

commenting at Petr. 72.7 'canis catenarius' that: 'in Trimalchio's house the dog harasses those already inside but does not seem to challenge those approaching from outside'. At this point, however, should one not go on to recall the role Cerberus played in 'frightening shades and preventing egress from the underworld'? See Paul Murgatroyd's note at Tib. 1.3.71–2,<sup>4</sup> at which he cites e.g. Sen. *Her. F.* 782f., Stat. *Theb.* 4.486f., and, of particular relevance given Smith's remarks, Hes. *Theog.* 770ff.:

ἐς μὲν ἴοντας  
σαίνει ὁμῶς οὐρῇ τε καὶ οὐασιν ἀμφοτέροισιν,  
ἐξελθεῖν δ' οὐκ αὖτις ἐᾷ πάλιν, ἀλλὰ δοκεύων  
ἐσθίει, ὃν κε λάβησι πυλέων ἐκτοσθεν ἴοντα.

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<sup>4</sup> P. Murgatroyd, *Tibullus 1* (Natal, 1980, repr. Bristol, 1991).

### IDENTIFYING THE *CLARUS ORATOR* AT QUINTILIAN, *INST.* 8.2.3

To my knowledge, no attempt has been made to identify the *clarus orator* referred to by Quintilian at *Inst.* 8.2.1–3:

Perspicuitas in uerbis praecipuam habet proprietatem, sed proprietas ipsa non simpliciter accipitur. Primus enim intellectus est sua cuiusque rei appellatio, qua non semper utemur. (2) Nam et obscena uitabimus et sordida et humilia. Sunt autem humilia infra dignitatem rerum aut ordinis. In quo uitio cauendo non mediocriter errare quidam solent, qui omnia quae sunt in usu, etiam si causae necessitas postulet, reformidant; ut ille qui in actione Hibericas herbas se solo nequiquam intellegente dicebat, nisi inridens hanc uanitatem Cassius Seuerus spartum dicere eum uelle indicasset. (3) Nec uideo quare *clarus orator* duratos muria pisces nitidius esse crediderit quam ipsum id quod uitabat.

In this paper, I wish to suggest that the orator at issue is Asinius Pollio. I start (1) by clarifying some doubtful points in Quintilian's passage. Then (2) I attempt to support my hypothesis; and finally (3) I consider its implications.

1. Translators do not completely agree on the meaning of *clarus orator*. The translations of Butler ('a certain distinguished orator') and Cousin ('tel avocat distingué') have very different implications:<sup>1</sup> Butler's rules out the possibility that *clarus orator* refers to the orator whom Cassius Severus had laughed at, while Cousin's implies precisely that identification.<sup>2</sup>

Cousin's interpretation seems preferable. Firstly, 'a certain distinguished orator' more properly renders a phrase such as *quidam clarus orator* than *clarus orator* alone.<sup>3</sup> Secondly, the use of the imperfect (*dicebat*, *uitabat*) both with *ille qui* and with *clarus orator*, may well imply a reference to the same situation (see n. 9). And finally, the use

<sup>1</sup> More recent translations add no further explanation and seem to prefer Butler's view. Cf. H. Rahn's *Marcus Fabius Quintilianus, Ausbildung der Redners* (Darmstadt, 1988): 'ein berühmter Redner'; O. Frilli's *Marco Fabio Quintiliano, Istituzione oratoria* (Bologna, 1989): 'un famoso oratore'.

<sup>2</sup> In his 'Introduction' (in vol. I [Paris, 1975], at page X) Cousin reveals his interpretation more clearly: '... un autre texte (VIII, 2, 2), dans lequel Quintilien raille un avocat, déjà raillé par Cassius Severus ...'.

<sup>3</sup> Cf. also in Quintilian: *quendam <non> ignobilem poetam* (9.4.90); *de quodam suo antisophiste* (11.3.126).

of *clarus* itself is more understandable as referring to somebody identifiable from the context.<sup>4</sup>

Therefore, I think that Quintilian is applying his criticism to the same orator as Cassius Severus had laughed at: Severus had criticized the use of *Hibericas herbas* for *spartum*,<sup>5</sup> and Quintilian states that he cannot see any reason too why that man, distinguished orator as he was, could have thought that the periphrasis *duratos muria pisces* was more elegant than the (proper) word which he was avoiding. On the assumption, then, that both *ille qui* . . . and *clarus orator* refer to the same orator, who was he?

2. We must first locate him in the context of an *actio* (8.2.2 *in actione*).<sup>6</sup> Then there is what we can deduce from the part played by Cassius Severus. If it is right to assume, as I have argued, that Quintilian adds his own criticism of *duratos muria pisces* to Severus' of *Hibericas herbas* it seems very likely that Quintilian had to hand<sup>7</sup> not only a speech by Severus,<sup>8</sup> but *also* the corresponding speech by his forensic opponent.<sup>9</sup> Among the examples he gives of speeches available to him (*orationes in manus sumpserimus*) and containing the interventions of both sides (*utrimque habitas* . . . *actiones*) is the couple Cassius Severus and Asinius Pollio. We know that Cassius Severus acted as the prosecutor in a trial in which C. Nonius Asprenas was accused of having poisoned 130 persons and which took place in 9 B.C. Asprenas was defended by Asinius Pollio (cf. the passage preserved at Quint. *Inst.* 11.1.57).<sup>10</sup> Moreover, it is accepted that Quintilian is thinking precisely of this trial when he mentions Cassius Severus and Asinius Pollio in 10.1.22 (cf. Heldmann [n. 10] at 170, n. 411). In my view, it must therefore be a strong possibility not only that Asinius Pollio is the *clarus orator*, but also that both *Hibericas herbas* and *duratos muria pisces* are phrases taken from his speech *Pro Nonio Asprenate*. There is some evidence to support this: the phrase *duratos muria pisces*, referring to some sort of food, fits a speech in which a prosecution for poisoning is at issue,<sup>11</sup> especially if we take

<sup>4</sup> The combination of *clarus* and *orator* is not common at all. A combined search in *PHI* 5.3 provides only five examples: Cic. *Brut.* 330.1 *post Hortensi clarissimi oratoris mortem*; Cic. *Orat.* 6.4 *multi oratores magni et clari fuerunt* . . . ; Quint. *Inst.* 5.13.60 *clarissimos oratores*; 8.2.3 (our passage); Val. Max. 9.2.2 *clarissimique et ciuis et oratoris*. It is evidently not a standard forensic formula of the same type as e.g. 'my learned friend' in English.

<sup>5</sup> This criticism is not surprising at all coming from an orator who cast aside modesty of language, according to Tac. *Dial.* 26.5 . . . *omissa modestia ac pudore uerborum* . . . *non pugnat sed rixatur*. Cf. M. Winterbottom, 'Quintilian and the *vir bonus*', *JRS* 54 (1964), 90–7.

<sup>6</sup> That is to say 'a legal process, action, suit' (*OLD* s.v. *actio*); cf. *ThLL* I 441.48ff.

<sup>7</sup> Quint. *Inst.* 10.1.22 . . . *nosse eas causas quarum orationes in manus sumpserimus, et, quotiens continget, utrimque habitas legere actiones: ut Demosthenis et Aeschinis* . . . , *et Serui Sulpici atque Messalae* . . . , *et Pollionis et Cassi reo Asprenate, aliasque plurimas*.

<sup>8</sup> The works by Cassius Severus had a very hazardous history; cf. Tac. *Ann.* 1.72.4, Suet. *Cal.* 16.1–2 and see further L. Gil, *Censura en el mundo antiguo* (Madrid, 1985<sup>2</sup>), 139–40 and 152.

<sup>9</sup> Both *dicebat* and *uitabat* seem to be examples of the so-called 'aoristisches Imperfekt' appearing in cases 'wo der Sprechende aus seiner Erinnerung erzählt oder sich an die Erinnerung des Hörenden wendet' (Hofmann-Szantyr, 317, §177). Since it is not possible to assume an actual memory of an *actio* held long before Quintilian's time, one may argue that Quintilian is relying on his reading of it.

<sup>10</sup> Cf. H. Malcovati, *Oratorum Romanorum fragmenta liberae rei publicae* (Turin, 1955), 523–4; J. André, *La Vie et l'œuvre d'Asinius Pollion* (Paris, 1949), 72–3; K. Heldmann, *Antike Theorien über Entwicklung und Verfall der Redekunst* (Munich, 1982), 165–6.

<sup>11</sup> It is the food known as *garum* (later as *liquamen*) or, more generally, as *salsamenta*. Heldmann (n. 10) at 169 thinks that the poisoning was from fish, though this is not in the ancient sources, and he is probably relying on Groag, *RE* XVII 867.

into account what the Elder Pliny says about the use of *seruati pisces* for inducing vomiting.<sup>12</sup>

My third piece of evidence is more indirect and has to do with the phrase *Hibericas herbas* (= *spartum*). Cousin (n. 2 at 277) says that the usual adjective is *hispanicus*, 'ibericus étant plutôt employé par les poètes'; this would indeed fit Asinius Pollio, who was himself a poet, and who was reputedly happy to quote lines of poetry in his speeches (cf. Quint. *Inst.* 1.8.11). But we can go perhaps a bit further: in Horace's *Epodes* (4.3) the phrase *Hibericis funibus* is referred precisely to *spartum*! So, taking into account the close relationship between Horace and Pollio,<sup>13</sup> we can even suggest that Pollio, by using the phrase *Hibericas herbas*, is either evoking the poetry of his friend Horace or, at the very least, borrowing from him the use of *Hibericus* for the more prosaic *Hispanicus*. He might well be trying to give a poetic character to his speech, and this was precisely what made Cassius Severus laugh at him.

Moreover, if *spartum* is here the Spanish broom (*spartium junceum*),<sup>14</sup> it is also possible that it appeared in the case because of its edible nature. Columella (9.4.7) refers to it as an ingredient in an edible honey-like substance (*mel nemorense*), and we know from Dioscorides (4.154; cf. Plin. *N.H.* 24.66) that Spanish broom could be soaked in brine (again *muria*!) in order to make a lavative for those suffering sciatic pains.

3. None of the pieces of evidence is clinching; nevertheless, together they make the outlined hypothesis very attractive. Even so, it is not without some problems. In particular, why does Quintilian not name Asinius Pollio? One can only speculate: he might simply have thought either that it was not a strictly relevant piece of information or that it could be easily guessed from the context. But, more significantly, the passage is generally in accord with Quintilian's avoidance of every sarcastic criticism and with his 'esprit de tolérance' (Cousin [n. 2] at pages XLIII and XL). In the many criticisms which Quintilian makes of contemporary orators in the twelfth book,<sup>15</sup> no one is named at all; he prefers to use phrases such as *multos cognouimus qui* (12.3.11), *nonnullos reperias qui* (12.6.6), *aliquos* (12.8.2). He even tends to avoid quotation of Cicero when correcting his rhetorical doctrine.<sup>16</sup> So in his modesty and tactfulness, Quintilian would have avoided naming a great orator such as Pollio when making a criticism of him (even a slight one).

To sum up, I think the hypothesis deserves consideration and, if accepted, has interesting implications: to the four *testimonia* quoted by H. Malcovati (n. 10) for the speech *Pro Nonio Asprenate* we could add a new one, and—what is far more significant—even isolate two real 'fragments' by Pollio's hand: *Hibericas herbas* and *duratos muria pisces*.

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<sup>12</sup> Plin. *N.H.* 32.45 *Sunt et seruatis piscibus medicinae, salsamentorumque cibus prodest a serpente percussis et contra bestiarum ictus mero subinde hausto ita, ut per satiem cibus uomitione reddatur* . . .

<sup>13</sup> Cf. Hor. *Sat.* 1.10.85 and most significantly *Carm.* 2.1 (on which see Nisbet-Hubbard, *A Commentary on Horace: Odes. Book II* [Oxford, 1978], 7 ff.). The book of the *Epodes* was completed by 30 B.C., so it was surely well known to Pollio at the time of the Asprenas process.

<sup>14</sup> Cf. J. André, *Les Noms de plantes dans la Rome antique* (Paris, 1985), and Plin. *N.H.* 24.65.

<sup>15</sup> Cf. Cousin (n. 2) at XL, following R. G. Austin, *Quintiliani Institutionis oratoriae liber XII* (Oxford, 1948), XII–XIII.

<sup>16</sup> This has been recently shown by J. M<sup>a</sup>. Núñez González, 'Censuras de Quintiliano a la doctrina retórica (*de numero oratorio*) de Cicerón', *CFCLat* 15 (1998), 259–71.