέγει ὁ
τεχνικὸς ὑποδείγματος· ἐλκόμενος
γὰρ εἰς ἀπολογίαν τοῦ μὴ
πεποιηκέναι τὸν φόνον προβάλλεται
μὲν τὸν νόμον τὸν μὴ ἐξεῖναι δις
περὶ τῶν αὐτῶν διαγορεύοντα
ἀγωνίζεσθαι· προσθήσει δὲ καὶ τὴν
εὐθυδικίαν λέγων οὕτως, ὅτι εἰ καὶ
μὴ νόμος ἐξαιρεῖται με τοῦ
κινδύνου, οὐδ' οὕτως ὑπεύθυνός εἰμι
τιμωρίας· οὐ γὰρ ἔδρασα φόνον καὶ
ταύτη καὶ τὴν πρὶν ἀπέφυγον δίκην.

[238.28] ἡ. τοῦ μὲν φεύγοντος
ἐνταῦθα προτεινομένου τὸ ῥητὸν,
τοῦ δὲ κατηγοροῦ τὴν διάνοιαν.
λέξει γὰρ ἔχειν μὲν οὕτω τὸν νόμον,
οὐ μὴν ἐπὶ τούτοις, οὐδὲ ἐπὶ τῶν
οὕτω μεγάλων καὶ δεινῶν, ἀλλ'
ἐπὶ τῶν εὐτελῶν ἅπαξ κρίνεσθαι
προστάττει.

ἄλλοι δὲ κατὰ ἀμφιβολίαν τὴν
πρώτην εἰρήκασιν γίνεσθαι·
ὁμωνύμως γὰρ τὰς δίκας νοεῖσθαι
καὶ τὰς τιμωρίας, οἷον τιμωρεῖσθαι
μὲν δεύτερον κωλύει, κρίνεσθαι δὲ
δεύτερον οὐ κωλύει.
παρατηρητέον δὲ, ὡς διπλῇ
τις ἢ τοιαύτη στάσις, τουτέστιν ἡ
ζήτησις· δύο γὰρ ἐν ταύτῃ τὰ
ζητήματα, καὶ τὸ μὲν πρῶτον, εἰ μὴ
δεῖ κρίνεσθαι τὴν ἀρχὴν ἐπὶ τούτοις·
τὸ δὲ δεύτερον, τουτέστι τὸ τῆς
εὐθυδικίας, ἐκ τῆς φύσεως τοῦ
πράγματος ἀναφυόμενον, καθ' ἣν ἂν

ἐκβάλλειν;), διὰ τοῦτο ἡ τέχνη
τοῦτο παραμυθουμένη ἐφεῦρε τὴν
εὐθυδικίαν.

[4.281.25] ἰστέον δὲ ὡς οὐκ ἀνάγκη
πανταχοῦ ταῖς εὐθυδικίας χρησθαι,
ἀλλὰ δίδωσι μὲν ἡ τέχνη, ὅπῃ
μέντοι ἐμπίπτει καὶ ὁ καιρὸς
ἐπιτρέπει χρηστέον ...

[4.277.9] εὐθυδικία τοίνυν ἐστὶ τὸ
κατευθὺ τῆς δίκης ἰέναι, καὶ μὴ
μόνον ἀπὸ τοῦ νόμου προβάλλεσθαι
ἄδειαν ἀλλὰ καὶ τὴν ἀπὸ τῶν
πραγμάτων ἀπολογίαν ποιεῖσθαι, ὡς
ἔστι παρὰ πᾶσι τοῖς ἀρχαίοις εὐρεῖν
ῥήτορσιν, οἷον ὡς ἐφ' οὗ λέγει ὁ
τεχνικὸς ὑποδείγματος· ἐλκόμενος
εἰς ἀπολογίαν τοῦ μὴ
πεποιηκέναι τὸν φόνον προβαλεῖται
μὲν νόμον τὸν μὴ ἐξεῖναι δις
περὶ τῶν αὐτῶν διαγορεύοντα
ἀγωνίζεσθαι· προσθήσει δὲ καὶ τὴν
εὐθυδικίαν λέγων οὕτως, ὅτι εἰ καὶ
μὴ νόμος ἐξαιρεῖται με τοῦ
κινδύνου, οὐδ' οὕτως ὑπεύθυνός εἰμι
τιμωρίας· οὐ γὰρ ἔδρασα φόνον, καὶ
ταύτη καὶ τὴν πρὶν ἀπέφυγον δίκην.

[4.285.30] ... τοῦ μὲν φεύγοντος
ἐνταῦθα προτεινομένου τὸ ῥητὸν,
τοῦ δὲ κατηγοροῦ τὴν διάνοιαν.
λέξει γὰρ ἔχειν μὲν οὕτω τὸν νόμον,
οὐ μὴν ἐπὶ τούτοις (οἷον οὐκ ἐπὶ
τῶν οὕτω μεγάλων καὶ δεινῶν, ἀλλ'
ἐπὶ τῶν εὐτελῶν ἅπαξ κρίνεσθαι
προστάττει· ἐπὶ μὲν γὰρ τούτων καὶ
τὴν μίαν ἐξέτασιν ἀρκεῖν ἡγήσατο,
ἐπὶ δὲ τῶν μειζόνων καὶ πλείονας.
ἄλλοι δὲ κατὰ ἀμφιβολίαν τὴν
πρώτην εἰρήκασιν γίνεσθαι·
ὁμωνύμως γὰρ τὰς δίκας νοεῖσθαι
καὶ τὰς τιμωρίας, οἷον τιμωρεῖσθαι
μὲν δεύτερον κωλύει, κρίνεσθαι δὲ
δεύτερον οὐ κωλύει.

[4.285.27] παρατηρητέον δὲ ὡς διπλῇ
τις ἢ τοιαύτη στάσις, τουτέστιν ἡ
ζήτησις· δύο γὰρ ἐν ταύτῃ τὰ
ζητήματα, καὶ τὸ μὲν πρῶτον, εἰ μὴ
δεῖ κρίνεσθαι τὴν ἀρχὴν ἐπὶ τούτοις,
[4.282.23] ἡ δὲ ἑτέρα, ἡ τῆς
εὐθυδικίας, ἐκ τῆς φύσεως τοῦ
πράγματος ἀναφυομένη, καθ' ἣν ἂν

ἐμπέση στάσιν μελετᾶται.

[239.29] ι. τὸ ἕτερον, φησί, ζήτημα τὸ τῆς εὐθυδικίας, ὃ ἐστὶ τοῦ πράγματος ἢ ἐξέτασις, ὅπερ ἐξ ἀρχῆς προεγράψατο.

[240.1] ἐπλανήθησάν τινες ἀφ' ὧν εἶπεν ὁ τεχνικός, *εἶτα ἔπεται τὸ στοχαστικόν*, ὅτι κατὰ μόνον στοχασμὸν ἢ εὐθυδικία μελετᾶται. οὐκ ἔστι δέ, ἀλλὰ καὶ κατὰ τὰς ἄλλας στάσεις,

πλὴν τῆς μεταλήψεως, τῆς ἐγγράφου τε καὶ ἀγράφου· οὐ γὰρ οἶόν τε στάσιν εὐρεθῆναι ἐν τῇ αὐτῇ στάσει.
 χρή οὖν διαιροῦντα ζητεῖν μετὰ τὴν παραγραφὴν, ὑπὸ τίνα τῶν στάσεων ἀνάγεται ἢ εὐθυδικία, καὶ κατὰ ταύτης κεφάλαιον διαιρεῖν τὸ ζήτημα περὶ οὗ ἢ παραγραφῇ· οὐ πάντως οὖν ἐπὶ πάσης παραγραφῆς στοχαστικόν, ἐκάστοτε δὲ πρὸς τὸ προκείμενον.
 ἐνταῦθα γοῦν ἢ μὲν παραγραφῇ ἐκ τοῦ ῥήτοῦ καὶ διανοίας, ἢ ἐξ ἀμφιβολίας, ἢ δὲ εὐθυδικία κατὰ τὸν στοχασμόν.
 στοχαστικὸν δὲ λέγει οὐ κεφάλαιον, ἀλλὰ ζήτημα.
 [240.13] χρή δὲ καὶ τοῦτο γινώσκειν, ὡς τῆς παραγραφῆς ἢ μὲν τελεία ἐστίν, ἢ δὲ ἀτελής, τελεία μὲν ὅτε¹²⁵ τοῦ πράγματός ἐστι παραγραφῇ, ὡς ἐπὶ τοῦ φεύγοντος φόνου καὶ λέγοντος ὅτι ἐκρίθη (οὔτε γὰρ τὸν κατηγοροῦντα νῦν οὔτε ἄλλον τινὰ δέχεται· λέγει γὰρ ὅτι οὔτε σοὶ οὔτε ἄλλω τινὶ δικάζομαι περὶ τούτου), ἀτελής δὲ ὅτε προσώπου μόνου γίνεται παραγραφῇ· λέγει γὰρ ὅτι σοὶ μὲν οὐ δικάζομαι, ἐτέρῳ δὲ τῷ

ἐμπέση στάσιν μελετᾶται·

[4.286.9] *εἶτα ἔπεται τὸ στοχαστικόν*. τὸ ἕτερόν φησι ζήτημα τὸ τῆς εὐθυδικίας, ὃ ἐστὶ τοῦ πράγματος ἢ ἐξέτασις, ὅπερ ἐξ ἀρχῆς παρεγράψατο.

[4.285.4] ἐπλανήθησαν δὲ τινες ἀφ' ὧν εἶπεν ὁ τεχνικός, *εἶτα ἔπεται τὸ στοχαστικόν*, ὅτι κατὰ μόνον στοχασμὸν ἢ εὐθυδικία μελετᾶται. οὐκ ἔστι δέ, ἀλλ' ὡς προαποδέδεικται κατὰ τὰς ἄλλας στάσεις. ἐνταῦθα δὲ ἢ μὲν παραγραφῇ ἐξ ἀμφιβολίας, ἢ δὲ εὐθυδικία κατὰ στοχασμόν.

[4.282.31] ... πλὴν τῆς μεταλήψεως τῆς ἐγγράφου τε καὶ ἀγράφου· πῶς γὰρ οἶόν τε στάσιν εὐρεθῆναι ἐν τῇ αὐτῇ στάσει;

[4.282.26] διὰ τοι τοῦτο χρή διαιροῦντα ζητεῖν μετὰ τὴν παραγραφὴν ὑπὸ τίνα τῶν στάσεων ἀνάγεται ἢ εὐθυδικία, καὶ κατὰ τὰ ταύτης κεφάλαια διαιρεῖν τὸ ζήτημα ...

[4.286.12] οὐ πάντως δὲ ἐπὶ πάσης παραγραφῆς στοχαστικόν, ἀλλ' ἐνταῦθα μὲν στοχαστικόν, ἐκάστοτε δὲ πρὸς τὸ προκείμενον.

[4.285.8] ἐνταῦθα δὲ ἢ μὲν παραγραφῇ ἐξ ἀμφιβολίας, ἢ δὲ εὐθυδικία κατὰ στοχασμόν.

[4.286.14] στοχαστικὸν δὲ λέγει οὐ κεφάλαιον, ἀλλὰ ζήτημα.

[4.283.24] χρή δὲ γινώσκειν ὡς τῆς παραγραφῆς ἢ μὲν τελεία ἐστίν, ἢ δ' ἀτελής, τελεία μὲν ὅτε τοῦ πράγματός ἐστι παραγραφῇ, ὡς ἐπὶ τοῦ φεύγοντος φόνου καὶ λέγοντος ὅτι ἐκρίθη (ἐν τούτῳ γὰρ οὔτε τὸν κατηγοροῦντα οὔτ' ἄλλον τινὰ δέχεται· λέγει γὰρ ὅτι οὔτε σοὶ οὔτ' ἄλλω τινὶ δικάζομαι περὶ τούτου)· ἀτελής δὲ γίνεται ὅτε προσώπου μόνου γίνεται παραγραφῇ· λέγει γὰρ ὅτι σοὶ μὲν οὐ δικάζομαι, ἐτέρῳ δὲ τῷ

¹²⁵ ὅτι cod.

βουλομένω.

[241.14] ιγ. ἐν τῇ μεταλήψει, φησίν, ἥτις ὁμώνυμός ἐστιν τῷ οἰκείῳ γένει, περὶ τοῦ ποιόν τί ἐστι ζητοῦμεν. λέγομεν γὰρ μεταλαμβάνοντες ὡς οὐ δικαίως γέγονεν ὁ φόνος ἐνταῦθα, ἢ ἀπὸ τοῦδε τοῦ προσώπου, ἢ ἐν τῷ νῦν χρόνῳ, ἢ ἀπὸ τινος τῶν περιστατικῶν. ἀπὸ προσώπου μὲν ὡς ἐπὶ τοῦ τὴν μητέρα μοιχευομένην ἀνελόντος. ἀπὸ προσώπου δὲ καὶ πράγματος, ὡς ἐπὶ τῆς ἱερείας τῆς μυούσης τὸν τύραννον καὶ ἀποκτεινάσης· τὸ πρᾶγμα γὰρ μεταλαμβάνοντες λέγομεν ὅτι οὐκ ἐχρῆν ἀποκτείνειν, ἀλλὰ καὶ τὸ πρόσωπον, ὅτι καὶ ἱερεία· καὶ τὸν χρόνον δέ· παρὰ γὰρ τὸν καιρὸν τῆς μυήσεως· καὶ τὸν τόπον· ἐν ἱερῷ γὰρ ἀθέμιτον φονεύειν. ἀπὸ τρόπου δέ, ὡς ἀπὸ τοῦ καταφλέξαντος σὺν τῷ μοιχῷ τὴν οἰκίαν· ὁ τρόπος γὰρ ἐνταῦθα μέμφεται τῆς τιμωρίας. τόπον δὲ καὶ χρόνον, ὡς ἐφ' οὗ ὑποδείγματος εἶπεν ὁ τεχνικός.

RG 7.616.12-627.2

[616.12] προειπὼν περὶ πραγματικῆς ὅτι διττὴ ἐστὶ, κατὰ ἀκολουθίαν ἐπήγαγεν ἢ *μετάληψις* *πάλιν*, τὸ *πάλιν* εὐλόγως προστιθεὶς πρὸς τὰ προειρημένα. ἀλλ' εἰ ἐν τῇ μεταλήψει ἀεὶ ἀπὸ ῥητοῦ ἢ ζήτησις, τίνος χάριν τὴν μὲν ἔγγραφον, τὴν δὲ ἄγραφον ἐκάλεσεν; ὅτι ἐν μὲν τῇ ἀγράφῳ ἀποστάντος τοῦ ῥητοῦ περὶ τοῦ πράγματος ποιούμεθα τὴν ζήτησιν, ἐν δὲ τῇ ἐγγράφῳ περὶ αὐτὸ στρεφόμεθα τὸ ῥητόν.

βουλομένω.

[4.287.26] ἐν ταύτῃ τῇ μεταλήψει ἥτις ὁμώνυμός ἐστι τῷ οἰκείῳ γένει περὶ τοῦ ποιόν τί ἐστι ζητοῦμεν. λέγομεν γὰρ μεταλαμβάνοντες ὡς οὐ δικαίως γέγονεν ὁ φόνος ἐνταῦθα, ἢ ἀπὸ τοῦδε τοῦ προσώπου, ὡς ἐπὶ τοῦ τὴν μητέρα μοιχευομένην ἀνελόντος, ἢ ἐν τῷ νῦν χρόνῳ ἢ ἀπὸ τινος τῶν περιστατικῶν ... [4.288.20] πρόσωπον μὲν ὡς ἐπὶ τοῦ τὴν μοιχευομένην ἀνελόντος μητέρα· πρᾶγμα δὲ ὡς ἐπὶ τῆς ἱερείας τῆς μυούσης τὸν τύραννον καὶ ἀποκτεινάσης· οὐ γὰρ ἐχρῆν ἀποκτείνειν· τὸ πρᾶγμα γὰρ μεταλαμβάνοντες ἐγκαλοῦμεν. ἐν τούτῳ δὲ τῷ ζητήματι καὶ ἀπὸ τοῦ προσώπου γίνεται μετάληψις· οὐ γὰρ ἐξῆν ἱερείαν οὔσαν ἀποκτείνειν· καὶ ἀπὸ τοῦ χρόνου· παρὰ γὰρ τὸν καιρὸν τῆς μυήσεως· καὶ ἀπὸ τόπου· ἐν ἱερῷ γὰρ ἀθέμιτον φόνος. τρόπον δέ, ὡς ἐπὶ τοῦ καταφλέξαντος σὺν τῷ μοιχῷ τὴν οἰκίαν· ὁ τρόπος γὰρ ἐνταῦθα μέμφεται τῆς τιμωρίας. τόπον δὲ καὶ χρόνον, ὡς ἐφ' οὗ ὁ τεχνικός παρατίθεται ὑποδείγματος ...

[4.776.7] προειπὼν περὶ πραγματικῆς ὅτι διττὴ ἐστὶ, κατὰ ἀκολουθίαν ἐπήγαγεν ἢ *μετάληψις* *πάλιν*, ἢ μὲν *ἔγγραφος*, ἢ δὲ *ἄγραφος*, τὸ *πάλιν* εὐλόγως προσθεὶς πρὸς τὰ προειρημένα. [4.775.26] εἰ ἐν τῇ μεταλήψει ἀεὶ ἀπὸ ῥητοῦ ἢ ζήτησις, τίνος χάριν τὴν μὲν ἔγγραφον, τὴν δὲ ἄγραφον ἐκάλεσεν; ἢ τοίνυν διαφορὰ αὕτη ἐστίν, ὅτι ἐν μὲν τῇ ἀγράφῳ ἀποστάντες τοῦ ῥητοῦ (οὐ γὰρ ἰσχύομεν αὐτῷ χρῆσθαι) περὶ τοῦ πράγματος ποιούμεθα τὴν πᾶσαν ζήτησιν, ἐν δὲ τῇ ἐγγράφῳ ἄνω καὶ κάτω περὶ αὐτὸ στρεφόμεθα τὸ ῥητόν.

[616.19] ἐν τῇ μεθόδῳ τελευταίαν
ἔταξε τὴν μετάληψιν,
ὥς πάσας περιέχουσιν, ἅτε
ἐπιπτοῦσιν τῶν ἄλλων στάσεων ἐν
αὐτῇ· οὐδέποτε γὰρ παραγραφὴ μόνη
μελετᾶται, ἀλλὰ τὸ μὲν ἔγγραφον
ζήτημα κατὰ μίαν τῶν νομικῶν,

τὸ δὲ ἄγραφον, καθ' ἣν ἂν ἐμπέσῃ
τῶν λογικῶν. πάσαις γὰρ ὥσπερ
ἀντιπάσχει ἡ μετάληψις, ταῖς τε
λογικαῖς καὶ νομικαῖς, ἐνταῦθα δὲ
μεταξὺ τῶν τε λογικῶν καὶ τῶν
νομικῶν, ἐπειδὴ ἀμφοτέρων μετέχει,
τῶν μὲν νομικῶν κατὰ τὴν
παραγραφὴν, τῶν δὲ λογικῶν κατὰ
τὴν εὐθυδικίαν.

[619.16] πρῶτον δὲ τὸν
παραγραφῆς ποιεῖται λόγον.
καίτοιγε ἐχρῆν τὸ ὁμώνυμον τῷ
γένει πρῶτον διδάξαι. ἀλλ' ἐπειδὴ ἡ
μὲν παραγραφὴ ἀπὸ τοῦ ῥητοῦ τὸ
κράτος ἔχει καὶ περὶ τοῦτο τὴν
πᾶσαν σπουδὴν, ὅπερ ἄτεχνος
πίστις, ἡ δὲ μετάληψις οὐκ ἀπὸ
ῥητοῦ ἀλλ' ἀπὸ τινος τῆς περὶ τὸ
ῥητὸν περιστάσεως, ὃ τῆς ἐντέχνου
πίστεως, εἰκότως ἡ παραγραφὴ
τῆς μεταλήψεως προτετίμηται.

[622.23] ε. σημειωτέον ὅτι οὐ μόνον ἡ
παραγραφὴ κατὰ μίαν τῶν
νομικῶν ἐξετάζεται κατὰ τὸ
πρότερον ζήτημα, τουτέστι τὴν
παραγραφὴν, ἀλλὰ καὶ ὀριστικῶς,
καὶ στοχαστικῶς.

ὀριστικῶς μὲν οὕτως· νόμος
τὸν ἡταιρηκότα μὴ πολιτεύεσθαι,
Τίμαρχος ἡταιρηκῶς καὶ διδάσκων
γράμματα κωλύεται. ζητεῖται γὰρ
ἐνταῦθα εἰ ταῦτόν τῷ πολιτεύεσθαι
τὸ γράμματα διδάσκειν, καὶ
ὀριστικῶς κατὰ τὸ πρῶτον ζήτημα ὁ
λόγος προέρχεται.

στοχαστικῶς δὲ οἷός ἐστιν ὁ κατὰ
Τιμάρχου, ὃς ἐγράψατο Αἰσχίνην
παραπρεσβείας, ὁ δὲ τὴν ἐταίρησιν
αὐτῷ ἐγκαλῶν παραγράφει·
στοχαστικῶς γὰρ ἐκείσε ζητεῖται εἰ
Τίμαρχος ἡταίρηκεν ἢ μή.

[4.774.1] ἐν τῇ μεθόδῳ τελευταίαν
ἔταξεν Ἑρμογένους τὴν μετάληψιν,
ὥς πάσας περιέχουσιν, ἅτε
ἐπιπτοῦσιν τῶν ἄλλων στάσεων ἐν
αὐτῇ· οὐδέποτε γὰρ παραγραφὴ μόνη
μελετᾶται, ἀλλὰ τὸ μὲν ἔγγραφον
ζήτημα κατὰ μίαν τῶν νομικῶν,
ὥς αὐτίκα δηλὸν ἔσται,

τὸ δὲ ἄγραφον, καθ' ἣν ἂν ἐμπέσῃ
τῶν λογικῶν. πάσαις γὰρ ὥσπερ
ἀντιπάσχει ἡ μετάληψις, ταῖς τε
λογικαῖς καὶ νομικαῖς, ἐνταῦθα δὲ
μεταξὺ τῶν τε λογικῶν καὶ τῶν
νομικῶν, ἐπειδὴ ἀμφοτέρων μετέχει,
τῶν μὲν νομικῶν κατὰ τὴν
παραγραφὴν, τῶν δὲ λογικῶν κατὰ
τὴν εὐθυδικίαν.

[4.777.1] πρῶτον δὲ τὸν περὶ τῆς
παραγραφῆς ποιεῖται λόγον.
καίτοιγε ἐχρῆν τὸ ὁμώνυμον τῷ
γένει πρῶτον διδάξαι. ἀλλ' ἐπειδὴ ἡ
μὲν παραγραφὴ ἀπὸ ῥητοῦ τὸ
κράτος ἔχει καὶ περὶ τοῦτο τὴν
πᾶσαν σπουδὴν, ὅπερ ἄτεχνος
πίστις, ἡ δὲ μετάληψις οὐκ ἀπὸ
ῥητοῦ ἀλλ' ἀπὸ τινος τῆς περὶ τὸ
ῥητὸν περιστάσεως, ὃ τῆς ἐντέχνου
πίστεως, εἰκότως καὶ ἡ παραγραφὴ
τῆς μεταλήψεως προτετίμηται.

[4.777.23] σημειωτέον ὅτι ἡ
παραγραφὴ οὐ μόνον κατὰ μίαν τῶν
νομικῶν ἐξετάζεται κατὰ τὸ
πρότερον ζήτημα, τουτέστι τὴν
παραγραφὴν, ἀλλὰ καὶ ὀριστικῶς
καὶ στοχαστικῶς.

[4.777.26] ὀριστικῶς μὲν οὕτω· νόμος
τὸν ἡταιρηκότα μὴ πολιτεύεσθαι,
Τίμαρχος ἡταιρηκῶς καὶ διδάσκων
γράμματα κωλύεται. ζητεῖται γὰρ
ἐνταῦθα εἰ ταῦτόν τῷ πολιτεύεσθαι
τὸ γράμματα διδάσκειν ...

[4.778.16] στοχαστικῶς δὲ, ὥς τὸ κατὰ
Τιμάρχου·

ζητοῦμεν γὰρ εἰ
Τίμαρχος ἡταίρηκεν ἢ μή.

φησὶν οὖν ὁ τεχνικὸς ὅτι
 ἔσθ' ὅτε καὶ ὀριστικῶς τέμνεται καὶ
 στοχαστικῶς·
 ἀλλ' εἰ καὶ κατὰ ὅρον καὶ
 στοχασμὸν πολλάκις τὸ πρῶτον
 ζήτημα γίνεται, ἀλλ' οὖν ἀπὸ νόμου
 πάντως τὴν ἀρχὴν λαμβάνει·
 καθὸ μὲν γὰρ ἀπὸ ῥητοῦ ἔχει
 πᾶσα παραγραφὴ τὴν ἀρχήν, ἀπὸ
 νόμου πάντως λαμβάνεται καὶ
 νομικῇ ὑποπίπτει στάσει. καὶ κατὰ
 τοῦτο ὑγιὴς ὁ Ἑρμογένους κανὼν,
 ὅτι ἡ ἔγγραφος κατὰ μίαν τῶν
 νομικῶν ἐξετάζεται· καθὸ δὲ
 πλατυνομένη, τυχὸν ἐν τῇ κατὰ
 ῥητὸν καὶ διάνοιαν τῆς ἐξετάσεως
 στάσει ὀριστικῶς ἢ στοχαστικῶς
 ἐργάζεται, λέγεται κατὰ ὅρον ἢ
 στοχασμὸν ἐξετάζεσθαι, τουτέστι
 τοῦ ῥητοῦ καὶ τῆς διανοίας ὀρικῶς
 πλατυνομένου ἢ στοχαστικῶς,
 οἷον· ἐγράψατο
 Τίμαρχος Αἰσχίνην παραπρεσβείας,
 ὁ δὲ ἐταίρησιν ἐγκαλῶν αὐτῷ
 παραγράφεται τὴν δίκην. ἐνταῦθα
 γὰρ ἕτερος μὲν ἐστὶν ἀγὼν ὁ τῆς
 παραπρεσβείας, ἕτερος δὲ ὁ τῆς
 ἐταιρήσεως, στάσεως ὣν διὰ τὸ
 ἀμάρτυρον στοχαστικῆς κατὰ
 παραγραφὴν, μετὰ δὲ τὸ ἡττηθῆναι
 διὰ τῆς παραγραφῆς Τίμαρχον ὁ τῆς
 παραπρεσβείας ἀγὼν εἰσάγεται,
 στοχαστικῆς ὣν καὶ αὐτὸς στάσεως.
 καὶ πάλιν· δις περὶ τῶν αὐτῶν
 δίκας μὴ εἶναι, γραψάμενος
 δημοσίων ἀδικημάτων Μειδίαν
 Δημοσθένης καὶ ἐλὼν κρίνει αὐτὸν
 καὶ ὕβρεως. ἐν τούτοις γὰρ
 χρωμένου τοῦ παραγραφομένου τῷ
 ῥητῷ, ἐξετάζουσι τὴν διάνοιαν οἱ
 διώκοντες ὀριστικῶς,
 καὶ εἰ τὸ δῖς
 νῦν τε καὶ πρότερον ἢ δύο φησί, καὶ
 εἰ ταὐτὸν ὕβρις καὶ δημόσιον.
 [623.11] ἀκριβῶς δὲ
 σκοποῦντι οὔτε κατὰ στοχασμὸν
 οὔτε κατὰ ὅρον γίνεται ἢ
 παραγραφὴ, διὸ οὐδὲ ὁ τεχνικὸς
 πλατέως εἶπε περὶ αὐτοῦ.

[4.779.20] πῶς φησὶν ὁ τεχνικὸς ὅτι
 ἔσθ' ὅτε ὀριστικῶς τέμνεται καὶ
 στοχαστικῶς;

ἐροῦμεν ὅτι καθὸ μὲν ἀπὸ ῥητοῦ
 ἔχει πᾶσα παραγραφὴ τὴν ἀρχήν,
 ἀπὸ νόμου πάντως λαμβάνεται καὶ
 νομικῇ ὑποπίπτει στάσει. καὶ κατὰ
 τοῦτο ὑγιὴς ὁ Ἑρμογένους κανὼν,
 ὅτι ἡ ἔγγραφος κατὰ μίαν τῶν
 νομικῶν ἐξετάζεται· καθὸ δὲ
 πλατυνομένη ἐν τῇ κατὰ
 ῥητὸν καὶ διάνοιαν τῆς ἐξετάσεως
 στάσει ὀριστικῶς
 ἐργάζεται, λέγεται κατὰ
 ὅρον ἐξετάζεσθαι, τουτέστι
 τοῦ ῥητοῦ καὶ τῆς διανοίας ὀρικῶς
 πλατυνομένου ... [example replaced]
 [4.769.5 = Syr. 157.9] οἷον· ἐγράψατο
 Τίμαρχος Αἰσχίνην παραπρεσβείας,
 ὁ δὲ ἐταίρησιν ἐγκαλῶν αὐτῷ
 παραγράφεται τὴν δίκην. ἐνταῦθα
 γὰρ ἕτερος μὲν ἐστὶν ἀγὼν ὁ τῆς
 παραπρεσβείας, ἕτερος δὲ ὁ τῆς
 ἐταιρήσεως, στάσεως ὣν διὰ τὸ
 ἀμάρτυρον στοχαστικῆς κατὰ
 παραγραφὴν, μετὰ δὲ τὸ ἡττηθῆναι
 διὰ τῆς παραγραφῆς Τίμαρχον ὁ τῆς
 παραπρεσβείας ἀγὼν εἰσάγεται,
 στοχαστικῆς ὣν καὶ αὐτὸς στάσεως.
 [4.780.1] καὶ πάλιν· δις περὶ τῶν
 αὐτῶν δίκας μὴ εἶναι, γραψάμενος
 δημοσίων ἀδικημάτων Μειδίαν
 Δημοσθένης καὶ ἐλὼν κρίνει αὐτὸν
 καὶ ὕβρεως. ἐν τούτοις γὰρ
 ἀμφοτέροις τοῖς προβλήμασι
 χρωμένων τῶν παραγραφομένων τῷ
 ῥητῷ, ἐξετάζουσι τὴν διάνοιαν οἱ
 διώκοντες ὀριστικῶς, οἷον εἰ ἢ
 προαγωγεία ἀσέβεια, καὶ εἰ τὸ δῖς
 νῦν τε καὶ πρότερον ἢ δύο φησί, καὶ
 εἰ ταὐτὸν ὕβρις καὶ δημόσιον ...
 [4.778.23] ἐροῦμεν οὖν ὡς ἀκριβῶς
 θεωροῦντι οὔτε κατὰ στοχασμὸν
 οὔτε κατὰ ὅρον γίνεται ἢ
 παραγραφὴ, διὸ οὐδὲ αὐτὸς
 πλατέως εἶπεν περὶ αὐτοῦ.

σκοπῶμεν δὲ οὕτως· παντὶ ῥητῷ δὴ
τινα ὑποκεῖσθαι περίστασιν, εἰ
μέλλοι ἐν ὑποθέσει ἀλλὰ μὴ ἐν
θέσει λαμβάνεσθαι· ὅταν γὰρ
αὐτὸ ἐφ' ἑαυτοῦ τὸ ῥητὸν
ἀμφισβητῇται, θετικὴ γραφὴ ἢ
κατ' αὐτὸ ἐξέτασις, κατὰ νόμου
εἰσφοράν, οἷον εἰ δημηγορητέον τοῖς
τὰ πατρῶα κατεδιδόκοσιν. πᾶν
τοῖνυν ῥητὸν περιστάσιν τινα
ἔχει,

ὥς ἐπὶ τοῦ ξένου τοῦ ἐπὶ τὸ τεῖχος
ἀνελθόντος· ἐνταῦθα γὰρ νόμος μὲν
τὸ μὴ ἀνιέναι, περίστασις δὲ τὸ
ἀνελθόντα ἡριστευκέναι·
ἀμφισβητεῖται γὰρ ἐκάτερον. ὁ γὰρ
νόμος περὶ παντὸς διαγορεύει ξένου,
ὁ δ' ἀνελθὼν ἡδίκησε τὸν νόμον
παραβάς· εἰ μὲν οὖν κατ' ἄμφω
γένοιτο ἢ ἀμφισβήτησις, κατὰ τε
ῥητὸν καὶ κατὰ περίστασιν, νομικὴ
πάντως ἀναφαίνεται στάσις, ὥς ἐν
τούτῳ.

εἰ δὲ περὶ ῥητοῦ μὲν μὴ
ἀμφισβητοῦμεν, περὶ μόνης δὲ τῆς
περιστάσεως, λογικὴν ποιήσομεν
στάσιν, οἷον· νόμος τὸν φονέα
κολάζεσθαι, εὐρέθη τις ἐπ' ἐρημίας
ξιφῆρης νεοσφαγεῖ σώματι
παρεστηκώς καὶ κρίνεται φόνου.
δῆλον γὰρ ὅτι στοχαστικὸν τὸ
ζήτημα, περὶ τὴν περίστασιν οὐ περὶ
τὸ ῥητὸν τῆς ζητήσεως οὔσης·
ὡμολόγηται γὰρ τὸ ῥητόν.
ἢ τοῖνυν παραγραφῇ,
ὅτι μὲν μόνον περὶ τὸ
ῥητὸν οὐκ ἔχει τὴν ζήτησιν,
καταφανές· θετικὴ γὰρ ἂν ἐφαίνετο.
ἀλλ' οὐδὲ περὶ γυμνὴν τὴν
περίστασιν· λογικῆς γὰρ τοῦτο
στάσεως, πᾶσα δὲ
παραγραφὴ ἔγγραφος. λείπεται ἄρα
καὶ κατὰ τὸ ῥητὸν καὶ κατὰ τὴν
περίστασιν γίνεσθαι ἐν αὐτῇ τὴν
ἀμφισβήτησιν. ὅπου δὲ ταῦτα,
νομικὴ ἐστὶν ἢ στάσις, ὥστε καὶ ἡ
παραγραφὴ.

σκοπῶμεν δὲ οὕτω· παντὶ ῥητῷ δεῖ
τινα ὑποκεῖσθαι περίστασιν, εἰ
μέλλοι ἐν ὑποθέσει ἀλλὰ μὴ ἐν
θέσει λαμβάνεσθαι. ὅταν μὲν γὰρ
αὐτὸ ἐφ' ἑαυτοῦ
ἀμφισβητῇται, θετικὴ γίνεται ἢ
κατὰ ταῦτο ἐξέτασις, κατὰ νόμου
εἰσφοράν, οἷον εἰ δημηγορητέον τοῖς
τὰ πατρῶα κατεδιδόκοσι. παντὸς
τοῖνυν ῥητοῦ περιστάσιν τινα
ἔχοντος, εἰ μὲν κατ' ἄμφω γένοιτο ἢ
ἀμφισβήτησις, κατὰ τε ῥητὸν καὶ
κατὰ περίστασιν, νομικὴ πάντως
ἀναφαίνεται στάσις,

ὥς ἐπὶ τοῦ ξένου τοῦ ἐπὶ τὸ τεῖχος
ἀνελθόντος· ἐνταῦθα γὰρ νόμος μὲν
τὸ μὴ ἀνιέναι, περίστασις δὲ τὸ
ἀνελθόντα ἡριστευκέναι·
ἀμφισβητεῖται γὰρ ἐκάτερον. ὁ γὰρ
νόμος περὶ παντὸς διαγορεύει ξένου,
ὁ δ' ἀνελθὼν ἡδίκησε τὸν νόμον
παραβάς.

ὅλως δὲ περὶ πάσης ζητήσεως
νομικῆς, εἰ μὲν περὶ ῥητοῦ μὴ
ἀμφισβητῶμεν, περὶ δὲ μόνης τῆς
περιστάσεως, λογικὴν ποιήσομεν
στάσιν, οἷον· νόμος τὸν φονέα
κολάζεσθαι, εὐρέθη τις ἐπ' ἐρημίας
ξιφῆρης νεοσφαγεῖ σώματι
παρεστηκώς καὶ κρίνεται φόνου.
δῆλον γὰρ ὅτι στοχαστικὸν τὸ
ζήτημα, περὶ τὴν περίστασιν οὐ περὶ
τοῦ ῥητοῦ τῆς ζητήσεως οὔσης·
ὡμολόγηται γὰρ τὸ ῥητόν.
προαγάγωμεν τοῖνυν τῇ παραγραφῇ
τὸν λόγον. ὅτι μὲν οὖν περὶ μόνον
τὸ ῥητὸν οὐκ ἔχει τὴν ζήτησιν
καταφανές· θετικὴ γὰρ ἀνεφαίνετο.
ἀλλ' οὐδὲ περὶ γυμνὴν τὴν
περίστασιν· λογικῆς γὰρ τοῦτο
γένεσις στάσεως, πᾶσα δὲ
παραγραφὴ ἔγγραφος. λείπεται ἄρα
καὶ κατὰ τὸ ῥητὸν καὶ τὴν
περίστασιν γίνεσθαι ἐν αὐτῇ τὴν
ἀμφισβήτησιν. ὅπου δὲ ταῦτα,
νομικὴ ἐστὶν ἢ στάσις, ὥστε καὶ ἡ
παραγραφὴ.

[624.7] ἡ ἔγγραφος δὲ αὕτη μετάληψις ἴδια κεφάλαια οὐκ ἔχει.

[624.9] ζ. δύο αἰ ζητήματά ἐστι περὶ τὴν ἔγγραφον μετάληψιν, τὸ μὲν κατ' ἐκβολὴν τοῦ ἀγώνος, τὸ δὲ κατ' εὐθυδικίαν, ἐν ᾧ τοῦ πράγματος ἡ ζήτησις. πρῶτον οὖν καλεῖ τὸ τῆς ἐκβολῆς, ὃ δὴ καὶ κυρίως παραγραφή. αὕτη δέ, φησί, κατὰ μίαν τῶν νομικῶν ἐξετασθήσεται· ἐπειδὴ γὰρ ἐν αὐτῇ ἐστὶν ἡ τῶν ἐμπιπτόντων ῥητῶν ἐξέτασις, ἀναγκαίως κατὰ μίαν τῶν νομικῶν στάσεων διαιρεῖται. τὸ δὲ ἕτερον, ὃ καὶ ἐπαγόμενόν ἐστιν ἥτοι ἡ εὐθυδικία, καθ' ἑτέραν δὴ τινα τῶν λογικῶν.

λογικαὶ δὲ εἰσιν ἐν αἷς περὶ πράγματος ἡ ζήτησις, καὶ πάντα ἃ περὶ ἀγράφων ἐξετάζεται. καὶ οὕτως εὐρηται εἴσω τῶν τριάκοντα τοῦ κυριωθῆναι ἡμερῶν ἀντιλέγειν, μετὰ ταῦτα δὲ μὴ ἐξέστω·

χρήσεται γὰρ ὁ μὲν πλούσιος τῷ ῥητῷ λέγων ὅτι ἄχρι λ ἡμερῶν εἶπε κατηγορεῖν· ὁ δὲ πένης τῇ διανοίᾳ.

ταῦτα γὰρ πραγματικῆς ἴδια,

καὶ καθόλου ἔνθα ἂν ἔχωμεν παρὰ νόμον γραφήν, καὶ οὐ μόνον ἂν ἔχωμεν νόμον, ἀλλὰ καὶ ψήφισμα.

[4.780.21] δεῖ δὲ εἰδέναι ὅτι ἡ ἔγγραφος αὕτη ἴδια κεφάλαια οὐκ ἔχει ...

[4.781.12] δύο αἰ ζητήματά ἐστι περὶ τὴν ἔγγραφον μετάληψιν, τὸ μὲν κατ' ἐκβολὴν τοῦ ἀγώνος, τὸ δὲ κατ' εὐθυδικίαν, ἐν ᾧ τοῦ πράγματος ἡ ζήτησις. πρῶτον οὖν καλεῖ τὸ τῆς ἐκβολῆς, ὃ δὴ καὶ κυρίως παραγραφή. αὕτη δέ, φησί, κατὰ μίαν τῶν νομικῶν ἐξετασθήσεται· ἐπειδὴ γὰρ ἐν αὐτῇ ἐστὶν ἡ τῶν ἐμπιπτόντων ῥητῶν ἐξέτασις, ἀναγκαίως κατὰ μίαν τῶν νομικῶν στάσεων διαιρεῖται. τὸ δὲ ἕτερον, ὃ καὶ ἐπαγόμενόν ἐστιν ἥτοι ἡ εὐθυδικία, καθ' ἑτέραν δὴ τινα τῶν λογικῶν.

[4.781.32] λογικαὶ μὲν εἰσιν ἐν αἷς περὶ πράγματος ἡ ζήτησις, καὶ πάντα ἃ περὶ ἀγράφων ἐξετάζεται.

[4.782.3] χρήσεται γὰρ ὁ μὲν πλούσιος τῷ ῥητῷ, ὁ δὲ πένης τῇ διανοίᾳ λέγων ὅτι ἄχρι τριάκοντα ἡμερῶν εἶπεν κατηγορεῖν τοὺς ἐπιδημοῦντας, οὐ τοὺς ἀποδημοῦντας, καὶ μάλιστα δημοσίας ἐνεκα χρείας, ὥσπερ κἀγὼ τῆς πρεσβείας χάριν ἀπὼν οὐκ ἐδυνάμην ἐντὸς τῆς προθεσμίας κατηγορεῖν· ἡ δευτέρα δὲ κατὰ πραγματικὴν, εἰ νόμιμον εἰσιέναι. ταῦτα γὰρ πραγματικῆς ἴδια ὡς ἐν τῷ πρὸς Λεπτίνην, ὡς ἐν τῷ κατὰ Ἀριστοκράτους, καὶ καθόλου ἔνθα ἂν ἔχωμεν παρανόμων γραφήν, οὐ μόνον δὲ ἔνθα ἔχομεν νόμον, ἀλλὰ καὶ ψήφισμα· μικρὸν γὰρ τι διαφέρει νόμος ψηφίσματος.

Appendix 7: Other sources

These extracts from unpublished commentaries on Hermogenes are taken from the articles cited in the notes; unattributed emendations are by the original editor.

Nilus fol. 154v-155r:¹²⁶ περὶ τῆς τάξεως τῆς μεταλήψεως πολλὰ πολλοῖς διαφωνοῦναι γεγόνασιν. Ἀρποκρατίων γάρ, φησί, πρώτην αὐτὴν ἀξιοῖ τετάχθαι διὰ τριῶν ἐπιχειρημάτων ... ὁ δὲ Μινουκιανὸς μετὰ τὴν ἀντίληψιν αὐτὴν τάττει, διότι κοινωνοῦσι πάνυ ἀλλήλοις, εἴγε θέλουσι λέγειν ὅτι ἡ ἀντίληψις μεταλήψει λύεται καὶ ἡ μετάληψις ἀντιλήψει. ἔλεγεν οὖν ὅτι ἄτοπον τὰς συμμένας τῇ φύσει καὶ τοῖς πράγμασι τοῖς τοποῖς χωρίζειν. διὸ καὶ τις τῶν τεχνικῶν, Ἑρμαγόρας δὲ οὗτος¹²⁷ οἶμαι, πολὺν ἀναλώσας λόγον εἶπεν ὅτι ἀλλήλαις οὐδὲν διαφέρουσιν ὕστερον. ὁ δὲ Ἐπιφάνιος μετὰ τὴν πραγματικὴν τάττει αὐτὴν ὡς μετὰξὺ οὐσαν καὶ μετέχουσαν τῶν λογικῶν καὶ τῶν νομικῶν.

Nilus fol. 156v:¹²⁸ ὁ μὲν οὖν τεχνικὸς λέγει τὴν παραγραφὴν κατὰ μίαν τῶν νομικῶν ἔχειν ἐργασίαν, ὁ δὲ γε Εὐστάθιος φησὶν ὅτι καθ' ἐαυτὴν ἡ παραγραφὴ γίνεσθαι οὐ δύναται· γίνεται δὲ κατὰ τέσσαρας μόνους τῶν στάσεων, κατὰ ὅρον καὶ δύο τῶν νομικῶν, ῥητὸν καὶ διάνοιαν λέγω καὶ ἀμφιβολίαν. καὶ κατὰ στοχασμὸν φησὶν ὡς κατὰ Τιμάρχου. κακῶς δὲ λέγει ὁ Εὐστάθιος περὶ τὰς δύο μόνους τῶν νομικῶν γίνεσθαι τὴν ἐργασίαν· γίνεται γὰρ καὶ κατὰ συλλογισμὸν καὶ ἀντινομίαν.

Nilus fol. 157v:¹²⁹ συνίσταται ἡ παραγραφὴ μετὰ ἐκάστης στάσεως. κακῶς οὖν εἶπεν ὁ Εὐστάθιος τὴν πρώτην ζήτησιν ἡγούν τὴν παραγραφὴν κατὰ στοχασμὸν ἢ ὅρον εἶναι. καὶ ἐν τῷ τῆς ἱερείας γὰρ προβλήματος τοῦ δις περὶ τοῦ αὐτοῦ μὴ εἶναι δίκας πρὸ τοῦ ζητουμένου νομικὴ ἐστὶν ζήτησις καὶ τελευταῖον ὁ ὅρος ἐμπίπτει. τοιγαροῦν ἐν ἀπάσῃ παραγραφῇ τρεῖς ἀνάγκη τὸ ἐλάχιστον ὑπεῖναι στάσεις, αὐτὴν τὴν παραγραφὴν καὶ τὴν συμπεπλεγμένην αὐτῇ, καθ' ἣν γίνεται, καὶ τὴν τῆς εὐθυδικίας, οἶον ...

Christophorus 131r:¹³⁰ ὁ μὲν οὖν τεχνικὸς λέγει τὴν παραγραφὴν κατὰ μίαν τῶν νομικῶν ἔχειν ἐργασίαν, ὁ δὲ γε Εὐστάθιος φησὶν ὅτι κατὰ στοχασμὸν καὶ ὅρον καὶ δύο τῶν νομικῶν, ῥητὸν <καὶ> διάνοιαν λέγω καὶ ἀμφιβολίαν. καὶ κατὰ στοχασμὸν φησὶν ὡς κατὰ Τιμάρχου. κακῶς δὲ λέγει ...

Christophorus fol. 132r-132v:¹³¹ ὁ δὲ Ἀρποκρατίων εἰσάγει ξένον τι, παραγραφὴν λήγουσαν¹³² εἰς παραγραφὴν, οἶον νόμος μετὰ τοῦ στρατηγοῦ, ἕως ἂν στρατηγῇ, ἰδιωτικὰς μὴ εἶναι δίκας· ἐν πολέμῳ <στρατηγὸς> στρατιώτην μὴ φοροῦντα κράνος ἐμάστιξεν· ἐγράψατο αὐτὸν ὁ στρατιώτης ὕβρεως, ὁ δὲ κατὰ τὸν νόμον παρεγράψατο· μετὰ τὸ διαδεχθῆναι τῆς στρατηγίας πάλιν ἐγράψατο αὐτὸν ὁ στρατιώτης, ὁ δὲ παραγράφεται λέγων

¹²⁶ Gloeckner (1901) 95 (Gloeckner does not report Harpocration's three arguments), 33, 93.

¹²⁷ οὕτως cod.: corr. Norden.

¹²⁸ Gloeckner (1901) 79.

¹²⁹ Gloeckner (1901) 79f.

¹³⁰ Rabe (1895) 248; Gloeckner (1901) 79..

¹³¹ Rabe (1895) 248.

¹³² λέγουσαν cod.

δὲς περὶ τῶν αὐτῶν μὴ εἶναι δίκας. λέξει γὰρ κατὰ πρώτην ζήτησιν ὅτι δὲς περὶ τῶν αὐτῶν οὐ δίδωσι¹³³ δίκας, καὶ ἴδου πρώτη παραγραφὴ. λοιπὸν δευτέρα ζήτησις· ἵνα μὴ δόξω δι' ἀπορίαν δικαιωμάτων τοῦτο ποιεῖν, κρίνομαι· νόμος γὰρ τὸν στρατηγὸν ιδιωτικὰς μὴ διδόναι δίκας. ἴδου γὰρ καὶ ἡ δευτέρα παραγραφὴ. ἰστέον δὲ ὅτι ἐνταῦθα ἡ ὑστέρα ζήτησις κατὰ μίαν τῶν λογικῶν ἐξετάζεται. λέξει γὰρ πάλιν· ἵνα μὴ δόξω δι' ἀπορίαν δικαιωμάτων τοῦτο ποιεῖν, ἀξίως γε ἐμάστιξα, ὅτι οὐκ ἐφόρεις κρᾶνος· καὶ λήγει εἰς ἀντέγκλημα.

Georgius fol. 224r:¹³⁴ ὁ Μητροφάνης δὲ δύο φησὶν ἔχειν ἰδικὰ τὴν παραγραφὴν κεφάλαια, ἀπὸ μὲν τοῦ κατηγοροῦ τὸ ἐπαγγελτικόν· ὑπισχνεῖται γὰρ ὁ κατήγορος τοῖς δικασταῖς τάδε· εἴπερ μὴ δέξεσθε, φήσει, αὐτὸν παραγραφόμενον ἀλλ' ἀνέξεσθέ μου κατηγοροῦντος, εὐελπίς εἰμι πολλὰ τὴν πόλιν ὠφελῆσαι· δείξω γὰρ αὐτὸν πλείστα ἡδιδηκότα τὴν πόλιν. οὕτως μὲν οὖν ἀπὸ τοῦ κατηγοροῦ τὸ ἐπαγγελτικόν, ἀπὸ δὲ τοῦ φεύγοντος τὸ ἀποβησόμενον· φήσει γὰρ ὁ παραγραφησόμενος· εἰ τοῦτον συγχωρήσετε ἐπ' ἐξουσίας κατηγορεῖν οὐδὲν κωλύσει λοιπὸν τοὺς ἡταιρηκότας δημηγορεῖν καὶ πολιτεύεσθαι καὶ πάντας ἀπλῶς οἷς οὐκ ἔξεστι λέγειν, καὶ λοιπὸν ἄτοπὸν τι αποβήσεται τὴν πόλιν. ταῦτα μὲν ὁ Μητροφάνης. ἰστέον δὲ ὅτι οὐκ ἀγωνιστικά εἰσι ταῦτα κεφάλαια ἀλλὰ τελικά, ἐν ἐπιλόγοις εὐρισκόμενα. τὰ δὲ τελικά κεφάλαια κοινὰ εἰσι πάσης στάσεως. ἔφαμεν γὰρ ὅτι ἡ πραγματικὴ ἐν τῷ τέλει ἐκάστης εὐρίσκεται ὑποθέσεως, ἐν τοῖς ἐπιλόγοις, καὶ ἐμπίπτουσι τὰ κεφάλαια αὐτῆς τελικά· καὶ ταῦτα δέ, ἅπερ ἔφη Μητροφάνης τῆς παραγραφῆς δύο κεφάλαια, τῆς πραγματικῆς εἰσι μᾶλλον ὥς τελικά ἐμπεσόντα, τό τε ἐπαγγελτικόν φημι καὶ τὸ ἀποβησόμενον.

¹³³ δίδω cod.

¹³⁴ Schilling (1903) 753.