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# RHETORIC IN THE FOURTH ACADEMY*

## I

Around 87 B.C. during the turmoil of the first Mithridatic war, Philo of Larissa, head of the so-called Fourth Academy, fled from Athens to Rome.[1] There he gave lectures on philosophical topics and taught rhetoric.[2] His classes were attended by a young man called Cicero, who was inspired by him to include in a work on rhetorical theory, somewhat inappropriately, a fervent confession of scepticism to which he stuck for the rest of his life.[3] Later Cicero claimed to be—as an orator—not a product of the workshops of the teachers of rhetoric, but of the spacious walks of the Academy.[4] And he developed the ideal of the philosopher-orator. Scholars disagree whether the idea to bring philosophy and rhetoric together is Cicero's own invention or an adaptation from someone else, for instance Philo.[5]

In this paper I shall try to describe the presumable nature of the rhetorical training Philo conducted and some of the theoretical precepts he provided for this purpose. I

[1] Important works on Philo include: K. von Fritz, 'Philon 40 (von Larissa)', *RE* 1.19 (1938), 2535–44; J. Glucker, *Antiochus and the Late Academy* (Göttingen, 1978), *passim*; D. N. Sedley, 'The end of the Academy', *Phronesis* 26 (1981), 67–75; H. J. Tarrant, *Scepticism or Platonism?* (Cambridge, 1985); J. Barnes, 'Review of Tarrant', *CR* 36 (1986), 75–7; G. Striker, 'Review of Tarrant', *AncPhil* 1 (1991), 202–6; W. Görler, 'Philon aus Larissa', in H. Flashar (ed.), *Die Philosophie der Antike*, vol. 4.2 (Basel, 1994), 915–37. See also B. Inwood and J. Mansfeld (edd.), *Assent and Argument—Studies in Cicero's Academic Books* (Leiden/New York/Cologne, 1997). There is a collection of fragments by H. J. Mette, 'Philon von Larisa', *Lustrum* 28–9 (1986–7), 9–24. And I shall cite Charles Brittain's as yet unpublished 1996 Oxford D.Phil. thesis 'Philo of Larissa and the Fourth Academy', which is going to appear as an *Oxford Classical Monograph*. I read his thesis before I was asked to prepare this paper, and then made a point of writing it without consulting the thesis again. On returning to it, I find us in agreement about several points (and in disagreement about others). I am happy to acknowledge that he is the finder of whatever plausible idea we both propose.

[2] Cic. *Tusc.* 2.9 (= fr. 9 Mette): . . . *nostra autem memoria Philo, quem nos frequenter audivimus, instituit alio tempore rhetorum praecepta tradere, alio philosophorum* . . .

[3] *Inv.* 2.9–10. Against a twofold shift of Cicero's philosophical position from scepticism to dogmatism and back, maintained by J. Glucker, 'Cicero's philosophical affiliations', in J. Dillon and A. A. Long (edd.), *The Question of 'Eclecticism'* (Berkeley/Los Angeles/London, 1988), 34–69, and P. Steinmetz, 'Beobachtungen zu Ciceros philosophischem Standpunkt', in W. W. Fortenbaugh and P. Steinmetz (edd.), *Cicero's Knowledge of the Peripatos* (New Brunswick/ London, 1989), 1–22, see the convincing arguments of W. Görler, 'Silencing the troublemaker: *De Legibus* 1.39 and the continuity of Cicero's scepticism', in J. G. F. Powell (ed.), *Cicero the Philosopher* (Oxford, 1995), 85–113.

[4] *Or.* § 12: . . . *et fateor me oratorem, si modo sim aut etiam quicumque sim, non ex rhetorum officinis sed ex Academiae spatiis exstitisse*. Note the contrast of narrowness and space for later reference. Cf. also K. Reinhardt, *Poseidonios* (Munich, 1921), 212. A different interpretation of the passage in J. Wisse, *Ethos and Pathos from Aristotle to Cicero* (Amsterdam, 1989), 171–2.

[5] Philo: H. von Arnim, *Dion von Prusa* (Berlin, 1898), 4–114; Antiochus: W. Kroll, 'Studien über Ciceros Schrift de oratore', *RhM* 58 (1903), 552–97; Cicero: A. D. Leeman, H. Pinkster and J. Wisse, *De oratore libri* III, vol. 4 (Heidelberg, 1996), 87–101.

hope to show that the Academic training of rhetoric was in some respects strikingly similar to the established forms of Academic dialectic, because Philo converted them into forms of rhetorical training. I also hope to show that the rhetorical theory he taught relied—for rational argumentation—on an up-graded version of the standard rhetorical theory of his day, supplemented by Peripatetic doctrines.

As one has to start for the most part from texts of Cicero, criteria must be fixed for identifying Philonian material. While Cicero usually wants to report Greek *philosophical* doctrines in as undistorted a form as possible,[6] things are different in the field of rhetoric. Cicero regarded himself with perfect right as the summit of Roman oratory and is in 'his realm' prepared to propose his own views, to form a new unity out of previously unrelated bits of theory and to modify rhetorical doctrines in the light of his own experience.[7]

I am looking for elements of rhetorical theory which stand in close connection to the few passages where we are given details of Philo's rhetorical teaching, which are linked to the sceptical Academy by Cicero himself or may reasonably be related to it for other reasons, which form coherent and recurrent complexes, and which are distinctly different from what ordinary school-rhetoric provides. If Cicero adopts them, it should be comprehensible why he does so.

## II

But before I turn to that, Philo's rhetorical interests should be placed in a historical context, as to teach rhetoric was quite uncommon for a philosopher of his time. The rivalry of philosophy and rhetoric, which characterized the age of Plato and Isocrates, appears to have been replaced by a coexistence of both disciplines as independent elements of the educational system in the Hellenistic era.[8] Around the middle of the second century B.C., however, the antagonism was revived.[9]

This may reasonably be credited to an increasing influence of rhetoric as taught by rhetoricians and, accordingly, to a threat to the educational function of philosophy. At least it is rhetoric as a subject of education that is questioned by the philosophers' attacks. The Academics, in particular, resume arguments that were formulated for the first time by Plato in the *Gorgias*: that rhetoric was not an art and therefore not systematic and impartable by a teacher, and that it was open to misuse and hence potentially detrimental.[10] Yet notwithstanding the Academics' rejection of contemporary rhetoric in both its practical and theoretical form, Cicero has Charmadas, an Academic of the generation before Philo, also say that there could be no worthwhile oratory which can be divorced from philosophy and the 'findings' of the philoso-

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[6] Cf. G. Patzig, 'Cicero als Philosoph, am Beispiel der Schrift De finibus', *Gymnasium* 86 (1979), 304–22.

[7] Cf. A. E. Douglas, 'A Ciceronian contribution to rhetorical theory', *Eranos* 55 (1957), 18–26; M. Winterbottom, 'Cicero and the middle style', in J. Diggle, J. B. Hall, and H. D. Jocelyn (edd.), *Studies in Latin Literature and its Tradition in Honour of C. O. Brink*, PCPS Suppl. 15 (Cambridge, 1989), 125–31.

[8] von Arnim (n. 5), 4–114; D. M. Schenkeveld, 'Philosophical prose', in S. E. Porter (ed.), *Handbook of Classical Rhetoric in the Hellenistic Period 330 B.C.–A.D. 400* (Leiden/New York/ Cologne, 1997), 195–264 with further literature (197, n. 4). A detailed reconstruction of the quarrel in Brittain (n. 1), 279–92.

[9] The main texts on the 'quarrel' are Cic. *de Orat.* 1; Philod. *Rhet.* 2; Quint. *Inst. Or.* 2; S. E. *Adv. Math.* 2.

[10] See, in particular, Cic. *de Orat.* 1.84–93.

phers.[11] If this does not mean that the only rhetoric there is is philosophy, the door is opened for an alternative philosophical rhetoric; an Academic could have referred to Plato also for this, as a comparable, less hostile position is taken in the *Phaedrus*.[12] And from Charmadas' objection to ordinary rhetoric—that it takes no regard of really important issues like the foundation of states, moral values or justice and equity (*de Orat.* 1.86)—we can infer the topics such a philosophical rhetoric should be concerned with.

Moreover, it is well known that Academic philosophizing after Arkesilaos in the third century, when the Academy turned sceptical, is mainly characterized by a certain kind of dialectical practice, by particular argumentative methods to deal with philosophical views.[13] Two related approaches are distinguished, both implying the same attitude towards knowledge: arguing on either side of a question—the most famous example of this being Carneades' arguing for and against justice in Rome—and attack on a given thesis. The former typically led to suspension of judgement about the matter under consideration, on the grounds that the arguments on both sides were equally strong. The latter led to the conclusion that the view examined is indefensible, obviously without the implication that the alternative is any better. Both ways of dialectical argument aim at plausible representation either of two positions contrasted or of the one that is opposed to the given thesis. In this respect they already display a point of contact with rhetorical argument.[14]

In the light of that, but in particular of the hints given in the *de Oratore* concerning a philosophical Academic rhetoric and of the philosophers' critique of ordinary rhetoric, there is little reason to regard Philo's rhetorical interests as simply going along with the fashions of his day, or to expect his teaching to be very much along the lines of the rhetorical schools, which would also be hardly compatible with his being a sceptic. And it would be highly implausible that rhetoric of the sort which could be learnt everywhere had particular attraction for Cicero only because it was taught by a philosopher.

## III

But before I actually come to Philo, I will briefly introduce the prevailing school-rhetorical theory of his day. By setting up in this way a counterpart for his rhetoric it will be easier to understand the attacks against the rhetoricians which the Academics launched. And it will prepare for the argument that Philo adapted precisely this theory to his needs.

In the second half of the second century, Hermagoras of Temnos had drawn up a highly influential handbook on rhetoric. In it he characterized rhetoric as being

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[11] *de Orat.* 1.84. Although there is no reason to doubt that Cicero is relating Academic views in this passage, one should not stress too much that they are Charmadas'; there might be the couple Cicero–Philo behind Antonius–Charmadas. And when a sceptical Academic like Charmadas talked about the *philosophorum inventa*, he was unlikely to have particular doctrines in mind; rather, he should be taken to refer to philosophical ways of looking at certain problems, which lead to an awareness of their complexity.

[12] Yet it would be wrong to claim that the *Gorgias* has no ideas of that kind at all (cf. 503a–b, 504e).

[13] Cf. e.g. P. Couissin, 'The stoicism of the New Academy', in M. Burnyeat (ed.), *The Sceptical Tradition* (Berkeley/Los Angeles/London, 1983), 31–63, and G. Striker, 'On the difference between the Pyrrhonists and the Academics', in G. Striker, *Essays on Hellenistic Epistemology and Ethics* (Cambridge, 1996), 135–49.

[14] This is discussed in detail by Brittain (n. 1), 303–5.

concerned with the 'political question', which included the 'general and abstract question' (θέσις) and the 'particular question' (ὑπόθεσις), which took regard of individual circumstances like the person involved, the time and the place of an event.[15] For the treatment of 'particular questions' he provided the στάσις-doctrine, a version of which was to form the core of the sections on rational argument in most rhetorical handbooks of the Greek and Roman tradition down to the end of classical antiquity.[16]

The way in which according to this theory the 'particular question' was determined is this: when replying to the charge of the prosecutor, the defendant or, as it normally would be in Rome, the orator who spoke on his behalf could rely on a set of four points of view from which one might look at the case. These στάσεις represented possible ways he should reply to the charge, and hence determine the 'particular question' to be settled in the trial.[17] Hermagoras' four στάσεις are:


1. στοχασμός—coniectura: whether or not something had been done at a particular time by a particular person (prosecutor: 'you did'; defendant: 'I didn't').
2. ὅρος—definitio: whether or not an admitted action falls under the legal 'definition' of a crime ('you did'; 'yes, but it wasn't, for example, theft').
3. ποιότης—qualitas: the issue of the 'quality' of the action, its motivation and possible justification ('you did'; 'yes, but I had to' or 'yes, but I didn't mean to').
4. μετάληψις—translatio: objection to the legal process or 'transference' of jurisdiction to a different tribunal.


The doctrine effectively helps one analyse the amorphous data presented by a case: these data could be reduced to simple questions to be decided, by going through a checklist of possible angles from which the case could be looked at. Once the issue in a case was determined, finding an argument worked according to the theory in, say, coniectura-cases in such a way that the orator, again guided by a checklist of headings, considered whether or not, for instance, the social background, the age, or the criminal record of an accused might yield an argument.[18] There was not necessarily one στάσις only in every speech. A case could make the treatment of several στάσεις necessary, because it had more than one aspect, or allowed for a treatment in more than one respect ('I did not commit the crime. But even if I had, it would have been rather . . .').

What made rhetorical education along these lines open to the philosophers' criticism was that it operated in a highly restricted area, i.e. that of the forensic

[15] Cic. Inv. 1.8 (= fr. 6a Matthes); Quint. Inst. Or. 2.21.21–2 (= fr. 6c Matthes).

[16] The fragments are collected in D. Matthes, Hermagorae Temnitae Testimonia et Fragmenta (Leipzig, 1962). See also J. Stroux, 'Summum ius summa iniuria—Ein Kapitel aus der Geschichte der interpretatio iuris', in J. Stroux, Römische Rechtswissenschaft und Rhetorik (Potsdam, 1949), 7–66; D. Matthes, 'Hermagoras von Temnos 1904–1955', Lustrum 3 (1958), 58–214, 262–78; K. Barwick, 'Augustins Schrift De rhetorica und Hermagoras von Temnos', Philologus 105 (1961), 97–110; L. Calboli Montefusco, La dottrina degli Status nella retorica greca e romana (Bologna, 1984); D. A. Russell, Greek Declamation (Cambridge, 1983), 40–73; G. A. Kennedy, A New History of Classical Rhetoric (Princeton, 1994), 97–101; M. Heath, 'The substructure of στάσις-theory from Hermagoras to Hermogenes', CQ 44 (1994), 114–29. See also M. Heath, Hermogenes on Issues (Oxford, 1995). That the tradition links στάσις-theory very firmly to Hermagoras does not imply that he did not himself rely on works of predecessors.

[17] For my purposes it suffices to give a simplified account of the working of the theory; for details see Heath's 1994 paper (n. 16).

[18] Cic. Inv. 1.34–43, on which passage see M. C. Leff, 'The topics of argumentative invention in Latin rhetorical theory from Cicero to Boethius', Rhetorica 1 (1983), 23–44.

ὑπόθεσις. This restriction seemed to be at odds with Hermagoras' definition of the subject area of rhetoric, that is the particular and the general question. For no proper provision was made for the rhetorical treatment of abstract, in the philosophers' view 'really important' problems.[19] The 'general question' (θέσις), which the philosophers would wish to see treated, was neglected in higher rhetorical education.[20] It is understandable, therefore, why as technical a distinction as that between θέσις and ὑπόθεσις could provide an arena for the quarrel between rhetoricians and philosophers. And it is not difficult to guess which line an alternative, philosophical rhetoric would take.

The distinction between the two questions also provides the background to an important shift of Cicero's views on rhetoric, which may well have something to do with Philo's teaching. In *Inv.* Cicero promotes the view that the orator's business is the ὑπόθεσις exclusively. In his mature writings, however, he favours a rhetoric which centred upon the θέσις, but linked it closely to the ὑπόθεσις, because the inclusion of the θέσις caused the orator to consider the case on a more abstract level. Specifically, Cicero suggested ascending from the ὑπόθεσις to the θέσις in a speech. And there are several passages where Cicero describes the emphasis on the θέσις as the distinctive feature of his rhetorical education and also of ideal oratory.[21]

## IV

We can now turn to Philo himself. In all likelihood he made his pupil Cicero familiar with Academic dialectic, that is the two ways of dialectical arguing mentioned above (Section 2), and the structure of Cicero's philosophical works betrays the influence of this teaching.[22] There is, however, also evidence for something like rhetoricized versions of these two kinds of dialectical discourse, and we need to clarify how one should conceive of them. I assume that Philo turned the traditional forms of dialectical practice into rhetorical exercises, thereby generating a sort of discourse which was difficult to categorize as either philosophical or rhetorical. I shall produce evidence for this sort of rhetorical exercise in this and in the next section; then I shall turn to the actual precepts Philo provided in order to create this sort of discourse methodically.

For argument against a given proposition, the *Tusculans* as a whole provide an instance. There Cicero opposes five general propositions like 'Death is an evil' (Book 1) or 'Pain is the worst of all evils' (Book 2) on—in the literary fiction—five successive days. He describes the work as his *senilis declamatio*, using an expression which rarely means anything else but 'rhetorical exercise'.

But just as Aristotle, a man of supreme genius, knowledge and fertility of speech, under the stimulus of the fame of the rhetorician Isocrates, began like him to teach the young to speak and combine wisdom with eloquence, similarly it is my design not to lay aside my early devotion to the art of expression, but to employ it in this grander and more fruitful art. I have always

[19] Cic. *de Orat.* 2.65, 2.78, 3.110. W. Kroll, 'Rhetorik', *RE* Suppl. 7 (1940), 1040–1138, at 1096. That Hermagoras, at least nominally, made some claim also to the θέσις emerges from Posidonius' attack on him for just that reason; cf. Plut. *Pomp.* 42.5 = fr. 43 Edelstein/Kidd.

[20] The θέσις was a preliminary exercise, a προγύμνασμα: M. L. Clarke, 'The thesis in Roman rhetorical schools of the Republic', *CQ* 45 (1951), 159–66; H. Throm, *Die Thesis* (Paderborn, 1932). Although the extant texts of προγυμνάσματα come from the Imperial era, it is very likely that the type of exercise is Hellenistic.

[21] See *Ad Q. fr.* 3.3.4; related passages are collected in E. G. Sihler, 'θετικώτερον', *AJPh* 23 (1902), 283–94. Cf. also *Or.* §§ 45–6; *Brut.* § 322.

[22] On, for instance, the *in utramque partem*—structure of the *de Div.* see M. Schofield, 'Cicero for and against divination', *JRS* 76 (1986), 47–65.

regarded as the perfect philosophy that which can discuss the most important problems with adequate fullness and in an attractive style (*quae de maximis quaestionibus copiose posset ornateque dicere*). To this endeavour (*in quam exercitationem*) I devoted myself with such an energy that I have now actually reached the point of venturing to give *scholae* in the manner of the Greeks. For instance, soon after your departure, as there were a number of close friends staying with me, I attempted in my house at Tusculum to see what I could do in this sort of exercise. For just as in my youth I used to be constantly declaiming on legal cases (*causas*)—and no one ever did it longer—so this is now a declamation of my old age.

> (*Tusc.* 1.7, trans. King, revised)

It will be clear that other words in the text have a rhetorical ring, too. Accordingly the five speeches include, apart from serious philosophical argument, much which interpreters have found lightweight, like anecdotes from myth or history and extensive quotations from Latin poets. In the following text Cicero refers to the literary form of the *Tusculans* and to his teacher Philo.

But he [sc. the Stoic Dionysius] recited poetry as if he were dictating a lesson, without choice or appropriateness. Philo, however, used to give the verse its proper rhythm, and the passages he introduced were well-chosen and apposite. And so since I have fallen in love with this sort of school-exercise of my old age, I follow the example given and make diligent use of our poets.
(*Tusc.* 2.26 [= Philo fr. 9 Mette], trans. King, revised)[23]

Philo, we may assume, did something similar to the *Tusculans*, and in including quotations from poets in his *senilis declamatio* Cicero follows his example. So one may say that the *Tusculans*, though basically an example of dialectical argument against a proposition, are materially more rhetorical than other works of Cicero and are characterized in rhetorical terms.[24] As far as they are dubbed an 'exercise', one will hesitate to equate them with rhetorical exercises in the strict sense, as not only rhetorical but also dialectical skills have to be trained. Perhaps the notion of 'exercise' is as ambiguous as the character of the whole work is.[25] I come now to a corresponding rhetoricized version of *in utramque partem dicere* and to the corresponding rhetorical precepts Philo is likely to have given.

## V

For this we have to turn to the third book of Cicero's *de Oratore*. The context in which this testimony stands has a peculiar two-layered structure. In Books 2 and 3 of *de Oratore*, Cicero introduces two main characters and some subordinate ones as engaging in a discussion about the ideal orator. The general ordering principle of these two books is the 'tasks of the orator' (*officia oratoris*) which must be fulfilled when composing and making a speech:[26] the arguments must be found, ordered, cast in an attractive linguistic form; then the speech must be learnt by heart and delivered effectively. The information about Philo is in the section on *ornatus*, that is ways to flesh out the argumentative bones of a speech by packaging them appropriately.

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[23] . . . *sed is quasi dictata, nullo dilectu, nulla elegantia. Philo et* †*proprium nrt* [*et proprio numero* Seyffert, *et pronuntiabat numero* Pohlenz] *et lecta poemata et loco adiungebat. itaque postquam adamavi hanc quasi senilem declamationem, studiose equidem utor nostris poetis . . .*

[24] In *Fat.* §§ 3–4 and *Fin.* 2.2, the method used by Cicero in the *Tusculans* is described without a rhetorical ring.

[25] Görler (n. 1), 1041. The way in which Cicero introduces the first *disputatio* in the *Tusculans* seems not to suggest that the rhetorical slant was imposed by him on an originally philosophical method. Cf. also A. E. Douglas, 'Form and Content in the *Tusculan Disputations*', in: Powell (n. 3), 197–218.

[26] Leeman et al. (n. 5), 91–5.

At the same time, this section is a part of the famous digression about the historical relationship of rhetoric and philosophy.[27] There the speaker Crassus holds the view that rhetoric and philosophy were united at an earlier point of time, that they were separated due to the influence of Socrates and should now be brought together again. Immediately before the crucial passage stands this text, concerned with *ornatus* as explained:

Others [sc. *loci communes*] are debates on either side (*ancipites disputationes*) allowing copious arguments to be advanced both pro and contra in regard to the general question (*universum genus*). The latter exercise is now considered the special province of the two schools of philosophy of which I spoke before [3.67: Academics and Peripatetics], but in early days [i.e. before rhetoric and philosophy were separated by Socrates] it was the function of the persons who used to be called on to furnish a complete line of argument and supply of matter for speeches on public affairs—the fact being that we orators, too, ought to possess the intelligence, capacity and skill to speak both pro and contra on the topics of virtue, duty, equity and good, moral worth and utility, honour and disgrace, reward and punishment, and like matters.

(de Orat. 3.107, trans. Rackham, revised)

Speaking on either side is introduced as an exercise common among Academics and Peripatetics, helpful for the achievement of stylistic richness; in it, one argues for and against a general question about topics like the ones reclaimed by Charmadas for 'real rhetoric' (*de Orat.* 1.86). What suggests that here too rhetoricized dialectic is at issue is the notion of the general question (*universum genus*). This does not merely mean 'abstract problem', the typical playground of philosophers. Rather, it means 'general question' in the technical sense and thus refers to the twofold Hermagorean distinction between 'general and particular question'.[28]

This emerges clearly from what follows, that is, from the way the notion of *universum genus* is picked up. The poor position which is allotted to rhetoric after its divorce from philosophy is illustrated by Cicero immediately after 3.107 with reference to the distinction between θέσις and ὑπόθεσις, which the philosophers are said to have stolen from the rhetoricians; the philosophers now have the spacious grounds of the θέσις at their disposal and are able to talk about everything θέσις-wise, while the orators have to confine themselves to the ὑπόθεσις. And because they restrict the ὑπόθεσις to forensic matters, their realm is characterized as a 'narrow and troubled corner' and so contrasted with the θέσις. But not even there—and this is the most exact information we get about Philo's teaching of rhetoric—are they safe from the infringements of the philosophers, as Philo has now intruded also in this area.

For they [sc. the rhetoricians] retain their hold upon the former of the two classes, the one limited by dates and places and parties, and this itself they hold on to merely by the fringe—for at the present time the study and practice *also* of these cases is pursued under Philo, who I am told is in high esteem in the Academy. (de Orat. 3.110, trans. Rackham)

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[27] Famous not the least as a battlefield of *Quellenforschung*; von Arnim (n. 5), 4–114 suggested Philo, Kroll (n. 5) Antiochus of Ascalon.

[28] On *in utramque partem dicere* as a rhetorical way of arguing in Cicero, see also A. A. Long, 'Cicero's Plato and Aristotle', in Powell (n. 3), 37–62, in particular 52–8; Görler (n. 1), 930. The speaking on either side is introduced in 3.107 as one type of *locus communis*, i.e. of the commonplace. This is to be explained by the fact that Cicero inserted the Academic and Peripatetic speaking *in utramque partem* at that place of the curriculum of the *Progymnasmata* where normally the training with the θέσις stands, another form of preliminary training being κοινὸς τόπος. Theon begins his discussion of the θέσις with an account of why it is distinct from the κοινὸς τόπος (120.16–17 Spengel), which suggests some overlapping of the two concepts (for 3.105–7 as a whole, cf. also Theon 106.4ff. περὶ τόπου and 109.19ff. περὶ ἐγκωμίου καὶ ψόγου).

An interest in the 'particular question' is indeed correctly termed an intrusion of a philosopher into the sphere of rhetoric, but the highlighted 'also' is important, as it makes plain that the treatment of the θέσις likewise and primarily was in Philo's repertoire, as it naturally would be (again, cf. 3.107). After a short transition, saying that the orators mention the θέσις only briefly and fail to discuss its nature and its subdivisions, there is a lengthy division of the θέσις, which is unparalleled in rhetorical handbooks and which Cicero owes, as he says, to *doctissimi homines*.[29]

The θέσεις in *de Orat.* 3.111–118:
1. Theoretical questions,
referring to the *cognitio rei*: 'Virtusne suam propter dignitatem an propter fructum alienum expetitur?'
1.1 *coniectura—quid sit in re*: 'Estne in humano genere sapientia?'
    1.1.1 *quid sit*: 'Naturane sit ius inter homines an in opinionibus?'
    1.1.2 *quae sit origo*: 'Quid est initium legum aut rerum publicarum?'
    1.1.3 *causa et ratio*: 'Cur doctissimi homines de maximis rebus dissentiunt?'
    1.1.4 *de immutatione*: 'Virtusne interire potest? Potestne virtus converti in vitium?'
1.2 *definitio—quam vim quaeque res habeat*: 'Quid est sapientia?'
    1.2.1 *quid in communi mente quasi impressum sit*: 'Idne ius est, quod maximae parti est utile?'
    1.2.2 *quid cuiusque sit proprium*: 'Propriumne est oratoris ornate dicere?'
    1.2.3 *(cum res distribuitur in partis)*: 'Quot genera sunt rerum expetendarum?'
    1.2.4 *quae forma et quasi naturalis nota cuiusque sit*: 'Quid est avari species?'
1.3 *consecutio—quid quamque rem sequatur*: 'Estne aliquando mentiri viri boni?'
    1.3.1 *simplex*: 'Expetendane gloria?'
        1.3.1.1 *de expetendis fugiendisve rebus*: 'Fugiendane paupertas?'
        1.3.1.2 *de aequo aut iniquo*: 'Aequumne est ulcisci iniurias etiam propinquorum?'
        1.3.1.3 *de honesto aut turpi*: 'Estne honestum gloriae causa mortem obire?'
    1.3.2 *ex comparatione*: 'Laus an divitiae magis expetendae?'
        1.3.2.1 *idemne sit an aliquid intersit.*
        1.3.2.2 *quid praestet aliud alii.*
2. Practical questions, *quae referuntur ad agendum*.
    2.1 relating to the *officii disceptatio*: 'Quaeritur quo in genere quid rectum faciendumque quaeritur, cui loco omnis virtutum et vitiorum est silva subiecta.'
    2.2. relating to *animorum permotio aut gignenda aut sedanda tollendave* (including *cohortationes, obiurgationes, consolationes, miserationes, omnis ad omnem animi motum mitigatio et impulsio*).

The context suggests a philosopher as source, for the Peripatetics and the Academics had been introduced as arguing the θέσις on either side a moment ago. Philo was mentioned as teaching, not so surprisingly, the arguing of the θέσις and, quite extraordinarily, that of the ὑπόθεσις. What is crucial now is that the division mirrors this uncommonly broad conception of rhetoric, in that it is meant to provide a doctrine for both the θέσις and the ὑπόθεσις. The introductory sentence runs as follows:

Accordingly every matter that can be the subject of inquiry and discussion involves the same kind of issue, whether the discussion falls in the class of abstract deliberations (*in infinitis consultationibus*) or of things within the range of political and legal debate (*in eis causis* . . .); and there is none which has not for its object either the acquisition of knowledge or the performance of action.[30]         (*de Orat.* 3.111, trans. Rackham)

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[29] On the division in its context, see also K. Barwick, 'Das rednerische Bildungsideal Ciceros', *Abhandlungen der sächsischen Akademie der Wissenschaften zu Leipzig, philologisch-historische Klasse* 54.3 (Berlin, 1963), at 51–8.

[30] 'Omnis igitur res eandem habet naturam ambigendi, de qua quaeri et disceptari potest, sive in infinitis consultationibus disceptatur sive in eis causis, quae in civitate et forensi disceptatione versantur; neque est ulla, quae non aut ad cognoscendi aut ad agendi vim rationemque referatur.'

[Cicero had introduced the Latin terms for θέσις (consultatio) and ὑπόθεσις (causa) in 3.109; cf. also Topica § 86.] It is likely, then, that Cicero is using material he had retained from the rhetorical teachings of Philo.[31]

If the function of the list is analogous to that of a list of στάσεις in the ordinary sense, then its purpose will be to fulfil the function of a checklist, as described above, for every discussion. That is, by going through the list one could draw up an outline for a treatment of the topic in question by enquiring into it from different angles. So before a closer examination of the list, but with de Orat. 3.107 and the Tusculans in mind, one may assume that it provides a hint for the methodical and systematic examination of a complex problem, cast in the form of a θέσις, which may be discussed 'on either side' or against which it is to be argued. At the same time, however, a particular problem may be tackled with the help of this doctrine as well. Thus, unlike the precepts of the rhetoricians, it actually provides for both the general and the particular question.

Looking at details, one realizes that the first three στάσεις known from Hermagoras appear, but that they are reinterpreted as fundamental question-types with several subdivisions, which in turn supports the assumption that the Academics' arguing of the universum genus was to be taken as a form of rhetoric.[32] Strictly speaking, it cannot be inferred from the use of the names of the στάσεις that the drawing up of this list postdates Hermagoras' τέχνη, as not only the method, but also some of the terminology appears to be pre-Hermagorean; but given the strong impact Hermagoras made on the rhetorical tradition, a post-Hermagorean date is likely.[33] Taking the στάσεις out of their exclusively forensic context may be viewed as a tribute to the unquestionable qualities of this doctrine, that is its capacity to organize material which is to be discussed in an ordered way. Moreover, the division shows that the core of the doctrine is in itself neutral and can in principle in virtue of its instrumental character easily be adopted even by a critic of school-rhetoric.

So the division and what else we know about Academic rhetoric point to a way in which the Academy could on the one hand respond to the growing influence of rhetoric and on the other hand maintain the overall nature of its philosophizing even in its teaching of rhetoric.[34] Philo's rhetoric, then, would not be a dubiously motivated alien element in a philosophical programme that is otherwise differently orientated. For the arguing of almost any question on either side not merely as a training of argumentative skills but with an actual interest in the argumentative potential—positive and negative—inherent to the problem and with the objective to convey this potential to an audience may in fact be described both as philosophical and rhetorical.

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[31] Kroll (n. 19), at 1096: 'Die ausgeführte Theorie der Theseis, wie sie bei Cicero vorliegt, ist das Werk eines Philosophen.' Barwick (n. 29), 52: '. . . kann sie nur von philosophischer Seite stammen und nach Lage der Dinge nur von Peripatetikern und Akademikern.' Leeman et al. (n. 5), 99: 'Die Andeutung der letztgenannten De oratore-passage, daß diese Einteilung von doctissimi homines herrührt (3.117; cf. 114 redeunt; dispertiunt; 116 ponuntur), bestätigt die Vermutung, daß Cicero sie der Akademie, also wahrscheinlich Philon, entnommen hat.' Schenkeveld (n. 8), 200 appears to be certain that the division comes from Philo, as is Brittain (n. 1), 319–20.

[32] A characterization of the division also in Brittain (n. 1), 315.

[33] The doctrine is to some extent anticipated by Aristotle, Rhet. 3.16, 1416b20ff.; Quintilian was aware of that, as his historical survey of the στάσις-doctrine shows (Inst. Or. 3.6). But see also Rhet. ad Alex. p. 26.23ff.; Fuhrmann, and Matthes (n. 16), 135ff. Also Brittain (n. 1), 290, assumes that the division postdates Hermagoras.

[34] I have found no evidence to the effect that Philo himself directed exercises in which persuasion in the ordinary sense, i.e. without a dialectical element, was practised; but he will obviously have allowed for this use of his rhetoric.

## VI

Here we should consider one of the few fragments of Philo that is not preserved by Cicero. It can, I believe, support the view that Philo's rhetorical teachings were not only compatible with, but could indeed not always be clearly distinguished from his philosophical instruction. It contains a division of ethics (without further specification what that exactly means) and compares philosophy to medicine, εὐδαιμονία to health.[35] The person to be influenced by philosophy appears as the patient who is treated in a three-step procedure. First, he must be persuaded to undergo the treatment. Then, unhealthy δόξαι are removed from his soul and useful ones implanted. Finally, after health has been achieved, he gets advice (παραγγέλματα) for his further life on how to preserve it.

Twofold is also the *logos* 'on Lives', referring to particular matters on the one hand, and to common ones on the other. That concerned with particular matters must look at the sphere of the individual, e.g. whether the clever man should participate in politics, whether one should seek the company of the powerful or whether the wise man should marry. That concerned with common affairs must look at what has bearings on everyone, e.g. which constitution is the best one, whether offices should be accessible to everyone or awarded on grounds of wealth.

> (Philon fr. 2.26–35 Mette [= Areius Didymus apud Ioann. Stob. 2.7.2 p. 39.19ff. Wachsmuth], my trans.)

(The general/particular distinction used in this text has nothing to do with that between θέσις and ὑπόθεσις.) Under the two subdivisions of the 'λόγος περὶ βίων' θέσεις are listed, that is, open questions. Two of them are indeed standard examples for θέσεις given by Quintilian (*Inst. Or.* 2.4.24). So the θέσις is linked to the problem of how one can maintain the health of one's soul, and the nature of the questions given does not suggest that they are titles of chapters or lectures in which one is advised to do one thing or another.

The section following the text quoted, dubbed 'ὑποθετικὸς λόγος', a set-piece of Hellenistic ethics,[36] probably contained proverb-like precepts, collected and refined as a sort of popular ethics mainly in the rhetorical tradition. It is emphasized that this λόγος is attached as a provision for those people who are not σοφοί, which entails that the λόγος περὶ βίων was a more demanding programme. We note in passing that Philo felt the need to adapt his teachings to different audiences.

Moreover, one would expect an element of abstraction, a *method* to deal with problems, as otherwise only a few potentially dangerous situations could be covered. And taking the medical analogy seriously, the παραγγέλματα should in some way take regard of individual dispositions. These considerations might warrant the assumption that the λόγος περὶ βίων consisted of exemplary discussions of θέσεις like the ones given, to teach the individual how to cope with problematic situations by analysing them. At any rate one would expect instruction how to employ such θέσεις rather than definite answers.

I want to connect evidence from Cicero with the Philo-fragment, in order to clarify my suggestions in the previous paragraph. In the year 49, after civil war had begun

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[35] Brittain (n. 1), 241–77, offers a full interpretation of the fragment, which effectively refutes the *communis opinio* that it is merely a list of lecture-titles involving a trite comparison of medicine and philosophy.

[36] A. Dihle ('Poseidonius' system of moral philosophy', *JHS* 93 [1973], 50–7) argues that the ὑποθετικὸς λόγος was introduced by Poseidonius. Yet Aristo of Chios is reported to have found the ὑποθετικὸς τόπος useless in the third century B.C. (S. E. *Adv. Math.* 7.12). The variation in terminology does not seem significant.

between Caesar and Pompeius, Cicero was in a psychological crisis. Pompeius had left for Greece, and Cicero found the situation obscure and was at a loss whether to follow him or not. The letters to Atticus dating from that time, collected at the beginning of Book 9, are characterized by rash changes of mind and continuously shifting judgements about the situation. This was, after all, not an unusual way for Cicero to react. In this situation he draws up a list of θέσεις, in Greek, and argues them *in utramque partem* in order to find out what to do.[37] I give two examples:

> Ought a man who has rendered his country great service and has on that account brought himself irreparable suffering and hostility voluntarily to incur the danger on his country's behalf or may he be allowed to begin to think of himself and his family, giving up political opposition to those in power?                    (Cic. *Att.* 9.7 [4].2, trans. Shackleton Bailey)

The letter illustrates the connection there could have been between a θέσις-based rhetoric and ethics and therefore illuminates why there could be θέσεις in an ethical fragment of Philo and why they could be equated with the παραγγέλματα of a doctor. To reduce a confusing situation to one or more θέσεις and thereby to 'objectify' it may be useful in situations that appear overwhelming and leave one helpless. To argue the θέσεις on either side, then, is an effective method to make oneself in an ordered way familiar with all aspects of the problem and has close similarities with ways of self-therapy which psychologists in our day recommend.

In his mature writings Cicero strongly emphasized the inseparability of ὑπόθεσις and θέσις with respect to forensic rhetoric, because it allows one to consider the wider implications of a particular case and the conflicting values involved. A closer look at the θέσεις shows that it could also fit Philo's use of rhetoric as proposed here. To formulate and discuss θέσεις urges one to ask and thus to define what the circumstances of one's life and the social framework one lives in require. The ὑπόθεσις, then, would bring into consideration the individual aspects which may determine one's action. So Cicero has to consider whether the experience of his exile, highly traumatic for him, carries the same weight on the level of the θέσις. The θέσεις given in Philo's fragment equally need to be transformed into ὑποθέσεις, if one wants to argue what oneself should actually do.

Moreover, there is reason to take the letter as a further instance of *rhetoricized* arguing on either side. Although the θέσις played a very marginal role in rhetorical education and although arguing on either side of a θέσις is for professional rhetoricians only very thinly attested—what Quintilian knows about it appears to come from Cicero[38]—Cicero explains what he is doing in this letter in rhetorical terms. Some letters later he calls his arguing σοφιστεύειν, a word that oscillates in meaning between philosophical and rhetorical activity (*Att.* 9.10 [9].1). He says that he is exercising himself in *id de quo agitur*,[39] an expression reminiscent of the rendering he gives in the *Topica* for κρινόμενον, the 'question at issue' in the στάσις-theory, which, as we recall,

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[37] On this letter see also P. A. Brunt, 'Cicero's officium in the civil war', *JRS* 76 (1986), 12–32, at 13; M. Griffin, 'Philosophy, politics and politicians at Rome', in J. Barnes and W. Griffin (edd.), *Philosophia Togata* (Oxford, 1989), 1–37, at 34; G. O. Hutchinson, *Cicero's Correspondence* (Oxford, 1998), 148. There are parallels for this behaviour in Cicero's letters (*Att.* 14.13.4; *Fam.* 11.29.1); but normally Cicero does not explain what he is doing.

[38] Teachers of rhetoric did sometimes set pupils to take opponent sides in declamation; but these were ὑποθέσεις.

[39] Cic. *Att.* 9.7 (4).1 [introduction to the θέσεις]: . . . *sed tamen, ne me totum aegritudini dedam, sumpsi mihi quasdam tamquam θέσεις, quae et πολιτικαί sunt et temporum horum, ut et abducam animum a querelis et in eo ipso, de quo agitur, exercear.*

was applied to the θέσις in *de Orat.* 3.111–18.[40] 'Exercise' is as ambiguous here as it was in the *Tusculans*. So the letter not only shows what θέσεις could have to do with the precepts of a doctor, but also provides a parallel for the *Tusculans'* position between dialectic and rhetoric.

<div align="center">VII</div>

The θέσις is in Cicero's works and in his conception of rhetoric linked to another uncommon bit of theory. So the question arises whether these are further traces of the precepts Philo provided in his rhetorical teachings.

Once the consideration of a certain problem has led to one of the questions listed in the θέσις-division, that is in most cases to a question which may be resolved into a contradictory pair or two propositions representing alternatives, a theory would be helpful which provides arguments for and against a general proposition. And in the light of the information that Philo taught *praecepta dicendi* (*Tusc.* 2.9) it is likely that he provided methods of invention, that is in his case methods primarily applicable to θέσεις, just as standard theory provided methods to find arguments relating to ὑποθέσεις (for the technical notion *praecepta dicendi* cf. *Brut.* § 263 and *de Orat.* 2.152).

A device which can serve that purpose is the τόπος, introduced by Aristotle in his *Topics* and then, with some changes, transferred to the field of oratory in his *Rhet.*[41] In both fields, the τόπος helps one to find propositions by means of which a given proposition can be established or refuted. And in particular in the *Topics*, the handbook on how to construct conclusive arguments in dialectical exercise talks, it is plain that the τόπος originally refers to what rhetorical theory later on calls the 'general question' or θέσις, because the theory as a whole does not work when applied to singular propositions or ὑποθέσεις.

Moreover, an Aristotelian theory of τόποι is the sort of argumentative theory a sceptical Academic was, if any, most likely to adopt. Starting from Aristotle's *Topics*, there was a tradition to employ the τόποι not only to find, depending on the situation, arguments for *or* against a particular proposition, but also arguments for *and* against it.[42] In Aristotle's *Topics*, to produce arguments for *and* against a given proposition is one method of philosophical training and philosophizing, and later Peripatetics preserved this way of dialectical arguing in various forms. The crucial difference between this Peripatetic arguing *in utramque partem* and that of the sceptical Academics consists in the use of the method, in the impression created by the argument. The Peripatetics thought that, with all relevant data at their disposal, they could arrive at the truth in this way. The Academics, seeing that there were equally plausible arguments for and against, found themselves compelled to state that the truth could not be

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[40] Cic. *Topica* § 95: . . . *Sed quae ex statu contentio efficitur, eam Graeci* κρινόμενον *vocant, mihi placet id, quoniam quidem ad te scribo,* <u>qua de re agitur</u> *vocari.* Translations for κρινόμενον are *iudicatio* (*Rhet. Her.* 1.16.26; Quint., *Inst. Or.* 3.11.4), *contentio,* or *id de quo contenditur* (Augustin., *De Rhet.* p. 145.8 Halm); in the *Topica* where Cicero is addressing a jurist, he gives an alternative translation which resembles a set-phrase of legal *formulae* (cf. H. Krüger, 'Die Worte "qua de re agitur" und (res) "qua de agitur" in den Prozessformeln', *ZRG* 29 [1908], 378–89). But *id de quo agitur* is in itself more neutral than the usual translations of κρινόμενον, which have the forensic ring of school-rhetoric. This might have influenced Cicero's choice of expression.

[41] On this aspect of the *Rhetoric* the. standard work is still F. Solmsen, *Die Entwicklung der aristotelischen Logik und Rhetorik* (Berlin, 1929).

[42] Ar. *Top. A*2, 101a35–6; Θ14, 163a37–163b15; Cic. *Or.* § 46; Alex. Aphr. *in Top.* 27.17–18; *Anon. Seg.* § 183.

found and that judgement was to be suspended therefore. Since on the evidence of *Or.*
§ 46 Aristotelian τόποι were in Cicero's time still associated with arguing on either side,
one may conjecture that they would provide the sceptical Academic with a tailor-made
method which had merely to be put to a different use.[43]

The most prominent place where the θέσις and the τόπος are connected is Cicero's
*Topica*, which is primarily known for its enigmatic reference to Aristotle's *Topics* in the
preface. It was written in the summer of the year 44 shortly after the assassination of
Caesar and before Cicero began work on *Off.* In the 50s, Cicero had recommended the
dedicatee of the work, the jurist C. Trebatius, to Caesar, with whom and, as one may
suspect, with whose political followers he remained associated from that time onwards.
So the treatise is, among other things, an attempt to stay in touch with the opposite
party, as can be demonstrated by corresponding remarks in the preface and in an
accompanying letter (*Fam.* 7.19).

The book, which is divided into three sections, provides a synthesis of various
different traditions of thought. That Trebatius was a jurist strongly affects the content.
The *loci*[44] are discussed twice, with Cicero consistently using legal examples, cast in
legal terminology, while the third part of the book is in substance, though there are
additions here as well, *identical* with the list of θέσεις in the *de Oratore*. Because Cicero
inserts in the second discussion of the *loci* material of foreign, mostly Stoic provenance
like a list of Indemonstrables or a discussion of the notion of 'cause', the source
behind the 'legal' cover appears to show the mixture of Stoic and Peripatetic doctrines
which is said to be the trademark of Antiochus of Ascalon, to whom the source for the
book has often been attributed.[45] Moreover, the third part has been taken to have been
added by Cicero to material coming from elsewhere, on the grounds that the first
two-thirds are 'philosophical' (this impression is primarily due to the insertions men-
tioned), while the last one is 'rhetorical'.[46]

The τόποι derive materially, though by an uncertain route,[47] from the τόποι
Aristotle discussed in his *Topics* and transferred to the field of oratory at the end of the

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[43] The partial structural parallelism of the methods of sceptical Academics and Peripatetics in
the Hellenistic era is manifest also in another (related) area. It is well known that to contrast
opposing views is one of the principles according to which the tenets of philosophers in the
doxographical tradition are organized. The sources show a shift of attitude in the use of this
method similar to that which I am presuming for the use of the τόποι. Cf. J. Mansfeld,
'Doxography and dialectic', *ANRW* 2.36.4 (1990), 3056–229, at 3063: 'The Skeptical mode of
presentation, later called *diaphonia* (disagreement), is not much more than a diaeresis (from a
purely formal point of view, it of course still is) employed to a different purpose. The diairetic
construction of a *status quaestionis*, or listing of such views as were available and even,
sometimes, theoretically possible, could be used to help one, in a preliminary way, to discover the
truth; this is how Aristotle and Theophrastus used it. It could also be used to produce a stalemate.
The disagreement(s) could be allowed to remain as they were, and suspension of judgement could
be recommended. This is how the Academics used it. One may say that part of the history of
ancient doxography is contained in the switch from a Peripatetic dialectical *dihairesis*, with the
emphasis on finding one's way towards the truth, to an Academic *dihairesis* stated in the shape of
a *diaphonia* in order to preclude, or indefinitely to postpone, a decision.'

[44] The *loci* are: *a definitione, a partium enumeratione, a notatione, a coniugatione, a genere, a
forma, a similitudine, a differentia, e contrario, ab adiunctis, ab antecedentibus, a consequentibus, a
repugnantibus, ab efficientibus causis, ab effectis rebus, ex comparatione, ex auctoritate.*

[45] M. Wallies, *De fontibus Ciceronis Topicorum* (Halle, 1878); Kroll (n. 5); J. Dillon, *The Middle
Platonists* (London, 1977), 102–4.

[46] This was suggested for the first time by Wallies (n. 45), 48.

[47] Proposals as to the further development of the topical doctrine in J. van Ophuijsen, 'Where
have the Topics gone?', in W. W. Fortenbaugh and D. Mirhardy (edd.), *Peripatetic Rhetoric after
Aristotle* (New Brunswick/London, 1994), 131–73.

second book of his *Rhetoric*. In Cicero, they are characterized primarily by their names, e.g. 'definition', 'cause' or 'consequence', terms which may guide the associative processes that lead to arguments. In that respect their use and their place in the system resembles that of ordinary rhetorical methods of invention. They do not, as all τόποι in Aristotle's *Topics* and some in his *Rhetoric* do, point to a logical connection of two propositions, each of which consists of one term that is predicated of another,[48] but rather instruct one to consider, for instance, the definition of the subject under consideration as to whether it might yield an argument. Occasionally, this leads to arguments which may be analysed in terms of Aristotle's conception of the τόπος, but clearly such an interpretation does not mirror Cicero's view. So Cicero's version of the topical doctrine is much less exact than Aristotle's. However, one may wonder how useful it is to reduce sentences of ordinary spoken language to the relatively rigid subject–predicate structure, and a comparison of τόποι which Aristotle used in his *Topics* and also in his *Rhetoric* shows that he himself sparked the development towards a more relaxed understanding of the τόπος when applied to rhetoric.[49]

The close interlocking between the θέσις-division and the *loci* is demonstrated by a section on which *loci* particularly match which question-types (§§ 87–90). At the two other places where the θέσις-division is given, the *de Oratore* and the *Classifications of Oratory* (§§ 61ff.), the *loci* are again linked to it (*de Orat.* 3.119; *Part. Or.* § 68).[50] Here the methodological problem arises that the internal coherence of the two elements alone and the general plausibility that a sceptical Academic would find Aristotelian τόποι useful do not suffice to justify the assumption that Philo rather than Cicero himself combined them. But if it is reasonable to assume that Philo provided rhetorical doctrines to tackle the θέσις, one will have to acknowledge that the *loci* expounded in the *Topica* are just such a doctrine—and one that is different from the precepts usually provided in the θέσις-section of *Progymnasmata* and that is in itself hard to classify as 'rhetorical' or 'philosophical'. If we accept that the information about Philo's 'teaching the *praecepta dicendi*' must be interpreted as indicated, then it will not be economical to assume that Cicero abandoned any methods of invention Philo taught, only to adopt the functionally equivalent ones he presents in the *Topica*. And there is the fact that Cicero maintains the combination of *loci* and θέσις even in a context where this leads to the uneven structure we find in the *Topica*.

## VIII

I move on to a possible third sort of rhetorical precept Philo might have given in addition to the θέσις and the τόποι. The main text after the preface of the *Topica* starts with the following passage, which assigns a systematical place to the topical doctrine.

Every systematic treatment of argumentation (*ratio disserendi*) involves two skills [the best mss. have *artes*; other mss. read *partes*, which was adopted by most editors], one concerned with invention of arguments and to the other with judgement of their validity; Aristotle was the

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[48] See J. Brunschwig (ed.), *Aristote—Topiques I–IV* (Paris, 1967), xxxviii.

[49] This holds for the κοινοὶ τόποι; the so-called εἴδη are a different case.

[50] So where the division of the θέσις appears, the *loci* are mentioned as the next stage of invention. In the *de Oratore*, however, the structure of the work, which follows the *officia oratoris*, requires the detailed treatment of the *loci* under *inventio* in Book 2, and that of the *quaestio universa* under *elocutio*, because the 'general question' is linked to stylistic richness. In the *Part. Or.*, an uncommon division of the work into *vis oratoris* (where the *loci* are treated), *oratio* and *quaestio* leads to the separation of the detailed discussions of the two elements.

founder of both in my opinion. The Stoics have worked in only one of the two fields. That is to say, they have followed diligently the ways of judgement by means of the science which they call διαλεκτική, but they have totally neglected the art which is called τοπική, an art which is both more useful and certainly prior in the order of nature. For my part, I shall begin with the earlier, since both are useful in the highest degree, and I intend to follow up both, if I have leisure.

(*Topica* §§ 6–7, trans. Hubbell, revised)

*Ratio disserendi* is usually Cicero's rendering for λογική, the third branch of philosophy apart from ethics and physics, and editors have assumed that Cicero is giving here the species or parts of λογική. But where Cicero does that the items mentioned are completely different.[51]

And for this as well as for other reasons—a parallel passage in Cicero—one must assume Cicero is talking on a different level here, stating in a general sense which skills (therefore my reading of *artes* for *partes*) are required in rational discourse, thereby conflating rhetorical and philosophical argument. In preparation of what follows, it should be underlined that Cicero does not straightforwardly identify judgement with διαλεκτική, but rather says that this term is used by the Stoics to refer to their particular art of judgement.[52]

While *Topica* § 6 does not suggest that 'judgement' originally formed part, in one way or another, of the rhetorical theory expounded in the work, other passages where the *loci*, whether with the θέσις or not, are mentioned introduce *iudicare* of the arguments 'found' as a further stage after invention proper.[53]

Here we may compare this passage from Quintilian.

[Context: The orator should use syllogisms and enthymemes very sparingly] For in the former [sc. *in dialecticis disputationibus*] we are confronted with learned men seeking for truth among men of learning; consequently they subject everything to a minute and scrupulous inquiry with a view to arriving at clear and convincing truths, because they claim for themselves the tasks both of invention and of judgement, calling the former τοπική, and the latter κριτική.

(*Inst. Or.* 5.14.28, trans. Butler, revised)

It is hard to say where this information comes from. Clearly, it is unlikely to be inspired by Cicero himself. Immediately before the passage quoted Quintilian says that he would prefer not to continue the discussion of rhetorical syllogisms as being *sacra*, esoteric knowledge. The passage seems to belong with that. There was apparently a tradition which linked the topical doctrine to the scrutinizing of arguments, and for Quintilian it was a philosophical one. Perhaps the notion of κριτική, a word normally used to refer to a certain quality of the mind, the faculty of judgement,[54]

[51] Cf. A. A. Long and D. N. Sedley (edd.), *The Hellenistic Philosophers*, vol. 2 (Cambridge, 1987), 188, where *Topica* §§ 6–7 is given as 31F. The parts of λογική are given in e.g. *Acad.* 1.19: . . . *tertia* [sc. *pars philosophiae*, λογική] *de disserendo et (i) quid verum quid falsum (ii) quid rectum in oratione pravumque (iii) quid consentiens quid repugnet iudicando.* Referring to epistemology, rhetoric, and logic?

[52] The parallel passage mentioned is *Fin.* 4.10: 'Cumque duae sint artes [no mss. variants], quibus perfecte ratio et oratio compleatur, una inveniendi, altera disserendi, hanc posteriorem et Stoici et Peripatetici, priorem autem illi egregie tradiderunt, hi omnino ne attigerunt quidem.' Cf. J. S. Reid, *M. Tulli Ciceronis Academica* (London, 1885), at 139–40 on *Acad.* 1.32 for Cicero's use of *disserere* (as opposed to *dicere*) to refer to διαλεκτική. That Cicero thereby equates *iudicare* and διαλεκτική in *Fin.* 4.10 is compatible with *Topica* § 6, in that in *Fin. disserere* covers the art of judgement in general, i.e. also the Peripapetic way of doing it. The beginning of *Fin.* 4 is sometimes regarded as Antiochian in origin; that this is either a simplification or false is suggested by the fact that in *Fin.* 4.6–7 there is a remark about 'the Academic and Peripatetic teaching of rhetoric' which strongly resembles the information given in *de Orat.* 3.109–10.

[53] *Or.* §§ 47–8; *Part. Or.* §§ 8 and 139; but not in the *de Orat.*

[54] For example, Alex. Aphr. *in Metaph.* 306.6; Alex. Aphr. *in Top.* 27.30–1; Gal. *De plac. Hipp. et Plat.* 7, p. 430.29 De Lacy (= Chrys., fr. mor. 259.32 von Arnim).

might suggest that *iudicare* is meant to be in a less narrow sense the use of this faculty: the blocking off of inappropriate, that is irrelevant or unconvincing or fallacious, arguments. There is no conflict with Cicero and his reference to διαλεκτική, if we accept that Cicero names διαλεκτική as the Stoic way of *iudicare*.

But one might wonder whether Quintilian's assessment of the division is compatible with the assumption that the *loci* presented in the *Topica* are meant be used for rhetorical purposes. A reply to that would be that the *loci* constitute in any event a method for a sort of rhetoric which was close to popular philosophical discourse and quite different from ordinary forensic rhetoric. From this point of view, Quintilian's remarks about the dialectical discussions should perhaps be taken *cum grano salis*, since his practical approach to rhetoric made him qualify theories as philosophical which every philosopher would have called rhetorical.

Since the idea that arguments may be discovered with the help of τόποι and 'judged' after that is evidently not Cicero's, and since it is likely that the topical doctrine played a rôle in Philo's rhetorical training, it seems reasonable to assume that some instruction on judgement, in whatever form, was given as well.

## IX

Rhetoric in the Fourth Academy may finally be characterized as follows. It focused on abstract general problems, which Plato in the *Phaedrus* and perhaps already Academics of the generation before Philo had established as the subject of rhetoric in the full sense of the word. Nevertheless, in making a claim also to the 'particular question', Philo took regard of rhetoric's need to cater for the treatment of concrete problems. To judge from what Cicero says in *de Orat.* 3.109, this has included the occasional training with forensic ὑποθέσεις. But it is hard to imagine Philo teaching the rhetorical treatment of the twisted legal problems which were the business of the rhetorical schools.[55]

From the formal viewpoint, the Academic rhetorical training seems to have followed the established procedures of Academic dialectic. When Philo himself delivered speeches against a proposition in a way comparable to that of the *Tusculans* and, as one may assume, called this 'his rhetoric', one might think of different audiences to which his speaking was to be adapted. He will have addressed aspiring philosophers in a different way from young Roman aristocrats. As rhetorical exercises the two ways of dialectical arguing are simply an effective training, and it depends primarily on the attitude and on the commitment of the trainee whether an air of philosophical enquiry is preserved. Persuasion, the aim of all rhetoric, comes in indirectly. The attack on a given proposition aims at convincing the audience of its inacceptability; arguing on either side of a problem tries to represent both sides as plausibly as possible and may make the *verisimile* emerge, as Cicero often says (though usually not with reference to Academic *rhetoric*).[56] But when rhetorical methods are used to determine how one

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[55] There are also remarks by Cicero that the Academy and the Peripatetics alone cannot make the perfect orator (*Brut.* 120), because their way of speaking is not aggressive enough.

[56] Presumably the coming out of one side as *verisimile*, in evidence in Cicero (e.g. *Tusc.* 2.9) and attested by Favorinus of Arelate (as reported by Galen, *Opt. Docr.* I = Favorinus fr. 28 Barigazzi; cf. also L. Holford-Stevens, 'Favorinus: the man of paradoxes', in J. Barnes and M. Griffin [edd.], *Philosophia Togata* II [Oxford, 1997], 188–217, at 208–9) for 'younger Academics', reflects a Philonian modification of the more rigorous earlier 'speaking on either side', which was meant to lead to ἐποχή, suspension of judgement; it could be explained as an extension of the initially epistemological notion of the πιθανόν towards a qualified acceptance of other schools' opinions.

should act, and hence the speaker becomes the audience, there is no longer persuasion in the proper sense.

As to the theory of rhetorical invention Philo appears to have taught, a partial structural and functional parallelism to school-rhetorical theory is obvious. His theory helps, first to narrow down a complex problem to single questions, second to find arguments relevant to their consideration. And with the revised στάσις-doctrine and the Aristotelian τόποι Philo unified the modified core element of standard rhetorical theory with a bit of argumentative doctrine which featured already in earlier philosophical rhetoric.[57]

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That this modification is due to Philo has, in my view on insufficient grounds, recently been questioned by J. Glucker, 'Probabile, veri simile, and related terms', in Powell (n. 3), 133–7, and, for different reasons, by Görler (ibid., 133).

[57] One might wonder why there was the shift in Cicero's position concerning the θέσις—leaving it to the philosophers in *Inv.*, but claiming it for the perfect orator in his mature works—as his acquaintance with Philo predates the *Inv.* In fact, Cicero's position in *Inv.* is compatible with the assumption that he was familiar with Philo's views on rhetoric already; we could assume that in his later years he formed a new position by answering to the Academic's views in a different way. In *Inv.* 1.8 he attacks Hermagoras for making the θέσις the subject-area of rhetoric, because only philosophers can deal with difficult philosophical problems. This might mirror a claim Philo himself made for his rhetoric (cf. Posidonius' attack on Hermagoras for the same reason). It would have been very high-minded if Cicero had taken sides with Philo at this early stage; alternatively, since it is likely that Cicero, when writing *Inv.*, was still strongly influenced by his rhetorical teachers, he might be merely relating their views. But the *consularis* Cicero, who was one of the most erudite men of his time and 'king of the courts' (*Fam.* 9.18.2), might easily have changed his mind, holding that the *orator perfectus* must be capable of discussing the general question.