The substructure of *stasis*-theory from Hermagoras to Hermogenes

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ABSTRACT: This paper analyses the history of the scheme *aition*, *sunekhon*, *krinomenon* in the rhetorical theory of *stasis* (issue-theory). The role of this scheme in the theory of Hermagoras of Temnos is reconstructed; it is shown that successive changes of position in Cicero's theoretical writings reflect the breakdown of Hermagoras' system. Responses to this breakdown in a number of later rhetoricians, including Quintilian, Lollianus and Minucianus, are discussed; Zeno and Hermogenes abandoned the scheme.

1. Introduction

Stasis-theory seeks to classify rhetorical problems (declamation themes, or real forensic and deliberative situations) according to the underlying structure of the dispute that each involves.[1] Such a classification is of interest to the practising rhetor, since it may help him identify an appropriate argumentative strategy; for example, patterns of argument appropriate to a question of fact (did the defendant do what is alleged?) may be irrelevant in an evaluative dispute (was the defendant justified in doing that?).

Ancient rhetoricians did not always agree on how to classify a given problem. Consider the case of the adulterous eunuch. A husband may kill an adulterer in the act; a man finds a eunuch in bed with his wife and kills him; he is charged with homicide. According to Hermogenes, the *stasis* is definition: the facts are agreed, and the dispute is about how to categorise those facts.[2] Whatever the eunuch was up to, it was clearly not a fully-fledged instance of adultery; it (and indeed he) lacked something arguably essential to that crime. Is this 'incomplete' adultery nevertheless to be classed as adultery? If so, then the killing is covered by the law on adultery; if not, the killing is unlawful. But the case could also be interpreted as counterplea (*antilêpsis*).[3] Counterplea is a form of the *stasis* of quality, in which the defence maintains that the act for which it is charged is lawful in itself. For example: a rhetor's encomium on death is followed by a rash of suicides; he is charged with crimes against the public interest (*dêmosia adikêmata*), and defends himself by arguing that he broke no law in practising his profession.[4] On this

[1] For an overview of *stasis*-theory see D. Russell, *Greek Declamation* (Cambridge 1983), 40-73; G. Kennedy, *Greek Rhetoric under Christian Emperors* (Princeton 1983), 73-86; L. Calboli Montefusco, *La dottrina degli status nella retorica greca e romana* (Hildesheim 1986).

[2] See Hermogenes 60.19-61.3 Rabe. This case is found also in Sen. *Contr*. 1.2.23. A simpler variant in which the eunuch is prosecuted for adultery (*RG* 5.158.12-15, 7.217.21-4; Syrianus II 114.1 Rabe) is evidently definition.

[3] See *RG* 5.158.8-159.6 Walz.

[4] See *RG* 8.407.14-16; the same case with a philosopher is found in Fortunatianus, *RLM* 92.26-9 Halm.

analysis of the adulterous eunuch, the husband's appeal to the law of adultery is seen as determining the *stasis* as counterplea without further ado.

Disagreement over the classification of a rhetorical problem raises the question of how *stasis* is in general to be ascertained. According to Hermogenes, one must inspect the *krinomenon*: if that is unclear, the *stasis* is conjecture (36.8-9); if it is clear but incomplete, the *stasis* is definition (37.1-2); if it is complete, the *stasis* is quality (37.14-15), which in turn has manifold subdivisions. However, Hermogenes does not tell us what the *krinomenon* is or how one identifies it. The *krinomenon* also figures in the alternative analysis of the adulterous eunuch, where it is linked to two other concepts, *aition* and *sunekhon*, which make no appearance in Hermogenes. We know that the triad *aition*-*sunekhon*-*krinomenon* goes back to Hermagoras (fr. 18 Matthes); but the significance of the terms in his system is uncertain,[5] and (as we shall see) in subsequent sources they are used in strikingly inconsistent ways. This paper attempts to trace the history of these and related terms, and so to throw light on changing conceptions of the fundamentals of *stasis*-theory from Hermagoras on.

2. A Simple Model

Our earliest sources offer a variety of schemes (I shall refer to them as 'Models') for the most basic analysis of a rhetorical problem. They agree that the analysis has a simpler structure when the question is conjectural (i.e. one of fact) than in other cases (Cic. *Inv*. 1.19, *Part*. 104; *ad Her*. 1.27) and offer a common account of that simple structure; their accounts of more complex analyses diverge. The complex analyses are not to be understood as elaborations of the simple analytical scheme applied to conjecture; each of these sources presents a Complex Model first, and appends the Simple Model as a departure from the norm dictated by a structural deficiency in conjectural problems. But for our present purposes it will be convenient to begin with the shared and more straightforward material; in this section, therefore, I summarise the Simple Model applied to cases of conjecture.

A conjectural dispute has three components: the prosecutor's claim ('You did this') and the defendant's counterclaim ('I did not') together pose a question for the jury to resolve ('Did he do it?'). To provide a concise, neutral system of reference to help anchor the shifting terminology of our sources, I shall use P, D and J to designate the roles of prosecutor, defence and jury;[6] subscript numerals

[5] See D. Matthes, 'Hermagoras von Temnos', *Lustrum* 3 (1958), 58-214, esp. 166-78 (with references to earlier literature). More recently: K. Barwick, 'Augustinus Schrift De Rhetorica und Hermagoras von Temnos', *Philologus* 105 (1961), 97-110; *id*. 'Zur Erklärung und Geschichte der Staseislehre des Hermagoras von Temnos', *Philologus* 108 (1964), 80-101; *id*. 'Probleme in den Rhet. LL Ciceros und der Rhetorik des sogenannten Auctor ad Herennium', *Philologus* 109 (1965), 57-74; J. Adamietz, *M. F. Quintiliani Institutionis Oratoriae Liber III* (*Studia et Testimonia Antiqua* 2, Munich 1966), 206-21; L. Calboli Montefusco, 'La dottrina del KPINOMENON', *Athenaeum* 50 (1972), 276-93.

[6] The parties to the dispute are called 'prosecutor' and 'defendant' for simplicity's sake; in some cases the first party might be a petitioner (e.g. a hero or tyrannicide) claiming an award which the second opposes.

will distinguish successive phases of analysis in the Complex Models (for example, D_1 would be the defence's initial claim, D_2 its subsequent grounding). So the Simple Model can be represented schematically thus:[7]

P_1	*kataphasis*	You did it.
D_1	*apophasis*	I did not do it.
J_1	*krinomenon*	Did he do it?

(It should be stressed that this and subsequent schemata illustrate the preliminary analysis of a problem. In particular, the notional dialogue is a device for clarifying the underlying structure of the dispute; it obviously does not correspond to the way a speech is organised or a trial conducted. The composition of a speech will not begin until after the preliminary analysis has been completed.)

3. Three theories of *stasis*

The Simple Model can be used to illustrate competing views about the location of *stasis* within the analysis. Three theories (I shall refer to them as 'Positions') can be identified:

Position A: *stasis* is the initial proposition of the defence (D_1).

According to Cicero this was Hermagoras' view: *placet autem ipsi constitutionem intentionis esse depulsionem* (*Inv*. 1.13). This is consistent with Hermagoras' well-attested definition of *stasis* as φάσις καθ' ἣν ἀντιλαμβανόμεθα τοῦ ὑποκειμένου πράγματος ἐν ᾧ ἐστι τι ζήτημα καθ' ὅ ἐστιν ἡ ἀμφισβήτησις (fr. 10 Matthes).[8] The defence's initial response ('I did not do it') is the proposition (φάσις) which counters (ἀντι-λαμβανόμεθα) the charge, and so constitutes the dispute as such. Cicero adopts this position himself in a late work: *refutatio autem accusationis, in qua est depulsio criminis, quoniam Graece stasis dicitur, appelletur Latin status; in quo primum insistit quasi ad repugnandam congressa defensio* (*Top*. 93). But in his earliest work he wavers between two other views:

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[7] Since my main concern is with the Greek tradition, I will generally translate the terminology of Latin sources into Greek without comment (here it is inferred from *ad Her*. 1.27: *intentio* = κατάφασις, *infitatio* = ἀπόφασις, *iudicatio* = κρινόμενον). Most equivalences are clear (e.g. *status* or *constitutio* = στάσις, *quaestio* = ζήτημα), but care is needed over the translations for two of our key terms, αἴτιον and συνέχον. I accept Quintilian's statement (3.11.5, 9) that *ratio* = αἴτιον, *continens* or *firmamentum* = συνέχον. Sometimes *ratio* is glossed as *quae continet causam* (Cic. *Inv*. 1.18) or *quae... continet defensionem* (*ad Her.* 1.26); might the use of *continere* suggest that *ratio* = συνέχον (the equation stated e.g. in Caplan's note on *ad Her.* 1.27)? The inference is groundless: *firmamentum* (= *continens*, *continentia*: Cic. *Top*. 95, *Part*. 103-4) is itself glossed *quod continet accusationem* (*ad Her*. 1.26), and Cicero observes that *ratio* and *firmamentum* equally *continent causas* (*Part*. 103).

[8] Thus *Prologemenon Sylloge* (22) 329.10-12 Rabe (hereafter *PS*); with minor variants, (18) 318.10-12; *RG* 7.173.10-12 omits φάσις and truncates after πράγματος, and this shorter version also underlies Quint. 3.6.21. I note in passing that this definition explains why Hermagoras excluded νομικὰ ζητήματα from the system of στάσεις: νομικὰ ζητήματα are περὶ ῥητοῦ (cf. e.g. Hermogenes 37.17-20), and so do not grasp the ὑποκείμενον πρᾶγμα.

Position B: *stasis* is the conflict of the initial propositions of prosecution and defence ($P_1 + D_1$).

Position C: *stasis* is the question which arises from the conflict of initial propositions (J_1).

Cicero seems to adopt Position C at *De Inventione* 1.10: *eam igitur quaestionem ex qua causa nascitur constitutionem appellamus* (cf. 2.15: *constitutio, id est quaestio*). However, he immediately reverts to Position B; *constitutio est prima conflictio causarum ex depulsione intentionis profecta*. At 1.18 we read that the *quaestio* arises out of the *conflictio causarum, in qua constitutio constat*, which clearly identifies *stasis* with the initial conflict ($P_1 + D_1$) and distinguishes it from the question which arises out of that conflict (J_1). The *Rhetorica ad Herennium* follows Position B: *constitutio est prima deprecatio defensoris cum accusationis insimulatione coniuncta* (1.18).

Why should Hermagoras' original Position have been modified in these ways? If the antilogical implications of his definition are overlooked, Position A might be criticised as one-sided. In isolation the defence's initial proposition (D_1) would be meaningless; one must take account of the prosecution's contribution (P_1) as a co-determinant of the dispute. Positions B and C achieve that shift of emphasis.[9]

4. Complex Models

If the defence denies the fact, D_1 will be 'I did not do it'; if the fact is conceded, D_1 will be (for example) 'I was justified in doing it'—the *stasis* of quality. The question which then arises ('Was he justified in doing it?') demands that the analysis be pressed further: on what grounds does the defence claim justification? So for *staseis* other than conjecture a more elaborate Model is needed. Although our sources are agreed on this point, they disagree about the shape of that Model. Cicero's rhetorical writings give three different accounts, each of which uses the terms *aition* and *sunekhon* in a different way. In this section I summarise the variants, and try to determine their historical relationship.

(a) Model 1

Cicero's earliest presentation (*Inv*. 1.18-19) can be summarised schematically thus:

P_1	You killed your mother.
D_1	I killed her justly.
J_1 *zêtêma*	Did he kill her justly?

[9] The antilogical implications of Hermagoras' ἀντιλαμβανόμεθα are noted by a later commentator on Hermogenes (*RG* 7.171.20-173.13), who infers (173.9-13) that Hermagoras agreed with his own adherence to Position B, as against adherents to Position C such as Minucianus (whose definition of *stasis* is attacked at 172.27-173.2). For this commentator *stasis* is not the *zêtêma*, but produces it: στάσεις γάρ εἰσιν αἱ ἀνωτάτω προτάσεις… αὗται δὲ συνιοῦσαι ποιοῦσι ζήτημα, 172.2-4). He quotes Hermagoras' definition in the abbreviated form (see n.8); φάσις (if authentic) contradicts the plural προτάσεις, and rules out Position B.

D_2	*aition*	For she killed my father.
P_2		But your mother should not have been killed by you, her son; her crime could have been punished without your committing a crime.
J_2	*krinomenon*	Was it right for Orestes to kill his mother because she had killed his father?
D_3	*sunekhon*	My mother's disposition... was such that her children above all were bound to exact the penalty.

The need to ground the defence's plea of justification gives rise to a second round of conflicting propositions. *Aition* is applied to D_2, the explanation for the act charged which the defence offers in order to substantiate its plea of justification. *Sunekhon* also belongs to the defence; it is D_3, the defence's strongest argument (*firmissima argumentatio defensoris et appositissima ad iudicationem*). Note that, by contrast with the Simple Model, there is a distinction between the *zêtêma* which arises from the initial propositions (J_1) and the ultimate point for adjudication, the *krinomenon* (J_2).

This Model is coherent and intelligible. The analysis of a case has three stages. First one looks at the the initial positions of the two parties (P_1, D_1) and the question to which they give rise (J_1). This allows an identification of the *stasis* of the case, revealing the nature of the dispute in the most general terms (whether it is about fact, name, or quality). If the dispute is about fact, the analysis is complete; one's task is then to marshal evidence for or against the contested factual claim. If the dispute is not one of fact, it is necessary to proceed to the second stage. The defence's first proposition (D_1) must be supported by circumstantial grounds (D_2); this identifies the precise point on which the jury will have to adjudicate (J_2). Thirdly, knowing the point on which the jury must adjudicate one can identify the defence's strongest line of argument (D_3). Once this has been identified, both parties can begin to work out the points which they will deploy to weaken or confirm that crucial line of argument. D_3 is thus the *sunekhon* in the sense of the main or crucial point of the dispute.[10]

(b) Model 2

Cicero's second presentation, in *Partitiones Oratoriae* 101-6, is significantly different:

P_1		Opimius killed Gracchus.
D_1		The killing was legal.
J_1	*zêtêma*	Did Opimius kill Gracchus legally?
D_2	*aition*	I acted lawfully in the interests of public security and the preservation of the republic.

[10] See LSJ[9] *s.v.* συνέχω 3. The usage is attested (e.g.) in Polybius' references to the *sunekhon* of a treaty (2.12.3), document (3.27.1), agreement (3.29.9) or deliberative assembly (24.4.2).

P_2 *sunekhon*	You had no legal power to put a citizen to death without trial, no matter how depraved.
J_2 *krinomenon*	Did he have the legal power to put a citizen subverting the state to death unconvicted?

As in Model 1, *zêtêma* (J_1) and *krinomenon* (J_2) are distinguished, and *aition* is D_2, the defence's grounding of its plea of justification. But *sunekhon* has been transferred to the prosecution: it designates P_2, the prosecutor's attempt to undermine the grounding of the defence's initial claim. The defence's third proposition plays no role in this analysis.

The example cited here (one of several in the *Partitiones*) reappears in *De Oratore* 2.132. The presentation is highly condensed, and technical terminology is suppressed. This makes it impossible to say with certainty that we are dealing here as in the *Partitiones* with Model 2; but the two texts may be close in date,[11] and since they both omit D_3 (by contrast with Model 1) and place P_2 after D_2 (by contrast with Model 3), it seems likely that the same Model is assumed in both.

The anonymous *Rhetorica ad Herennium* also embodies a variant of Model 2 (1.26):

P_1	Orestes killed his mother.
D_1	I killed her justly.
D_2 *aition*	For she killed my father.
P_2 *sunekhon*	But she should not have been killed by you, or been punished without trial.
J_2 *krinomenon*	Given that Orestes claims to have killed his mother to avenge his father, was it right that Clytaemnestra was killed without trial and by her son?

This scheme is structurally identical to that in the *Partitiones*, except that no account is taken of an initial *zêtêma* (J_1); from the first propositions one proceeds immediately to determining the *aition*.

(c) Model 3

At the very end of his life, Cicero offered a further account (*Topica* 93-5).[12] The presentation is very compressed, and no example is elaborated; but there is enough to show that we are dealing with a distinct Model. As in Model 1, *sunekhon* belongs to the defence (*continentia vocentur, quasi firmamenta defensoris*); but, by contrast with Model 1, *sunekhon* cannot now be the defence's third proposition. This is indicated by the gloss *quibus sublatis defensio nulla sit*. Removing the strongest argument of the defence (D_3) would not remove the defence itself; to abolish the defence one must remove the grounding of its plea of

[11] *De Oratore* is securely dated to 55 by *ad Att*. 4.13.2; on the date of *Part*. see B.B. Gilleland, *CP* 56 (1961), 29-32, who argues for 54-52.
[12] The *Topica* is dated to 44 by *ad Fam*. 7.19.

justification, i.e. D_2. It seems, therefore, *sunekhon* has taken over the place (D_2) which in Model 1 is filled by *aition*.[13] In outline:

P_1	Orestes killed his mother.
D_1	I killed her justly.
D_2 *sunekhon*	For she killed my father.
J_2 *krinomenon*	Did Orestes kill his mother justly, given that she killed his father?

What, then, has become of *aition*? There are no internal grounds for answering this, but one possibility is that *aition* has been taken over by the prosecution (P_2); this would correspond to the normal usage in later sources. If so, the full Model would resemble that found in pseudo-Augustine (*RLM* 143.25-145.33 Halm):[14]

P_1 *kataphasis*	The general is guilty of murder.
D_1 *apophasis*	The killing was lawful.
J_1 *zêtêma*	Was the killing lawful?
P_2 *aition*	He killed a soldier.
D_2 *sunekhon*	I killed him because he swore he would desert.
J_2 *krinomenon*	Was it lawful for the the general to kill the soldier because he swore he would desert?

Note the changed relationship between the second propositions. In Models 1 and 2 the defence substantiated its plea of justification, and then the prosecution tried to rebut it; now the prosecution's second proposition *precedes* that of the defence. The prosecutor substantiates his charge, and then the defendant substantiates his defence.

(d) Hermagoras and his critics

Can we assign any one of these Models to Hermagoras? Quintilian attributes to him the scheme summarised in 3.11.1-10, and this (as we shall see) is Model 1; moreover, he explicitly contrasts Cicero's adherence to Hermagoras' system in *De Inventione* with the variant schemes in the *Partitiones* and *Topica* (3.11.18-19). Quintilian cannot have concluded that *De Inventione* follows Hermagoras on internal evidence alone: Cicero sometimes departs explicitly from Hermagoras in *De Inventione* (1.8, 12-14), and Quintilian maintains that Cicero misunderstood some aspects of Hermagoras' doctrine of *stasis* (3.6.58-60). Quintilian therefore had an independent source for Hermagoras' doctrines. It does not follow that he

[13] Compare the gloss on *continentia* = συνέχον = D_2 here (*quibus sublatis defensio nulla sit*) with that on *ratio* = αἴτιον = D_2 at *Inv.* 1.18 (*quae si sublata sit nihil in causa controversiae relinquatur*).

[14] Ps.-Augustine does not say that conjecture and the other *staseis* require different treatment, although none of his illustrations of this scheme are conjectural.

was right to identify Model 1 as Hermagorean; but his testimony cannot be set aside lightly.

Against this must be weighed the evidence of pseudo-Augustine. This author remarks that Hermagoras sometimes used *aition aitiou* as an alternative for *sunekhon*; he explains that the *aition* (i.e. the initial charge) is the cause of the dispute, so that the *sunekhon* (i.e. the defence's explanation of the act charged) gives the cause of the act which was the cause of the trial (144.30-145.6). If this explanation of Hermagoras' usage is correct, he must have applied *sunekhon* to D_2, which entails Model 3.[15] The context bristles with references to Hermagoras, and there is good Hermagorean material in it; most scholars who have worked on this material have sided with pseudo-Augustine against Quintilian.[16]

Quintilian's testimony is, however, to be preferred:

(i) Pseudo-Augustine's preferred usage is to speak of *zêtêma* (*quaestio*) instead of *stasis*; he remarks that 'some' use the term *stasis* (144.11-18). We know from Quintilian of rhetoricians who used *zêtêma* in place of *stasis* (3.6.2), but there is no doubt that *stasis* is a Hermagorean usage. Furthermore, it is only possible to substitute *zêtêma* for *stasis* if one adopts Position C; but (as we have seen) Hermagoras probably adhered to Position A. There are therefore significant inconsistencies between pseudo-Augustine and what is known of Hermagoras' doctrines.

(ii) In Model 1 three phases of the defence appear in the analysis, and only the defence's propositions are dignified with technical terms. This consistent emphasis on the defence sits well with the corresponding emphasis in Position A. It would make sense if Hermagoras adopted both.

(iii) A variant of Model 3 dominated later theory, in the sense that *aition* was normally associated with the prosecution, *sunekhon* with the defence. If Hermagoras proposed Model 3, he established—in pioneering work—the dominant system for the rest of antiquity; subsequent criticism would have created nothing but dead-ends.

(iv) It is unlikely that *aition* and *sunekhon* were selected as technical terms by two independent parallel processes; more probably, one of our Models established the terminology and the others represent modifications of it. It is easier to grasp the motivation for the change of Model 1 into Models 2 and 3 than for either of the alternatives.[17] I suggested in (3) that Hermagoras' adherence to Position A might be criticised as failing to take adequate account of the prosecution's role. Criticism of a one-sided emphasis on the defence might well prompt, as well as a

[15] If ps.-Augustine's evidence is discounted, the statement that Hermagoras used *aition aitiou* as equivalent to *sunekhon* must be rejected, or else the usage must be reinterpreted in terms of Model 1 (e.g. *aition* gives the ground of the initial defence = D_2 and *sunekhon* = *aition aitiou* gives the ground of the ground = D_3).

[16] E.g. Matthes (n.5) 174-6; contrast Adamietz (n.5) 206-7.

[17] Motivation is no problem, of course, if we are free to assume 'misunderstanding' (e.g. Matthes (n.5) 176); but since *Inv*. and *ad Her*. attest lively debate over, and deliberate modification of, Hermagoras' views, we should look for intelligibly motivated changes before resorting to the hypothesis of misunderstanding.

move from Position A to Position B or C, a restructuring of the whole Model. Models 2 and 3 can be understood as alternative ways of bringing the prosecution's role into greater prominence, and so achieving a more balanced distribution of emphasis between the two parties. Each, therefore, implements a well-motivated structural modification of Model 1.

(v) I argued above that Model 1 is a coherent system; but despite its theoretical elegance, the Model shows signs of weakness in practice. It is striking, in particular, that in the second book of *De Inventione* Cicero makes no reference at all to the third proposition of the defence when analysing specimen cases; his practice follows Model 2 in everything except terminology. It is hard to see why, if Model 3 was original, any rhetorician would have added a component (D_3) for which no practical use was found; it is easy to see why, if Model 1 was original, modifications should have dropped that component and cannibalised the technical term.

It seems likely, then, that Model 1 was the Hermagorean original. One problem remains. The simplest revision of Model 1 is Model 2: the analysis is truncated, the unwanted third proposition of the defence is dropped, the spare term *sunekhon* is recycled. Can we account for the more extensive reconstruction undertaken in Model 3, where the order of the second propositions is reversed and the terms *aition* and *sunekhon* are exchanged? The subsequent dominance of Model 3 suggests that it was found more satisfying in some respect. The answer may be a sense that, even if the role of the prosecution has to be taken into account, it is the defence which makes the decisive contribution to the structure of the dispute.[18] So it should be the second proposition of the defence which immediately precedes and finally determines the *krinomenon*; and it is this second proposition of the defence which should be the *sunekhon* in the sense noted earlier, the main or crucial point.[19]

I conclude, therefore, by offering this (inevitably hypothetical) reconstruction of the early stages of the debate. Hermagoras proposed Model 1; and, consistently with its thorough-going focus on the defence, he adopted Position A, locating *stasis* in the first proposition of the defence (D_1). His system was faulted for failing to take adequate account of the role of the prosecution. This criticism prompted Positions B and C, relocating *stasis* to the conflict of first propositions ($P_1 + D_1$) or to the *zêtêma* arising out of that conflict (J_1) respectively. In addition, his Model for the basic analysis of a rhetorical problem was reconstructed. The

[18] Thus Cic. *Part*. 102 adopts Position B (characterising *stasis* as *quasi conflictio cum adversario*) but recognises that it is the defence's response which determines the nature of the conflict, *aliquo certo statu aut infitiando aut definiendo aut aequitate opponenda*. In the second century, Minucianus (discussed below) followed Position C but likewise saw the defence as determinative (*RG* 5.8.22-3; 7.139.24-5). At a still later date (citing the fourth-century Tyrannus) compare *PS* (22) 329.22-4:... ἡ τοῦ φεύγοντος φωνή ἡ ποιοῦσα τὴν ἀμφισβήτησιν, καὶ ὡς ἂν ὁ φεύγων ἀπολογήσεται, ἀναφαίνεται ἡ στάσις. Even Quintilian, who argues that *stasis* is sometimes determined by the prosecution (3.6.13-19), accepts that determination by the defence is the norm.

[19] Compare too the glosses on D_2 quoted in n.13 above with the definition in Stoic theory of causation of the class of cause termed *sunektikon*: αἴτιον οὗ παρόντος μένει τὸ ἀποτέλεσμα καὶ αἰρόμενον αἴρεται... αὐτάρκως δι᾽ αὑτοῦ ποιητικόν ἐστι τοῦ ἀποτελέσματος (*SVF* II 121.25-8); cf. A. Long & D. Sedley, *Hellenistic Philosophy* (Cambridge 1987), I 336, with 341-2.

simplest modification abandoned D_3, which had proved of little use in practical analysis, and transferred the term *sunekhon* to P_2. But this went against the intuition that the defence was the ultimate, even if not the sole, determiner of the structure of the dispute; so Model 3 emerged, changing the order and logical relation of the second propositions so that D_2 was the *sunekhon* (the key point) immediately preceding the *krinomenon*.

If this reconstruction is right, Cicero's successive changes of Model become intelligible: in moving from Model 1 to Model 2 to Model 3 he was not switching sources at random, but keeping up with the latest developments in theory.

5. Collapsed Models

We noted above that the analyses of specimen cases in the second book of *De Inventione* illustrate the practical uselessness of the third proposition of the defence in Model 1; another point that emerges from these analyses is that the identification of *stasis* may in practice be influenced by the second round of propositions (2.70, 73). But this is a paradox. All three Positions associate *stasis* with the first phase of the analysis; no two-phase model can consistently adopt one of the Positions and allow the second phase propositions to influence *stasis*. Indeed, where an explicit distinction is made between the treatment of conjectural and other cases, the restriction of *stasis* to the first phase of analysis is a logical necessity. The analyst must have identified the *stasis* of his problem before he considers the second propositions, since he will only proceed to a second phase of analysis (and so bring the second propositions into play) if he has already acertained that the case is not conjectural. In theory, therefore, *stasis* must belong to the first phase of the analysis; but the treatment of specimen cases in *De Inventione* suggests that this was hard to sustain in practice. Quintilian (3.11.15) records that there were some who thought the *stasis* of the *zêtêma* (J_1) may differ from the *stasis* of the *krinomenon* (J_2); applied to the case of the adulterous eunuch, this theory might yield the conclusion that the *stasis* of the *zêtêma* is counterplea, that of the *krinomenon* definition. But this approach to the problem conflicts with the assumption that any problem has a single *stasis*.[20] In general, therefore, later rhetoricians were forced to collapse the two phases of analysis into one. In this section I examine a variety of approaches.

(a) Quintilian

The difficulty of keeping *stasis* bound to the first phase can be observed in Quintilian. In 3.6.13-19 he rejects Position A (which links *stasis* to the first proposition of the defence) on the grounds that in rare cases it is the prosecution which determines *stasis*. For example, if the defence alleges adultery in justification of a homicide, the prosecution may constitute the case as conjecture by denying that the victim was an adulterer in fact. (Quintilian could equally have cited the adulterous eunuch: the prosecution's denial that a eunuch could commit adultery constitutes the case as definition.) If *stasis* can be determined by the

[20] See Quint. 3.6.9, 11.8; this is not to deny that any subsidiary questions which may arise in a speech will each have *stasis* (3.6.6-12, 11.6-7, Cic. *Inv*. 1.19).

prosecution's rebuttal of D_2 (the defence's grounding of a plea of justification), it has clearly broken free of the first phase of analysis.

To see how Quintilian copes with this development, we must pick our way carefully through the obscurities of 3.11. One apparent inconsistency confronts us immediately. At the beginning of this chapter *stasis* has already been identified (*his inventis*...), and the analyst proceeds to consider the *zêtêma* and subsequent elements of Hermagoras' Model 1 (... *intuendum deinceps... quid sit quaestio, ratio, iudicatio, continens*). This is consistent with Position A (*stasis* = D_1), as in Hermagoras, or with Position B (*stasis* = P_1 + D_1). But Quintilian has rejected Position A in 3.6.13-19 and Position B in 3.6.4-6. At first sight, the latter passage commits Quintilian to Position C: *stasis* is not the first conflict, but what arises from the first conflict. However, what arises from the conflict in 3.6.5 is not the *zêtêma* as such, but its species (*genus quaestionis*); Position C has apparently been qualified in some degree. A desire to qualify Position C is also in evidence at 3.6.20-1, which questions whether *stasis* is what arises from the first conflict, or is *in* what arises; a preference for the latter option is implied by 3.11.2, where *stasis* arises from the *zêtêma*. But neither Position C nor its modification agrees with the precedence of *stasis* over *zêtêma* entailed by the opening sentence of 3.11.

The exposition that follows, like the opening sentence, adheres to Model 1, covering *zêtêma* (2-3), *aition* and *krinomenon* (4),[21] and *sunekhon* (9). At 3.11.10 Quintilian notes that there is no *aition* in conjecture, unlike the other *staseis*—a standard doctrine, as we have seen (Cic. *Inv*. 1.19, *Part*. 104; *ad Her*. 1.27). But in 3.11.10-17 he reports and *rejects* the distinction between *zêtêma* and *krinomenon* in other *staseis*, insisting that the two are always identical. The distinction between J_1 and J_2 is an essential part of the structure of Model 1; in asserting the identity of *zêtêma* and *krinomenon*, therefore, Quintilian abandons the Model he has been expounding to this point. After a brief summary (18-19) of Cicero's different schemes in the *Partitiones* and *Topica* (i.e. Models 2 and 3), Quintilian arrives at his preferred scheme. In 3.11.19-20 he approves those who reduce their technical apparatus to *stasis*, *sunekhon* and *krinomenon* (*verius igitur et brevius ii qui statum et continens et iudicationem esse voluerunt*).[22] *Sunekhon* has now acquired a new sense: in 3.11.9 Quintilian defined it as D_3; here it refers to the combination of P_1 (*et quod Orestes matrem...*) and D_2 (... *et quod Clytaemnestra Agamemnonem occiderit*). Quintilian goes on to say (24) that *sunekhon*, *zêtêma* and *krinomenon* are all the same. The identity of *zêtêma* and *krinomenon* has already been asserted (15-17); *sunekhon* is included in the equation apparently in the sense that the conflict of claim and counterclaim is precisely the matter on which judgement must be passed. *Stasis* and *krinomenon* are not identical but 'agree' (*consentire*, 20); this formula, which restates the claim (8) that there is always a single ultimate *krinomenon* to which the *stasis* of the case is tied, agrees with the qualification of Position C noted earlier: *stasis* is not itself the product of the initial conflict, but is in or arises out of that product.

[21] In 5-8 Quintilian digresses to review some variant usages and discuss the possibility of multiple *aitia* and/or *krinomena*.

[22] The supplement <*idem*> *esse* (printed in Butler's Loeb) leads to incurable contradictions; Adamietz and Winterbottom rightly reject it.

Quintilian's exposition in 3.11 is hardly a model of clarity, but its structure should now be discernible. He begins by setting out the original Hermagorean Model (1-10), noting that it entails a distinction between *zêtêma* and *krinomenon* (10-14); this distinction he regards as untenable (16-17); so he opts in the end for a radically simplified system (19-20, 23-4). In this system one first considers claim and counterclaim (*sunekhon*); this discloses the question on which the jury must pronounce (*zêtêma = krinomenon*):

P_{1+2}, D_{1+2} *sunekhon* Orestes killed his mother; but she had killed his father.

J_{1+2} *zêtêma = krinomenon* Did Orestes kill his mother justly, given that she had killed his father?

Having pinned down the question, one can then identify the kind of question (*stasis = genus quaestionis*, cf. 3.6.5) at issue. The impracticability of restricting *stasis* to the first phase of the analysis has been solved, simply enough, by collapsing the two phases into one.

(b) Lollianus

Quintilian's source in 3.11.19-20 cannot be identified; but a variety of parallels to his Collapsed Model can be discerned in later Greek theory. I turn first to Lollianus, a Greek rhetor of the early second century. His views are partially preserved in an important but cryptic testimonium.[23]

The context is Lollianus' contention that *stasis* is an accidental property of rhetorical discourse (συμβεβηκὸς τῷ ῥητορικῷ λόγῳ). He distinguishes *zêtêma* (which is like matter), *sunekhon* (like form) and *stasis* (like colour and shape). This analogy implies that *stasis* is inseparable (ἀχώριστον) from *sunekhon*, but not identical with it. Lollianus illustrated his point, but the illustration is preserved in a very cryptic form. There is a reference to the killing of a hero as an adulterer; but immediately after that two cases are mentioned, one a counterplea and one a definition; the difference in *stasis* is determined by the different quality of the persons involved. The case of the hero is a standard example of counterplea. A husband kills an adulterous hero and is charged either with homicide or (more aptly) with a crime against the public interest; his defence rests on the legal warrant for his act.[24] There can be little doubt that the definitional case is the adulterous eunuch (the two cases being paired also in *RG* 5.158.8-159.6). Substituting the eunuch for the hero is a change of person, and it is accompanied by a change of *stasis* from counterplea to definition. The *sunekhon* in each case is the same (the defendant argues that the killing was legal since the victim was an adulterer) but the *stasis* is different; so *sunekhon* and *stasis* are not identical, even

[23] *PS* (22) 330.14-331.3 (at 330.27 Rabe's supplement <οὐδαμῶς> destroys the sequence of the argument); see O. Schissel, 'Lollianus aus Ephesos', *Philologus* 82 (1926/7), 181-201, esp. 191-5; P. Richter, 'Byzantinischer Kommentar zu Hermogenes', *Byzantion* 3 (1927/8), 153-204, esp. 190-1. On Lollianus: S. Gloeckner, *Quaestiones Rhetoricae* (*Breslauer Philologische Abhandlungen* 8.2, 1901), 50-54; O. Schissel *art. cit*. and *RE* XIII/ii (1927), 1373-5 *s.v*. Lollianos (15).

[24] Homicide: Syrianus II 129.19-22; *RG* 4.595.27-9. *Dêmosia adikêmata*: *RG* 4.587.23-4, 615.8-20; 7.487.29-488.31, 490.27-491.27 (and probably in 7.234.25-235.1).

though they are inseparable. It follows that *stasis*, since it can vary independently, is an accidental property.

Let us now consider Lollianus' use of terms more closely. First, *zêtêma*. When Lollianus compares *zêtêma* to matter, this suggests that the *zêtêma* is the rhetorical problem itself, the facts of the case; in this sense Syrianus speaks of τὸ πρᾶγμα περὶ οὗ ἡ στάσις, τουτέστι τὸ ζήτημα, which is also called πρόβλημα, ὅρος, ὑπόθεσις, μελέτη, πλάσμα or γύμνασμα (II 58.3-17; cf. e.g. Hermogenes 36.7: παντὸς οὑτινοσοῦν προτεθέντος ζητήματος...). The cases of the adulterous hero and eunuch are different *zêtêmata*—different bodies of matter—since the facts of the case are different; but they receive the same form from their shared *sunekhon*; and yet the *stasis* differs in each. So *zêtêma* is not applied here to a preliminary question arising out of the conflict of first propositions, as in the original Complex Models. But if that preliminary question is dropped, it is at least possible that Lollianus has collapsed the two phases into one, as did Quintilian's source. What of *sunekhon*? I have been assuming that this refers to the defence. Quintilian surmised (*mihi videntur*, 3.11.20) that in his source for the Collapsed Model the term subsumes both prosecution and defence, but Lollianus is unlikely to have followed suit. This would be self-evident if the charge in his version of the adulterous hero was crime against the public interest. The prosecution will then allege 'you harmed the public interest by killing him', but in the case of the eunuch 'you killed him'; these different allegations cannot be included in the *sunekhon*, which (in Lollianus' view) is the same in each case. But even if the charge in the case of the adulterous hero was homicide, the extension of *sunekhon* to include the prosecution is implausible. It is hard to see how the *stasis* could be differentiated if both prosecution and defence were identical in the two cases; there must be some reference to the difference of person ('you killed him *although he was a hero*', 'you killed him *although he was a eunuch*') if the analyst is to get a grip on the difference of *stasis*. *Sunekhon* must, therefore, refer to the defence alone in Lollianus. So if (as I suspect) Lollianus is working with a Collapsed Model, it is a collapsed version of Model 3.

The doctrine that *stasis* is an accidental is attacked in a scholion on Hermogenes (*RG* 7.248.13-32) which makes contrasting use of the matter/form analogy.[25] The facts of the case are (as for Lollianus) the matter; a reference to πολιτικὰ πράγματα ἤτοι ζητήματα shows *zêtêma* being used in the sense of the theme or problem, as in Lollianus. Paradoxically, however, these facts in themselves are ἀζήτητα, that is, they lack *zêtêma*. What this means is that a rhetorical problem (*zêtêma* in one sense) needs a further ingredient if it is to involve a question or dispute (*zêtêma* in the other sense). This ingredient is *stasis*; for this commentator *stasis* is to the facts of the case as form is to matter. His thesis is, on the face of it, in conflict with that of Lollianus, for whom *sunekhon* was form. But the disagreement may not be about what gives form to a case, so much as about the definition of *stasis*. In Lollianus' system *stasis* varies independently of *sunekhon*, so he does not follow Position A. The scholiast may do so; if, for him, *stasis* is (or is directly determined by) the *sunekhon*, his claim

[25] See Richter (n.23) 190.

that *stasis* is form makes the same point as Lollianus' claim that *sunekhon* (and *not stasis*) is form—namely, that a dispute is constituted as such by the defence's response to the charge. This is standard doctrine, as we have seen (see nn.18-19 above).

Lollianus' assertion that *zêtêma*, *sunekhon* and *stasis* are distinct implies that other theorists equated all or some of them. As we have just seen, the equation of *stasis* and *sunekhon* can be understood as a modification of Position A; *stasis* is the first proposition of the defence; if the two phases of analysis are collapsed into one, then *sunekhon*, taken in an extended sense (= D_{1+2}), is the first proposition of the defence. The equation of *stasis* and *zêtêma* recalls Position C, except that if the two-phase structure is collapsed *zêtêma* will now be identical with *krinomenon*. It is possible that Lollianus is opposing these two distinct equations of *stasis* (with *sunekhon* and *zêtêma* respectively); a triple equation would be harder to interpret. Taking our cue from Quintilian 3.11.24, we might say that the defence's claim (e.g. 'I killed her justly because she killed my father') is what is ultimately subjected to adjudication; thus the *krinomenon* is the *sunekhon*.[26] Taken with the equations of *krinomenon* and *zêtêma*, *zêtêma* and *stasis*, the circle would be complete. However, it is not clear that *krinomenon* can be identified both with *sunekhon* and with *zêtêma* without equivocation; so this triple equation remains somewhat speculative.

It is perhaps worth noting that the variant of Position A evidenced in the equation of *stasis* and *sunekhon* may provide a clue to the rival interpretation of the adulterous eunuch as counterplea. This view depends on the analysis being truncated before arguments about whether a eunuch can be an adulterer enter into consideration. A theory which equates *stasis* with the initial proposition of the defence achieves this, even if the initial propositions are taken in an extended sense, so as to include the defence's claim that the killing was legal *because the victim was an adulterer*. It is the inheritors of Position C who will carry the analysis on until they reach the real point of conflict between the two parties, and so bring to light the definitional aspect of the case.

(c) Minucianus

I turn next to Minucianus, one of the most important rhetoricians of the second century, whose work on *stasis* for a long time was more influential than that of Hermogenes.[27] Minucianus defined *stasis* as the *zêtêma* constituted by the two initial propositions (τὸ ἐκ τῶν πρώτων προτάσεων συνιστάμενον

[26] This is presumably the explanation of Aquila's interchange of the terms *sunekhon* and *krinomenon* (Syrianus II 50.23-51.2): the defence's claim (e.g. 'I killed justly since he was an adulterer') is the point to be submitted to the jury's adjudication, and the question arising ('was the killing, given such-and-such circumstances, a legal killing of an adulterer?') is the crux of the case. Matthes (n.5) 171 and 170 n.3, infers textual corruption in the Aquila tesimonium; but Syrianus' description of Aquila's proposal as a 'change' (ἐναλλάξας) would hardly be warranted by the minor alteration to the definition of *aition* (= τὰ ἀπ' ἀρχῆς ἄχρι τέλους, i.e. the events on which the charge is based, e.g. a man's standing beside the newly-slain corpse as the basis for a homicide charge) alone. For Aquila see J. Brzoska, *RE* II (1896), 314 *s.v.* Aquila (6).

[27] Minucianus: Gloeckner (n.23) 22-50. W. Stegemann, *RE* XV/ii (1932), 1975-86 *s.v.* Minukianos (1) is not consistently reliable on points of rhetorical theory.

ζήτημα);[28] this is unequivocally Position C. We know from the scholia to Hermogenes that he used the triad *aition-sunekhon-krinomenon*, and that he applied *aition* and *sunekhon* to the first propositions of prosecution and defence respectively. We must now consider whether these first propositions were the first phase of a Complex Model, or the sole phase of a Collapsed Model (in which case the identity of *stasis* and *zêtêma* will entail the idenity of *stasis* and *krinomenon* as well).

The external evidence is conflicting. When the Hermogenes scholia want to explain Minucianus' usage of *aition* and *sunekhon*, they tend to use examples at the level of P_1 and D_1 (e.g. 'You killed' and 'I did not kill');[29] this could, however, be a mere shorthand. More telling is a summary of Minucianus' definition (*PS* (22) 328.13-21) which explicitly distinguishes these first propositions from the subsequent propositions used to support them (αἱ λοιπαὶ προτάσεις, i.e. P_2 and D_2).[30] Against this we must set Syrianus, whose summary equally clearly identifies *aition* and *sunekhon* as the extended versions of the first propositions (II 50.13-23), giving a scheme like this (the case is of a rich man who constantly shakes his fists at his poor enemy, and is charged with *hubris*; the *stasis* is definition: does aggressive behaviour which falls short of an actual blow count as assault?):

P_{1+2} *aition*	You commit *hubris* by shaking your fists at me, as if I were a slave.
D_{1+2} *sunekhon*	I did not commit *hubris*, since I struck no blow.
J_{1+2} *krinomenon*	Did he commit *hubris*?

Furthermore, there is the evidence that Minucianus accepted the analysis of the adulterous eunuch as definition.[31] The definitional aspect of this case is not revealed by propositions at the level of P_1 ('You killed him') and D_1 ('I killed him justifiably...'); it emerges only when D_2 ('... because he was an adulterer') evokes a response from the prosecution ('But a eunuch cannot commit adultery'). If *stasis* of this case is identified as definition by the initial propositions, therefore, they must be the extended initial propositions of a Collapsed Model.

The inference that for Minucianus *aition* and *sunekhon* had an extended sense is supported by considerations internal to his system. Minucianus had a distinctive approach to *asustata* (cases that are invalid because they lack *stasis*), which he diagnosed by means of deficiencies in their *aition* and *sunekhon*.[32] To do this job,

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[28] See *PS* (13) 206.2-5, (21) 318.13-15, (22) 328.13-14; *RG* 7.170 n.58, 7.172.27-8.

[29] *PS* (13) 209.19-20; *RG* 7.139.22-5; compare Sopater's equation of *aition* and *sunekhon* with *kataphasis* and *apophasis* (*RG* 5.77.27-78.3, with 4.202.7-19).

[30] This passage incidentally shows that the distinction between conjecture and other *staseis* has been forgotten; the illustration given is a standard example of conjecture (the man found beside a newly slain corpse and charged with homicide).

[31] See Gloeckner (n.23) 49, quoting the unedited scholia of Nilus: ἐπεὶ δὲ πολλοὶ τὸ παρὰ τὸ τεχκνικῷ παράδειγμα ἐκβαλεῖν ἐπιχειροῦσι τοῦ ὅρου, ἀντιπίπτοντες οὐ μόνον τῷ τεχνικῷ, ἀλλ᾽ ἔτι καὶ Μινουκιανῷ...

[32] *RG* 7.139.19-40.4; cf. Syrianus II 50.13-15; *PS* (13) 209.17-18, (22) 330.10-11; Rufus 405.3-7 Spengel-Hammer. There appears to be no evidence that any rhetor before Minucianus tried to

aition and *sunekhon* must include P_2 and D_2, since opposed claims at the level 'You killed him' and 'I did not kill him' leave open the possibility that the theme is *asustaton* (for example, the accusation might be groundless).[33] We have, then, in Minucianus another example of a Collapsed Model.

(d) Zeno and Hermogenes

Collapsing the two phases of analysis into one removes a problem from the original Models, but arguably at the cost of triviality. Do the expanded concepts of *aition* and *sunekhon* tell us any more than that there are two parties to a dispute? If not, they have lost their function and might as well be abandoned. One rhetor who seems to have taken this step is Zeno. His work is known to us from Sulpicius Victor, whose primary authority he was (*RLM* 313.3-4); it is generally agreed that he dates to the second century.[34] Zeno defines *stasis* as *summa quaestio, ad quam referenda est omnis oratio* (*RLM* 325.5-6); this equates *stasis* and *zêtêma* in terms which echo earlier characterisations of the *krinomenon* as the central point of reference for a speech (*ad Her*. 1.26, cf. Quintilian 3.11.25-6). To this extent, therefore, his views are identical with those of Minucianus. But he makes no reference to *aition* or *sunekhon*.

Although *zêtêma* and *krinomenon* will, in general, be identical for Zeno, he recognises one exception. There is a special category of definition (called *enkrinomenon*) in which *krinomenon* and *zêtêma* part company: *aliud quidem in quaestionem veniat et aliud iudicetur* (*RLM* 338.19-24). For example: a man raids a cenotaph and is charged with grave-robbery. The *krinomenon* in this case is whether the man was a grave-robber, but the *zêtêma* is whether a cenotaph is a grave. Zeno regards *enkrinomena* as a species of complex definition;[35] in Syrianus (II 100.7-20, 115.17-116.24) an equivalent category is counted as a variant of simple definition, but the substance is the same. One of Syrianus' illustrations is the adulterous eunuch: the *krinomenon* is the killing, the *zêtoumenon* is whether the eunuch was an adulterer. Another commentator on Hermogenes (*RG* 4.532.6-535.6) also uses the adulterous eunuch to illustrate this category, although

integrate the theory of *asustata* with his Model for the analysis of themes possessing *stasis*; I suspect that in Hermagoras *asustata* were discussed and classified before the Model was introduced.

[33] Admittedly inconsistency is possible. Fortunatianus' presentation of a version of Model 3 similar to that of ps.-Augustine does attempt to identify *asustata* by means of *kataphasis* (P_1) and *apohasis* (D_1). It is perhaps significant that this attempt to integrate the theory of *asustata* with the Model (*RLM* 82.12-14) comes adrift from the immediately following survey of the four Hermagorean categories of *asustata* (82.15-83.9); for example, the category of *impudens intentio* mentioned at 82.13 corresponds to nothing in Hermagoras. Ps.-Augustine introduces the Hermagorean *asustata* immediately after his exposition of Model 3, but makes no use of the Model in defining them (*RLM* 145.34-147.17).

[34] Zeno: Gloeckner (n.23) 103-8; H. Gärtner, *RE* XA (1972), 140-2 *s.v*. Zenon (9). There are (I believe) possible indications that Zeno's work may antedate that of Minucianus; if so, the ancient testimony that the system of thirteen *staseis* (which Zeno uses) was introduced by Minucianus (*PS* (6a) 60.14-15; *RG* 5.8.21-2; Syr. II 55.1-3) must be treated with caution. I hope to discuss the point elsewhere. On Sulpicius Victor see O. Schissel, *RE* IVA (1931), 873-8 *s.v*. Sulpicius (106).

[35] Compare the distinction in Sopater's treatise on division between ἔγκλημα and ζήτημα in certain kinds of complex conjecture (*RG* 8.42.23-43.8, 51.5-16).

(surprisingly) Zeno's cenotaph example appears here as an instance of straightforward definition in which *krinomenon* and *zêtêma* are identical.

Stasis in this kind of case is determined by the *zêtêma*; the definitional aspect of the case (e.g., whether a cenotaph is a grave) determines the *stasis* of the whole. But there is one subtle difference between Zeno on the one hand, and Syrianus and the scholiast on the other. For Zeno, both *zêtêma* and *krinomenon* are formulated as questions, the answer to the latter (is he a grave-robber?) dependent on the answer to the former (is a cenotaph a grave?). But for Syrianus and the scholiast the *krinomenon* is not expressed as a question (e.g. did the man kill an adulterer?) but is the act charged (the killing). To put it another way, the *krinomenon* is identified with the underlying facts of the case (the ὑποκείμενον πρᾶγμα), not with any question posed by or about those facts.

This brings us to Hermogenes. He cannot have recognised *enkrinomena*,[36] since these violate his principle that *stasis* can be determined by inspecting the *krinomenon*. But his criteria for identifying *stasis* (is the *krinomenon* clear and complete?) make no sense applied to a question; so his *krinomenon*, like that of Syrianus, must be interpreted as the underlying facts of the case.[37] The *krinomenon* in the case of the adulterous eunuch will be (as Syrianus and the scholiast say) the killing. Of course, the fact that the victim was a eunuch is crucial to Hermogenes' understanding of the case: that is what makes it a case of definition. So the *krinomenon* will be not the killing *per se*, but the killing *qua* killing of a eunuch as an alleged adulterer; to identify the *krinomenon* one must take the killing together with all its materially relevant circumstances.

The question of how to identify the *krinomenon* comes down, therefore, to the question of how to identify which of the circumstances given in a rhetorical problem are materially relevant. Hermogenes provides no answer to this question; in his treatise the Model for the basic analysis of a rhetorical problem has collapsed to vanishing point. Hermogenes might well have shared Quintilian's opinion (3.11.21-23): *simplicius autem instituenti non est necesse per tam minutas rerum particulas rationem docendi concidere... Nam qui viderit quid sit quod in controversiam veniat, quid in eo at per quae velit efficere pars diversa, quid nostra (quod in primis intuendum), nihil eorum ignorare... poterit*.

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[36] W. Jaeneke, *De statuum doctrina ab Hermogene tradita* (Diss. Leipzig 1904), 145-6, and Calboli Montefusco (n.1) 88-9, equate Hermogenes' category of 'incident definition' (ἐμπίπτων ὅρος, 64.15-23) with *enkrinomenon*. This is a mistake. In Hermogenes' example (a man dreams about the mysteries, and asks an initiate whether his dream was accurate; the initiate assents, and is charged with disclosing the mysteries to an uninitiate) there are two *zêtêmata*: whether assenting to the other's statement was revealing the mysteries; and whether the questioner was still, after his dream, uninitiate. Both must be resolved in order to reach a verdict. In *enkrinomena* there is only one *zêtêma*. Once it is established whether a cenotaph is a grave, judgement on whether the man is a grave-robber follows immediately; no further investigation is needed.

[37] *PS* (22) 330.13-14 equates *krinomenon* with ὑποκείμενον πρᾶγμα in a summary of Minucianus' theory; but this is unique (Minucianus' *krinomenon* is treated as a question by Syr. II 50.22-4; cf. *PS* (13) 209.21-2; *RG* 4.143.11-12, 7.140.1-3), and I suspect contamination with Hermogenes.

(e) Tyrannus and Syrianus

Hermogenes' example did not kill off the Collapsed Model; it can still be traced in the fourth-century rhetor Tyrannus.[38] Syrianus took over Tyrannus' definition of *stasis*, and illustrates it from the case of the rich man who asked for the life of his poor enemy as his reward for heroism; the poor man's death deters other poor men from taking part in public life, and the rich man is charged with crimes against the public interest (II 48.10-50.6):[39]

P_{1+2}	You harmed the city by killing the poor man.
D_{1+2}	I did not harm the city in killing someone lawfully made over to me as a reward.

The latter is the *phasis sunektikê* and determines the *stasis* (in this case, counterplea).

Syrianus' second illustration is the man found by a newly-slain corpse (see n.30 above) homicide. Here he specifies only D_2 as the *phasis sunektikê* (this is the μετάθεσις αἰτίας, that he was standing by the corpse because he wished to bury it), but we should not infer that he retained a two-phase Model. The variation between Syrianus' exposition of his two examples suggests that *sunekhon* does have an extended sense; D_1 and D_2 are seen as a single unity, which can be cited in any of three forms (D_1, D_2 or D_{1+2}) according to contextual convenience.

6. Conclusion

We have seen, therefore, how the impracticality of restricting *stasis* to the first phase of a two-phase analysis lead later theorists to collapse the two phases into one. But this in effect robbed the analytical Model of its point, and in Hermogenes the attempt to provide a theoretical substructure to the doctrine of *stasis* seems to have been abandoned. Hermogenes is left only with the substantive structure of the doctrine—the actual system of *staseis*, each with its recommended 'division'. From the perspective of the practising teacher of rhetoric this approach makes sense. The practical value of Hermogenes' treatise lies in the sophisticated and effective structures of argument which his divisions offer the would-be speaker or declaimer. In any case, the attempt to work out a substructure for *stasis*-theory had broken down: the Collapsed Model on offer in various forms in Hermogenes' day had as little theoretical as practical value. But we should not assent too readily to Quintilian's dismissal of the more elaborate schemes. The perspective of the practising rhetor is not the only valid one. The concept of rhetoric as *tekhnê*, to which Hermogenes too was committed,[40] implies a quest for understanding; the

[38] Tyrannus: Gloeckner (n.23) 89-90; W. Stegemann, *RE* VIIA (1948), 1843-7 *s.v.* Tyrannos (2).

[39] Syrianus does not name Tyrannus as his source; the identification is suggested by *PS* (22) 329.17-20 and *PS* (21) 318.16-319.3, where the same definition is attributed to Tyrannus by name. (The modified form of the definition which is adopted there is found at (23) 339.6-9 = (24) 350.4-11, and in abbreviated form at (13) 206.7-9.)

[40] The allusion in the opening sentence of the treatise (28.3-7) to the definition of τέχνη as σύστημα καταλήψεων συγγεγυμνασμένων πρός τι τέλος εὔχρηστον τῷ βίῳ (*SVF* 1.21, 2.30-1, cf. Long and Sedley (n.19) I 259; Quintilian 2.17.41 shows that it had lost any distinctively Stoic flavour) has been recognised since antiquity. But Hermogenes seems to elide its

attempts of Hermagoras and his successors to work out a formal Model for the analysis of rhetorical problems, and so to provide a theoretical underpinning for practical work with *stasis*, were part of that quest.

epistemological content in favour of an interest in the historical development of rhetoric (note ἐξ ἀρχῆς... τῷ χρόνῳ).