The Eighteenth and Nineteenth
Major Declamations Ascribed to Quintilian:
a Commentary

Bé Breij

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A COMMENTARY

Een wetenschappelijke proeve op het gebied van de Letteren

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Preface

Roman declamation, though an important and influential phenomenon both in the rhetorical schools of the Empire and as a literary genre, was long regarded as trivial and only began to receive thorough scholarly attention in the late nineteen-seventies. The nineteen *Declamationes Maiores* ascribed to Quintilian – the only extant collection of complete Roman declamations – were not properly accessible until the appearance of Håkanson's 1982 edition. The bizarre subject matter of a number of these *controversiae* together with their mannered style make clear at first sight that the famous rhetor was not their author. Yet these texts are well worth studying, for they tell us a great deal about Roman higher education and a sophisticated elite pastime. Their exuberant Latin, combining colloquial and highly abstract language with poeticisms, and absorbing as well as influencing other genres, is of great linguistic interest. We find it used to deploy intricate arguments and subtle rhetorical tricks, which make these *controversiae* quite abstruse. The consultation of Roman rhetorical precepts does not only clarify them, but is also rewarding because it brings to light a mutual dependence between rhetorical *artes* and declamation. The declamatory laws, finally, and the spectacular themes and the way they are developed provide us with new insights in Roman preoccupations with power, justice, and *pietas*. The present commentary is meant to contribute to our increasing knowledge of Roman declamation by paying ample attention to all these aspects.

I am most grateful to Professor Marc van der Poel, in the first place for introducing me to this fascinating material, secondly, for being a perfect supervisor. I thank him warmly for showing me a great deal of confidence by granting me prodigious scope – yet at the same time always being prepared to think along with me, and for becoming a very good friend in the process. Many thanks also to Professor Antonio Stramaglia, Master of Declamation, for making me welcome in Cassino, where I spent three fruitful months, and to Professor Lewis Sussman for allowing me to use his translation of the two declamations.

My time at the Nijmegen Faculty of Arts has been rich, fulfilling and great fun. I would like to thank the many colleagues within and without the Classics Department who make me feel at home. Of these, Leon ter Beek deserves special mention for introducing me to the intricate subject of Roman law, Jan Waszink for consulting a number of old editions of the *Declamationes Maiores*, Vincent Hunink and Lisenka Fox for offering their expertise especially in computer-related matters, Willeon Slenders for sharing an office, life's joys and sorrows and a terrible sense of humour with me. My fellow junioronderzoekers have proved good friends, notably Janneke de Jong, Miko Flohr, Floris Overduin and of course Carolien Trieschnigg, whose laugh rocks the foundations of the Erasmusgebouw. Thanks, furthermore, to my students, who can always be relied on to give relief to what could have been a lonely job.

Many thanks also to my good friends Cindy, Jaantje, Jacco, Karianne and Marjan, for your kindness and support. Finally, there are two persons whom I cannot thank enough. First, my husband Bart, for his constant care and attention and his willingness to share me with an unknown Roman with a dodgy reputation. Secondly, my mother Gerda, who has always stood by me and who, like myself, still misses my father Aloys every day. It is to his memory that this book is dedicated in love and gratitude.

Nijmegen, 2006

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Text

The text printed below has been taken from Håkanson's 1982 edition. Bracketed numbers refer to its pages and lines, bold numbers to the text's paragraphs. The text is followed by a number of proposed textual changes, which are all discussed in the commentary.

[353] XVIII Infamis in matrem I

Malae tractationis sit actio. Speciosum filium, infamem, tamquam incestum cum matre committeret, pater in secreta parte domus torsit et occidit in tormentis. Interrogat [353, 5] illum mater, quid ex filio compererit, nolentem dicere malae tractationis accusat.

1 Etsi, iudices, callidissimus parricida facinus suum sic ordinavit, ut vobis matrem faceret invisam, sive dissimularet misera mortem filii sui, sive quereretur, tantaque mon- [353, 10] strorum novitate circumdatam eo perduxit, ut sibi videatur infamaturus iterum vel patientiam nostram vel dolorem, matri tamen, <in> cuius calamitatibus tunc minimum sibi vindicat orbitas locum, ideo ad vos fugiendum fuit, ut sciretis non illi praestari, quod tacet maritus. laudo, iudices, [353, 15] laudo miseram, quod interrogare noluit domi, quod nihil fecit et ipsa secreto hic coram civitate, coram liberis ac parentibus et, licet dissimulare parricida videatur, coram rumore mater inquit, quid tormentis unici quaesierit, quid [354] morte compererit respondeat saltem reus, fateatur iratus, cui in peracta crudelitate modestia[e] frontis obstitit. nec uxori potest videri parcere, de qua scire voluit, an esset incesta, nec filio, quem, tamquam sciret, occidit.

[354, 5] Ante omnia igitur, iudices, mulier infelicissimi pudoris hoc ab adfectibus publicis petit, ne vobis accusare videatur ream se incesti, ream parricidii putat, exhibet populo conscientiam suam et adversus quemcumque sermonem, quodcumque secretum marito famaeque praestat interrogandi [354, 10] potestatem vellet innocentiam suis probare visceribus, vellet in eculeos, in ignes hanc miseram praecipitare pietatem. **2** Ignoscite, iudices, inpatientiae, quae contra callidissimam dissimulationem libertate doloris exaestuatur, incestum probaretur silentio patris, si taceret et mater.

[354, 15] Equidem, iudices, tam contrarios adfectus senis satis admirari, satis stupere non possum: in rumore tam suspicax, post tormenta <tam> patiens, modo ad fabulas vulgaresque sermones pronus ac facilis, in orbitate, in parricidio, <in> reatus quoque dolore conticuit quo repente conversus est, [354, 20] in quam modestiam desperationemque defecit? torsit tamquam dicturum, tacet, tamquam dixerit fidem igitur ve- [355] stram, iudices, ne cui praestet magnae severitatis auctoritatem non posse defendi, neve ideo suspicari nefanda malitis, quia se silentio parricida miratur parcere nunc illum cuiquam tacendo creditis? loqui se cum maxime putat, et, si [355, 5] bene artes et profundae mentis consilia perspicio, respondere sibi videtur plus quam mater interrogat. fallitur, quis- [355, 10] quis hunc esse credit inexplicabilis doloris aestum et inter silentii confessionisque causas miserum pudorem; alium exitum non habet, quam ut respondere nolle videatur, quisquis filium occidit et probare non potest, propter quod debuerit occidi.

3 Coniungat, quantum volet, nocentissimus senex cum rumore populi silentium suum, et relaturae ordinem tristissimae sortis conlata malignitate cludat ora, compescat audi- [355, 15] tus. securi tamen estote, mortales, fas est, fas est innocentissimae matri velut in templis, velut apud ipsos proclamare superos: 'amavi filium meum!' matrona, iudices, cuius puellares annos, primam rudemque coniugii mentem nulla libidinum respersit infamia, cui impudens rumor, suspicax ma- [355, 20] ritus nihil umquam potuit obicere nisi filium, quae pudicitiae prima fiducia est, edidit partum, quem maritus agnosceret. non timuit, ne stupra furtivosque concubitus parvuli vultus aut crescentis infantiae similitudo detegeret. natum [356] de te continuo, si quid ipsi creditis, inpatientius complexa quam reliqui parentes non in nutrices nec in ministeria seposuit; suis aluit uberibus, suo fovit amplexu. numquid et hos annos, parricida, numquid et pueritiam miseri iuvenis infamas? [356, 5] actum est de sacrorum nominum fide, si, ut videatur innocens mater, aetas tantum filii facit. accendebat hanc erga unicum optimae matris inpatientiam rigidus pater, asper maritus, et sibi videbatur parum implere, quem pro duobus conferebat, adfectum. rarus hic namque ad oscula, [356, 10] difficilis amplexibus, et qui unicum aspiceret animo, quo quandoque posset occidere, fecit, ut notabilior esset caritas matris. omnis igitur miserae sermo cum filio, omnis in publicum pariter egressus. gaudebat etiam, quod laudandus occursibus, quod omni frequentia coetuque conspicuus po- [356, 10] pulo iam ipse fateretur, quod plus amaretur a matre. 4 miseremini, iudices, ne nefandas suspiciones maritum ex ullius traxisse credatis indicii; suum rigorem, suum tantum secutus est animum. filium si non ames, videatur tibi mater adamasse.

[356, 20] Questurum nunc me, iudices, putatis de licentia sermonis humani? ego vero iuxta hunc patrem non accuso rumorem. quae materia fabulae tam inpudentis, qui fuerit auctor, iste probavit, qui credit. facillimum fuit, ut loqueretur populus de incesto, de quo mirabatur patrem suspicari.

[356, 25] Haec sunt, iudices, quae mater fecit secure, simpliciter, palam, coram marito, coram civitate. referat nunc suum iste [357] secretum. iuvenem, quae integritatis prima simplicitas est, nihil timentem in partem domus, qua nulla proclamatio, nullus poterat gemitus audiri, rapuit, abduxit. ibi verberibus, ignibus, omni crudelitatis arte consumpsit. quis um- [357, 5] quam, iudices, peius de innocentia temporum, de sacris meruit adfectibus? torsit filium, ut probaretur incestum; occidit, ut crederetur.

Ponite nunc ante oculos, iudices, duorum parentum confessionem. mater exclamat: 'filium amavi!' pater dicit: 'oc- [357, 10] cidi.' nefas est utrumque putetis innocentem. iam quidem, nocentissime senex, grande deprehensae feritatis indicium est, quod, cum filium occideris, ut interrogeris, expectas: non erumpis ab illo secreto tuo terribilis in publicum, et homo filii cruore perfusus non proclamas, non deos homi- [357, 15] nesque testaris, non occidis et matrem? scilicet modestia te scelerum tuorum cum maxime decet, et ideo tibi relinquis, unde sis quietae patientiae: [5] miser parcis uxori, coniugales deos et lectuli iura revereris. o quam non habet nec quod mentiatur!

[357, 20] Malae tractationis agimus. placet ergo, iudices, ut illa voce, qua matrimoniorum conquerimur iniurias, gemitu, quo corporum contumelias, damna cultus et negatos in publicum deflemus egressus, orbitates ac liberorum suprema plangantur? quid tamen facere vultis miserum dolorem, si [357, 25] non habet aliam sexus hic legem, si intra

iuris huius angustias omnis nuptiarum querela constricta est? mater, quae de [358] morte filii maritum malae tractationis accusat, non vindicat, sed probare contenta est, quod non debuerit occidi

Omittamus paulisper, iudices, orbitatis tristissimae dolorem, et in parricidio malae tractationis reddamus aliunde [358, 5] causas ita non iuste quereretur uxor, si diceret 'adulterium de me facile suspicatus es, cito credidisti'? matronalis pudor tutelam non ex sua tantum innocentia habet, infirmitas huius sexus non potest totam [in]probitatis existimationem debere tantum moribus suis, omnis in feminas venit mari- [358, 10] torum praedicatione reverentia, omnes sermones originem de vestris pectoribus accipiunt tristior vultus, querela, fastidium fatum est coniugii de pudore pronuntiat, mittit in ora populi, mittit in fabulas hoc proxima ministeria narrant, hoc exteri putant nemo peiore exemplo temere de [358, 15] uxore credit, quam cui omnes credituri sunt sane faciat vos pronos ad suspiciones nimia caritas, et <ex> inpatientia diligendi plerumque descendat, ut credas facile, quod timeas, furtiva stupra raptosque concubitus obiciat vel falso maritus, fas est, fieri solet, parcius tamen, si iam sit et mater, si [358, 20] in fidem castitatis uxoria fecunditate profecerit quid, si sit iam iuvene quoque filio severa, iam nurum nepotesque prospiciat? 6 miseremini temporum, ne alienae innocentiae interpretationem de suis quisque moribus trahat incestum [359] posse fieri pater hoc solo vult probare, quod filium potuit occidere

'Rumor,' inquit, 'fuit est hercules, cui contra rerum naturam, contra parentes liberosque credatur' 'rumor fuit' [359, 5] hoc ergo sic audiemus, tamquam si diceret 'consciis detulit servus, nuntiavit ancilla, improvisus adstiti, dum non timeor, adveni'? rogo, iudices, utrum credibilius putatis incestum de matre an de rumore mendacium? rem inprudenter popululus loquendo fecerat, nisi pater credidisset

[359, 10] Pessimum, iudices, humanarum mentium malum est, quod semper avidius nefanda finguntur, nec umquam se maius operae pretium putant maligni facere sermones, quam cum incredibilia quasi deprehensa narrantur Necesse est contentiosius loquaris quod probare non possis, et adfir- [359, 15] mationem sumit ex homine quicquid non habet ex veritate est tamen hoc iniquissimum de loquacitate populi, quod plerumque accendit contentio non credentium fama<m> materiam miraris rumoris, de qua nemo nec sibi credit, quam qui narrat, adsignat alii rumor res sine teste, sine [359, 20] indice, res ex incertis inprobissima, maligna, fallax et similis silentio tuo 7 quid et ipse de rumore senseris, vis breviter probem? tormentis quaerendum putasti, an verum diceret

Sane sit aliqua publici sermonis auctoritas in illis, ad quae [360] fas est populi pervenire notitiam vide[o], cur adulteria proferantur in fabulas explicantur per ministeria, per conscios, habent inconsulta gaudia pars voluptatis videtur esse iactatio facinus vero, cui, si fas est, ut illud humanae mentis [360, 5] capiat audacia, circumdatur undique nox profunda, densior caligo tenebrarum, quod nocentes suis quoque oculis vix fatentur, non servo, non creditur ancillae quid internuntius, quid opus est ministeriis? sufficit animus duorum, explicat omne filius materque secretum incestum tanto incredibi- [360, 10] lius est, quanto et de illo plures locuntur

O misera condicio sexus, cuius ipsae plerumque virtutes fabulas parant' 'cur ista nullis in publicum gaudet egressibus? unde adversum omnes tam rigida conversatio, tam

severus adfectus? nihil concupiscit, nihil ergo desiderat? [360, 15] filius possidet cuncta tempora, universos occupavit adfectus, filius matris tota iactatio est rogo, numquid adamavit? mihi credite, non est nefandorum ista simplicitas da, ut sit haec inter matrem ac filium conscientia, parcent osculis palam, abstinebunt coram patre complexibus, omnis fami- [360, 20] liaritas substringetur in publico, sermones, occursum coram servulis libertisque vitabunt, et maximi sceleris ardor captabit adfectare gravitatem 8 elige, parricida, quod voles incestum diligens suspectum non erit, neglegens deprehendetur.

Sed quid ego sic ago, tamquam inauditum, incredibile [360, 25] scelus locutus sit populus? teneo in hoc sermone facinus [361] unius mali mariti non interest, incestum de uxore fingat an credat quid? iste ergo non timuit tam nefandae rei famam, nec ad aures patris pervenire rumor erubuit? dissimules licet, a te malignitas accepit ortum, te secutus est, quisquis [361, 5] hoc ausus est narrare, proferre. da bonum patrem, bonum maritum, dicturum me putas, non credet? nesciet esse rumorem ite nunc, iudices, et adhuc dubitate, quis famae fuerit auctor, cuius pater agit causam

9 'Speciosus,' inquit, 'fuit' non magis hoc facinus in matre [361, 10] est quam crimen in filio 'speciosus fuit' ut hoc obici possit, ut debeat, adice, 'et adulter et raptor, in illa matrona maritali dolore paene percussus, in illa virgine publica subclamatus invidia' quamquam haec quoque intra notos decurrunt iuventutis excursus quid ais? ab incesto libidines coe- [361, 15] perunt? hoc primum umquam iuvenis admisit? hoc solum argumentum sumis ex forma? dic potius 'deprehendi iuvenem mihi venena miscentem, in necem meam conscientia sceleris est armatus' infinitum est, quantum debeat ante fecisse filius, ut de illo incestum pater sibi credat 'speciosus [361, 20] fuit' quis enim non est formosus filius matri? amant debilitates, amplectuntur illum morborum suppliciorumque pallorem, et in vires caritatis adcrevit ipsa miseratio non in- [362] pedit <s>acrae pietatis animum deformitas, pulchritudo non auget, amare liberos unus adfectus est liberi, marite, liberi non amantur oculis, non complectitur mater ore, non vultu, sed est in filio matri nescio quid homine formosius [362, 5] possit forsitan novitas sollicitare visus, expugnare mentes, in matris aspectu coalescit infantia, pueritia consurgit, iuventa subrepat, speciosum suum cotidie videt, miratur, amplectitur quae tamdiu amavit, quando incipiat amare desinere? non est opus, nocentissime senex, ad hoc nefas cari- [362, 10] tate, sed amentia, sed furore ut in iuvene suo mater possit concupiscere, quod formosus est, oderit oportet, quod filius est, et adeo sacris adfectibus non adiuvatur in facinus, ut ad illud nisi per oblivionem sui transire non possit

10 Quid, quod et hoc incredibilis est, quod parem duorum [362, 15] poscit insaniam, et ad incestum opus est, ut adamet et filius, non ut adametur? ab utro deinde vultis incipere preces, venire sermonem? audebit hoc rogare filius matrem, mater hoc inpetratam se sperabit a filio? hunc animum tuum, senex, quo cum maxime taces, si non est callida, non mali- [363] gna simulatio, de fide tanti sceleris interrogo an potest mater admittere, quod loqui non potest pater?

'Speciosus fuit' libet interrogare hoc loco omnes humani generis adfectus placet ergo, ut, si filio optigerit indulgen- [363, 5] tior facies, vultus erectior, refugiat mater amplexus? si virginem usque ad notabilem speciem natura formaverit, timeat oscula pater horreatque contactum? dii deaque male perdant tam inpudentes sollicitudines, tam nefarios

metus¹ prope est ab incesto timere, ne fiat malo simplicitatem, [363, 10] quae non vereatur infamiam, malo nudos adfectus inconsultamque pietatem, nihil de se fingi, nihil credant posse narrari teneat insatiabiliter, avide, tanti fama non est, ut amet filium mater sollicitudine pudicae

Me quidem, marite, si quis interroget, omnes matres libe- [363, 15] ros suos, tamquam adamaverint, amant videbis oculos numquam a facie vultuque deflectere, comere caput habitumque componere, suspirare cum recesserit, exultare, cum venerit, conserere manus, pendere cervicibus, non oculos, non conloquiis, non praesentiae voluptate satiari hoc [363, 20] est ergo <in> tam nefanda suspicione saevissimum incestum non potest fingi, nisi de optima matre execraretur mehercules, iudices, si crimen istud clarius obiecisset filio pater, si usque ad verborum processisset amentiam nemini minus fas esse debet credere incestum, quam qui propter [363, 25] illud paratus est filium occidere.

[364] 11 Quid, quod non credis tantum, nefande, sed quaeris? Ita tu non times monstri huius agitare secretum? 'populus loquitur incestum,' sed tu nega 'civitas infamat,' tanto magis osculare unicum et coniugem, tene pariter, duos circa tuum [364, 5] stringe complexum pro inaudita feritas! ita patri non sufficit non credere incestum, quod non potest probare? ferrem tamen adhuc suspiciones tuas, nefandissime senex, si dissimulanter indicia tanti sceleris agitasses? observa sermones, secreta custodi, omnium dierum noctiumque momentis sa- [364, 10] gax scrutator insiste quid tibi cum abruptis, quid cum supremis? incestum iam credas oportet, ut torqueas. at tu – pro nefas! – verberibus, ignibus et tota crudelitatis arte scrutaris rem, de qua non deberes interrogare servos, de qua vernilium quoque corporum patientiam petulanter ex- [364, 15] cutes laminas accendis, eculeos moves et parricidio suspicaris incestum nescis, quod praeceps, quod abruptum tam nefandae diligentiae furore commoveas? pater, qui de incesto filium torquet, non est neganti crediturus

Omnium quidem, iudices, incertorum suspiciones pes- [364, 20] sime semper a corporibus incipiunt, nec bene de cuiusquam moribus illam partem hominis interroges, quae non animo, sed dolore respondet nondum dico, quem torqueas, quis inter eculeos ignesque ponatur, criminis argu<men>ta prius, indicia praecedant novissimum debet esse, quicquid [365] obiter et torquet[ur] et punit fidem hominum deorumque, ne gravitatem putetis a novissimis ultimisque coepisse! non habet probationem facinus, de quo pater non potest alium torquere quam filium

[365, 5] 12 Video, qua possis ratione defendi, si omnia ante fecisti, ut incestum aliter erueres. quid ais? interrogasti servulos, nec potuit conscius inveniri? exquisisti ancillas, non apparuit ministra flagitii? non obscena litterarum commercia, non fatentis deprehendisti nefanda blanditias? nihil invenis [365, 5] mantus, dominus, pater? 1 nunc et dic scisse rumorem!

Sed, ut torqueas, ducatur tamen quaestio per coniugis ministeria, per filii servulos, in illa potius vilitate desaeviat prius est, ut repudietur uxor, ut divortio fiat in domo grande secretum excedit omnem inmanitatem filium ideo [365, 15] torquere, ut scias, an nocens torqueatur unicum pater ignibus verberibusque interrogas, rogo, quid factururus, si pernegaverit? videlicet, ut laudes, deinde dimittas, ut amplectaris perusta vitalia et laceri pectoris vulnera pietati rursus ad- [366] moveas? solus superest pudor homini, qui torsit

unicum, tūtorquere debuerit† faciat te necesse est res ista pessimum patrem, et oderis oportet filium, cui satisfacere non possis iamiam malo venena, ferrum, subitos ictus improvi- [366, 5] samque mortem incestum qui non credit, torquere non debet, qui credit, statim debet occidere

Quodsi tormenta etiam filii placent, si praestanda est satisfactio tam nefanda rumori[s], exigo, ne perdas quaestionem in media civitate, in ipsa constitue fama, advoca illos [366, 10] malignos, illos loquaces, et saeculi rem exquire audiente populo coram omnibus torqueri debet, de quo locuntur omnes. interroget quisque, quod volet, suis auribus, suis credat oculis cur in abditam semotamque partem iuvenis abducitur? secretum quaestionis nec incesto filio debetur [366, 15] nec innocentī dabo adhuc inter secretum publicationemque temperamentum. advoca propinquos, adhibe amicos, circumpone iuveni serios senes, intersint magistratus, adsistant, quibus habere possit civitas fidem praestare debes aut tibi, ut probare possis, si confessus fuerit, aut filio, si perne- [366, 20] gaverit. **13** at tu, nefande, crudelis, tollis quaestionis alteram partem efficis, ne possit amplius innocens esse, qui tortus est. quid agunt contra populum tormenta secreta? praedico, testor, iterum dantur malignis alimenta sermonibus, et a quaestione seposita in maius reditur incertum coram omni- [367] bus torquere debet filium pater, et qui vult absolvere et qui est paratus occidere

Non vultis, iudices, ad facinus indignissimae quaestionis accedat et quod ipse torsit filium pater? adeone non potuit [367, 5] libertis aut servulis necessitas ista mandari, non carnifex potius adhiberi? pater in tormentis filii non aversos tenuit oculos, ipse vestes scidit, velamenta laceravit, manibus flagella concussit, renovavit ignes et mori filium contentione non sivit; diduxit os, quod iam suprema claudebant, fovit [367, 10] animum, ut longis cruciatibus patientia sufficeret o dignum patrem, cui dicat innocens filius 'feci'

Non mehercules inprobe mihi proclamaturus hoc loco videor hominem, qui torquetur in matrem, debere coram matre torqueri cur excluditur infelix a sua causa, a sua [367, 15] quaestione? adhibe speciosi cruciatibus hanc nimis amantem, huius gemitus excipe, huius suspiria oculosque custodi, si quod facinus admissum est, torquebis quidem filium, sed fatebitur mater

14 Inrumpere me cum maxime puta in illud tuum, parricida, [367, 20] secretum, inicio properanti quaestioni manum inhibe ictus, subtrahe paulisper ignes. quicquid est, quod eruisti, profer in medium. memento te fecisse de filio, propter quod tibi [368] non debeat credi quid spiritum dolore praecipitas, quid miserae intervalla patientiae pertinaci crudelitate continuas? [si] frustra tibi sufficere credis, quod audieris, nuntiare, proferre incestum ut credatur, ipse debet audiri.

[368, 5] Mirabar et ego, iudices, si tam nefanda quaestio alium exitum potuisset habere quam mortem hic est parricidii pudor, sic desinunt, quae incipere non debent facinus quaestionis operis scelere maiore exire tibi videris per orbitatem scimus, unde venerit ista contentio. nihil extorsit [368, 10] saevitia misero vincit torquentem qui occiditur

Iamiam non miror, quod post ista non habes vocem, verba non invenis unicum sine teste lacerasti, unicum occidisti soli tibi deinde vis videri celare facinus, et in parricidio quaeris aliunde trisitiam praepostera res est filium occide- [368, 15] re, deinde

erubescere fas non est non esse notum, propter quod se parricida putat innocentem eligas utrum voles aut tormenta damnes necesse est aut silentium quod non debet indicari, non debet quaeri posses videri fortassis, crudelissime senex, silentium filio praestare, si viveret, consumpta [368, 20] est paterni nominis religio, omnis pietatis sublata reverentia si hoc ille meruit, parum in quaestione, parum ultionis in morte est vindicare vis confessionem? traduc cadaver, et super illa vulnera omnes pone causas non est eiusdem fateri, cur torseris, et tacere, cur occideris

[368, 25] **15** Quid ais, severissime parricida? filium consumpsisti per flagella, per laminas potes tacere? viscera de tuis concepta [369] vitalibus, sanguinem, qui de tua fluxit anima, non insania, non furore sed, quantum vis videri, consilio, gravitate lacerasti potes tacere? super vulnera unici, super exustos artus metuendus adsisisti, et causas quaerente matre, quaerente [369, 5] populo hoc solum dicis 'occidi, contenta esse debet incerto' interrogari nunc te, marite, credis a matre sola? causas mortis illius reposcit sollicitudo generis humani stant circa liberos attoniti parentes, horret invicem se caritas fraterna complecti, rupta est illa osculorum inter soceros gene- [369, 10] rosque simplicitas quousque nos cum silentii tui interpretatione committis? si nihil factum est, quod debeat erubescere temporum pudor, quid sibi volunt verba media, suspensa? si nefas prodigiosis simile fabulis deprehendisti, miserere, ne sis una morte contentus incestam gravius odisse [369, 15] debes, quod et venit in forum, quod audaciam innocentis imitatur, et tacenti videtur irasci cum filium propter rumorem torseris, propter tormenta occideris, non est media res, ut neutrum sciamus

Mater quidem, iudices, innocentissima hoc complorat, [369, 20] hoc ferre non potest, quod nihil parricida respondet, sed nobis videtur iamiamque esse dicturus **16** non fallit nos, nefande, quid captes hoc, quod supra silentium trahis alta suspiria, quod in prorumpenti videris exclamatione deficere, mendacio paratur auctoritas, et in fidem erupturae [369, 25] vocis adfertur, ut fateri videaris invitus dic tamen! par est huic rei matris integritas, ut mentiaris o quanto nunc dolore torqueris, quod instantem non potes aliqua truci pro- [370] clamatione discutere! non verba tibi contra miseram, sed argumenta desunt, non voce, sed probatione deficeris quod solum datur, relinquis infamiae, et nos cum perpetua sermonum malignitate committis qui interrogantem uxorem [370, 5] nec damnat nec absolvit, rumore contentus est modestiam mariti pariter et patris accipite de muliere, quae convinci non potest, sufficere sibi putat, ut incesta credatur quis umquam tam nefandas artes, tam cruentum deprehendit ingenium? quia non potest probare, quod dixerit, captat, ut [370, 10] credatur, quod non dixerit dissimulas, taces, saeve, crudelis, invenisti tormenta matris

17 Audi, quid misera simplicissimo dolore proclamet 'non efficies,' inquit, 'callidissime parricidarum, ut non audeam cadaver amplecti ego vero incesta sum, si possum moderari [370, 15] gemitus, comprimere lacrimas coite in funus, omnes liberi, omnes parentes, custodite planctus meos, observate suspiria si quid feci, si quid admisi, fatebor ecce supra lectulum effusa feralem laceros artus et perustum complexa corpus exclamo teneo unicum meum, velit nolit invidia, meum [370, 20] misera formosum hoc erat, quod infelicissimam matrem ultra solitae caritatis exagitabat adfectus amabam, marite, perituum infames quantumlibet hanc impatientiam, ego mihi videor defuisse,

cessasse, multum de laetitia, multum perdidisse de gaudiis nemo umquam filium nimis amavit'

[370, 25] 'Excuso tibi,' inquit, 'iuvenis innocentissime, quod supremis tuis nondum praestiti misera comitatum vivere quidem [371] te defuncto continuo non debui, sed mori marito tacente non potui rumpam taedium lucis invisae, si prius licuerit coram civitate manibus tuis iusta persolvere, cum damnato supra callidissimum silentium parricida nihil te dixisse con- [371, 5] stiterit ignosce, quod ad iudicium istud orbata duravi. timui, ne, si ad exitum impatientia, si praecipiti pietate properassem, faceret alium parricida de mea morte rumorem'

XIX. Infamis in matrem II

Malae tractationis sit actio Speciosum filium infamem, [371, 10] tamquam incestum cum matre committeret, in secreta domus parte pater torsit et occidit in tormentis interrogat illum mater, quid ex iuvene compererit, nolentem dicere malae tractationis accusat.

[372] 1 Debebatur quidem tristissimae orbitatis misero pudori, ut iam taceremus omnes, et post tam prodigiosas rerum sermonumque novitates oportuerat hoc esse novissimum de malis infelicissimae domus, quod occidi filium pater, sed [372, 5] quoniam mulier inmodici semper adfectus super cuncta, quae vel passus sum paulo ante vel feci, reatus quoque me dolore concussit, veni petiturus a vobis, ne me scientem silentium contentioni praestare credatis, non quia occidi filium, taceo, sed occisus est, ut tacerem utinam, iudices, [372, 10] negare possem, quod occidi, utinam totum miserae necessitatis ordinem fas esset intra pectoris huius premere secretum' miratur hanc aliquis patientiam meam? ardor ille, qui me modo inpegit in filium, ipsa sui immanitate consumptus est quicquid erumpere posset in proclamationem, parrici- [372, 15] dio peractum est, in orbitate conticuit non habeo adfectum, nisi quo cuncta tantum patiar, audiam, feram utrumque de filio fieri non potest, ut et occiderim et fatear, cur meruerit occidi

Quapropter, iudices, satis admirari, satis stupere non [372, 20] possum, quod mulier, cuius praeter optimam sane conscientiam sexus quoque maiorem malis nostris pudorem praestare debebat, tacere non potest silentium meum 2 novo [373] quin immo fabulosoque secum inpatientiae genere dissentit queritur de populo, quod loquatur, de patre, quod taceat, nec contenta confessione mariti nihil se dissimulare, nihil scire reatus auctoritate testantis, mavult de silentio [373, 5] meo facere secretum. orbitatis istud amentia sit an innocentia, perditus dolor viderit, ipsius animus potest scire, quid filius meus dixerit, quae me putat habere, quod dicam

Fidem igitur vestram, iudices, ne vos orbitatis miseratione confundat sola mater, neve maximae calamitatis ibi [373, 10] tantum putetis resedissem sensum, unde vos lacrimae gemitusque conveniunt mei magis debetis in uxoris conparatione misereri, qui filium et perdidit et occidi ego sum infelicior ex parentibus duobus, qui quicquid, iudices, ista conplorat, et patior et feci felicem ignorance conscientiam [373, 15] matris, quae sufficit

interrogare¹ maior me impatientia, maior urit adfectus cur filium occiderim, indicare non possum, nec paenitet, quod occidi

Infelix senectus, misera patientia, sic quoque quam multa dicenda sunt¹ fuimus quondam, iudices, fuimus felicissimi [373, 20] parentes, cum adhuc rudis unici nobis blandiretur infantia, duravitque domus tota prosperitas, quamdiu pariter fruebamur, pariter dileximus, quamdiu civitas de nobis hoc solum poterat loqui, filium nos habere formosum ut vero in eam adolevit aetatem, in qua corporalibus bonis iuventus [373, 25] insolenter exultat, superbus atque adrogans in nullum vitae genus, non in privatos, non in publicos actus florentem duxit aetatem. 3 dii immortales, quantus qualisque circa iuve- [374] nem rumor ingemuit¹ omnium maledictis succlamatus, omnium denotatione damnatus est, donec et ipse consensum circa se publici doloris agnosceret inde rarus in publico, et tamquam patris occursum, tamquam civitatis ora vitaret [374, 5] non est leve concipere verbis, in quantam civitatis execrationem, in quantam culpam iuvenis inciderit dictus est occidere posse patrem, dictus est dignus, quem posset etiam pater occidere quid facerem, iudices, infelicissimus senex? iam iam non evitabat fama nec patrem, iam meis auribus [374, 10] nemo parcebat interrogare non audebam, dissimulare non poteram fallitur, quisquis me putat quicquam fecisse consilio impetus ac temporis ipsius nescio quis ardor explicuit prae parari filio tormenta non possunt.

Est in miseris penatibus pars remota, seposita, profunda [374, 15] tenebris, tristis accessu, omnibus apta flagitiis, et in qua audeat facere facinus et pater illo, fateor, dum me variae cogitationes per totius domus spatia circumagunt, quantum intellegere licuit, improvisus adveni et ille quidem ad conspectum meum tamquam deprehensus obstipuit refugitque [374, 20] trepidus, puto, ne quaerem causam inrumpo festinanter, avide, sine liberto, sine servulo, sicut me deprehenderat temporis illius fatum, manibus, ictibus et quaecumque ex obviis dolor in telorum transtulerat usus, ultra vires senectutis adgressus, ignes ex proximo raptos, verbera, quae ca- [374, 25] sus obtulerat, non diviso dolore, non per partes nec per [375] intervalla suspensio, sed semel, sed pariter invado pars secreti fuit, ut ipse torquerem 4 dii immortales, quae contumacia, quae fuit illa patientia, cum domi torqueretur a patre, non invocare matrem¹ non repugnavit iuvenis, non oppo- [375, 5] suit manus, nullum imploravit auxilium, mersis tantum deiectisque luminibus, tamquam numquam flagella sustinisset, tamquam meis torqueretur oculis, omnis ictus excepit in faciem, verberibus, ignibus laudatos vultus, velut illis irascereetur, opposuit reddo testimonium novissimum pu- [375, 10] dor¹ cum iam mori vellet, occisus est

Laudo, iudices, patientiam matris cum et ipsa semper plurimum esset domi, et ab illo secreto fortasse non longe, intervenire noluit, interpellare non ausa est sed et manibus meis gratulor, quod non propinquus aliquis, non amicus [375, 15] inrupit, occidissem, quisquis me tunc ausus fuisset interrogare pro filio sepelivi tamen lacera membra, funus indulsi, ossa collegi. non iniecit uxor lectulo manum, non inter exequias planctibus elisisque uberibus mihi fecit invidiam unde in hanc impatientiam prorupit, exiit² domi me nihil [375, 20] interrogavit

Possum iam, mater infelix, coram liberis ac parentibus, possum audientibus diis hominibusque clamare. et ego amavi filium meum, non osculis, non infirmitate, non lacrimis, sed viribus, dolore, patientia unicum, quem, si acie [375, 25] clausisset hostis,

vicaria morte servassem, si subitum cinxis- [376] set incendium, extulissem relicta meorum parte membrorum, eripui malignitati, abstuli famae habeo, quod inputem tibi, natura, pietas rem difficillimam feci, quod non me potius occidi.

[376, 5] **5** Malae tractationis accusat adeone, uxor, tibi parum videor dedisse poenarum post parricidium, ut labores, ne lucrifaciat pater, quod occidit filium suum? non pudet ergo, si<c> irascers parricidae? quid tibi cum lege, quam propter alios minores accepistis adfectus? querelas habet ista, non [376, 10] gemitus, et matre seposita solam conplorat uxorem

Rursus ad populum vocas miserum pudorem, materiam novi rumoris accendis, perdi ergo rationem secreti mei sic omnia feceram, ne quid aut quaeri posset aut dici iam vero quid inpudentius, quid indignius quam cum sibi de [376, 15] liberis credunt licere tantundem, et aequum ius patris ac matris esse contendunt, quasi nesciant nobis arbitrium vitae necisque commissum! non est privilegium filium occidere, cum fieri potest, nec quisquam tantum ideo fecit, quia liceret. viscera unici lacerare suffeci, ignosce si non potes, mihi [376, 20] crede nemo filium suum occidit odio, non erit tanti iuvenis invisus. illud est in patribus usque ad parricidium terribile, quod amant, quod succurrunt, quod sibi videntur aliter non posse misereri non est, quod vos ab aestimatione malorum meorum mollior sexus abducat; maioris adfectus est filium [376, 25] occidere quam vindicare desine igitur me, mulier, fatigare [377] interrogationibus tuis ita tibi non videtur omnia respondere pro filio, qui dicit 'occidi'? et licet comprimantur exclamationes, ora claudantur, nihil negat, qui hoc fatetur atquin summorum facinorum ipsa inmanitas innocentia est [377, 5] filium pater non demens, non insanus occidi – hominem extra sensus adfectusque positum, quisquis non miseretur! – occidi[t] **6** vides senem sanguine suo fluentem, laceratis exustisque illis sanctionibus carioribusque visceribus super exanimis unici corpus cruentis manibus iacentem; horre[o] [377, 10] cadaver et velut corpora, quae caelestis exanimavit ignis, adire propius time[o]. ad quaedam facinora sufficit claudere oculos, vultus avertere, tacere, mirari et incredibilis calamitates relinquere suis causis. miserere, ne quid amplius quaeras, ne quid interroges dicturum me putas. [377, 15] 'parce saeculo, parce marito, parce patri'? tu vero parce illi, qui occisus est

Novum, iudices, uxoris in marito crimen audite silentium est, de quo queritur solebat indignatio vestra convicia nostra ferre non posse, et matronalis indignatio dicere vide- [377, 20] batur 'non parcis erga me, marite, verbis, nullam habet nostri tuus sermo reverentiam; facile prorumpis in oppro- [378] bria, facile quodlibet obicis, exclamas, et, dum nimium libertati vocis indulges, potest populus aliquem de me facere rumorem' tu, mulier, obicis mihi rem, quae nulli umquam crimini fuit, solam in nostris moribus innocentiam, vo- [378, 5] ce<m> repressam [taciturnitas] vide, cur manus, cur verba peccare videantur illis infamamus, his torquemus, occidimus vis scire, quam non possis queri de silentio meo? felicissima fueras, si idem fecissemus omnes

Finge me paulisper sepositis silentii causis hoc tantum [378, 10] respondere non prodo secretum. **7** ex omnibus, iudices, quibus humana pectora seriis gravibusque complentur adfectibus, nullam difficiliorem quam silentii credo virtutem, adeoque promptissimo sermone facile delinquimus, ut constantiam tacendi neque in aliis ferre possimus crimen hoc [378, 15] in me mulier vocat, quod in priscis illis morum

mentiumque rectoribus fuit prima sapientia, quod quosdam totius vitae pertulisse patientia[m] magis illa seria miratur antiquitas, quam quod temporum vices, siderum cursus et profunda naturae velut conscia ratione sanxerunt quae, per fidem, [379] inpotentia est effringere rigens sacra dissimulatione pectus, evolvere animum, quem supra sua secreta compositum non laetitia, non dolor, non necessitas, non fortuita laxaverint! quisquis de tacente queritur, multo minus ferre poterit lo- [379, 5] quentem nec adeo coniugali societate cuncta miscentur, ut nihil sibi adversus hanc concordiam proprium relinquat animus est aliquis etiam a sanguine suo secretus adfectus genusque reverentiae, ut tacenda minime velis scire carissimos, quaedam non possis verberibus, eculeis eruere, et ple- [379, 10] rosque videas fortiter supra sua secreta morientis agedum, si videtur, utrumque sexum, omnem condicionem, omnem scrutemur aetatem nullum sine conscientia pectus, nulla vita sine causis tacendi si te interrogaret omnia maritus, haberes aliquid et tu, quod non fatereris et quanto silen- [379, 15] tium gravius est in sene, verecundius in marito, sanctius in patre! 8 pudeat nos, mulier, infirmitatis vicit nos modo iuvenis ille constantia, mori voluit, ut taceremus

Vides, mulier, quibus in<ter>pretationibus praestes tuum dolorem? dicens ideo me interrogare, quia scias omnia me [379, 20] potius pati malle quam loqui quis enim in hac civitate non novit taciturnitatis meae rigorem, quis ignorat, qua cuncta soleam ferre patientia? ne occisurus quidem suspiria gemitusque praemisi, nihil feci, unde erupturum quandoque per orbitatem patris animum aut tu praescio timore sentires aut [380] ipse periturus hanc nunc me iactare constantiam putas, quod nihil in publico, nihil in ullo mihi permisi proclamare conventu? ego vero non sum questus de iuvene nec tibi, nec captavi, ut illum mecum et mater odisset frustra te putas [380, 5] extorquere accusatione posse, quod mihi non ipsae calamitates, non dolor, non meditatio orbitatis expressit Uras licet, durabo, perferam passus sum iam, quod erat difficilius occidi

'Torsit,' inquit, 'filium meum breviter, iudices, ratio [380, 10] reddatur infamem, quid refert, an innocentem, si aliud omnibus liquet? iuvenem cunctis pignoribus invisum, omnibus adfectibus gravem maligni fecere sermones quid agimus, anime, quemadmodum effugimus, evadimus? in tanta infamia nihil facere credentis est vis me circumire singulos, [380, 15] reclamare populo, cum rumore rixari? tuae fortassis infirmitati conveniat negare, me tantum fortior adsertio unici decet eripiendus est non contentione verborum, sed ut civitas stupeat, ut erubescat 9 torquere me filium putas? invidiam facio populo videor mihi illis verberibus lacerare fa- [380, 20] mam, illis ignibus increpare rumorem quaestio de infami filio unam ratione habet, ut probes innocentem

Dii mala prohibeant, ut noveris illum dolorem, quo potest torquere filium pater! nihil est infelicius homine, cui de unico suo mors sola non sufficit iuvenem, in cuius animo [380, 25] perdiderant nomina nostra respectum, quem cotidie necesse habebamus excusare rumori, qui inter nos formosum [381] malebat agere quam filium, verberibus ignibusque consumpsi vis scire, quanta tormentorum ratio fuerit? debuit etiam tortus occidi

Si tamen utique, mater, vis scire causas, breviter audi [381, 5] prospiciebam miser in grande quandoque facinus prorupturum, quod otio vitam, quod desidem domi perdebat aetatem non peregrinationibus excolere mentem, non experiri militiam, non temptare maria, non rura colere, non administrare rem publicam, non ducere volebat uxorem praete-

[381, 10] rea traxerat ex frequentibus castigationibus taedium patris, et in execrationem mei conscientia, quia non emendabatur, exarserat timebat occursus, non audebat adire conloquia, oscula convictusque fugiebat breviter perditissimae mentis definienda mensura est: oderat me filius et timebat

[381, 15] Filium igitur totius civitatis existimatione damnatum, quem adhuc vivere mirabantur homines, torsisse me putatis? ego vero occidi tarde, diu quaestionem illud vocas? poena, supplicium et malorum meorum exitus fuit nulla ratio est interrogandi hominem, cui non est fas nisi negare [381, 20] quanta tamen mihi luit et in quaestione moderatio! 10 non enim praecipiti raptus impulsu exsilii repente, subito, nec captus dolore caeco inpatientiae meae velox vulnus infixi non potest non ratione occidi filius, cum ante torquetur [382] dedi moras, spatium, tempus indulsi vides, quantam hinc malignitatibus potuerim praestare materiam si in illo secreto gladio tantum, si vulneribus egissem, exitum fecerat iuvenis deprehensi.

[382, 5] Non est igitur, mulier, quod mihi facias duplicatae questionis invidiam, id est, quod torsi et occidi sola est huius necessitatis ratio de morte illud est parricidium, filium torquere victurum putas iuvenem vivere potuisse, cui iam non poterat nisi morte succurri? quem contra magnos ser- [382, 10] mones adserere coeperam, non reddidi rursus infamiae, neque in oculos et ora vulgi de secreto patris emisi providentia[m] mea[m] tibi quoque, mater, ne in hunc interrogetur, eripui ille vero non fuit post tormenta laturus vitae pudorem, ut interrogaretur a singulis, ut negaret verum, mulier, [382, 15] adfectibus tuis renuntiandum est ad totius domus nostrae pertinere innocentiam credidi, ne se ipse potius occideret

Sentit, iudices, mulier ad ius querelae suae nec quod torserim, nec quod occiderim pertinere, itaque quaerit, quid mihi dixerit ille, de quo nescit, an dixerit quid ais, mater [382, 20] inpatientis? ita in morte filii tui nihil aliud ad te pertinet, quam quid locutus sit, ita, si respondero, remittis parricidium, tormenta non obicis? o inconsultam muliebrem sem- [383] per amentiam! quid iuvenis in tormentis dixerit, tamquam ignoret, interrogat, nihil comperisse non credit, tamquam sciat, quid dixerit!

11 Fidem communis sanguinis, fidem communium ma- [383, 5] lorum! ne parricidii me velis agitare secretum, ne calamitatibus nostris gravem facias innocentiam tuam! viderit, quid meruerit, iuvenis ille, ego iam possum suprema revereri et post exitum unici revertor in patrem maior defunctis liberis praestanda reverentia est, nec quicquam minus convenit [383, 10] adfectibus patris, quam si insultare videatur occiso in gratiam me cum filio reduxit orbitas, iram nostram mors severa composuit quin immo recogitanti mihi totum secreti illius ordinem subit tacita miseratio quantam ego debeam reverentiam filio, quem potui torquere solus, quem potui solus [383, 15] occidere!

Perseveras, cogis, instas? invicem te, mulier, interrogo, cur, si tanto opere volebas scire, quid interrogarem, quid ille loqueretur, non inruperis in quaestionem, quam nullis ministris, nullis custodibus vallaverat pater. quanto melius, [383, 20] mater, ipsum adisses, quanto fortius interrogasses una, quanto tibi plura dixisset! quis te, mulier, adfectus abegit, tenuit, exclusit? agnosco verecundiam tuam timuisti, credo, ne, si in illo secreto fuisset omnes, occidisse filium diceretur et mater

[383, 25] Instas tamen et miserū senis ora diducis? puta me hoc solum dicere: ex maximi facinoris colluctatione veniens, quid audierim, nondum scio, totus adhuc sum in parricidio meo, et post mortem unici omnia, quibus laceratus, occisus [384] est, in animum meum tormenta redierunt est quidem difficile, ut aliquem pati pudorem parricida videatur, verumtamen stupore<m>, amentia<m>; et in silentium orbitate defeci ablata est mihi omnium verborum fides, omnis sermo- [384, 5] nis auctoritas, nec habet causam loquendi, cui non potest credi 12 desine, mulier, interrogare, filium, quem occidit pater, nec absolvere nec accusare iam debet

'Quid,' inquit, 'dixit, cum occideres?' miseram parricidii innocentiam, quod hoc me non potestas, non magistratus, [384, 10] non propinquus aliquis, non amicus, non ille semper loquax populus ac malignus interrogat' quiescitis, tacetis, me infelicem, numquid scitis omnes? puta me, mulier, hoc tibi respondere non habent incredibilia vocem, quaedam maiora sunt, quam ut illa capiat modus sermonis humani tu vero [384, 15] crede nihil aliud fuisse quam furorem, insanisse me puta videbam quae non fiebant, audiebam, quae nemo dicebat. hoc solum non insanientis habui, quod tacebam finge me respondere nihil dixit, nihil locutus est non credis? atquin multo minus creditura quid dixerit

[384, 20] Accipe, mulier, brevem veramque rationem, cur in quaestione iuvenis occisus est torquebam nec interrogabam si qua ad aures tuas ab illa quamvis remota domus parte perlata vox est, meus gemitus fuit, meorum viscerum [385] dolor quaeris, cur nihil dixerit? quia non habuit, quod scire vellem, quod audire deberem nihil aliud quaestio illa captavit quam silentium, quod praestare vita non poterat quisquis in tormentis occiditur, ideo tortus est, ut occideretur. [385, 5] an tu quaestionem illam fuisse credis, qualis vernilibus corporibus adhibetur? ideo enim eculeos movebam artifex senex, ten<d>ebam fidiculas ratione saevitiae, ut leviter sedibus suis remota compago per singulos artus membra laxaret consumptus est spiritus silentio sui, et verbera ignesque [385, 10] animum pariter vocemque cluserunt videbatur mihi premere gemitus, tenere suspiria, et sic nihil dixit, tamquam torqueretur ab homine, qui sciret. 13 miraris hanc in filio contumaciam, in iuvene patientiam? patri torquenti non potest aliter responderi, quam ut mori malit quam confiteri

[385, 15] Quod sufficit igitur, interrogantibus respondeo, mulier occidi fallitur, quisquis expectat, ut obiciamus illa communia ego vero proclamo non luxuriosum, non amore meretricis infamem; nihil ille delinquebat, quomodo liberi solent monstrum erat inenarrabile, quod nollem deprehen- [385, 20] dere, quod ferre non possem

Miratur aliquis, quod non abdicaverim, nec notissima ultione patrum fuerim tantum expulisse contentus? tuus, mulier, nefarius, tuus inconsultus non permisit adfectus. filium, cui contra severitatem meam ignoscebas, quem mecum [385, 25] odisse non poteras, secuta fuisse abdicatum

[386] Finge iuvenem dixisse nescioquid, ego audire nihil potui. non enim potestatis alicuius more consederam, nec torquentibus aliis agebam iudicem pater ego tunc cuncta et passus sum pariter et feci non vacabat aures praestare ver- [386, 5] bis, excipere gemitus, aestimare singultus, avocavit me contentio, dolor, orbitas, parricidium omnia facta sunt festinatione praecipiti idem patris adfectus est torquere, ut scias, occidere, ut nescias

'In meam,' inquit, 'infamiam taces' ita nunc primum la- [386, 10] boras, misera, de fama, et post unici mortem pertinere ad te coepit, quid loquantur homines? scilicet filius inpensus est, ut erubesceres, ut male audires adeone hoc captanti non erat satis rem totam commisisse rumori? 14 ego vero me famae tuae, mulier, opposui, et inter matrem filiumque me- [386, 15] dius parricidium feci, unicum occidi, ne quid aliud loquerentur homines alioquin si hoc capto, quod putas, quousque taceo, in quod tempus differo illam, quam me putas premere, vocem? ecce reatus, iudicium, pronunti<ati>o ego tamen scire me nego egregiam rationem malignitatis [386, 20] locuturus adversus uxorem feci, ne mihi crederetur!

Fateor igitur nihil ad certum indubitatumque perduxī hoc est quin immo, propter quod ad mortem usque contendi. non explicant tormenta quaestionem, quae occidunt

'Quid,' inquit, 'dixit?' felicem te, misera, si nescis! 'quid [386, 25] dixit?' ita non es contenta conscientia tua? non sufficit, quod non habuit ille, quod negaret, quod fateretur? poscis [387] verba quaestionis, cogis, extorques? testor, tu facis, ne possis negare, quod dixerō 'quid dixit?' parasse se parentibus venenum? negas proditiōnis agitasse sermones? negas tyrannidis misse consilium? negas, et quicquid dixerō, nega- [387, 5] bis o bonae conscientiae incauta simplicitas! ita non times, ne coactus loqui multa fingam, multa componam? si potes scire, mulier, an mentiar, scis, quid dixerit 'quid dixit?' nihil 'quid dixit?' omnia. maledixit saeculo, fecit temporibus invidiam, detestatus est patrem, conviciatus est matri [387, 10] 'quid dixit?' plus quam interrogabam vicisti, mulier, obstinationem meam, audi breve succinctumque responsum, quid dixerit: quod quaeris, quod putas.

15 O si quis in illam vos secreti nostri potuisset adhibere praesentiam! vidissetis novum genus quaestionis stabam [387, 15] senex furis monstrosae feritatis accinctus, manibus exertis, hinc ignibus, hinc verberibus armatus super ora, super oculos iacentis adsistens clamabam. 'furiose, demens, tace!' et ille velut exustis amputatisque, per quae dolor exit in verba, fuit adtonitus, amens. quotiens admotis ignibus ad aliquam [387, 20] corporis partem totum pectus inposuit! quotiens hiatu oris avide flammās adversus exeuntia verba collegit! cum vero iam totus calor verberibus expulsus viribus novissimi doloris erumperet, pertractis ab ima pectoris parte suspiriis brevissime collecti spiritus, ille, quo redditur anima, singultus [387, 25] fuit similis exclamaturō nescio quid, quod et tu fortassis audires occupavi, fateor, et advocatis, quas iam consumpseram, viribus, manibus, telis totoque corpore pariter adnissus, antequam mentiretur, occidi

[388] Misera temporis illius recordatio! deficientem in manibus meis filium vidi, aspexi ora pallentia, frigidos anhelitus, interrupta suspiria et animam magno silentio exeuntem non tamen tormenta laxavi, non subtraxi restinxique flammās [388, 5] miserere, mulier, ne quaeras amplius vocem huius adfectus filium, qui moriebatur, occidi, non perdidī tamen, non perdidī unici mortem, fortuna, non perdidī iam me non interrogat nisi sola mater consiste aedem, mulier, loco meo, et in habitum paterni furoris accincta admove eculeos, fla- [388, 10] gella, laminas, praedico, testor, aliter non possum loqui, aliter mihi non potest credi

16 Quamquam, miserrime iuvenis – fas est enim iam tuos alloqui manes – exprimere mihi vocem nullus poterit dolor quantum volet, laceret, vel occidat, vincere me

tormenta [388, 15] docuisti. si tamen fas est cogitationis memoria tractare verba miserae quaestionis, cur me coram populo magis interrogas? eamus, uxor, in illam desolatam domum, in illud iam patris filique secretum; ibi me interroga, ibi, ubi torsi, ubi occidi, ubi adhuc forsitan filii tui vaga per maestos pe- [388, 20] nates anima discurrit porrigat aliquis imaginem iuvenis occisi, ponat in sinu matris illas vestes, quibus ipsa iuvenem misera comebat eamus ad tumulum, misceamus supra busta lacrimas ibi aut tacebimus pariter aut invicem confitebimur

[388, 25] Iamiam miser mori possum. explicui[t] te, sollicitudo, pietas non scribo tabulas, testamento suprema verba non credo et ego moriar in tormentis meis. illud tantum novissi- [389] mis precibus a te, civitas, per liberos †ferre coniuges paterne† a te, uxor, per occisi iuvenis umbram peto, a te, mater, ne quid amplius quaeras †tu famam ne dicas†.

Proposed textual changes

18,1

- 353, 12 †ne > vel
- 354, 2 cui in peracta crudelitate modestia[e] frontis obstitit > cui in peracta crudelitate modestiae frontis substitit

18,3

- 355, 13 relaturae > relatura
- 355, 14-15 auditus > aditus

18,5

- 358, 16 et <ex> > ex

18,6

- 359, 19-20 materiam miraris rumoris, de qua nemo nec sibi credit, quam qui narrat, adsignat alii > materiam miraris rumoris, de qua nemo nec sibi credit? quam qui narrat, adsignat alii?
- 360, 1 vide[o] > video

18,8

- 361, 2 ergo > sermo

18,9

- 362, 3-4 non complectitur mater ore, non vultu > non complectittur mater ora, non vultus

18,10

- 363, 21-25 execrerer mehercules – filium occidere make a separate paragraph.

18, 11

364, 5-11 ita patri non sufficit non credere incestum, quod non potest probare? ferrem tamen adhuc suspiciones tuas, nefandissime senex, si dissimulanter indicia tanti sceleris agitasses observa sermones, secreta custodi, omnium dierum noctiumque momentis sagax scrutator insiste quid tibi cum abruptis, quid cum supremis? incestum iam credas oportet, ut torqueas at tu > ita patri non sufficit non credere incestum, quod non potest probare? quid tibi cum abruptis, quid cum supremis? incestum iam credas oportet, ut torqueas ferrem tamen adhuc suspiciones tuas, nefandissime senex, si dissimulanter indicia tanti sceleris agitasses observa sermones, secreta custodi, omnium dierum noctiumque momentis sagax scrutator insiste at tu

18, 12

- 365, 9 deprehendisti > reprehendisti
- 365, 13 fiat > patefiat
- 365, 15 unicum > should introduce a new paragraph
- 366, 2 † ut torquere debuerit † > ut torquere debuerit

18, 15

- 369, 4-5 'occidi, contenta esse debet incerto' > 'occidi' contenta esse debet incerto'

18, 16

- 370, 10-11 dissimulas, taces, saeve, crudelis, > dissimulas, taces, saeve, crudelis?

19, 3

- 374, 20 – 375, 1 ultra vires senectutis adgressus, ignes ex proximo raptos, verbera, quae casus obtulerat, non diviso dolore, non per partes nec per intervalla suspenso, sed semel, sed pariter invado > ultra vires senectutis adgressus ignes ex proximo raptos, verbera, quae casus obtulerat; non diviso dolore, non per partes nec per intervalla suspenso, sed semel, sed pariter invado

19, 5

- 376, 8 si<c> irascere > si irascere
- 376, 13 iam vero start a fresh paragraph
- 376, 25 desine igitur start a fresh paragraph

19, 7

- 378, 17 seria antiquitas > severa antiquitas
- 379, 8-9 carissimos, quaedam non possis > carissimos quaedam non possis

19, 10

- 382, 9-15 quem contra magnos sermones adserere coeperam, non reddidi rursus infamiae, neque in oculos et ora vulgi de secreto patris emisi. providentia[m] mea[m] tibi quoque, mater, ne in hunc interrogaretur, cripui ille vero non fuit post tormenta laturus

vitae pudorem, ut interrogetur a singulis, ut negaret verum, mulier, adfectibus tuis renuntiandum est > quem contra magnos sermones adserere coeperam, non reddidi rursus infamiae, neque in oculos et ora vulgi de secreto patris emisi ille vero non fuit post tormenta laturus vitae pudorem, ut interrogaretur a singulis, ut negaret. providentia[m] mea[m] tibi quoque, mater, ne in hunc interrogaretur, eripui. verum, mulier, adfectibus tuis renuntiandum est

19, 12

- 384, 11-12 me infelicem, numquid scitis omnes? > me infelicem! numquid scitis omnes?
- 385, 3-9 quisquis in tormentis occiditur, ideo tortus est, ut occideretur an tu quaestionem illam fuisse credis, qualis vernilibus corporibus adhibetur? ideo enim eculeos movebam artifex senex, ten<d>ebam fidiculas ratione saevitiae, ut leviter sedibus suis remota compago per singulos artus membra laxaret. > an tu quaestionem illam fuisse credis, qualis vernilibus corporibus adhibetur? quisquis in tormentis occiditur, ideo tortus est, ut occideretur ideo enim eculeos movebam artifex senex, ten<d>ebam fidiculas ratione saevitiae, ut leviter sedibus suis remota compago per singulos artus membra laxaret

19, 13

385, 15 Quod sufficit igitur, interrogantibus respondeo > Quod sufficit igitur interrogantibus respondeo

19, 15

387, 17-19 et ille velut exustis amputatisque, per quae dolor exit in verba, fuit adtonitus, amens > et ille, velut exustis amputatisque per quae dolor exit in verba, fuit adtonitus, amens

387, 26-27 advocatis, quas iam consumpseram, viribus > advocatis quas iam consumpseram viribus

388, 6 filium, qui moriebatur, occidi, non perdi > filium, qui moriebatur, occidi non perdi

389, 1-2 a te, civitas, per liberos † ferre coniuges paterne † > a te, civitas, per liberos, per coniuges, per parentes

389, 3 quaeras † tu famam ne dicas † > quaeras, tu, fama, ne dicas

Translation

The translation below is based on Sussman 1987. Bracketed numbers refer to its pages, bold numbers to the text's paragraphs. The translation is followed by a list of changes made by the present author; they are accounted for in the commentary, except when they have been occasioned by textual changes.

[217] **18 The case of the son suspected of incest with his mother (1)**

The Law: Maltreatment may be actionable

The Situation: A father tortured his handsome son in a secluded part of the house and killed him on the rack, since he suspected him of committing incest with his mother. The mother asked her husband what he had learned from their son. Since he refused to tell, she accuses her husband of maltreatment. (Speech in behalf of the wife)

1 May it please the court, although this rather crafty killer of his own son has so arranged his crime that he would make a mother an object of your hatred whether the poor lady turned a blind eye to her own son's death or whether she lodged a formal complaint, and he has brought her besieged by such novel and monstrous acts, to such a pass that he thinks he will once more smear with suspicion either her patience or indignation, nevertheless the mother, in whose calamities the loss of her son commands even the least place, must take recourse in you so you may be aware that the fact that her husband keeps silent is no guarantee for her. Gentlemen, I commend this poor woman to you, yes I do, because she refused to interrogate her husband at home, and because she herself also did nothing in secret. In this hall, before the assembled citizens, before children and their parents, and, although the murderer appears to ignore it, face to face with the rumour, the mother inquires into what he asked during the torture of their only son, and what he found out from his death. At least as a defendant let him reply, let him though angered admit whom he has protected with a pretence of restraint in the cruel act which has been committed. He can neither appear to be showing merciful consideration to a wife about whom he wanted to find out whether she was committing incest or not, nor to his son, whom he killed as though he found out it were true.

Therefore, gentlemen of the jury, above all, this woman, a miserable soul owing to her sense of decent behaviour, asks this favour of the people's judgement, that she does not appear to you to be making an accusation. No, she considers herself a defendant on the charges of incest and killing her son. She is revealing her untroubled conscience to the community and, in the face of whatever the rumours and whatever has been concealed, she is providing to her husband and to public opinion at large the opportunity of questioning her in court. She would be willing to prove her innocence by trial of her own flesh and blood, and this poor woman would be willing to prove her proper conduct by throwing her faithful love onto the torturer's rack or into his flames. **2** Gentlemen, forgive her impatience which

boils over in the release of her resentment against this extremely cunning deception. The father's silence would prove incest, if the mother also kept quiet.

[218] For my part, members of the jury, I cannot marvel enough, I cannot be amazed enough at such contrasting states of mind displayed by the old man during the gossip so suspicious, after torturing his son so forbearing, just recently eager and quick for stories and common gossip, but in the loss of his son, as a murderer, in the mental stress of being on the dock – he has lapsed into silence. What has changed him so suddenly? Into what reticence and despair has he now sunk? He tortured someone, supposing he would make some admission, yet he remains quiet as though some admission were made. Therefore I beg this favour of you, gentlemen of the jury, don't let the inability to defend himself confer on anyone prestige for strict self-discipline, and please don't you prefer to suspect terrible crimes since the murderer of a son prides himself on his silence. Do you suppose that he is now showing mercy to anybody by keeping still? At this very moment he thinks that he is speaking, and if I read the tricks and designs of his crafty mind well, as it appears to him, he is giving more answers than the mother asks questions. Anyone makes a fatal mistake who believes that what we have here is a flood of inexpressible grief and that his modesty is suffering between the rock and hard place of silence or confession. Whoever has killed his son and cannot prove for what reason he should have been killed has no other way out than to appear unwilling to reply.

3 Let this guilty old man connect his own silence with common gossip as much as he pleases and, with all his malice applied, let him shut his lips which would relate the course of her very bitter circumstances. Yes, let him suppress this opportunity to speak. Yet the human race may rest assured, it is altogether fitting and proper for a totally innocent mother to cry out as follows, as though she were in the temples and in the presence of the gods themselves: "I loved my own son." This is a lady, gentlemen of the jury, whose girlhood years and whose mind, young and naive in matters of marriage, were never besmirched by a bad reputation for indecent conduct. Shameless gossip and a suspicious husband never ever charged anything against her, except in the case of her son. And here is prime evidence for chaste conduct – she bore a son acknowledged by her husband as his own. She was not afraid that the likeness of his little face or his maturing features through infancy would reveal an adulterous secret liaison. If you at all believe his mother, as soon as he was born your son, she embraced him more affectionately than other parents do and did not pack him off to wet nurses and servants. She breast-fed him herself and pampered him in her own arms. You killer of your own son! Surely you are not impugning these years and the boyhood of this poor youth? Say farewell to the holy bonds of family ties, if only her son's age causes a mother to appear innocent of incest. An overbearing father intensified this excellent mother's lavish affections towards her only son. He was a harsh husband and so it seemed to her that she was not sufficiently providing the full measure of love which she was conferring on her son for the both of them. For rarely did he kiss his son, and he was reluctant to embrace him. He was the kind of man who looked upon his only son with such an attitude as might render him capable of killing him one day, and [219] so caused his mother's affections to be more conspicuous. For this reason all the unfortunate woman's conversations were with her son and likewise all her ventures outside

the house She also used to be pleased that he was the object of praise when they happened to meet people, and because in every gathering and crowd, attracting the people's attention, he now of his own accord would admit that his mother loved him more than his father did 4 Show your compassion, gentlemen of the jury, please do not believe that her husband drew his foul suspicion from anybody's disclosures No, he acted in accordance with the dictates of his own hard and unyielding heart If you don't love your son, it may well appear to you that his mother has fallen in love with him

Now, gentlemen, do you suppose that I will complain about people's disgusting and freely ranging gossip? No indeed, with a father like this I do not censure the rumour Who it was who provided the fuel for such an indecent fib and who was the source, that man over there who believed it has proven It was quite easy for the people to start talking about incest in a case where they were amazed that the father would suspect it

Gentlemen, these are things which the mother did with an easy conscience, innocently, openly, in front of her husband, and in front of the community Now let this man tell his secret He seized and removed the youth who was then totally unafraid (itself telling evidence of his innocence) into a part of the house where no outcry and no groans could be heard Gentlemen, who ever deserved worse in view of the innocence of these times and the holy bonds of family affection? He tortured his son to prove incest, he killed his son so he would be believed

Now place before your eyes, gentlemen of the jury, the confessions of both parents The mother loudly proclaims "I loved my son!" The father just says, "I killed him " It is impossible for you to think both parties are innocent You guilty old greybeard, it is now indeed powerful evidence of your unmasked savagery that when you killed your son, you waited around to be asked about it Why didn't you rush, a terrible sight, from that concealed room of yours out into the open and now, splattered with your son's blood, make a clamour in your own defence? Why didn't you call men and gods as your witness? Why didn't you kill his mother as well? Well of course! At this very moment diffidence about the evil deeds of your family is proper in your case, and you are reserving your prerogative to suffer in silence 5 Poor fellow, you are sparing your wife and you are displaying your reverence for holy wedlock and the bonds of marriage He doesn't even have anything to lie about!

The charge before us is one of maltreatment In that case then does it please the court that we mourn the death and burial of our children with the same language with which we complain about matrimonial disputes, and the grumbling by which we deplore physical maltreatment, [220] deprivation of nice clothing and permission denied to leave the house? Yet what would you have her do in her pitiful suffering if this sex has no other ordinance if every marital dispute has been constricted within the narrow confines of this law? In the case of her son's death, a mother who accuses her husband of maltreatment is not exacting punishment, but is content with proving that he should not have been killed

Let us pass over for a little while, gentlemen of the jury, her anguish at the very bitter loss of her son and in this murder case let us provide reasons for the charge of maltreatment from another source Wouldn't a wife justly complain if she were to speak as follows "Did you so easily suspect me of adultery and did you believe it so quickly?" A

matron's modesty does not rest its sole defence in her own innocence. In its weakness this sex cannot owe its entire reputation for sexual purity only to its virtuous behaviour. Every iota of respect for women originates in the public statements of their husbands, and all gossip proceeds from your minds. A rather bitter expression on a husband's face, his complaining, and his scorn are a married woman's ruin. A husband makes a public verdict on her chastity, he spreads it by word of mouth, he makes it the talk of the town. The house servants speak about it and strangers believe it. No man gives a worse example in talking recklessly about a wife than a man whom everybody is inclined to believe. Granted, your overly abundant love may render you prone to suspicion and because of your impatient affections often it comes down to the point that you may readily believe the objects of your fears. A husband may charge a woman with secret adultery and stolen favours, even though falsely. It's possible and often happens, yet it is rather rare if she should already be a mother and has progressed into confidence regarding her marital fidelity through her fertility as a wife. But what if with her son already grown she should be a highly principled woman looking forward to the prospects of a daughter-in-law and grandchildren? ⁶ Take pity on these times, don't let anyone draw the interpretation of another's innocent state from his own behaviour. The father wants it possible to prove incest by this fact only, that he could kill his son.

"There was a rumour about it," he tells us. There certainly is, and it is one which is believed in the face of the natural order of things, in the face of the natural ties between parents and children! Well then, shall we listen to your testimony as though you were saying this. "A servant in on the crime denounced them, her maidservant told me, I stood close to the scene when I appeared with no warning, and while they were still unafraid of me I came upon them"?' Now I ask you, gentlement of the jury, do you think it is more believable that a mother is guilty of incest or that a rumour is guilty of being false? In such talk people would have committed a terrible breach of decency unless the father had already given it credence.

Gentlemen, it is human nature's worst fault that people always too eagerly concoct salacious tales and the malicious do not consider it worthwhile to make gossip except where they relate unbelievable things as [221] though detected in the act. One must say all the more emphatically what one cannot prove, and whatever does not have support from the truth of the matter takes it from the person making the assertion. All the same, there is this terribly unfair aspect of people's blabbering – quite often the disputing, even of non-believers, kindles a malicious rumour. Are you surprised that there is a fertile ground for rumour when nobody would believe it by himself and when the speaker assigns it to somebody else? Rumour is something which lacks a witness and an informant. It is something compounded of doubtful ingredients, totally unconscionable, malicious, deceptive – and just like your silence. ⁷ Would you like me to establish briefly how even you felt about the rumour? You thought you had to question your son under torture to see if it was true or not.

Granted, to be sure, people's gossip has some weight in those matters where the public's knowledge can reach. Take a look at why adultery emerges into a hot topic of conversation: servants and go-betweens reveal it; people manage their sensual pleasures

indiscreetly Boasting of it seems to be a part of the pleasure. But here, if possible, is a crime which, in order for the audacity of the human mind to encompass it, is shrouded on all sides by the deep darkness of night and a thick, thick veil of shadows, a crime which the guilty parties scarcely even concede to their own eyes They trust neither the butler nor the upstairs maid What need is there for intermediaries, what need for the help of servants? The couple's passionate designs are enough, a mother and a son totally serve the needs of their secret Incest is all the more incredible, the more people in large numbers talk about it

Pity the sad state of her sex when her very virtues give occasion for scandalous talk! "Why doesn't this woman like to leave her house at all? What's the reason for such stern behaviour and such an unyielding disposition on her part towards everybody? Doesn't she long for anything? Is it true that she desires nothing? Her son occupies all her time, he has seized all her affection, all this mother boasts of is her son I ask you, is it really possible that she has fallen in love with him?" Take my word for it, that well observed openness of hers is not normal in one committing depraved acts Suppose that there is some complicity between mother and son then, public kisses will be few and far between, they will repress any and all intimacies in public, they will avoid conversations or meetings in sight of servants and freedmen, and in their passion for this worst of crimes they will strive to maintain a pose of dignified reserve. 8 Take your choice, you murderer a carefully managed incestuous affair would not have been suspected, but an indiscreet one would be caught red-handed

But why am I carrying on as though the people would start talking of this unheard-of and unbelievable crime? In this gossip I find the crime of only one man It is not important whether an evil husband concocts a charge of incest about his wife or whether he believes it when he hears it What? Well then, didn't the man before us fear the notoriety of such [222] a depraved business and wasn't the rumour embarrassed to reach the father's ears? Though you may pretend otherwise, the malicious rumour originated with you, whoever dared to retell this and bring it out into the open followed your lead Show me a good father and a good husband, do you think I will say this to him and will he refuse to believe it? No, he will be unaware of the rumour Go on now, gentlemen of the jury, and still doubt who was the source of the malicious report when the father acts as its advocate

9 "He was handsome," we are told This is no more a crime in a mother than it is an offence in a son. "He was handsome " For the accusation he is making, then add this "He was both an adulterer and a rapist, he was nearly killed by an outraged husband in one woman's case, in some young lady's case he encountered public indignation " Yet charges such as these also run their course within the familiar escapades of youth What are you telling me? Did his sensuality begin with incest? Did a young man ever perpetrate this crime as his first? Do you take this as your sole proof – his beauty? Tell us instead, "I caught the youth red-handed compounding a poison for me, a guilty conscience for his crime motivated him to kill me " There are no bounds to what awful things a son must have done previously for a father to believe his is guilty of incest "He was handsome " Indeed, what son is not handsome to his mother? They love them though disabled, they embrace them in the pallor of disease and extreme suffering, and their very pity assumes the force of love Deformity does not obstruct the holy bonds of devotion in her soul, beauty does not

increase it It is one and the same emotion to love one's children Husband, listen to me children, I repeat, your children are not loved by one's eyes, a mother does not embrace them because of their face or appearance, but because there is something in a son that is beautiful beyond what is commonly human Perhaps the novelty of beauty may be able to attract one's glances and to conquer one's heart, but under a mother's gaze the infant grows, the boy sprouts up, the young man gradually appears Every day she sees her own handsome son, she admires him, and she embraces him When does a mother who has loved so long begin to stop loving? You guilty old fool, love is not a prerequisite for this sin, but insanity and madness are For a mother to lust after her son because he is handsome, she must hate the fact that he is her son, and so true is it that she is not assisted in committing this crime by the sacred ties of family affection, that she cannot proceed to it except through forgetting that she is his mother

10 What then of the fact that it demands an equal measure of insanity from both – something even more incredible than this – and a requisite for incest to succeed is for the son also to be enamoured, not just to be the object of love Next, which of the two, as you would have it, starts the solicitation and the intimate conversations? Will a son dare ask this of his mother, will a mother expect to succeed with her son in such a request? Old man, regarding your certainty of such an evil crime taking place, I ask this of your mental processes, which at this particular [223] moment are silent (if it is not a cunning and malicious pose) is it possible for a mother to perpetrate something which a father cannot repeat?

Ah, but he was “handsome” Well, at this point I would like to cross-examine the human race regarding all their natural feelings of affection Is it the generally held view, and is it true, that if a son should happen to have a rather gracious face and noble appearance, his mother should avoid embracing him? If nature has fashioned a young woman to the point of striking beauty, should a father flee her kisses and shudder at her touch? Heaven help us from such indecent anxieties and wicked fears! The closest thing to incest is to fear it will happen I prefer the naturalness which doesn't dread disgrace, I prefer bared affections and family love that need no circumspection Let people believe nothing can be badly construed and nothing be made the subject of gossip about themselves Let her hold him insatiably and eagerly, rumour is not so important that a mother should love her son, yet be anxious about her modesty

Indeed, husband, if anybody were to ask me, all mothers love their children as though they have fallen in love with them You will never see their eyes turn away from their appearance and their face, they comb their hair and adjust their clothing, she sighs when he leaves, rejoices when he returns, she clasps his hands in hers, she hangs from his neck, she is sated neither with his kisses, his conversation, or the pleasure of his company There is, then, this very brutal aspect in such a horrible suspicion incest cannot be imagined except in the best of mothers

Really, gentlemen of the jury, I would hate it if the father had charged this crime to his son in clearer terms and if he had been moved to madness in the form of words Nobody has less right to believe there is incest than a man who is prepared to kill his son for that very reason

11 You diabolical man, what of the fact that you not only believed it but that you questioned him about it? Indeed, aren't you afraid to pursue the secret of his monstrous act? "The people are talking of incest" But you should deny it "The citizens are bringing us into disrepute" But you should kiss your son and wife all the more, hold them both at the same time, draw them tightly in your embrace God help us – what unheard-of cruelty! So, isn't it enough for a father to disbelieve incest because he cannot prove it? You wicked old man! Nevertheless, I could still tolerate your suspicions had you investigated the evidence for such a terrible crime in secret observe their conversations, keep a watch on the secluded parts of the house, be a crafty detective and concentrate your attention on their movements night and day But what business do you have with such drastic acts and death itself? You must already believe there is incest for you to torture him But you – heaven help us from this villainy – you inquire into the matter with whips, fire, and every device of cruelty, concerning something for which you shouldn't even interrogate slaves, concerning something for which you would also be insolently provoking groans from their suffering bodies. You heat up the branding irons, you ready [224] the torture rack, and you show your suspicions of incest by murdering your son. Don't you know what a rash and precipitous act you are producing in the madness of such a wicked piece of diligence? A father who tortures his son over incest is not about to believe him if he denies it

To be sure, gentlemen of the jury, in a very unwise method people always set to work on the body regarding suspicions for all acts shrouded in uncertainty, and you would not successfully question in a matter of anyone's character that part of the man which replies, not from his intellect, but from pain Not yet do I mention who it was you tortured, who was put between the rack and the flames First let the proof and the evidence of the crime be brought forward Whatever both tortures and punishes at the same time should be the ultimate phase By all that's holy, don't consider it evidence of stern morality to have started with the ultimate and most drastic measures! A crime lacks any proof in a case where the father cannot torture anybody else but his son

12 I see the means by which you could defend yourself, if you took every measure beforehand to unearth incest by another method What's your answer? Did you interrogate the servant boys, and could no go-between be found? Did you examine the maidservants and did no accomplice to the crime emerge? Didn't you uncover the exchange of their indecent notes or lascivious words confessing their abominable acts? Didn't you find anything – you, the husband, the master of the house, and the father? Well then, go out and say that you have learnt a rumour!

But granted, use torture, nevertheless, let the questioning proceed through the wife's attendants and your son's servants, let it vent its rage preferably on people of that lower rank Your first act is for you to repudiate your wife, and for this immense secret to be revealed in the house through the divorce. It surpasses every form of barbarity for a father to torture his son to find out whether the guilty party is being tortured Do you, his father, interrogate your only son with flames and whips? I ask you, what would you have done if he persistently denied it? Well of course, you would praise and then free him so you could embrace his scorched vitals or furnish your fatherly ministrations to the wounds of his torn up chest to restore things as they were before Shame alone remains for a man who

has tortured his only son, even if he ought to have tortured him This business unavoidably makes you the worst father there is, and you must hate a son to whom you cannot make amends Yes, at this stage I would prefer poison, the sword, a sudden thrust, and an unexpected death A man who does not believe that incest occurred should not apply torture, a man who believes it ought to kill with no hesitation

But if torturing your son seems an acceptable way out, if you must offer such wicked satisfaction to gossip, I demand that you do not ruin your examination Set it up in the middle of the city and in the source itself of the rumour, summon those malicious and talkative people, and inquire into the crime of the century in the hearing of all [225] the citizens A man about whom everyone is talking should be tortured in front of everyone Let each man ask what he will, let him believe his own eyes and ears Why is the young man led off into hidden and remote quarters? A secret questioning is due neither an incestuous nor an innocent son Still, I will offer a compromise between secrecy and full, open disclosure summon the relatives, invite your friends, surround the youth with our sober minded elders, let public officials be present, let people stand by in whom the citizen body can place its confidence You should provide the means either to yourself so that you can prove it if he confessed, or to your son if he totally denies it **13** But, you wicked and cruel man, you took away the other function of an examination you made it so that, since he was tortured, he could no longer appear innocent What can secret torture accomplish in the face of people's talk? I here declare, God is my witness, once again fuel was furnished for malicious gossip and the uncertainty was rendered greater when you interrogated him secretly A father should torture his son in view of everyone – both the father who wishes to absolve his son and one who is prepared to kill him

Since also the father himself tortured his son, doesn't it appear to you, gentlemen of the jury, that this fact adds to the crime of his shocking interrogation? Really, couldn't this task you obviously found imperative be assigned to freedmen or slaves? Couldn't a professional torture master be hired? No, the father didn't avert his eyes during his son's torture, he himself rent and tore apart his son's clothing, with his own hands he brandished the whips, he revived the flames, and he refused to let his son die in the struggle When death was already closing his mouth, he pulled it open, he fostered life so that his son would endure long enough for a prolonged torture How worthy a father, one to whom even an innocent son would say, "I did it!"

Really now! At this point it doesn't seem to me out of place to declare that a man who is tortured in a case regarding his mother should be tortured in front of his mother Why is the poor lady excluded from a proceeding and an interrogation vitally concerned with herself? Summon this woman who loves her son too much to the handsome boy's torture, pick up her groans, observe her sighs, carefully watch her eyes If any crime has been committed, you will of course be torturing your son, but his mother will confess it

14 You murderer! Suppose at this very moment I broke into that secret room of yours and I restrained your premature interrogation stop the blows, take away the fires for a little while Whatever it is that you have uncovered, bring it out into the open Remember that with regard to your son, you have done something on account of which nobody should believe you Why do you rush his breathing with pain? Why with relentless cruelty do you

prolong the intervals of the poor boy's agony? You mistakenly believe that it is adequate for you to declare and disclose [226] what you have heard but for incest to be believed, your son himself has to be heard

Yet I keep wondering, gentlemen of the jury, if such an evil interrogation could have any other outcome than death At this point there is shame for killing a son, thus those acts cease which should not have started in the first place You shroud the evil deed of your interrogation with a greater crime you think you can get off by acting the bereaved father We know the source of your intense exertions your savage treatment squeezed nothing out of the poor boy The man who is killed scores a victory over his tormentor

Even now I am not surprised that after what you did you lost your voice and found nothing to say You tore your only son to shreds without a witness, you murdered your only son in your own selfish interest Next, you wish to appear to be refraining from divulging the crime, and in the murder of your own son you seek the appearance of sadness from another source It is a preposterous situation to kill your son and then to feel diffidence It is wrong for the reason not to be disclosed why the killer considers himself blameless You may take your choice you must condemn either the torture or your silence You must not interrogate someone on a matter which must not be disclosed You could perhaps appear to be supplying your son with your silence, you cruel old man, were he still alive As it is, regard for fatherhood is destroyed and all respect for family ties annihilated If that son of yours deserved this, his questioning under torture and his death are too light a penalty Would you like to punish him for his confession? Display his corpse and over those wounds specify your reasons for inflicting them It's not the same man's role to admit why you tortured him, but to be silent about why you killed him

15 What's your answer, you stern and strict man, one who killed his own son? You destroyed your son with whips and branding irons can you keep silent? You tore to pieces vital organs conceived of your own body, and shed the blood which originated in your own being, not because of insanity or madness, but, as you would have it appear, you mangled him because of your calculated and grave deliberation can you keep silent? Now, you, an object of terror, stand by over the wounds of your only son, over his burned limbs, and when his mother asks for your justification, when the people ask too, you say only this "Yes, I killed him" Must she be satisfied with the reason left unspecified? As her husband, do you believe that you are being questioned only by a mother? No, a concerned human race demands the reason for his death Parents stand shocked and paralysed by fear around their children, brothers, though they love each other, shudder at sharing embraces, that innocence of kisses shared between in-laws has been shattered How long will you engage us in interpreting your silence? If nothing happened which the modesty of our era needs to be ashamed of, what is your purpose in using noncommittal and vague words? If you have discovered an unnatural crime like those [227] found in hideous legends, for pity's sake, don't be satisfied with just one death You should detest the incestuous woman more intensely because she comes into court, because she assumes the confidence of an innocent party and appears enraged at you because of your silence Since you tortured your son because of a rumour, and killed your son through torture, it is not a matter of indifference for us that we know about neither one nor the other

In fact, gentlemen of the jury, a completely innocent mother deplores and cannot tolerate it that the murderer of her son makes no reply at all, but to us, he seems to be on the very verge of speaking. **16** You criminal, we know what you are up to: this is the reason that you heave deep sighs through your silence, that you are faltering in restraining a shout threatening to burst out – you are trying to supply an air of authority to your lies, and, that you appear to admit it against your will is brought forward to produce credibility for a remark apparently ready to escape your lips. But speak out all the same! The mother's innocence is equal to this situation, even supposing that you lie. Oh my, with how much suffering you are now afflicted because you are unable to shake off with some fierce exclamation the woman now pressing her case! You don't lack the words to use against this poor woman, but proof; you are found wanting not in your physical voice, but in logical argument. The only evidence provided you leave to defamation of her character and you involve us in a never-ending round of malicious gossip. A man who neither condemns nor absolves a wife who questions him is satisfied with the rumour. Learn of this man's respect for decency, a man both a husband and a father: in the case of a woman who cannot be proven guilty of incest, he thinks it is sufficient for his purposes that she is believed guilty. Who has ever discovered such despicable craftiness or such cruel ingenuity? Because he cannot prove what he would have said, he seeks to be believed because of what he has not said. You are concealing your purpose and remain quiet, you savage and cruel man; you have found out how to torture a mother.

But hear what the poor woman proclaims in her totally innocent grief: "You, the most cunning murderer in the world, you won't prevent me from acting boldly and embracing my son's corpse. **17** I am indeed a sinner if I can restrain my groans and hold back my tears. Gather for his funeral, all you children and parents, carefully watch my lamentations, observe my deep sighs. If I have done anything, if I have committed any crime, I will confess it. Look, stretched over his funeral bier, and after embracing his mangled limbs and scorched body, I loudly shout this: poor me, I hold my only son – and regardless of any aspersions cast on the word – my handsome son. This was what stirred a poor, unfortunate mother beyond the common feelings of affection: husband, I kept loving a son who was doomed to die. You may blacken as much as you want my inability to tolerate all this, I seem to myself to have been found wanting, to have held back, and to have lost much of my happiness and much of my joy. Nobody has ever loved a son too much."

[228] She continues, "I'm sorry, young man, totally innocent as you are, that in my suffering I have not yet furnished you companionship in your final resting place. Indeed, right after you died I should not have continued living, but it was impossible for me to die while he remained silent. I will cut short my weariness with my hateful life, if first I may render the funeral rites due to your ghost in front of all my fellow citizens, after your killer has been condemned on top of (a conviction for) his clever and cunning silence, and when it has been established that you said nothing. Forgive me since I lasted through this trial though bearing grief for you, my lost son. I was afraid that if I had rushed my death because I couldn't stand it any longer, if I had done so because of my desperate feeling of

affection for you, your murderer – your father – would concoct another rumour, this time about my death.”

[229] **19 The case of the son suspected of incest with his mother (2)**

The Law Maltreatment may be actionable

The Situation A father tortured his handsome son in a secluded part of the house and killed him on the rack, since he suspected him of committing incest with his mother. The mother asked her husband what he had learned from the youth. Since he refused to tell, she accuses her husband of maltreatment. (The husband speaks in his own defence)

1 That we should all now remain silent was, if nothing else, a debt we owe to the distressing humiliation for the terrible loss of our son. Following such unnaturally strange twists of events and the gossip, this should have been the last of the troubles inflicted on our unfortunate household, that I, his father, killed my own son. But since this woman, always characterized by immoderate emotions on top of all those things which I either suffered or which I did just a little while ago, has also harassed me with the anguish of a legal accusation, I have come here to ask you not to believe that I am intentionally maintaining silence in the dispute at hand. I am silent not because I killed my son, but, rather, he was killed so that I could remain silent. Gentlemen, I wish I could deny that I killed him! I wish it were possible to bury the whole succession of grievous actions forced upon me deep within the secret confines of this heart! Does anybody marvel at this lack of emotion I display? That passion which just recently drove me against my son is now spent by its very own fierceness. Whatever could issue forth into a public declaration has been used up in killing my son and has fallen silent through his loss. I have no power of feeling except only where I may suffer, hear, and endure all that has occurred. In my son's case, it's impossible for me to do both things: first, to kill him, next to confess why he deserved to be killed.

Therefore, gentlemen of the jury, I cannot express enough amazement and bewilderment that this woman, who, beyond the quite highly regarded moral sense of her sex, and who should have displayed even more modesty in the face of our misfortunes, is unable to pass over in silence my silence. 2 Yes, and furthermore she is inconsistent and she displays her lack of restraint in a novel and incredible manner. She complains about the people because of what they say, but about me, the boy's father, because I remain silent. Nor is she satisfied with her husband's open confession that he is hiding nothing and knows nothing, though I am under the responsibility of a defendant giving testimony, but she prefers to make of my silence a dark, deep secret. Whether this is due to insanity because of her bereavement or to her innocence, her reckless grief will take care of [230] that, but she is able to know in her own heart what my son said, seeing that she thinks I have something to say.

For this reason, gentlemen of the jury, I beg of you not to let the mother upset you only through pity for her bereavement, and for you not to think that emotions over this terrible misfortune reside only in the person whose tears and groans confront you. Compared to my wife, you ought to pity me more since I both lost and killed a son. I am the more unfortunate of the two parents who, gentlemen of the jury, both suffer and inflicted whatever that woman complains of. Lucky in her ignorance is the conscience of a mother who has it in her to conduct such questioning! A greater inability to endure and greater emotion scorch me. I cannot reveal why I killed my son, but yet I have no regrets that I did kill him.

Oh my unhappy old age and my pitiful suffering! Under the circumstances how much I must yet tell you! We were once, gentlemen of the jury, yes indeed, the happiest of parents, when still in his tender infancy our only son used to charm us. The unbroken prosperity of our house lasted as long as we both delighted in him and we both loved him, as long as the townspeople could only say this about us, that we had a handsome son. But when he grew up to that age in which a young man arrogantly exults in the physical charms of his body, he was haughty and insolent, with no interest in any kind of occupation, and he did not devote this prime time of his life to a public or private career. 3 Good Lord, then how great and remarkable the rumour which complained about the young man! He was greeted with everybody's shouted curses and was condemned by everyone's censure, until even he himself recognized the unanimity of the public's indignation against him. From then on he rarely appeared in public view, as if, in other words, to avoid meeting his father and the eyes of the community. It is not easy to express in words how much public vilification and censure the young man encountered: it was said that he was capable of killing his father and even deserved to be killed by his father. Gentlemen of the jury, what was I, a poor, unhappy old man, to do? By now his bad reputation did not escape his father's attention, now nobody spared my ears. I wouldn't dare question him, but I couldn't turn a blind eye to the situation. Whoever supposes that I acted at all with any deliberately set purpose is mistaken: an unpremeditated impulse and an indescribable flash of anger settled the matter. One cannot premeditate a son's torture.

In my unfortunate house there is an area which is out of the way, secluded, deep in darkness, repulsive to visit, suitable for all infamous acts, and in which even a father might dare commit a crime. While various speculations were driving me around in circles throughout the expanse of the entire house, I came upon him, unexpectedly, as far as I can determine. And what is more, he, on seeing me, was disturbed as though surprised in something, and, trembling, he drew back, I suppose so I wouldn't ask why. I burst in hurriedly and impatiently, without a freedman or [231] servant. Just as the destiny of that moment had suddenly seized me, exceeding the capabilities of my old age I attacked him with my fists, with blows, and whatever was at hand I transformed into weapons. Fires were hurriedly gathered from what was close by, my whips were what the circumstances had provided. I did not assail him with pain applied by degrees nor meted out bit by bit at intervals, but all at one go, at one and the same time. It was a necessary element of the secret that I myself should torture him. 4 Good Lord! What stubbornness and what an ability to endure suffering he displayed, not to call for his mother when he was being

tortured at home by his father! The youth did not fight back, he didn't lift a finger in his defence, he did not implore anybody's help With his eyes just lowered and downcast, as though he would never have checked my advancing lashes, as though he were being tortured by my eyes, he received all the blows to his face Yes, he set his much praised face in the way of my blows and flames, as if he were angry at it I deliver this final proof of his sense of decency. he was killed since he already wanted to die

Gentlemen, I applaud his mother's forbearance Although she was always herself at home most of the time and maybe not far from that isolated room, she declined to intervene and did not venture to interrupt But I also rejoice for my hands, because some relative or friend did not interrupt, I would have killed whoever then would have dared to question me regarding my son Nevertheless, I buried his mangled body, I conceded him a funeral, and I gathered his bones together My wife did not seize the bier, and during the last rites she did not put me in a bad light by beating and battering her breasts How did she come now to break forth and leap out into this inability to endure what has occurred? At home she didn't question me at all

You unfortunate woman! Now, I can exclaim before the children and parents here, in the hearing of gods and men I for my part also loved my son, not with kisses, with a woman's weakness, or with tears, but with manly strength, my anguish, and my capacity to face hardship I rescued from malice and withdrew from infamy an only son whom I would have saved by my own death in his place had the enemy surrounded him in battle, whom I would have rescued at the cost of losing part of my own body had a sudden fire engulfed him I also have what I might ascribe to you – natural ties of blood and parental love I did a most difficult thing since I didn't kill myself instead

5 Now she accuses me of maltreatment My dear wife, do I actually seem to have paid so insufficient a penalty after doing away with my son that you are worried that a father may escape the consequences of killing his own son? Well now, aren't you ashamed if you are angered at your son's killer? What business have you with a law which you were provided with in regard to other, less important emotions? That law which you cite encompasses [232] minor grievances, not serious charges The law puts aside the question of motherhood and embraces complaints only regarding her role as a spouse

Again you parade my sad shame before the people and you ignite fuel for new rumours, for this reason I have been defrauded of my scheme for a secret interrogation I had managed everything in such a way that nothing could be asked or stated Now, indeed, what is more brazen, what is more scandalous, than when mothers suppose that they enjoy the same prerogatives over their children, and contend that fathers and mothers have equal jurisdiction, as if they were unaware that we fathers are entrusted with this life or death decision! It's no special privilege to kill one's son when it is possible to do so, nor has anyone so acted only because it was his right I was equal to the task of shredding my only son's insides, please forgive me If you can't, believe me nobody kills a son because of hatred, even if despised, no young man is worth so much agony This dreadful quality in parents extends even to the point of killing their sons, that they love them, that they come to their rescue, that they don't think in any other way they can show their compassion Gentlemen, there are no grounds for a member of the weaker sex to divert you from

calculating my own misfortunes. It takes more love to kill a son than it does to whitewash him. Therefore my good wife, stop pestering me with your questions. Really, doesn't the man who say, "Yes, I killed him," seem to you to be giving the fullest possible reply regarding his son? And although his outcries are repressed and his lips are sealed, the man who confesses this says it all. And what is more, the very enormity of my terrible deeds constitutes my innocence. Yes I, his father – neither crazy nor insane – killed my son. Whoever feels no pity is a man transported beyond the capacity of judgment and past his feelings for love. Yes, I did kill him. **6** You see an old man soaked in his own blood, lying, with gory hands, over the lifeless corpse of his only son, whose insides, now torn and charred, were more sacred and dear to him [than his own]. Shudder at his body and be afraid to approach it, like corpses which a thunderbolt from the sky has robbed of life. For some crimes it is enough just to shut one's eyes, avert one's face, keep silent, feel bewilderment about it, and abandon incredible catastrophes to their own good reasons. For pity's sake, don't investigate or ask any more about this. Do you suppose I will say, "Spare this age in which we live, spare you husband, and spare the boy's father!"? No indeed! Spare the one who was killed.

Gentlemen, listen to the strange new charge of a wife against her husband: it is my silence which she is complaining about. Your resentment used to be your inability to bear my censure, and in your complaining as a married woman you seemed to be saying: "Husband, you show no mercy with your words against me, and in your talk you show no respect for me. You often break out into insults, you carelessly charge and shout out whatever you object to, and, while you allow excess free play to the outspokenness of your speech, people can make up some rumours about me." But, my good woman, you are charging me with an act which was never a crime for anyone, [233] the sole blameless element in our character – restraining one's speech. See why our hands and why our words appear to inflict wrongs: with the latter we give people a bad name, with the former we torture and kill them. Would you like to know how little you can complain about my silence? You would have been much happier had we all done the same thing.

Putting aside my reasons for silence for a moment, suppose I only made this reply: I don't betray a secret. **7** Gentlemen, of all the serious and sober character traits with which human hearts are furnished, I believe there is none more difficult to maintain than the virtue of silence. So easily do we offend with too loose a tongue that we cannot tolerate another's persistence in keeping quiet. In my case my wife terms this a crime which in those time-honored educators of our minds and manners was the highest attribute of wisdom, about which the sober, bygone generation marvelled more that some men accomplished it through forbearance during their entire lives than that they established and settled, by conscious calculation, the succession of the seasons, the courses of the constellations, and the other mysteries of nature. Now really, what violence it is to break open a heart steadfastly holding out in a holy silence, to overturn a resolve which, settled over its own secrets, neither joy nor pain nor necessity nor accident would have loosened! Whoever complains about keeping silent can much less tolerate one who opens his mouth. Nor to such an extent is all information exchanged in a marriage relationship that your mind would not leave something as its private possession, in spite of this harmonious union. There are also

feelings screened off from relatives and a type of restraint of a nature that you would not at all want those dearest to you to know certain things which must be kept quiet, certain things which you could not extract with whips and a torture rack, and you would see quite a few people resolutely dying to protect these secrets. Come then, if you like, let us examine both sexes, every station in life, people of every age, there is no breast without a guilty conscience, nobody alive without some reason to keep quiet. If your husband should ask you about everything, even you would have something which you would not want to admit. And silence – how much more respectable it is in an elderly man, more proper in a husband, more revered in a father! 8 Woman, let us be ashamed of our weakness just a while ago that young man surpassed us in his firmness of purpose, he wanted to die so that we could remain silent.

Dear lady, do you see to what bad interpretations your resentment is being exposed? People will say you are giving me the third degree since you know that I prefer to suffer anything at all rather than speak out. For who in this community is unaware of the unyielding quality of my silence, and who does not know with what endurance I usually bear everything? Not even when I was going to kill him did I emit groans and sighs. I did nothing through which either you, with some premonition, or our son himself soon to die would sense that a father's angry feelings might at some time break out through ridding myself of him. Do you suppose that I am now boasting of my resolute character because I allowed myself no outcry at all, either in [234] public or in any assembly? Honestly, I did not complain about the young man, not even to you, nor did I aim at having his mother also hate him, along with me. You are mistaken when you think that you can extort from me by this indictment what neither these very disasters, nor my anguish, nor the contemplation of losing a son extracted from me. Although you may torture me with fire, I will persist and persevere. I have already suffered something even more difficult to handle. I killed my own son.

"He tortured my son," she tells us. Gentlemen, let me give a brief explanation. I tortured a son suspected of misconduct, what difference does it make whether he was innocent, if something else appears clear to everyone else? Malicious gossip made the young man hateful to all we hold dear, and obnoxious to all who loved him. What do we do, I keep asking myself, how do we escape and get out of this? To do nothing in such a notorious case is to believe it. Would you have me appeal to individuals, one at a time, to protest to the people, and to battle against this rumour? As a member of the weaker sex, just a denial may be all right for you, but for me a more vigorous defence of my sole son's character is the only proper course. He has to be rescued not just by my impassioned words, but so that the community will be aghast and feel embarrassed. 9 Do you think that I was torturing my son? No – I was placing a burden of guilt on the people. I thought I was lashing their slander with those blows of the whip and that I was rebuking their rumours with those flames. In the case of a son under suspicion an inquest by torture has a single justification – for you to prove his innocence.

God forbid that you should know this anguish when a father finds it possible to torture his son! Nothing is more unfortunate than the man for whom, in the case of his only son, just his death alone is not adequate. With lashes and flames I destroyed a young man in

whose moral character our names had lost their respect, for whom we had to make excuses every day in the face of this rumour, and who preferred to play the role of a pretty-boy among us rather than act like our own boy should. Would you like to know how powerful a reason I had for torturing him? Even after he was tortured, he deserved to die.

Yet if you, as his mother, expressly want to know my reasons, listen to them in brief. Though heartbroken about it, I kept anticipating that he would one day break out into some vicious crime because he wasted his life in idleness and the flower of his youth at home in laziness. He was not willing to improve his intellect through foreign travel, nor did he try a military career, go to sea, take up agriculture, engage in public administration, or get married. Furthermore, as a result of my constant reprimands he had become annoyed at me, his father, and since he would not be corrected his bad conscience had flamed into hatred of me. He was afraid of confrontations with me, and he didn't dare engage me in conversation. He avoided my kisses and my company. The dimensions of his totally incorrigible behaviour have to be summed up as follows: my son hated and feared me.

[235] Well then, do you suppose that I tortured a son, one already condemned by the entire weight of public opinion, one whom people marvelled was still alive? No sir! I executed him, but long and slowly. Do you term it an inquest by torture? No, it was his penalty, capital punishment, and the end of my troubles. There is no point in interrogating someone under torture whose only recourse otherwise is to utter a denial. **10** Yet in the interrogation too, what great restraint I used! For I did not suddenly jump out, carried away by rash impulse, and I did not inflict a quick wound, after being overcome with the blind indignation caused by my impatience. A son can't be killed without deliberation when he is tortured beforehand. I provided some measure of delay, I granted him time as a favour. Do you see then how much substance I could have provided to malicious talk? If I had finished him off only with sword thrusts in that secluded room, it would have made his the death of a young man caught in the act.

Therefore, my good woman, you have no compelling reason to condemn me on a twofold complaint, to be more precise, that I both tortured and killed him. Only a justification of his death is necessary. To torture a son who will survive – now that is really murder. Do you think a young man could live on who could not be helped except by dying? I did not again restore to notoriety the son whom I had started to defend against malicious gossip, nor did I release him from his father's secret room to be a public spectacle. With my characteristic prudence, mother, I prevented also for your sake that any questions should be asked to incriminate him. Indeed, after the torture he wouldn't have been about to endure the shame of surviving it, to be questioned by individuals, and then to deny his crime. But, my good woman, your own personal feelings ought to be discounted. I believe it was part and parcel of our entire family's innocence that he did not commit suicide instead.

Gentlemen of the jury, this lady realizes that my torturing or killing my son has no relevance to the equity of her complaint. Thus she asks what was said to me by him about whom she doesn't know whether he spoke at all. You're so impatient, what do you, his mother, say to that? In such a case, do you think nothing else concerns you in the death of your son than what he might have said? And so, if I reply, will you forgive me for killing your son, and won't you object to his torture? Women – how foolish and thoughtless they

always are! She asks what the young man said under torture as if she didn't know, yet she does not believe that I didn't learn anything, as if she knew what he said!

11 By all that's holy in the blood shared by our son and our own shared misfortunes! Please don't force me to stir up the secrets of our son's death, don't make your own innocence an additional burden to our present calamities! Let that youth have taken care of what he deserved. As far as I am concerned, I am now able to pay reverence to his remains and, after my only son's death, to go back to being his father again. We must pay greater respect to our children when they are dead, and nothing [236] is less becoming to a father's bond to his son than for him to appear to be dancing over his son's grave. The loss of my son reconciles me to him, and his dreadful death has allayed my anger. And furthermore, quiet compassion comes over me as I reflect upon the whole course of what I did in secret. What great respect I owe to my son whom I could torture alone and whom I was able to kill while acting alone!

Why do you persist in forcing my hand and pressing me? In turn, good woman, I ask you, if you wanted to know so much what I asked and what he said, why you didn't break into the interrogation which a father had not safeguarded with any servants or any watchmen? How much better it would have been had you, his mother, gone to him, how much more forcefully you would have interrogated him together with me and how much more he would have said to you! What emotion, my good woman, drove you away, who restrained you, and who denied you access? I recognize your diffidence: you were afraid, I suppose, that if we had all been together in that secluded room, people would say that his mother also had murdered her son.

Why do you still keep pressing me and force open an old man's lips? Suppose I say only this: as I come from my physical exertion in the commission of this terrible deed, I do not yet realize what I heard, I am still totally involved in the killing of my son, and after the death of my only boy, all the torment by which he was torn to pieces and killed reappeared in my mind. It is indeed difficult for a man who has killed his son to appear to suffer shame, but even so, he is able to appear to suffer from bewilderment and loss of his senses, I also subsided into silence because of my son's loss: all confidence in my words and the authority of all I might say have been taken away from me. A man who cannot be believed has no good reason to speak out. **12** Stop your questioning, woman, a father must no longer absolve nor accuse the son he has killed.

But she keeps saying, "What did he say when you were killing him?" How unfortunate is my innocence of the crime of murdering my son since none of the following calls me to account: the duly constituted authorities, government officials, some relative, a friend, or that always talkative and spiteful populace. You are quiet and keep silent – unlucky me! Is it possible that all of you know the truth? Suppose, my good woman, that I respond in this way to you: incredible events cannot be expressed in words, some things are too enormous for the limitations of human speech to encompass. Yet as far as you are concerned, believe that nothing else was there except my rage, think that I went crazy. I saw things that were not happening, I heard things that nobody was saying. I possessed only this property of a man who was not insane: I kept quiet. Suppose that I reply: "He said

nothing, he didn't utter a word " You don't believe it? All the same, you would be much less prone to believe what he said

[237] My good woman, listen to the brief but true reason why the young man was killed during his examination on the rack I wasn't questioning, him, I was torturing him If any sound reached all the way to your ears from that part of the house, even though it was distant, it was my groaning, and the distress originating in my own heart You ask why he said nothing? Because he had nothing that I was willing to know or that I ought to hear That examination under torture aimed at nothing else than the silence which his life could not provide Anyone who is killed during torture is tortured for this reason – so that he may be killed Or do you suppose this examination was the sort applied to the bodies of slaves? Indeed, for this reason, did I, a clever old man, keep the rack in motion, did I keep tightening the machinery with calculated cruelty so that the articulation of his body, removed smoothly from its normal placement, would slacken his limbs one joint at a time? No, his life spirit was destroyed by his own silence The lashes and flames stopped his breathing and his voice at the same time It seemed to me that he was repressing his groans and was stifling his laboured breathing, and he said nothing, as if he were being tortured by someone who knew 13 Are you surprised at this stubbornness in our son and at this capacity for suffering on the part of a young man? No other response can be made to a father torturing a son than for the son to prefer death to confession

Therefore, my good woman, to those who ask, I respond sufficiently when I say, "Yes, I killed him " Whoever expects me to make the usual charges is quite mistaken Indeed, I openly proclaim that he was not addicted to high living, nor did he have a bad reputation because of an affair with a whore In no way did he misbehave as youngsters usually do His monstrous act defies description – something I would not want to catch in the commission, something I just couldn't bear

Is anybody surprised that I did not disown and disinherit him, and that I would not have just been content with the most common retribution used by fathers? Well, dear lady, your evil and ill-advised affection for him didn't allow it You would have followed your disinherited and disowned son, whom you would forgive in opposition to my strictness and whom you could not hate together with me

Suppose that the young man did say something or other, I could not hear anything For I hadn't sat down to try a case like some sort of magistrate, nor was I, his father, holding court like a judge while others did the torturing No, it was I who then both suffered and inflicted everything at the same time There wasn't the opportunity to lend an ear to what he said, to hear his groans, and to judge his sobs The exertion, the grief, the loss of my son, and killing him diverted my attention Everything happened so suddenly and quickly There is the same powerful emotion involved when a father tortures in order to learn something, and kills so that he may not

[238] "But," says she, "your silence results in my disgrace " So then, for the first time are you troubled about your reputation, you wretched woman, and following your only son's death, what people may say has begun to affect you? Well obviously, a son has been expended so that you may feel shame and acquire a bad reputation! Indeed if that was the aim, wasn't it enough just to leave the entire business to rumour? 14 But, my good woman,

I protected your reputation and, occupying a middle position between mother and son, I committed the crime of killing my son, yes, I put my only son to death to prevent people from saying anything else. In any event, if I am after what you think I am, how long will I keep silent and to what occasion will I put off that pronouncement which you think I am repressing? Look, as the accused, I give my judgement and still I insist that I know nothing. Here's a splendid method to apply my malice on the verge of speaking against my wife, I act so that nobody would believe me!

Therefore, I confess I haven't brought anything to the point of certainty and past all shadow of a doubt. This is indeed the reason why I pressed forward right up to the point of death. Tortures resulting in death do not accomplish an inquiry.

Yet she asks me, "What did he say?" You poor thing, consider yourself lucky if you don't know! "What did he say?" Really, aren't you satisfied with your own conscience? Isn't it enough that he had nothing to deny or to confess? Do you demand his words while still on the rack? Are you trying to force me and wring the words out of me? You are my witness – you are acting so that you can't deny what I will say. "What did he say?" That he had prepared poison for his parents? You will deny it. That he had stirred up talk of treason? You will deny it. That he had entered a plot to set up a tyranny? You will deny it, and whatever else I say, you will deny it. Aha, this is the unsuspecting innocence of your untroubled conscience! Then aren't you afraid that, if I am forced to speak, I may make up and concoct a pack of lies? If, my good woman, you are able to know whether I am lying, you really know what he said. "What did he say?" Nothing. "What did he say?" Everything. He denounced this age, he vented his hatred of these times, he solemnly cursed his father, he reviled his mother. "What did he say?" More than I asked. My dear lady, you have overcome my obstinate silence, as to what he said, hear my reply, brief and concise. He said what you are after, what you are thinking.

15 Oh how I wish someone could have brought you as witnesses to our hidden room at that time! Then you would have seen a strange kind of interrogation by torture! I was standing there, an old man readied with a mad craving for a monstrous exercise of cruelty, with my hands stretched out, furnished on this side with fire, on that with a whip. Standing by over his face and eyes as he lay there, I kept shouting, "My crazy, insane son – be quiet!" And since the parts had been burned and cut off by which pain gives vent to speech, he was stunned and distracted. How many times, when I applied the flames to some part of his body, did he offer [239] his entire chest! How many times, with his mouth wide open, did he take in the flames to stop his words from exiting! Indeed, when all his natural bodily temperature, already expelled because of my blows, was breaking out through the violence of his final suffering, after he had drawn some gasps of breath which he had managed to collect for just a brief instant, that sob, by which life is surrendered, was similar to one on the verge of exclaiming something or other, which perhaps even you should have heard. I confess, I forestalled him, and, summoning all the strength which I had already spent, exerting my hands, weapons, and entire body at the same time, before he could tell a lie, I killed him.

How the recollection of the occasion distresses me! I saw my son slipping away in my arms, I gazed on his face as it grew pale, his gasps became cold with the chill of death,

his laboured breathing was cut short, and his life departed in deep silence Yet I did not slacken the tortures, I did not remove and extinguish the flames For pity's sake, woman, please don't seek my description of this emotional state any more I killed my son while he was dying Yet I didn't waste the death of my only son, no I didn't, to my good fortune, I didn't waste it Now nobody asks me about it except his mother alone Come on then, my dear lady, put yourself in my shoes, and furnished with the same quality of a father's rage, put me on the torture rack, apply the whips and the hot irons I declare and solemnly swear, without these I cannot speak, without these nobody can believe me

16 But, my poor, unfortunate son – for now it is possible to address your ghost – no amount of suffering will be able to force a word out of me Let it torment me as much as she wants, even kill me you have taught me how to overcome torture Yet if it is possible, as I recollect them in my thoughts, to discuss the words of his questioning by torture, distressing as it was, why do you prefer to interrogate me in the presence of these people? Dear lady, let's go into that deserted house, into what is now that secret chamber of father and son, question me there, yes there, where I tortured and killed him, and where perhaps still the wandering ghost of your son flits about through its sad home Let somebody hold out the your man's death mask and place in his mother's lap the clothes which the poor woman used to set out for him Let us go to his tomb and mingle our tears over his ashes There we will either both be silent or confess, one after the other

I am now able to die, already deep in despair I have served your needs, you, my concern and you, my family responsibilities I do not write my testament, I do not entrust my last words to a will I will also die in my own kinds of torment Only this in my final prayer do I ask of you, my fellow citizens, by your children, by your wives, by your parents, and from you, my wife, by the ghost of your slain son, yes from you, his mother, please don't inquire any more, and you, rumour, please don't speak anymore

List of changes in the translation

18, 1

[217]

- ****not**** > even
- that the fact of her husband's silence should not render him safe > that the fact that her husband keeps silent is no guarantee for her
- whom the restraint of his masked feelings has protected in the cruel act which has been committed > whom he has protected with a pretence of restraint in the cruel act which has been committed
- leaping onto the torture rack > throwing her faithful love onto the torture rack

18, 2

[218]

- in killing his son > as a murderer

18, 3

- mothers > parents
- with the veiled intent of where and when he could kill him > with such an attitude as might render him capable of killing him one day

18, 4

[219]

- If you should love your son, would it appear to you that his mother has fallen in love with him? > If you don't love your son, it may well appear to you that his mother has fallen in love with him
- his innocent years > the innocence of these times
- shame for > diffidence about

18, 5

- Yes, what a pity – he doesn't have it in him, not even to utter a lie! > He doesn't even have anything to lie about!
- the hardships of a woman's person – > physical maltreatment,
- is not exacting punishment for the murder > is not exacting punishment

18, 6

[220]

- Yes indeed! This is something one should believe, contrary to human nature itself and to the detriment of all parents and children! > There certainly is, and it is one which is believed in the face of the natural order of things, in the face of the natural ties between parents and children!

18, 9

[222]

- pity itself adds to the force of their affections > their very pity assumes the force of love
- but because there is something in a son more beautiful than any other person > because there is something in a son that is beautiful beyond what is commonly human

18, 10

[223]

- for a mother to permit something > for a mother to perpetrate something
- Really, gentlemen of the jury starts a new paragraph
- I would be cursing my client if > I would hate it if
- and if he had been moved to extremes of furious words > and if he had been moved to madness in the form of words
- Nobody has less reason to believe there was incest than the man who was prepared to kill his son for that very reason > Nobody has less right to believe there is incest than a man who is prepared to kill his son for that very reason

18, 11

[224]

- last phase > ultimate phase
- don't consider it evidence of your stern morality that you started with the ultimate > don't consider it evidence of stern morality to have started with the ultimate

18, 12

- that you have scotched the rumour > that you have learnt a rumour
- ** even if he ought to have tortured him ** even if he ought to have tortured him
- lose the benefits of your examination > ruin your examination

[225]

- A secret place for the questioning > A secret questioning

18, 13

- difficult duty > this task you obviously found imperative
- vigorously refused to let his son die quickly > refused to let his son die in the struggle

18, 14

- But remember that you have done this in a case concerning your son, and for this reason nobody should believe you > Remember that with regard to your son, you have done something on account of which nobody should believe you

- Why do you destroy his life with suffering > why do you rush his breathing with pain

[226]

- stern righteousness > sadness

- feel remorse > feel diffidence

- But then the sanctity of fatherhood would be destroyed > As it is, regard for fatherhood is destroyed

18, 15

- "Yes, I killed him, she ought to be satisfied with the reason left unspecified" > "Yes, I killed him" Must she be satisfied with the reason left unspecified?

- father and son-in-law > in-laws

[227]

- but yet at this very moment appears to us to be on the verge of speaking > but to us, he seems to be on the very verge of speaking

18, 16

- would proclaim > proclaims

18, 17

[228]

- would continue > continues

- condemned for his clever and cunning silence > condemned on top of (a conviction for) his clever and cunning silence

19, 1

[229]

- regarding all those things > on top of all those things
- suffer, bear, and endure > suffer, hear, and endure

19, 2

[230]

- whatever that woman complains, both suffer and inflicted my own suffering > both suffer and inflicted whatever that woman complains of
- also tell you > yet tell you

19, 3

- even now > by now

[231]

- a necessary element of the seclusion of the place > a necessary element of the secret

19, 4

- proof of his shame > proof of his sense of decency

19, 5

- to be so angered > if you are angered

[232]

- I have lost my grounds for keeping this secret > I have been defrauded of my scheme for a secret interrogation
- since they love them, since they come to their rescue, since they don't think in any other way > that they love them, that they come to their rescue, that they don't think in any other way
- But would not anyone pity a man transported beyond the capacity for judgment and past his feelings of love? > Whoever feels no pity is a man transported beyond the capacity of judgment and past his feelings for love

19, 6

- as it were > del

- sacred and dear to him > more sacred and dear to him [than his own]

- hovering with gory hands over the lifeless corpse > lying, with gory hands, over the lifeless corpse

- shout out whatever you please > shout out whatever you object to

19, 7

[233]

- In my case my wife terms this a crime which in those time-honored educators of our minds and manners was the highest attribute of wisdom, because the sober, bygone generation marvelled that some men accomplished more through forbearance during their entire lives than they did because by conscious calculation they established and settled the succession of the seasons, the courses of the constellations, and the other mysteries of nature > In my case my wife terms this a crime which in those time-honored educators of our minds and manners was the highest attribute of wisdom, about which the sober, bygone generation marvelled more that some men accomplished it through forbearance during their entire lives than that they established and settled, by conscious calculation, the succession of the seasons, the courses of the constellations, and the other mysteries of nature
- neither joy nor necessity nor accident > neither joy nor pain nor necessity nor accident
- There is also some secret feeling and a type of shyness > There are also feelings screened off from relatives and a type of restraint

19, 8

- They say you are giving > People will say you are giving
- on the verge of killing > when I was going to kill him

19, 9

[234]

- our family name had lost its respect > our names had lost their respect

[235]

- There is a perfectly good reason to interrogate someone under torture > There is no point in interrogating someone under torture

19, 10

- Yet even in the interrogation > Yet in the interrogation too,
- His death alone is a strong argument to prove the torture was necessary > Only a justification of his death is necessary
- In taking provisions for your benefit, yes you, his mother, I rescued him from being put to formal questioning. > With my characteristic prudence, mother, I prevented also for your sake that any questions should be asked to incriminate him.
- But, my good woman, you ought to be reminded while your head is clouded with strong emotions > But, my good woman, your own personal feelings ought to be discounted
- Thus she asks what he said to me (about which she knows nothing), or whether he spoke at all > Thus she asks what was said to me by him about whom she doesn't know whether he spoke at all.
- but won't you object > and won't you object
- yet she doesn't suppose I discovered anything > yet she does not believe that I didn't learn anything
- what he would have said > what he said

19, 11

- pay reverence at his funeral > pay reverence to his remains

[236]

- you alone would have interrogated him > you would have interrogated him together with me

- Who, my good woman, drove away your affectionate intervention > What emotion, my good woman, drove you away

- I recognize your reluctance > I recognize your diffidence

19, 12

[236]

- at this point a father must neither absolve nor accuse > a father must no longer absolve nor accuse

- what he might have said > what he said

[237]

- removed little by little > removed smoothly

- and so he said nothing, as if he were being tortured by someone who knew what he did > and he said nothing, as if he were being tortured by someone who knew

19, 13

[238]

- you contemptible woman > you wretched woman

19, 14

- so that people would talk of nothing else > to prevent people from saying anything else

- Look at what we have here – an accusation, a trial and a verdict to come yet for my part I maintain that I know nothing > Look, as the accused, I give my judgement and still I insist that I know nothing

- Here's a splendid method to arouse her malice > Here's a splendid method to apply my malice

- do not settle a question > do not accomplish an inquiry.

- satisfied with your own private guilty conscience > satisfied with your own conscience

- what you are asking and thinking > what you are after, what you are thinking

19, 15

- And as though the parts had been burned > And since the parts had been burned

[239]

- his spirit was collected for just a brief instant after he had drawn some gasps > after he had drawn some gasps of breath which he had managed to collect for just a brief instant

19, 16

- Let her torment me > Let it torment me

- now into that secret chamber of father and son > into what is now that secret chamber of father and son
- source of concern > concern

Introduction

Patria potestas and the vitae necisque potestas

Non est privilegium filium occidere, cum fieri potest, nec quisquam tantum ideo fecit, quia liceret, says the father in *DM* 19, 5.¹ To understand why this seemingly bizarre statement makes sense in its context, it is necessary to make an excursion into the complex field of Roman law. We must examine the Roman father's power over the household, his *patria potestas*, which could encroach upon all domains of the lives of his dependants. Then we can focus on its most radical manifestation: the *vitae necisque potestas*, or the Roman father's right to kill his own children. This will help explain why so many Roman declamations involve fathers and sons, and shed some light on the murky relationships portrayed in *DM* 18 and 19.

Patria potestas²

Because of its huge impact and its long duration, the *patria potestas* was a matter of wonderment for Romans and foreigners alike.

Item in potestate nostra sunt liberi nostri, quos iustis nuptus procreavimus. Quod ius proprium civium Romanorum est (fere enim nulli alii sunt homines, qui talem in filios suos habent potestatem, qualem nos habemus) idque divus Hadrianus edicto, quod proposuit de his, qui sibi liberisque suis ab eo civitatem Romanam petebant, significavit. Nec me praeterit Galatarum gentem credere in potestate parentum liberos esse

(Gai. *Inst.* 1, 55)

ὁ δὲ τῶν Ῥωμαίων νομοθέτης ἅπασαν ὥς εἰπεῖν ἔδωκεν ἐξουσίαν πατρὶ καθ' υἱοῦ καὶ παρὰ πάντα τὸν τοῦ βίου χρόνον, εἴαν τε εἴργειν, εἴαν τε μαστιγοῦν, εἴαν τε δέσμιον ἐπὶ τῶν κατ' ἀγρὸν ἔργων κατέχειν, εἴαν τε ἀποκτινύναι προαιρήται, καὶ τὰ πολιτικὰ πράττων ὁ παῖς ἤδη τυγχάνη καὶ ἐν ἀρχαῖς ταῖς μεγίσταις ἐξεταζόμενος καὶ διὰ τὴν εἰς τὰ κοινὰ φιλοτιμίαν ἐπαινούμενος

(D H 2, 26, 4)

The actual origins of the *patria potestas* are unknown; Ulpian in *Dig.* 1, 6, 8 pr. states that it was *moribus receptum*. Some modern scholars point to the common patriarchal joint Indo-European family³, but this does not yet account for its more drastic and peculiarly Roman

¹ 375, 17-19

² A good introduction to this subject is Plescia 1976

³ It forms the basis for e.g. Westrup's analysis (1939) of the *patria potestas*

aspects, such as the *vitae necisque potestas*⁴. It has been suggested that the latter, like *imperium*, was derived from the Etruscans⁵.

All agree, in any case, that the roots of the *patria potestas* must lie in archaic times, when society consisted of relatively independent family units whose members shared a common cult, common property and common work. At the head of each unit was a *paterfamilias* with far-reaching lifelong powers in the economic, gubernatorial and sacral sphere. This hierarchical family structure was so fundamental to Roman society that it determined the structure of the state rather than the other way around⁶. Moreover, though some restrictions were made in the course of time, these were always *ad hoc* and of limited effect: in the entire history of the Roman people, the *patria potestas* underwent no essential changes whatsoever.

The powers of the *paterfamilias*, which resorted under the *ius privatum*, are best understood by starting with early Roman law and subsequently looking at the main adjustments by law and custom. The *paterfamilias*, then, was the sole legal person within a rigidly agnatic family structure. He was in that capacity the only member of the household who could own, buy, sell and inherit property. Sons could, and often did, receive a *peculium profectitium* (allowance), but this remained their fathers' property. Fathers were legally responsible for their sons, who had of course no legal capacity. They were made to compensate for damage done by their sons – whether in payment or by delivering them up to the claimant, in accordance with the *ius noxae dandi*. As for the more dramatic aspects of the *patria potestas*, apart from the *vitae necisque potestas*, fathers could sell their sons (*ius vendendi*), abandon them as babies (*ius exponendi*), force their marriages and divorces, release them from the *patria potestas*⁷ and adopt other youngsters at will. In fact, as Nicholas 1975⁵, 66 claims, the position of *filiifamilias* in Roman law rather equalled that of slaves. They were owned by their fathers, who could do with them as they pleased; moreover the procedures for emancipation and adoption of sons were essentially identical to those for conveyance of property.

In Republican times a number of infringements upon the *patria potestas* somewhat ameliorated the position of Roman sons in most respects. Under the *ius publicum* they could hold public offices, and as such have *imperium*. In cases of excessive abuse of the *patria potestas*, the *censor* could issue a *nota*;⁸ a magistrate could be asked to appoint a curator in cases of lunacy or prodigality on the father's part. Furthermore, already in the Twelve Tables it was established that if a father had sold his son three times, he must

⁴ Crook 1967 gives a detailed survey of Roman deviations and concludes that the concept of the Indo-European joint family is neither necessary nor sufficient to account for the *patria potestas*

⁵ Kaser 1938, 65-66. In his speech *De Dote* Cato the Elder says about the *paterfamilias*: *imperium quod videtur habet* (Gel. 10, 23, 4), cf. Cic. *Sen. 37 tenebat non modo auctoritatem, sed etiam imperium in suos*

⁶ As already observed by Mommsen 1955², 16. Lacy 1986 offers a detailed analysis of this development

⁷ Such a release cancelled the sons' right of intestate succession.

⁸ It should be noted, however, that *censores* did not hold *imperium*, and that the consequences of a censorian *nota* were therefore merely an administrative condemnation. Mommsen 1955², 23 remarks that it was issued not out of humane considerations, but to punish mismanagement of property. This gains plausibility in the light of Westrup's explanation (1939, 176-177) that originally, censorial *ignominia* fell upon those who did not cultivate their land properly (Gel. 4, 12; Plin. *Nat.* 18, 3, 11) or squandered their paternal property (Ascon. *ad Cic. oratio in toga candida*; Fontes 2, 69, cf. Quint. *Inst.* 3, 11, 13)

release him from the *patria potestas* (*emancipatio*).⁹ Even earlier, King Numa had restricted the *ius vendendi* by excepting sons who were allowed by their fathers to get married.¹⁰

In classical times, the exercise of the *vitae necisque potestas* came to be discouraged in favour of public authority; but neither it nor the *ius exponendi* were abolished until postclassical times.¹¹ Children were asked for their approval of prospective spouses and Antoninus Pius or Marcus Aurelius¹² took away their fathers' right to dissolve their marriages. The *ius noxae dandi* was confined to cases where poverty ruled out other options and no longer held when sons *sui iuris* committed a wrong, for they were now personally liable. Finally, Roman sons could gradually have some property. First they were allowed *bona adventicia*, which ranged from gifts from their mother and her relations in the course of time to anything that did not come from their fathers; but their fathers enjoyed lifelong usufruct of these *bona*.¹³ Under Augustus, soldiers acquired a legal title to their *peculium castrense* (i.e. to what they earned in military service), but until Hadrian, this property fell due to their fathers when they left the army. Constantine finally introduced the *peculium quasi-castrense*, or the right to property earned from public services other than the army.

Vitae necisque potestas¹⁴

The most dramatic aspect of the *patria potestas*, it has already been said, is the *vitae necisque potestas*, or the Roman father's right to put his children to death with impunity. It was unusual both in its extreme character and in the fact that no delicts were specified for it to become applicable.¹⁵ As far as we know, it was part and parcel of the *patria potestas* from the beginning; Papianus says it was issued by a *lex regia*.¹⁶ The earliest known citation is in the *adrogatio*-formula, which regulated adoption.¹⁷ The time of its abolition is

⁹ This became in fact the official ceremony for emancipation 'There were three mancipationes and two manumissions, which left the son out of the *potestas* of the father but in *mancipio* to [a] man of straw. The son could then be made free simply by a manumission by the man of straw.' (Nicholas 1975¹, 80).

¹⁰ See Kaser 1938, 70 who cites D.H. 2, 27 and Plu. Num. 17 as his sources.

¹¹ If at all; see below p. 48 with notes 18-20

¹² See Paul. Sent. 5, 6, 15 *Bene concordans matrimonium separari a patre divus Pius prohibuit, itemque a patrono libertum, a parentibus filium filiamque; nisi forte quaeratur, ubi utilius morari debeat*. See further D. 24, 1, 32, 19 and 43, 30, 1, 3 (Ulp.) and Cod. Just. 5, 17, 5 (*divus Marcus*). Evans Grubbs 2002, 196 comments that 'there may have been more than one ruling by different emperors responding to individual petitions'

¹³ Or half if the son had been emancipated.

¹⁴ Harris 1986 is a good introduction to this subject.

¹⁵ Mommsen 1955², 20-21, Thomas 1984, 499.

¹⁶ Coll. 4, 8 *Cum patri lex regia dederit in filium vitae necisque potestatem, quod bonum fuit lege comprehendere, ut potestas fieret etiam filiam occidendi, velis mihi rescribere. nam scire cupio. Respondit. numquid ex contrario praestat nobis argumentum haec adiecto, ut non videatur lex non habenti dedisse, sed occidi eam cum adultero iussisse, ut videatur maiore aequitate ductus adulterum occidisse, cum nec filiae pepercerit?*

¹⁷ See Cic. Dom. 77 *credo enim, quamquam in illa adoptione legitime factum est nihil, tamen te esse interrogatum auctore esse, ut in te P. Fonteius vitae necisque potestatem haberet, ut in filio; Gel. 5, 19, 8-9 'Adrogatio' autem dicta, quia genus hoc in alienam familiam transitus per populi rogationem fit. 9 Eius rogationis verba haec sunt: 'Velitis, iubeatis, uti L. Valerius L. Titio tam iure legeque filius stet, quam si ex eo patre*

uncertain: we have two fourth-century edicts referring to the matter, but they may contradict each other. In one, the killing of a son resorts under parricide and is to be punished accordingly:

Imp. constantinus a. ad verinum vicarium africae. si quis in parentis aut filii aut omnino affectionis eius, quae nuncupatione parricidii continetur, fata properaverit, sive clam sive palam id fuerit enisus, neque gladio, neque ignibus, neque ulla alia solenni poena subiugetur, sed insutus culeo et inter eius ferales angustias comprehensus serpentum contuberniis misceatur et, ut regionis qualitas tulerit, vel in vicinum mare vel in amnem proiciatur, ut omni elementorum usu vivus carere incipiat, ut ei coelum superstiti, terra mortuo auferatur. dat. xvi. kal. dec. licinio v. et crispo c. coss. acc. prid. id. mart. karthagine, constantino a. v. et licinio c. coss.

(C. Th. 9, 15, 1)¹⁸

In another, however, it seems that the *vitae necisque potestas* was still in force:

Idem a. ad maximum pf. u. libertati a maioribus tantum impensum est, ut patribus, quibus ius vitae in liberos necisque potestas permissa est, eripere libertatem non liceret.

(C. Th. 4, 8, 6 pr.)¹⁹

Kaser 1938, 66-67 dates the latter edict under Constantine, the former under Valentinian I and thus concludes that the *vitae necisque potestas* was formally abolished between 364-375; Harris 1986, 92 claims that C. Th. 9, 15, 1 dates from 318 and C. Th. 4, 8, 6 pr. from 322 and thus remains unsure about the abolition, but adds that the *vitae necisque potestas* must have become a dead letter by this time.²⁰

matreque familias eius natus esset, utique ei vitae necisque in eum potestas siet, uti patri endo filio est. Haec ita, uti dixi, ita vos, Quirites, rogo.

¹⁸ = C. Iust. 9, 17, 1. Arjava 1998, 153 n. 33 further adduces C. Th. 11, 27, 1 (from 315), but this specifically aims to prevent infanticide in cases of poverty. On the connection between infanticide (and *ius exponendi*) and the *ius vitae necisque potestas*, see below.

¹⁹ Cf. C. Iust. 8, 46, 10. *Libertati a maioribus tantum impensum est, ut patribus, quibus ius vitae in liberos necisque potestas olim erat permissa, eripere libertatem non liceret.*

²⁰ Mommsen 1955², 24 places the abolition under Constantine and remarks that – strikingly – the unmotivated killing of slaves had already been prohibited under Claudius. Lanfranchi 1938, 252 dates C. Th. 9, 15, 1 in 318 and C. Th. 4, 8, 6 pr. in 323 and explains the former as follows: ‘la costituzione o prendeva in considerazione i padri non muniti di patria potestà oppure mirava a vietare le uccisioni compiute senza alcun motivo, in modo del tutto delittuoso.’ Plescia 1976, 147 additionally comes up with C. Th. 9, 13, 1 which demonstrates a significant limitation by the emperors Valentinian and Valens: *Impp. valent et valens aa ad senatum in corrigendis minoribus pro qualitate delicti senioribus propinquis tribuimus potestatem, ut, quos ad vitae decora domesticae laudis exempla non provocant, saltem correctionis medicina compellat neque nos in puniendis morum vitis potestatem in immensum extendi volumus, sed iure patri auctoritas corrigat propinqui iuvenis erratum et privata animadversione compescat quod si atrocitas facti ius domesticae emendationis excedit, placet, enormis delicti reos dedi iudicum notioni.* His citation of Lact. Inst. 4, 4, 11 (*solus pater vocandus est qui creavit, solus dominus nuncupandus qui regit, qui habet vitae ac necis veram et perpetuam potestatem quem qui non adorant, et insipientes servi sunt, qui dominum suum augere fugiant aut nesciant, et impius filius, qui suum verum patrem vel oderit vel ignoret*) seems to confirm the continued existence rather than the abolition of the *vitae necisque potestas*. Rabello 1979,

Research into the *vitae necisque potestas* is further hampered by the fact that throughout Roman history there are but very few cases known in which fathers actually made use of this right. To put them in chronological order:²¹

1. In 509 L. Brutus when he was consul executed a number of rebels, among them his own sons, who wanted to bring back the Tarquini.²²
2. In 485 Spurius Cassius, tribune of the *plebs*, was flogged and executed on the orders of his father, who accused him of aspiring to be king after proposing an agrarian law.²³
3. In 431 the *dictator* Postumius Tubertus had his victorious son beheaded for breaking ranks and attacking the enemy on his own initiative.²⁴
4. T. Manlius Torquatus, when he was consul in 340, had his son executed for engaging in single combat against his orders.²⁵
5. Between 221-219 M. Fabius Buteo, a private citizen at the time, killed his son on a charge of theft.²⁶
6. Between 104-102 Q. Fabius Maximus Eburnus, a former censor, sent his son, who was *dubiae castitatis*, to the countryside and there had him killed by slaves. He was convicted of murder by Cn. Pompeius (probably Strabo) and went into exile.²⁷
7. In 63 or 62 A. Fulvius, of senatorial rank, put his son to death for joining Catiline.²⁸

181 cites Gai *Inst* 1, 53 *Sed hoc tempore neque civibus Romanis nec ullis aliis hominibus, qui sub imperio populi Romani sunt, licet supra modum et sine causa in servos suos saevire. Nam ex constitutione sacratissimi imperatoris Antonini, qui sine causa servum suum occiderit, non minus teneri iubetur, quam qui alienum servum occiderit. Sed et maior quoque asperitas dominorum per eiusdem principis constitutionem coercetur. Nam consultus a quibusdam praesidibus provinciarum de his servis, qui ad fana deorum vel ad statuas principum confugiunt, praecepit, ut si intolerabilis videatur dominorum saevitia, cogantur servos suos vendere. Et utrumque recte fit. Male enim nostro iure uti non debemus; qua ratione et prodigiis interdictum bonorum suorum administratio.* He adds that this must have held *a fortiori* in the case of sons as well, which of course cannot be proved

²¹ Killings of daughters as well as cases of sons being driven to suicide by their fathers will be left out of consideration, cases 9-11 are not mentioned in Harris 1986

²² See Liv. 2, 5, 5-9; V. Max. 5, 8, 1; D.H. 8, 79, 2; Plut. *Public*. 6, Verg. A 6, 817 ff

²³ See Cic. *Rep* 2, 60, V. Max. 5, 8, 2, Plin *Nat* 33, 15, Flor 1, 17, 7. A version in which he was consul and put to death for *perduellio* after successful prosecution by two *quaestores* is found in D. H. 8, 77-79, 1 and Liv. 2, 41, 1-12 (who give both scenarios but find this the more credible). Harris 1986, 83 adds that it stands to reason to assume that the *quaestores* are a 'modern' adaptation.

²⁴ Liv. 4, 29, 6; V. Max. 2, 7, 6, Gel. 1, 13, 7. Ogilvie 1965 comm. ad loc. emphasizes that Livius does not consider the story plausible.

²⁵ Liv. 8, 7-8; V. Max. 2, 7, 6, D.H. 8, 79, 2; Sal. *Cat.* 52, 30, Verg. A 6, 817 ff.

²⁶ Oros. 4, 3, 17-18

²⁷ V. Max. 6, 1, 5 (who has Q. Fabius Maximus Servilianus, father of the aforementioned Q.F.M., but he was never a censor), *DM* 3, 17 (57, 19-21); Oros. 5, 16, 8; cf. Cic. *Balb.* 28.

²⁸ Sal. *Cat.* 39, 5; V. Max. 5, 8, 3. Only D.H. 37, 36 explicitly states that the son was killed in virtue of his father's *vitae necisque potestas*, but this is not contradicted by the other authors. He also says that Fulvius was a *privatus* and not the only one to put his son to death, which Rabello 1979, 120 takes to signify that on this occasion there were several Roman fathers who put their sons to death. Contrarily Kunkel 1974², 144 and Harris 1986, 85 are convinced that D.H. simply refers to paternal severity in the course of time, since he continues *συχνοὶ γὰρ καὶ ἄλλοι, οὐχ ὅτι ὑπάτοι, ἀλλὰ καὶ ἰδιῶται παῖδας σφῶν ἀπέκτειναν*.

8. Under Augustus, a knight named Tricho beat his son to death. He was attacked on account of it by the people on the forum, but saved by Augustus' *auctoritas*.²⁹
9. A doubtful case: Trajan forced a father who had ill-treated his son to emancipate him. The ill-treatment may have resulted in the son's death.³⁰
10. In a *rescriptum* by Hadrian we find mention of a father's suicide after killing his son.³¹
11. Hadrian also relegated to an island a father who had killed his son during a hunt, after he had discovered that the young man was having an affair with his stepmother.³²

These are the scant specimens which form the only evidence of which researchers can avail themselves in their studies of the *vitae necisque potestas*. And to make matters worse, quite a few of these samples are disqualified by several scholars. Leaving aside 9 (the father who was forced to emancipate his son), which is dubious at best, they want to strike cases 1 (Brutus), 3 (Postumius Tubertus) and 4 (Manlius Torquatus) off the list, since these fathers acted not so much as fathers but in their capacity as magistrates.³³ Case 2 (Spurius Cassius) is considered doubtful because the sources do not concur, while some regard Orosius, the only source for case 5 (Fabius Buteo) as unreliable.³⁴ If we adopt these strict criteria, we are left with only five positive specimens, and it noteworthy that in three of these (6, 8, 11) the fathers' actions did not go unpunished. Nor is it likely that these cases are simply the only ones on historical or juridical record with a host of other murders lurking behind them – in that case, one would expect at least some mention of the subject in the correspondence of Cicero, Plinius or Fronto.³⁵

The paucity of the evidence has led Harris³⁶ to believe that there must be another application of the *vitae necisque potestas*, which is why he assumes that it included the *ius exponendi*, i.e. the right to expose babies. His proposal is attractive in several ways. It supplies us with many more cases in which the father exercised his right, for infanticide was a frequent phenomenon in antiquity.³⁷ Moreover, it explains the *vitae* part of the

²⁹ Sen *Cl* 1, 15, 1

³⁰ D 37, 12, 5 (Papinianus, *libro undecimo quaestionum*) *Divus Traianus filium, quem pater male contra pietatem adficiebat, coegit emancipare quo postea defuncto, pater ut manuissor bonorum possessionem sibi competere dicebat sed consilio Nerati Prisci et Aristonis et propter necessitatem solvendae pietatis denegata est*

³¹ D 48, 21, 3, 5 (Marcianus, *libro singulari de delatoribus*) *Videri autem et patrem, qui sibi manus intulisset, quod diceretur filium suum occidisse, magis dolore filii amissi mortem sibi irrogasse et ideo bona eius non esse publicanda divus Hadrianus rescripsit*

³² D 48,9,5 (Marcianus, *libro quarto decimo institutionum*) *Divus Hadrianus fertur, cum in venatione filium suum quidam necaverat qui novercam adulterabat, in insulam eum deportasse, quod latronis <more> magis quam patris iure eum interfecit nam patria potestas in pietate debet, non atrocitate consistere* Rabello 1979, 245-46 regards this measure as an important limitation of the *patria potestas*, symptomatic of the etatism of the Principate

³³ Thomas 1984, 512, Harris 1986, 82-84

³⁴ Yaron 1962, 250, Harris 1986, 84

³⁵ Saller 1996², 122 But Westrup 1939, 161 is overly optimistic when he writes 'There is nothing that warrants the ascription of a wider and generally valid significance to what is recorded hereof in the heroic epics and the sagas'

³⁶ 1986, 94-95

³⁷ In the late Republic, Harris 1986, 93 contends, it occasioned the invention of a 'law of Romulus' which forbade the exposure of sons and first daughters (D H 2, 15, 2 *πρῶτον μὲν εἰς ἀνάγκην κατέστησε τοὺς οἰκίτορας αὐτῆς*

potestas: a father could dispose of his child, but also accept it (*tollere*) and allow it to live. In all fairness, he does mention two objections that can be made to his theory: it is often assumed that the *patria potestas* took effect only after the acknowledgement of a child, and it is doubtful whether *expositio* can be equated with *nex*.³⁸ He wisely does not confine the *vitae necisque potestas* to the *ius exponendi*.³⁹

A last bone of contention is the status of the so-called *consilium domesticum*. It was *mos* for the Roman father, before he sentenced his child to death, to convene a council of wise men as a sort of impromptu court. If a daughter had been accused, the council consisted of near relatives and close friends, since these cases usually involved a sexual delict of some sort. Where a son was concerned, the council could be supplemented with magistrates. The *consilium* had no official jurisdiction, but the fact of its presence could help avoid a censorian *nota*.⁴⁰

In a couple of cases in our catalogue, a *consilium domesticum* played a part. It was assembled in cases 2⁴¹ and 6⁴², but it is also mentioned in a number of other cases. In 140 Silanus, son of Titus Manlius Torquatus and former governor of Macedonia, was denounced by the Macedonians for peculation. His *father ne consilio quidem necessariorum indigere se credidit ... domi consedit solusque utri parti per totum biduum vacavit*. He then renounced his son and banned him from the house, whereupon Silanus hanged himself.⁴³ In 102 L. Gellius, a former censor, had reasonable suspicions that his son was guilty of adultery with his stepmother and planning his father's murder. *Paene universo senatu adhibito in consilium, expositis suspitionibus, defendendi se adulescenti potestatem fecit, inspectaque diligentissime causa absolvit eum cum consilii tum etiam sua sententia*.⁴⁴ To give a final example: Sen. *Clem.* 1, 15, 2-7 records how a certain Tarius, who had discovered that his son was plotting to kill him, convened a *consilium domesticum*

ἅπαντα ἄρρενα γενεὰν ἐκτρέφειν καὶ θυγατέρων τὰς πρωτογόνους, ἀποκτινύναι δὲ μηδὲν τῶν γεννωμένων νεώτερον τριετοῦς, πλὴν εἴ τι γένοιτο παιδίον ἀνάπηρον ἢ τέρας εὐθὺς ἀπο γονῆς.).

³⁸ Harris contends that most modern scholars hold that *patria potestas* came into being at birth, as for the equation of *expositio* and *nex*, he adduces Paulus, *libro secundo sententiarum*, D 25, 3, 4: *Necare autem non tantum is qui partum praefocat, sed et is qui abicit et qui alimonia denegat et is qui publicis locis misericordiae causa exponit, quam ipse non habet* Thomas 1984, 509-10 states that *nex* is a term for killing without bloodshed, e.g. by strangulation or starvation, and also occurs in connection with the killing of infants in Cic. *Leg.* 3.19 = *Tab.* 4, 1 *cito necatus tamquam et XII Tabulis insignis ad deformitatem puer*

³⁹ Yaron's objections to the inclusion of the *ius exponendi* are convincingly countered in Harris 1986, 93-95, Thomas 1984, 543-44 denies any common ground. Strangely enough he tries to confirm his point by citing D 25, 3, 4 (see the previous note) but leaving out *et qui non habet* Saller 1996², 117 deems it possible that the *ius exponendi* resorted under the *vitae necisque potestas*.

⁴⁰ See e.g. Kaser 1938, 75.

⁴¹ V Max 5, 8, 2 *adhibito propinquorum et amicorum consilio*; Liv. 2, 41, 10 *cognita domi causa*

⁴² DM 3, 17 *cognita domi causa* (57, 20-21)

⁴³ V Max. 5, 8, 3, see further Cic. *Fin.* 1, 24 *T. Torquatus (...), cum illam severitatem in eo filio adhibuit (...) ut eum Macedonum legatis accusantibus, quod pecunias praetorem in provincia cepisse arguerent, causam apud se dicere iuberet reque ex utraque parte audita pronuntiaret eum non talem videri fuisse in imperio, quales eius maiores fuissent, et in conspectum suum venire vetuit, numquid tibi videtur de voluptatibus suis cogitavisse?* But Liv. *Per.* 54 *domi causa cognita filium condemnavit abdicavitque*. Mommsen 1955², 26 remarks that the son was no longer in *patria potestate*.

⁴⁴ V Max. 5, 9, 1; Auct. vir. ill. 72, 10

presided over by Augustus. Mercy prevailed, and the son was sent away to live in luxurious exile in Massilia.

The relatively frequent presence of a *consilium domesticum* in these cases indicates then that it was customary for fathers to summon such an assembly when they were about to punish their sons severely, this has led a number of modern scholars, notably Kunkel 1974², to believe that it was obligatory.⁴⁵ But taking all the evidence into consideration there is no proof that this was ever the case.

To sum up, for a phenomenon so notorious as the *vitae necisque potestas*, we have but little evidence of its exercise (leaving out of consideration the *ius exponendi*). It was clearly not simply taken for granted, as becomes evident not just from the paucity of cases, but also from the unease and sometimes downright disapproval with which these are discussed by ancient authors.⁴⁶ Modern authors are therefore generally inclined to regard the *vitae necisque potestas* as an anomaly in a relationship that was usually characterized by *pietas* rather than harshness.⁴⁷ When a conflict arose, fathers could first and foremost rely on their economic powers.⁴⁸ Besides, a sobering observation has been made: due to high mortality rates, many Romans lost their fathers at an early age and therefore did not experience the more stifling aspects of the *patria potestas*.⁴⁹ In situations where the *vitae necisque potestas*

⁴⁵ Mommsen 1955² 25 refers the *consilium domesticum* resolutely to the realm of *mos*. Kaser 1938, 68 69 subscribes to his view and to endorse it comes up with Tac. *Ann.* 2, 50 (*exemplum maiorum*), 13, 32 (*prisco instituto* [Kaser has *more*]) and Suet. *Tib.* 35, 1 (*mos maiorum*). Lanfranchi 1938 252 n. 2 talks of 'l'assoluta irrelevanza dal punto di vista decisivo, di questo consiglio di fronte al *paterfamilias*'. Westrup 1939, 167 n. 2 speaks of the necessity of summoning a *consilium propinquorum*. Kunkel in 1974² shows himself quite convinced that the *consilium* was obligatory. Two of his main arguments are its frequent presence in the notorious cases cited above and – as an argument *a fortiori* – the presence of a *consilium* at the interrogation of slaves which, he concludes on the basis of Cic. *Clu.* 176 ff. was 'üblich oder doch zum mindesten nicht unüblich' (130). Two other arguments are based on far-fetched conjecture. In *Inst. Fragm. Augustodun.* 4 85-86 (a fifth century paraphrase of Gaius' *Institutiones*) we read about the Roman *paterfamilias* *talis est ut habeat vitae et necis potestatem*. *De filio hoc tractari crudele est sed non est post r. <occi>dere sine iusta causa ut constituit lex XII Tabularum. Sed deferre ius debet propter calumniam*. Kunkel contends (139-44) that a *iusta causa* can only be determined by a *consilium domesticum* and therefore wants to supplement *ius* to *iudicibus* or even replace it with *necessarius* or *propinquis*. But Rabello 1979 89-91 like most interpreters reads *iudici* and is reconciled with the ensuing inconsistency (a father may kill his son if he has a just cause, but has to report in court afterwards). Though unsatisfying it seems the best option so far. Kunkel's other conjecture concerns D. 48 8 2 (Ulpian, *liber primo de adulteris*) *Inauditum filium pater occidere non potest sed accusare eum apud praefectum praesidem e provinciae debet*. Mommsen 1955² 618 n. 4 already assumed that the phrasing was a result of Justinian redaction, but Kunkel 146 47 wants to supplement it *sed <cognoscere de eo cum amicis vel> accusare eum*. But this is too much of an interference. It is better to hold with Rabello (1979, 144-45) who emphasizes that the passage concerns the *filius adulter* and thinks that *maudium* must be taken as *in continenti*. Rabello 1979, the most extensive and profound study of the *vitae necisque potestas*, concludes 91 149 that there is no evidence that the *consilium domesticum* had a more binding status than *mos*. Harris 1986 81 refrains from judgement but adds in a note that it seems unlikely that [the Roman father] had this obligation under the Republic.

⁴⁶ See e.g. Liv. 4 29 6 V. Max. 5 8 *praef.*, Gel. 1 13, 7.

⁴⁷ See e.g. Thomas 1984 545. Saller 1996² 117 130 cf. already D. 48 9 5 *nam patria potestas in pietate debet non atrocitate consistere*.

⁴⁸ As suggested by Arjavi 1998 153 in a slightly different context.

⁴⁹ See Saller 1996², 121 who contends that 25-30% of young Romans had lost their fathers by the age of fifteen 50 60% at twenty-five and 80 90% at the age of forty.

could be exercised at all, Harris concludes, it remained useful in as far as it coincided with the *ius exponendi* and as a useful threat unruly sons.⁵⁰

It is good that some nuance has been added to the grim picture that existed of Roman father-son relationships. On the other hand, it should not obscure the facts that the *vitae necisque potestas* did exist, that it was exercised, and that it was not abolished until very late, or maybe not at all. And above all, one must realize that it was but an element of an extremely hierarchical relationship, in which the subordinate party was little more than a slave. It is hardly a cause for wonder, then, that declamation served as a means to explore this relationship and to help prepare Roman adolescents to take over the role of *paterfamilias*.

Fathers and sons in Roman declamation

The unrealistic, sometimes scabrous themes of Roman *controversiae* have been the butt of severe criticism from Antiquity onwards.⁵¹ Modern authors likewise tend to find them either scandalous, or useless, or both.⁵² But when declamation began to be studied seriously, so too did specialists in the field try to come to terms with the lurid subjects rather than dismiss them. Bonner, though concerned about the moral calibre of many declamations⁵³, contends that it is their very outlandishness that makes them good practice material⁵⁴. Russell, who writes about Greek declamation, emphasizes its literary qualities, but sees valuable exercise of ῥητορική in the assuming of stock characters and remarks that the many declamations involving parent-children conflicts may have had a cathartic effect.⁵⁵

From the 1990s new insights have been brought to the fore by authors who are interested in declamation's socio-cultural aspects and approach these with viewpoints derived from sociology, cultural anthropology, and psycho-analysis. Although they sometimes betray a lack of familiarity with the subject of declamation and even express their disdain for those who concentrate on the genre's rhetorical features and declamatory law, their views can generally make a valid contribution to the study of declamation. Looking past the sensational story lines, they see 'family and sexual conflict, problems of public citizenly behaviour'. This is Beard's formula⁵⁶; she regards declamation as Roman mythopoesis, with declamation's stock characters taking the place of gods and heroes, and

⁵⁰ Cf e.g. Cic. *Dom.* 84 *Patrem tuum, civem optimum, clarissimi viri filium, qui si viveret, qua severitate fuit, tu profecto non viveres, L. Philippus censor avunculum suum praeterit in recitando senatu*

⁵¹ Thorough surveys of ancient criticism of declamation can be found e.g. Bonner 1969², 71-83 and Kennedy 1972, 330-37

⁵² E.g. Clarke 1996 (3), 89-99, Duff 1964 (3), 331-36

⁵³ 'It is hardly necessary to stress the bad effect upon the young pupil of this concentration on erotic and often sordid themes' (1969², 41)

⁵⁴ 'The harder the case is, the more removed from the circumstances of everyday life, where there is always something to be said on both sides, the better the declaimer needs to be to cope successfully () The principle is a sound one, and by it the declamations may be defended on the very grounds that their critics attacked them' (1969², 83)

⁵⁵ Russell, 1983 ῥητορική passim Cartharsis 31 Cf Kennedy 1972, 330-37

⁵⁶ Beard 1993, 52

declamatory law that of divine sanction. In terms commonly used for defining myth, she states that the function of declamation is to 'construct a fictional world of "traditional tales" for negotiating, and re-negotiating, the fundamental rules of Roman society; they "naturalize the arbitrariness" of those rules by setting them in the context of *legal* sanction; they offer a vision of *higher authority* – defined not in terms of divine intervention, but in terms of the social sanction of Roman *law*, they provide a focus for the re-presentation and constant re-resolution of central Roman/human conflicts that everyday social regulations do not (and *can* not) solve, they offer an arena for learning, practicing and recollecting what it is *to be and think Roman*'.⁵⁷ 'The subject matter takes us to the centre of Roman conceptions of private and social behaviour, ideas of the self and personal obligations'.⁵⁸ Without going into the genre's supposed mythical aspects, we can agree with Beard that declamation was not only a rhetorical exercise but also, by its subject matter, helped young Romans to construct their own identity and to determine their position within both family and society. A similar position is taken by Imber, who states that 'the very process of composing a declamation forced the student declaimer to learn Roman values and the contradictions between them () Student declaimers actively contributed to the ideological tradition that was itself shaping their own identities'.⁵⁹ Bloomer⁶⁰ largely concurs, but puts great emphasis on declamation as a means for the new imperial elite to distinguish and maintain itself and its language.⁶¹ It is a rehearsal for 'the needs and demands of all who might be clients of the future father'.⁶² It is 'role playing that practiced category-making'.⁶³ On a negative note, this means the exclusion of social subordinates, who are silenced because their discourse is determined for them by the elite students of rhetoric.⁶⁴

Some authors, recognizing these social and psychological implications of declamation, have focused more exclusively on father/son-relationships. Gunderson, whose approach is rooted in psychoanalysis, regards declamation as the dream state of rhetoric filled with forbidden subjects such as 'lust, transgression, violence, and implacable strife'.⁶⁵ It is a key to the Roman unconscious. This unconscious is obsessed with fatherhood as a norm, as the embodiment of virility on all levels, both within the declamatory texts and outside them. 'The scenography of rhetoric and rhetorical training becomes a venue for the satisfactory playing out of a 'family romance' whose *dénouement* involves recognizing the salutary quality of the maxim that father knows best. Furthermore rhetoric becomes the ideal tool with which to cure an ailing father and to lend linguistic authority to a languishing paternal authority'.⁶⁶ When the master performs, his 'speech is then a model one in manifold means: the educator educates by means of it, but so too does he offer it to

⁵⁷ Beard 1993: 56

⁵⁸ Beard 1993: 61

⁵⁹ Imber 2001: 209–212

⁶⁰ 1997a and b

⁶¹ For a similar function of recitation see Dupont 1997

⁶² Bloomer 1997a: 58

⁶³ Bloomer 1997b: 212

⁶⁴ They were also learning an inextricably connected social and rhetorical subordination: where to place various personae and what words and sentiments were appropriate. (Bloomer 1997a: 62; see further 63–71)

⁶⁵ Gunderson 2003: 22

⁶⁶ Gunderson 2003: 59

his students as something that they themselves might wish to take on and adopt. Thus the master offers to the students the mask of the father as if it were their own – but only if they themselves are good sons⁶⁷.

Ideological components are absent in Sussman's sensible study of father/son-relationships in the *DM*, the collection with the largest percentage of declamations in which young men figure as litigants or principal figures.⁶⁸ This is hardly surprising, because they were written by professional rhetores who had to compete for students; they were 'expressly for and obviously in sympathy with their intended audience'⁶⁹. This audience consisted of young men trying to assert their own identity and independence in the face of a *patria potestas* that dominated their lives in every respect. No wonder then that parricide, the most extreme remedy for a put-upon son, figures in four declamations⁷⁰, and that father/son-relationships are anyway full of strain or even overt bad feelings in *DM* 1; 2; 4; 5; 8; 9; 10; 17; 18; 19. Fathers are expressly cruel and harsh in *DM* 8; 9; 10; 17; 18; 19 (and cf. 5), while sons 'struggle to maintain the conventional pose of *pietas* towards their fathers' in *DM* 1; 2; 4; 6; 7; cf. 9; 10; 17⁷¹. Sussman notes that 'declaimers are careful to portray the virtue, innocence and even naiveté of the adulescens (1-4; 6; 9; 16) as well as his heroism and nobility of spirit (2-4; 6-10; 16) but significantly adds that only in *DM* 3 does the young man emerge as an active participant in affairs; in the other *controversiae*, the *iuvenis* is usually 'passive, pathetic, or a victim of circumstances, in an accurate depiction of his generalized role in society as dictated by *patria potestas*'⁷². 'It appears,' he concludes, 'that in composing and delivering in the first person declamations such as the example speeches in the *DM*, youths could achieve some catharsis, while for a short time escaping their rigidly controlled worlds, and also vent or explore in acceptable ways their repressed, pent-up emotions'⁷³.

Vesley has a similar point of view, noting the 'tension between the ideal of *pietas* and the reality of children's lives under *patria potestas*'⁷⁴. He rightly states that accordingly, the main father-son issues discussed in the *controversiae* are whether a son's obedience to his father was, or was supposed to be, unlimited, and in what cases he could be justifiably disinherited.⁷⁵

⁶⁷ Gunderson 2003, 66.

⁶⁸ Sussman has been counting all available Roman declamations. Litigants or principal figures: Sen *Contr* 33 of 74 (44.6%), Calp *Decl* 32 of 53 (60.4%), *DeMi* 49 of 145 (33.8%), *DM* 14 of 19 (73.6%). Lesser roles for young men Sen *Contr* 10 (13.5%); Calp *Decl* 11 (20.8%); *DeMi* 19 (13.1%), *DM* 3 (15.8%). No role Sen *Contr* 31 (41.9%), Calp *Decl* 10 (18.9%); *DeMi* 75 (53.1%); *DM* 2 (10.5%; 1985, 182). Fathers play an important part in *DM* 1-11 and 17-19, mothers in 2; 3; 6; 8; 10; 16; 18; 19 (1985, 184).

⁶⁹ Sussman 1995, 191.

⁷⁰ *DM* 1; 2; 4; 17, cf. 18 and 19. '[I]n father-dominated societies, anthropologists tell us that fathers' fears of murder at the hands of their sons are typical' (Sussman 1995, 186).

⁷¹ Sussman 1995, 190.

⁷² Sussman 1995, 191.

⁷³ Sussman 1995, 192.

⁷⁴ Vesley 2003, 160.

⁷⁵ Vesley 2003, 173. See e.g. Sen *Contr*. 2, 3, 12 *an quidquid pater imperat faciendum sit*, *DeMi* 271, 1 *an utique necesse sit facere filio, quidquid pater iusserit*, 271, 3 *ergone omnia necesse est facere libers, quaecumque patres imperant*, 286, 1 *an omnia, quae adversus voluntatem patrum admissa sunt, debeant abdicatione puniri*, 287, 1 *an quidquid pater voluit, filio facere necesse sit* (Lanfranchi 1938, 250-51).

The majority of declamations involving father/son-relationships is concerned with *abdicatio* – the declamatory term for disownment, including disinheritance – which is hardly surprising in view of the Roman son's financial dependence on his father. But there are as many as twenty-two in which a father has killed – or wishes to kill – his son. In ten of these, the father does not use his *vitae necisque potestas*, but goes to court to get his way. Yet they are worth taking a brief look at, for since they concern fathers who seek their sons' death, they provide valuable additional information about the extremes in declamatory father/son-relationships.

The charge made by the father is often – unsurprisingly – attempted parricide.⁷⁶ In *DeMi* 281 a son who is in the process of being disowned asks his father – sword in hand – to revoke his decision; in *Calp. Decl.* 4 the son has already been convicted and asks to be kept prisoner in a state prison rather than at home. In three declamations, the son is caught preparing poison; his defence is that he wants to kill himself because his father wants him to join the army for the third time (*DeMi* 377); because his father has thrice disowned and then reinstated him (*Sen. Contr.* 7, 3); because his father has tried to disown him three times (*DM* 17).

In two declamations a young rapist who does not succeed in winning over his father⁷⁷, accuses him of *dementia* (*Sen. Contr.* 2, 3; *DeMi* 349). In the remaining three declamations, a father asks, as a reward for bravery⁷⁸, for his son's death. In *DeMi* 304, a rich priest has used two of his rewards⁷⁹ to free the son of his poor enemy after he had committed sacrilege and adultery respectively. When he wants to use his third reward for the same purpose after the young man has deserted from the army, his father, who had become a hero in the same war, asks for the execution of his son. *Calp. Decl.* 36 treats of a poor hero who wants the execution of his handsome son, a deserter, to prevent his becoming the slave of their rich commander.⁸⁰ A special case is, finally, *DeMi* 315, in which a hero father asks, against the law that says that heroes must kill deserters with their own hands⁸¹ – not that his son be pardoned, but that he need not kill him himself.⁸²

A closer look at the way the themes are worked out proves instructive. Strikingly, most declaimers have opted to speak for the father.⁸³ This father usually shows himself to be a model: he is an embodiment of Roman values: heroic, morally upright, stern but just –

⁷⁶ I have left out of consideration cases such as *DM* 1 and 2, in which the alleged parricide was successful and the son is therefore prosecuted by someone else

⁷⁷ There are several declamatory rape laws. For the one in question, *Raptor, nisi et suum et raptae patrem intra dies triginta exoraverit, pereat*, see e.g. Lanfranchi 1938, 462-66, Bonner 1969², 91, comm. at 18, 9 in *illa virgine publica subclamatus invidia* (361, 12-13). In the declamations it is generally assumed that the father merely stalls to punish his son.

⁷⁸ There are several declamatory laws which allow heroes and tyrannicides to choose their own rewards. See e.g. Lanfranchi 1938, 389-90 (cf. 382-83), Bonner 1969², 88.

⁷⁹ The law is *Sacerdos tria praemia accipiat*. See Lanfranchi 1938, 388 n. 5.

⁸⁰ The commander can appeal to the law that *Desertor duci serviat*, for which see Lanfranchi 1938, 430-31. The mention that the young man was *speciosus* indicates that he would have become his commander's sex slave.

⁸¹ *Vir fortis desertorem sua manu occidat*, for which see Lanfranchi 1938, 429.

⁸² Compare below the somewhat similar case of *Calp. Decl.* 24, where a son opposes his father's use of a *canifex* for his execution under the *lex indemnatorum*.

⁸³ Father: *Calp. Decl.* 36, *DeMi* 281, 304, 315, 349. Son: *DeMi* 377, *DM* 17. In declamations where both parties are represented, the son has the bigger part in *Calp. Decl.* 4, but a very small one in *Sen. Contr.* 2, 3 and 7, 3.

and deeply disappointed in a son who has not lived up to his expectations. He may regret the course of events⁸⁴, but expresses no doubts about the rightness of the death sentence. He can invoke his *vitae necisque potestas* to lend force to his point of view: *Legem habeo et viri fortis et patris*⁸⁵. Only in one case does the father appeal to the famous *exempla* of earlier days: *Tu, si incidisses in illum qui laudatos (Sh.B: laureatos) filii sui cervices amputavit, si incidisses in illum qui iudiciis propinquorum atque amicorum contentus fuit, opinor habuisses tempus querendi, habuisses non dico deferendi patrem sed diutius rogandi. Illi vere fortes et viri fuerunt qui cum hoc meminissent, liberos a se rei publicae gratia procreatos, bene impendi crediderunt exemplo*.⁸⁶

On the other hand, apart from Calp. *Decl.* 4, where the son is defiant and angry (but mainly with his stepmother!), the sons come across as a sorry lot. They feel grief at the hatred and rejection they experience from their fathers; one expresses self-hatred⁸⁷ and another freely admits that he is a coward⁸⁸; they never voice their resentment about the power their fathers have over them. Only in *DM* 17, 7, from a son who is yet subservient and still seems to want to be reconciled with his father, is there some criticism of disproportional measures stemming from the *patria potestas*: *vos adhuc in suprema nostra praecipiat auctoritas, qui filium occidere vocatis plerumque gravitatem, sicut abdicationis emendationem, sicut reliqua supplicia nostra rationis fronte protegitis, cunctosque praeiugidae mentis adfectus vocabulo molliore lenitis* (338, 14-18).

When we look at declamations in which fathers kill their sons on the basis of their *vitae necisque potestas*, there is no substantial difference in roles. Most declamations are concerned with the father's part (obviously in most cases the son is already dead); but there are a few in which other family members fight the father in court.⁸⁹ Only in Calp. *Decl.* 24⁹⁰ the son speaks for himself: already convicted under the *lex indemnatorum*⁹¹, he asks that his father kill him in person rather than leave the job to a *carnifex*.⁹² The young man's speech is deeply pathetic and nowhere does he dispute his father's right to take his life: *Mori iussus adulescens in primis adhuc annis, quo tempore et vita carissima est et mors acerba, non quaero vitam ... eripere vis vitam quam dedisti; non infitabor*.

⁸⁴ See esp. Calp. *Decl.* 36; *DeMi* 349.

⁸⁵ *DeMi* 305, 3; see further Sen. *Contr.* 2, 3, 11, where Latro in the *divisio* doubts whether a son can take his father to court, *quod vitae mortisque arbitrium datum est*; cf. 3, 2, 15.

⁸⁶ *DeMi* 349, 8, the father refers to cases 4 and 2 (T. Manlius Torquatus and Spurius Cassius).

⁸⁷ Sen. *Contr.* 2, 3, 1.

⁸⁸ *DeMi* 377, 5, 11.

⁸⁹ Father: Sen. *Contr.* 3, 7 and 7, 1, 16 (both very small parts); Calp. *Decl.* 44; 45; 46; *DeMi* 256, 288, *DM.* 19. Brother: Sen. *Contr.* 7, 12, 1-15. Mother: Sen. *Contr.* 3, 7 (small part); *DM* 8; 18. In Calp. *Decl.* 11 and 53, poor biological fathers try to save their sons from murderous adoptive fathers (to whom the *patria potestas* had of course been transferred, see above n. 17).

⁹⁰ And maybe *Decl.* 4 belongs here: the text gives no indication where the son was convicted, and by whom.

⁹¹ The law *indemnatos liberos licet occidere* is Calpurnius Flaccus' declamatory version of the *vitae necisque potestas*. See Sussman 1994, 168.

⁹² This declamation can be termed a *controversia figurata*. For as Sussman 1994, 168 rightly observes, 'The son does not dispute the penalty, just (ostensibly) the means of delivery. But he obviously hopes that if the professional executioner is denied, his father will not be able to administer his own sentence.'

A great deal of pathos is also found in Sen. *Contr.* 7, 1: a father has convicted⁹³ one son of parricide and orders the other to kill him. This brother, instead of using the traditional *culleus*⁹⁴, puts the parricide on a disabled boat; he drifts off, becomes a pirate chief, later captures his own father, but sends him home. The father then tries to disown the executioner manqué, whose main defence is either that he could not kill or that the boat, providing a slow death, was in fact more terrible than the sack. There is very little criticism of the manifestly cruel and unreasonable father; instead, the innocence of the son is argued from the fact that he survived, while the accusation of parricide is laid at the door of the boys' stepmother.

The two cases in which a poor biological father appears against a rich adoptive father are similar. The men started out as enemies; when they were apparently reconciled, the rich man adopted the poor one's three sons (Calp. *Decl.* 11) or they each adopted the other's son (*Decl.* 53). In *Decl.* 11, the poor father asks for his third son to be restored after one has been killed for adultery, the other convicted for attempted tyranny. Though he expresses grief at the loss of his sons, the main part of what is left of his speech inveighs against the corruption that comes with wealth, thus fitting better with the numerous declamations on the rich vs. poor theme than with those about killing children. The poor man in *Decl.* 53, whose son was evidently killed out of resentment by his rich adoptive father, opposes when his own adoptive son presents his case for suicide in the senate⁹⁵; with supreme irony (or incredible *pietas*) the fragment left of his speech begins with *Utinam, P.C. liberis nostris exire de vita nisi nobis arbitris non liceret!*

Like the aforementioned adoptive fathers, some biological fathers can also be unequivocally wrong: in *DeMi* 256 a father killed two of his sons in a fit of insanity; he wants to disown the third for curing him and thus confronting him with what he has done. Not only does the father make his third son responsible for his grief, he also casts suspicion on him for having become the only beneficiary of his father's will: *Quod unum possum praestare infelicissimis illis iuvenibus meis praestabo: ne quis eorum morte gaudeat, ne cui prosit quod filios meos occidi* (*DeMi* 256, 6). Cold opportunism is found in Calp. *Decl.* 46, where an escaped rapist on his return finds out that he has fathered a boy, whose mother demands his death.⁹⁶ In his turn, he demands the boy's death on the grounds of the *lex indemnatorum*. Of course this is a *controversia figurata*, the rapist hoping to wangle his way out of a death sentence. But note the way he takes for granted that his *vitae necisque potestas* will be acted upon and that the mother is responsible for this: *Si perseverat in mea poena, mater hunc occidet*.

⁹³ In a *consilium domesticum*, see *thema domi parricidi damnavit*; 7, 1, 16; 22; 24. Winterbottom 1999², 14 n.2 sees an 'exact parallel with the case of Tarius' (see above p 8)

⁹⁴ For the *culleus* see comm. at 18, 9 *deprehendi iuvenem – est armatus* (361, 16-18)

⁹⁵ In accordance with the declamatory law *qui causas in senatu voluntariae mortis non adprobaverit, insepultus abicitur*. For a brief but informative discussion of this law, see Sussman 1994, 155, it was very popular in Greek declamation and may have a basis in local Greek law, see Russell 1983, 35-37 and 91-96. In Rome, refusal of burial seems to have been restricted to cases of suicide by hanging. See Lanfranchi 1938, 489-90; Bonner 1969², 100-101; Dingel 1988, 122-23; further comm. at 19, 5 *sepehvi tamen* (375, 16).

⁹⁶ In accordance with the most common declamatory rape law, *rapta raptoris aut mortem aut indotatas nuptias optet*, for which see e.g. Lanfranchi 1938, 462-65; Bonner 1969², 89-91

Most fathers, however, manage to justify the killing of their sons. The father in *DeMi* 288 has killed his two sons for the sake of the commonwealth: they were tyrants. He is duly praised: *Illud proprium, plus debere huic tyrannicidae, qui senex duos et filios occiderit* (*DeMi* 288, 1). The father in *Calp Decl* 44, who has killed his son for suspected incest with his sister but does not want the same sister to be sacrificed in order to avert a plague, blames fate for his son's death: *O fortuna crudelis! Abstulisti mihi filium*. The rest of the short fragment consists of insinuations about the alleged incestuous affair between brother and sister, i.e. an indirect justification of the killing. In the remainder of these declamations, fathers kill their sons (ostensibly) in order to rescue them either from a dangerous illness or from serious damage to their sexual integrity.

In *Sen Contr* 3, 7 the father has poisoned his insane son, who was destroying his own body; in *DM* 8 he allows a doctor to perform vivisection on one of his terminally ill twins in order to save the other. In both cases it is the mother who sues the father, using the *actio malae tractationis*.⁹⁷ Of *Contr* 3, 7 we have but a brief fragment left, from which it becomes clear that the mother regards the euthanasia as murder,⁹⁸ while the father states that the son had been dying for a long time. In *DM* 8, too, the father is considered a murderer, and it is here for the first time that his right to use the *vitae necisque potestas* is disputed.

Ecquid, iudices, vel ex hoc totus animus mariti, tota tristissimae coniugis calamitas perspicitur, quod se negat matri communium liberorum debere rationem? placet ergo, mortales, ut de hominibus, in quos plus ex harum sanguine, ex harum transit anima, non habeant partem nisi tantum doloris? solos ergo communicabit misera planctus, et ab omnibus consiliis, quibus ordinatur iuventa, vita disponitur, extranea vilitate reposita circa maerores tantum lacrimarumque consortium orbitate iungetur? si merhercules fas est aestimare, utri plus parenti debeatur ex liberis, non improbe totam potestatem sibi vindicabit adfectus, qui decem mensibus ante vestram incipit diligere notitiam, et, cum vos patres gaudium primum faciat oculorum, ante sunt conscientia matres. quam multa ideo tantum de filiis facitis, quia licet! et frequentius potestatis vestrae iactatione tamquam aliquo gravitatis genere delinquitis⁹⁹ non habet orbitas vestra lacrimas, super arduos rogos tenetis inconcussam rigidamque faciem, utis obviam consolationibus, et, quod omnem modum feritatis excedit, captatis in magna calamitate laudari

DM 8, 6-7 (157, 5 – 158, 5)

In 8, 11 it is objected that the father did not call in a *consilium domesticum* † *praesertim si me*¹⁰⁰ † *hercule de tua feritate sentirem, si in quacumque filii curatione non adhiberes propinquos, non interrogares amicos, non respiceres ad matris animum* (162, 12-14).

⁹⁷ That is a charge of maltreatment of her. This *actio* is discussed in the third chapter of the introduction.

⁹⁸ *Non mirum est quare vivat quae filium perdidit: vivit qui occidit.* A similar statement is found in *DM* 18, 17 (370, 25 – 371, 7).

⁹⁹ Compare *DM* 17, 7 (338, 14-18) cited above p. 16.

¹⁰⁰ Stramaglia 1999 n. 63 opts for the reading of *ς pessime mehercule*.

Except for its disproportionate and / or cruel use, however, the *patria potestas*, including the *vitae necisque potestas*, remains unassailable:

sileo adhuc illa, per quae parricidii crevit immanitas; occisum filium obicio, puta luxuriosum, perditum, nocentem, fingite hoc patrem ira, indignatione fecisse. quantum facinus sit filium occidere, nemo magis fatetur, quam qui vult se illud fecisse pro filio.

DM 8, 6 (156, 20 – 157, 4)¹⁰¹

Sane cedat vobis circa regendas communium pignorum mentes sexus infirmior; vos mores, vos vitae genus, vos matrimonia ceterosque actus vestra persuasione firmetis.

DM 8, 7 (158, 9-11).

In Calp. *Decl.* 45 a father kills his son under the *lex indemnatorum* to prevent his being delivered up to a tyrant who threatens to attack the city unless he is given a handsome young man.¹⁰² He is accused not of murder, but of harming the state.¹⁰³ In his defence, he relies on the very points for which the father in *DM* 8 is reproached:

interemi iam mori volentem et commendavi misero manum. feci quod licebat: occidi filium. sed ingens pater praemium retuli: occisus est ante quam moreretur.¹⁰⁴ perit homo, sed pudor vivit.

In *DM* 19 the father kills to salvage his son's reputation, or even – though he does not manage to assert this convincingly¹⁰⁵ – to prove his innocence:

tuae fortassis infirmitati conveniat negare; me tantum fortior adsertio unci decet: eripiendus est non contentione verborum, sed ut civitas stupeat, erubescat. torquere me filium putas? invidiam facio populo: videor mihi illis verberibus lacerare famam, illis ignibus increpare rumorem. quaestio de infami filio unam rationem habet, ut probes innocentem.

DM 19, 9-9 (380, 15-21)

He contends that his use of the *vitae necisque potestas* springs from 'tough love':

et ego amavi filium meum, non osculis, non infirmitate, non lacrimis, sed viribus, dolore, patientia. unicum, quem, si acie clausisset hostis, vicaria morte servassem, si subitum cinxisset incendium, extulissem relictā meorum parte membrorum, eripui malignitati, abstuli famae.

DM 19, 4 (375, 22 – 376, 2)

¹⁰¹ Cf. also *DM* 8, 8 *Quid, quod filium occidit innocentem, cui nihil obicere, nihil poterat irasci?* (158, 24-25).

¹⁰² Compare Calp. *Decl.* 36 discussed above, see also *Decl.* 39 where a father opposes a plan to wage war on a tyrant to free his son: the only honourable way out for this son is suicide

¹⁰³ Under the law *reipublicae laesae sit actio*, for which see e.g. Lanfranchi 1938, 423-25, Bonner 1969², 97-97

¹⁰⁴ <by his own hand>, Sussman 1994 rightly supplements in his translation (83), see also his comm. *ad loc.* (220)

¹⁰⁵ More precisely, the father does not *want* to convince the jury: his plea consists of a string of insinuations against mother and son.

non est privilegium filium occidere, cum fieri potest, nec quisquam tantum ideo fecit, quia liceret. viscera unci lacerare suffeci; ignosce. si non potes, mihi crede: nemo filium suum occidit odio¹⁰⁶; non erit tanti iuvenis invisus. illud est in patribus usque ad parricidium terribile, quod amant, quod succurrunt, quod sibi videntur aliter non posse misereri (...) maioris adfectus est filium occidere quam vindicare.

DM 19, 5 (376, 17-25)

But to be on the safe side, no argument is left unused; the killing is also presented as a punishment received eagerly by a guilty son in 19, 9: *Filium (...) torsisse me putatis? ego vero occidi tarde, diu. quaestionem illud vocas? poena, supplicium et malorum meorum exitus fuit* (381, 15-18); see also 19, 15 *quotiens admotis ignibus ad aliquam corporis partem totum pectus inposuit! quotiens hiatu oris avide flammam adversus exeuntia verba collegit!* (387, 19-21).

The father will not put up with interference from his wife: *iam vero quid inprudenter, quid indignius quam cum sibi de liberis credunt licere tantundem, et aequum ius patris ac matris esse contendunt, quasi nesciant nobis arbitrium vitae necisque commissum!* (19, 5 [376, 13-17]), nor from a *consilium domesticum*: *manibus meis gratulor, quod non propinquus aliquis, non amicus inrupit; occidissem, quiquis me tunc ausus fuisset interrogare pro filio* (19, 4 [375, 13-16]).

DM 18, the speech for the prosecution of this father, is a lucid, well-structured plea aimed to prove the innocence of mother and son and to expose the father's silence as a form of innuendo. Although the mother's advocate strongly objects to the killing of the son, his speech contains no criticism of the abuse of the *vitae necisque potestas*, such as we find in DM 8 and which would have fitted perfectly in this declamation. He only finds fault with the father's refusal to convene a *consilium domesticum*:

dabo adhuc inter secretum publicationemque temperamentum: advoca propinquos, adhibe amicos, circumpone iuveni serios senes, intersint magistratus, adsistant, quibus habere possit civitas fidem.

DM 18, 12 (366, 15-18)

Looking at the declamations discussed above, we can only conclude that they consolidate the position of the Roman father and his *patria potestas*, including the *vitae necisque potestas*. Those who assume a father's role present extreme measures as inevitable and just, even as taken for the son's good. Those who speak against fathers will only attack excrescences of the *patria potestas*, but never its roots – thereby confirming its sacrosanct nature. These declamations are thus an important instrument to explore, but also to preserve and pass on the all-powerful position of the *paterfamilias*.

¹⁰⁶ Though occasionally the father lets slip that he did hate his son 19, 8 *nec captavi, ut illum mecum et mater odisset* (380, 3-4), 19, 13 *filium quem mecum odisse non poterat* (385, 23-25)

Incest

In the previous chapter it has been argued that Roman declamation could serve as a means to explore and eventually confirm and adopt paternal authority. It has been noted that the *DM* form no exception – yet they differ from the other collections in one respect: in their choice of themes, they border on the limits of what is morally and psychologically acceptable. Thus they offer the declaimers extreme situations in which to think through the problems of citizenship, *pietas* and *patria potestas*; the Roman values attached to these concepts are always eventually accepted, but only after they have been explored in a more profound and probing manner than we find in other declamations.

This property of the *DM* is most clearly visible in the seven *controversiae* which involve the three taboos that were – and still are – categorical in most civilizations: cannibalism, parricide, and incest¹⁰⁷. Cannibalism, which occurs in no other extant Roman declamations¹⁰⁸, is the subject of *DM* 12, in which a city sues a grain merchant for harming the state: due to his late arrival, people have had to resort to eating their fellow citizens. The theme gives rise to vehement disquisitions on guilt, responsibility, and moral and religious defilement. The topic of parricide, on the other hand, is anything but unique in Roman declamation; in fact, it can be called trite. Yet the four *DM* in which it figures always manage to give it an original twist: in *DM* 1 and 2 the son is blind and extremely powerless; in *DM* 17 he is a nervous wreck, still trying to keep up his attitude of *pietas* after his father has three times failed to disown him; in *DM* 4 he asks the senate permission to kill himself because it has been foretold that he will kill his beloved father; he is already fighting his dark and violent impulses, which had ironically enabled him to become a war hero. The treatment of incest, the subject of the present chapter, is anomalous too: *DM* 18 and 19 are the only declamations dealing with sexual relations between mother and son¹⁰⁹; while *DM* 19 is an exercise in insinuation and the dissemination of red herrings, *DM* 18 offers a thoughtful discussion of family love and trust.

It will not do, however, to approach the sexual issues raised in these declamations without a brief preliminary outline of ancient views on incest. This will be supplied mainly by ancient myth and law, supplemented with information from historical and literary sources. It will provide the necessary background material to examine the relatively small group of declamations involving incest, and to determine the position of *DM* 18 and 19 among them.

Roman legend has little to offer in the way of incest. The only tale of interest is Phaedrus' *Fable* 3, 10, which is in some ways the reverse of the *thema* of *DM* 18 and 19 but may have influenced it: a father is goaded by his *libertus* into thinking that his wife is unfaithful. At night, he finds a young man sleeping next to her and stabs him to death in the dark. When

¹⁰⁷ Detienne 1981 p 215

¹⁰⁸ For cannibalism in the rhetorical tradition, see Stramaglia 2002, 13-22.

¹⁰⁹ This type of incest was – and still is – regarded as the most infamous in any culture. See e.g. Seligman 1950, 311, 315. The theme was actually known, however, as appears from Quint. *Inst.* 9, 2, 79-80 (discussed below p 85) and Tac. *Dial.* 35, 5 *trannicidarum praemia aut vitatarum electiones aut pestilentiae remedia aut incesta matrum aut quidquid in schola cotidie agitur*, but we have no other declamations left that address the issue

the young man turns out to be his son, whom the mother – *aetatem adultam servans diligentius* (3, 10, 23) – wanted to sleep close to her, he kills himself out of remorse. Though the mother is taken to court, she is acquitted by *Divus Augustus* himself, who remarks: *Quod si delata perscrutatus crimina / paterfamilias esset, si mendacium / subtiliter rimasset, a radicibus / non evertisset scelere funesto domum* (3, 10, 47-50).

On the other hand it is well known that Greek myth, which had such an enormous influence on Roman thought and literature, abounds with tales of incest. In his insightful study 'De l'Inceste dans la Mythologie Grecque', Rudhardt has made an inventory of these myths and arranged them systematically, which allows him to discern certain established patterns and draw important conclusions. Classifying types of incest in accordance with the blood relationship of the lovers concerned, he discerns three groups: siblings, fathers and daughters, mothers and sons. He moreover draws a sharp distinction between gods and men. For the gods, incest carries no stigma; it is in fact inevitable, since they are all related. Yet it is striking that even in their community, incest between parents and children hardly occurs after Gaia's union with her sons Ouranos and Pontos.¹¹⁰

Incest among mortals, on the other hand, is a grave religious offence, explained by Rudhardt as follows: family ties, especially the bond between parents and children, are sacred, but so is the act of procreation. When the sacred sexual act is performed upon a sacred object, it becomes what Rudhardt calls an 'acte sursacralisant': a superabundance of the sacred arises, as it were. Its consequences are drastic, often destructive, especially when the sacred bond between parents and children is violated.

We find, accordingly, that love affairs between brothers and sisters are (increasingly) regarded as wrong, yet relatively innocent. They usually originate in reciprocal love and when disasters follow, these are not directly caused by the incestuous relationships as such¹¹¹. Incest between fathers and daughters is evidently much worse. Sexual desire is never mutual; it is in fact often abominated even by the one in love. If this is the father, he usually rapes his daughter. The consequences of these sexual acts are more

¹¹⁰ Rudhardt 1982, 758. On p. 759-60 he names two doubtful exceptions: the snake Echidna mated with her son Orthus (Geryon's dog) and bore the Nemean lion and Phix (the sphinx, with whom Oedipus would later be confronted, see Hesiod. *Theog.* 295 ff.); Clement of Alexandria (*Protr.* 2, 16-18) in his exposure of the Dionysian mysteries, reveals that Zeus slept with his daughter Persephone in the guise of a snake. The result of their union was Dionysus, who in his infancy was murdered and devoured by Titans; but since his heart was saved, Zeus could let him be born again.

¹¹¹ See Rudhardt 1982, 733-39 with relevant sources in the *Odyssey*, Aeolus makes his six sons marry his six daughters (Hom. *Od.* 10, 5-12), in Euripides' *Aeolus* he acquiesces in the mass marriage after causing the suicide of his daughter Canace (note, later, Ovid's guilt-ridden treatment in *Her.* 11). The affair between Euopis and her brother evokes repugnance, but it is her husband (*cum* uncle) who pays the gravest penalty: after uniting himself with her dead body, he kills himself on the tomb he had built for her. When Leucippus falls desperately in love with his sister, it is their mother who arranges a rendez-vous. Father Xanthias apprehends them as an adulterous, not an incestuous couple, he accidentally kills his daughter and is promptly killed by his son, who then goes into exile – for parricide. In pseudo-Plutarch *De flux.* we find a number of young men who accidentally sleep with their sisters, upon the realization, they jump into rivers, which subsequently get to bear their names. He also mentions Haemus and Rhodope, who are turned into mountains for adding sacrilege to incest. they are used to call each other 'my Zeus' and 'my Hera'. In these cases we may venture to say that the 'acte sursacralisante' actually confers a privilege. This also goes for Byblis and Caunus, who do not give in to their passion: Caunus leaves to found a city and Byblis turns into a spring

drastic: on the one hand, they usually provoke violent responses in the object of infatuation, on the other, they confer greater supernatural privileges¹¹².

The same applies to the significantly small amount of cases of incest between mother and son, which moreover usually happen accidentally or are even prevented. Incest is narrowly avoided by Telephos and Auge¹¹³ and by Tanais: by way of punishment from Aphrodite, he falls in love with his mother, but jumps into, and becomes a river to avert disgrace¹¹⁴. Aigyptos and Neophron mistakenly sleep with their own mothers instead of each other's; Zeus transforms them into four different birds that are never seen together¹¹⁵. The sacred is more in evidence in the story of Halias and her sons: Aphrodite makes them rape their mother, after which their father Poseidon hides them in the earth; they become eastern deities. Halias jumps into the sea, becomes Leucothea and is honoured with a cult¹¹⁶. An overabundance of the sacred is, finally, also found in the life and acts of Oedipus. His origin is deeply tied up with the sacred and divine, but he was conceived against the express orders of an oracle. By killing his father and sleeping with his mother, he must doubly taint himself¹¹⁷.

This religious base of Greek incest prohibitions can be recognized in the terms used to refer to the phenomenon: instead of technical terms, we find designations like ἀνήκεστος καὶ ἄνομος γάμος, γάμος ἀσεβής, γάμος ἀνόσιος¹¹⁸. The prohibitions themselves reflect the status of incest in mythology: incest between parents and children is viewed with horror, while a marriage between non-uterine siblings was condoned, at least in Attica¹¹⁹. Civil law forbade marriages between ascendants and descendants, and between uterine siblings; this also applied in cases of adoption, except in the case of adopted brothers and sisters¹²⁰. When a forbidden marriage had taken place, the union was declared void; any

¹¹² See Rudhardt 1982, 739-46 with relevant sources. It is usually the father who falls in love; Pangaeus kills himself when he has accidentally slept with his daughter, he becomes a Thracian mountain. Side kills herself on her mother's tomb before her father gets a chance to get at her. Her blood is transformed into a harrier. Larissa drowns her father Piasus after he has raped her; Larissa becomes the name of a city in Asia Minor, where Piasus receives a cult. Harpalyce kills her brother to avenge herself for the rape, she becomes a bird (χάλκις) while her father commits suicide. Nyctimene only hides in shame and is transformed into a nightingale by Minerva; but Cyane kills her father Cyanippus to ward off a plague, and then herself; he had raped her as a punishment for his neglect of Dionysus. Further, in less-known variants of familiar myths, Niobe's children are killed by her father after she has refused his sexual advances; Athena kills her father Pallas when he attempts to rape her. When daughters take the initiative and trick their fathers into sleeping with them, their fathers try to kill them. This happens to Nyctimene in a different version of the myth mentioned above, and also to Smyrna/Myrrha, who has – as a punishment from Aphrodite – repeatedly slept with her father. She is transformed into a myrrh tree and gives birth to Adonis. A special case is, finally, that of Thyestes, member of a doomed family, to whom it is predicted that the son (Aegisthus) he begets with his daughter will take revenge for the horrible meal he had been served.

¹¹³ Rudhardt 1982, 756-57. The story bears a great deal of resemblance to that of Oedipus and Jocasta, but Telephos and Auge recognize each other in the nick of time.

¹¹⁴ Rudhardt 1982, 749. The river is the Don (OCD s.v. Tanais).

¹¹⁵ Rudhardt 1982, 749-50.

¹¹⁶ Rudhardt 1982, 750-51.

¹¹⁷ Rudhardt 1982, 753-56.

¹¹⁸ DS 449. Rudhardt 1982, 7310-32 observes that quite specific terms came in use after the advent of Christianity. In the 3rd and 4th centuries CE he finds μητρομξία, θυγατρογάμος or θυγατρομξία, ἀδελφογαμία.

¹¹⁹ DS 450, 452.

¹²⁰ Marriage was even obligatory in the case of ἐπικληροί see DS 453 and p. 74 below.

children that had sprung from it became second-class citizens¹²¹. Criminal law contained no provisions for punishment of incest, but insofar as it was a form of *μοιχεία*, husband, son, father and brother of a guilty woman were allowed to kill her lover *in flagrante delicto*¹²². The only other option was divorce¹²³.

For the Romans too, *incestus* – deriving from *in* and *castus* – was a religious transgression. As an umbrella term for sexual infringements of *fas*, it comprised not just sexual relations between relatives, but also *stuprum* of Vestal virgins¹²⁴. Both met with rigorous prohibitions and severe penalties, which in either case originated in the ancient, far-reaching *patria potestas*. *Stuprum* of Vestal virgins was punished by the *pontifex maximus*, who – either on the basis of a *patria potestas* over the virgins or because he had them *in manu*¹²⁵ – had the woman flogged and walled in alive, while her lover was beaten to death in the *Comitium*¹²⁶.

In their prohibitions of sexual relations between relatives the Romans went much further than the Greeks. This is mainly due, it is assumed¹²⁷, to the rigid family structure under the *paterfamilias*: all those who entered a family, whether by birth, marriage, or adoption, were regarded as (blood) relations. The Romans' views on what relationships were to be considered incestuous can best be deduced from their marriage laws. These varied with the course of time; veering from considerable strictness before the second Punic war to comparative leniency when Claudius had the senate authorize marriages between uncle and niece (so as to be able to marry Agrippina, the son of his brother Germanicus¹²⁸), then back to great severity, first under Diocletian, then under Constantine and later Christian emperors. A comprehensive overview is found in Gaius' *Institutiones*:

Inter eas enim personas, quae parentum liberorumve locum inter se optinent, nuptiae contrahi non possunt, nec inter eas conubium est, velut inter patrem et filiam vel inter matrem et filium vel inter avum et neptem; et si tales personae inter se coierint, nefarias et incestas nuptias contraxisse dicuntur. Et haec adeo ita sunt, ut quamvis per adoptionem parentum liberorumve loco sibi esse coeperint, non possint inter se matrimonio coniungi, in tantum, ut etiam dissoluta adoptione idem iuris maneat; itaque eam, quae mihi per adoptionem filia <e aut> neptis loco esse coeperit, non potero uxorem ducere, quamvis eam emancipaverim.

(Gai. *Inst.* 1, 59)

¹²¹ DS 454.

¹²² DS 455; Dem. C. *Aristocr.* 53.

¹²³ DS 455; Lys. C. *Alc.* 1, 28.

¹²⁴ RE s.v. *incestus* 1246; DS s.v. *incestus* 455-56; Mommsen 1955², 682-83 n. 2. The latter two consider the participation of men in women's religious festivals a third category, thinking mainly, it seems, of Clodius' appearance at the *Bona Dea* festival; see Quint. *Inst.* 4, 2, 88; cf. Cic. *Mil.* 52.

¹²⁵ RE 1246-47.

¹²⁶ See e.g. Liv. 8, 15, 7; 22, 57, 4; Plin. *Ep.* 4, 11, 10; Suet. *Dom.* 8; Mommsen 1967², 928-31

¹²⁷ DS 455.

¹²⁸ Tac. *Ann.* 12, 5-7; Suet. *Claud.* 26; Gai *Inst.* 1, 62 *Fratris filiam uxorem ducere licet; idque primum in usum venit, cum divus Claudius Agrippinam fratris sui filiam uxorem duxisset; sororis vero filiam uxorem ducere non licet.*

Sane inter fratrem et sororem prohibita sunt nuptiae, sive eodem patre eademque matre nati fuerint sive alterutro eorum. Sed si qua per adoptionem soror mihi esse coeperit, quamdiu quidem constat adoptio, sane inter me et eam nuptiae non possunt consistere; cum vero per emancipationem adoptio dissoluta sit, potero eam uxorem ducere; sed et si ego emancipatus fuero, nihil inpedimento erit nuptiis.

(Gai. *Inst.* 1, 61)

Item amitam et materteram uxorem ducere non licet. Item eam, quae mihi quondam socrus aut nurus aut privigna aut noverca fuit.

(Gai. *Inst.* 1, 63¹²⁹)

All these marriages were considered void under Roman civil law, and any children that had sprung from them were illegitimate¹³⁰. In addition incest was liable to criminal prosecution, but very little is known about the proceedings. RE 1247 assumes that originally the *pontifices* were responsible for the observance of the marriage laws¹³¹; Mommsen 1955², 687-88 on the basis of Plut. *Quaest. Rom.* 6 thinks that during the Republic, cases of incest came before *comitiae* presided over by the *quaestor*. There is no evidence left of any criminal laws against incest, but the fact that it was outside the scope of the *Lex Iulia de adulteriis coercendis* indicates that this augustan law was not needed to fill a gap in that area¹³². Punishment could be death¹³³ or deportation¹³⁴; the taint of incest was so great that additional expiatory rites had to be performed¹³⁵.

The horror of incest that provoked the numerous religious and juridical prohibitions also manifests itself in Roman literature. In oratory and history it was used effectively to malign political opponents and to substantiate one's general disgust with

¹²⁹ A good survey also in Mommsen 1955², 685-86. It is not clear when affinity came to be an obstacle for marriage, Mommsen 1955², 683 points out that the marriage between Sassia and her son in law was regarded as scandalous, but not yet illegal (see Cic. *Clu.* 12).

¹³⁰ *Ergo si quis nefarias atque incestas nuptias contraxerit, neque uxorem habere videtur neque liberos: itaque hi, qui ex eo coitu nascuntur, matrem quidem habere videntur, patrem vero non utique, nec ob id in potestate eius sunt, quales sunt ii, quos mater vulgo concepit: nam et hi patrem habere non intelleguntur, cum is et incertus sit, unde solent spurii filii appellari vel a Graeca voce quasi σπορόδην concepti vel quasi sine patre filii* (Gai. *Inst.* 1, 64).

¹³¹ Probably on the basis of Cic. *Leg.* 2, 22 *incestum pontifices supremo supplicio sanciunt*.

¹³² As Mommsen 1955², 684 assumes on the basis of Dig. 48, 18, 4 *in incesto lex Iulia cessat de adulteris*. DS 455 and Meyer Zwißelhofer 1995, 111, 119, 122 on the contrary think that incest did resort under the *Lex Iulia*, as aggravated forms of *stuprum* (with a spinster) or *adulterium* (with a married relative).

¹³³ Liv. *Epi.* 20 (*Herm.* 4, 372) mentions that a certain Cloelius, *qui primus adversus veterem morem inter septimum gradum cognationis duxit uxorem*, managed to escape the death penalty. Tiberius ordered Sex. Manus to be thrown from the Tarpeian rock for committing incest with his daughter (Tac. *Ann.* 6, 19, cf. Quint. *Inst.* 7, 8, 3-6 which is probably concerned exclusively with declamation; see n. 147 below).

¹³⁴ Paul. *Sent.* 2, 26, 15 *Incesti poenam, quae in viro in insulam deportatio est, mulieri placuit remitti, hactenus tamen, quatenus lege Iulia de adulteris non apprehenditur*; Dig. 48, 5, 12, 1 *Militem, qui sororis filiam in contubernio habuit, licet non in matrimonium, adulteri poena teneri rectius dicitur*. Famous cases are that of S. Papinius, who committed incest with his mother, he killed himself, while she was banned from Rome for ten years (Tac. *Ann.* 6, 49), under Claudius the praetor L. Iunius Silanus was accused of incest with his sister and expelled from the senate. He committed suicide, his sister was banned from Italy (Tac. *Ann.* 12, 4 and 8).

¹³⁵ Tac. *Ann.* 12, 8.

historical *personae*. The most famous examples are, of course, Cic. *Cael.* 36 about Clodius and Clodia¹³⁶ and Tac. *Ann.* 14, 2 about Nero and Agrippina¹³⁷; slightly less notorious, perhaps, are the imputations against Caligula and his sisters, Domitian and his niece¹³⁸.

If we turn our attention to poetry, we find incest employed for character assassination in the venomous poems of Catullus addressed to Gallus¹³⁹ and Gellius¹⁴⁰. Although he uses grave terms to denounce Gellius' affairs¹⁴¹, his discourse expresses acrimony and spite rather than profound religious or moral outrage¹⁴². His tone is quite different, however, in C. 64, the first Roman poem in which incest crops up as one of the factors that made the goodwill of the gods turn away from mankind¹⁴³:

*Sed postquam tellus scelere est imbuta nefando
iustitiamque omnes cupida de mente fugarunt,
perfudere manus fraterno sanguine fratres,
destitit extinctos natus lugere parentes,
optavit genitor primaevi funere nati,
liber ut innuptae poteretur flore novercae,
ignaro mater substernens se impia nato
impia non verita est divos scelerare penates.
omnia fanda nefanda malo permixta furore
iustificam nobis mentem avertere deorum*
(397-406)

But if there was any author especially preoccupied with the destructive force of incest – and one who exerted great influence on the *DM* – it was the younger Seneca. For him, incest leads 'to the paradox that love can be evil, and a mother a source of dread and pollution.' It 'symbolises the scelus between male and female that imparts to the normally beneficent force of love and sexuality a destructive power to outdo the traditional evil of hatred and murder.'¹⁴⁴ The disastrous power of incest culminates, of course, in the person of Oedipus, whom he makes lament:

¹³⁶ See Dixon 2001, 142; 145. But even Cicero himself did not escape aspersions of incest: it was said that he slept with his daughter Tullia (Dixon 2001, 200 citing [Sal.] Cic. 2 *filia matris paelex* and Dio 46, 18, 6 τὴν θυγατέρα μοιχεύειν). In Greek rhetoric too these slurs were par for the course – see e.g. Lys. C *Alc.* 1, 41; Isae. *De dicæog. her.* 39.

¹³⁷ See also Suet. *Nero.* 28-29.

¹³⁸ Suet. *Cal.* 36 and *Dom.* 22.

¹³⁹ Catul. 78, discussed in Rankin 1976, 118. Gallus allegedly arranged for a nephew to sleep with an aunt.

¹⁴⁰ Catul. 74, 88-91, discussed in Rankin 1976, 117-119. Gellius was supposed to have slept with his aunt, mother and sister.

¹⁴¹ E.g. *quid facit is, patruum qui non sinit esse maritum? / ecquid scis quantum suscipiat sceleris? / suscipit, o Gelli, quantum non ultima Tethys / nec genitor Nympharum abluit Oceanus* (88, 3-6); *qui ut nihil attingat, nisi quod fas tangere non est* (89, 5), *nascatur magus ex Gelli matrisque nefando / coniugio* (90 1-2).

¹⁴² Rankin 1976, 120-21 argues that Catullus' bitterness is caused by his frustration over his beloved Clodia's affair with her brother Clodius.

¹⁴³ See Fantham 1983, 72: 'Only Catullus includes incest ... with the standard familial crimes,' comparing the fragment with Lucr. 3, 70-73, one could also think of Ov. *Met.* 1, 141-150.

¹⁴⁴ Fantham 1983, 68, 73.

*scelerisque pretium maius accepi scelus.
leve est paternum facinus. in thalamos meos
deducta mater, ne parum sceleris foret,
fecunda – nullum crimen hoc maius potest
natura ferre. si quod etiamnum est tamen,
qui facere possent dedimus.*

(Sen. *Phoen.* 269-74)

While Laius fulminates:

*invisa proles, sed tamen peior parens
quam natus. utero rursus infausto gravis
egitque in ortus semet et matris impios
fetus regressit, quique vix mos est feris
fratres sibi ipse genuit.*

(Sen. *Oed.* 636-40)¹⁴⁵

Incest in Roman declamation

The above, while making no claims to be exhaustive – it is indeed an oversight that a comprehensive study of incest in Roman antiquity has not yet been written – will provide an adequate background against which to assess the Roman declamations involving incest. These declamations reflect contemporary socio-juridical notions in that they treat of two kinds of incest: unchastity of priestesses and sexual relations between family members.

The second type will be discussed below; the first type only occurs in Seneca the Elder. *Contr.* 1, 2 centres around the declamatory law *Sacerdos casta e castis, pura e puris sit*¹⁴⁶. The case is that of a girl who seeks a priesthood after having been imprisoned in a brothel, where – she claims – she managed to preserve her virginity, though it meant murdering an importunate soldier. About a fifth of the fragments is concerned with the girl's defence; the rest is devoted to accusations and imputations. In *Contr.* 1, 3 too, a large majority of the declaimers chooses to speak against the woman. This is the case of a Vestal

¹⁴⁵ It will be clear by now that Veyne 1978, 41 – notwithstanding his useful observations on the causal connections between the Roman *paterfamilias*' fear of losing social control and a growing puritanism (35-40) – is oversimplifying matters when he states that 'A Rome, l'inceste mère-fils, ou frère-sœur n'était pas très rare, il était, bien entendu, condamné, mais il ne soulevait pas d'horreur sacrée, comme chez nous' chez les satiriques, il est un thème de plaisanterie ou de sarcasme, un sujet de bons mots médisants; c'était plus grave que l'adultère, mais enfin, c'était une faute du même ordre, non un attentat contre la nature. On peut supposer que l'horreur sacrée de l'inceste s'est établie au cours des derniers siècles de l'Empire.'

¹⁴⁶ The declamatory law is firmly based in pontifical law. See Gel 1, 12; Borneque 1967², 60; Sprenger 1911, 256-57; Lanfranchi 1938, 386-88; Bonner 1969², 104.

virgin who was condemned for unchastity and thrown from the Tarpeian rock¹⁴⁷; she appealed to Vesta and survived; it is requested that she is thrown once more. *Contr.* 6, 8 finally is the case of a Vestal virgin charged with unchastity because she wrote a verse: *felices nuptae! moriar nisi nubere dulce est*. The excerpt, which grants slightly more scope to the prosecution than to the defence, is too brief to justify any conclusions.

The fourteen declamations that treat of incest between family members have in common a great abhorrence of the phenomenon. This distaste emerges from the fact alone that the word 'incest' appears in none of their titles: if the phenomenon is mentioned at all, euphemistic *infamis (in)* – 'suspected of misconduct (with) – is used¹⁴⁸. More strikingly, incest is never directly the subject of the *controversia* in question. This usually happens because the declamation is figured¹⁴⁹, though sometimes other matters are given deliberate and genuine precedence¹⁵⁰.

The declamations in the latter group are very much alike; the themes of *DeMi* 291, *Adulter uxoris qua cesserat fratri*, and *Calp. Decl.* 48, *Adulter uxoris*, are in fact identical. Both concern two sons and a father. Son 1 falls so desperately in love with the wife of Son 2 that he becomes dangerously ill. Father makes him confess his troubles, after which Son 2 immediately surrenders his wife to Son 1. Son 1 later catches his wife in the act with her former husband and kills the couple¹⁵¹. Father disowns him. It is his speech that we find in both declamations. In accordance with Roman civil law he does not regard the affair as incestuous¹⁵², but at the most as a forgivable instance of adultery¹⁵³ or even a manifestation of true and rightful love¹⁵⁴; it pales into insignificance beside the murder¹⁵⁵. A similar case is *DeMi* 286, where Son 1 rapes Son 2's fiancée; following the *lex raptarum*¹⁵⁶, she opts for

¹⁴⁷ In accordance with the declamatory law *Incesta (de) saxo deiciatur*, discussed in connection with this very case in Quint *Inst.* 7, 8, 3, 5-6. See further Lanfranchi 1938, 436-37, Bonner 1969², 92-93. It is probably this declamatory law combined with Tac *Ann.* 6, 19 that has caused many – e.g. Stroux 1926, 14 n. 24 and even Bonner himself – to believe that to be thrown from the Tarpeian rock was the punishment for either type of incest. The assumption has been contradicted vigorously by Mommsen 1967², 928 n. 4: he argues that it was just a common form of capital punishment (931-34).

¹⁴⁸ Sen *Contr.* 8, 3, *DeMi* 335, *Calp. Decl.* 44, 49, *DM* 18 and 19. The term has found its way into Quint *Inst.* 9, 2, 79 and Fortun. 1, 6, see also OLD *infamis* 2c, Forc. *qui alicui infamiam creat, praesertim stupro oblato*, TLL s.v. *infamis* 1341, 67-73.

¹⁴⁹ Sen *Contr.* 8, 3, *DeMi* 335, *Calp. Decl.* 22, 44, 49, *DM* 18 and 19, cf. *DeMi* 306 and *Calp. Decl.* 9. A figured declamation is one in which the main accusation or defence – for reasons of delicacy or as an effective means of insinuation – is hidden behind one that is more acceptable or feasible. For an extensive discussion of figured speech, see the fourth chapter of this introduction.

¹⁵⁰ Sen *Contr.* 6, 7, *DeMi* 286, 291, *Calp. Decl.* 48, *DeMi* 289 is a case apart.

¹⁵¹ Until the late Republic, a Roman husband was allowed to kill his wife and her lover if he caught them *in flagrante delicto*, the *Lex Iulia de Adulteris Coercendis* forbade him to kill his wife, while the lover could only be killed if he was *inhonestus* or *infamis*. The wife's father retained the right to kill both at once if they were caught in his own house or that of his son in law. See e.g. Corbett 1930, 127-38, Bonner 1969², 119-120.

¹⁵² But Son 1 does in *DeMi* 291, 2. *Paulo ante dicebas: 'corrumpere fratris uxorem ausus est, istud incestum est.'*

¹⁵³ *Calp. Decl.* 48. *quantum tibi nuptiarum cessatione praestiterit, adulterio probavit*.

¹⁵⁴ See *DeMi* 291, 5. *et hoc adulterium vocas? Ita est adulter ille, et tu maritus? Istud ego adulterium quondam manu mea iunxi*; 291, 6. *Occisus est iuvenis dum rem facit boni mariti*.

¹⁵⁵ See *DeMi* 291, 4. *Fratrem occidisti. Scio, iudices, quorundam scelerum eam esse magnitudinem ut augeri verbis non possint. Fratrem tuum occidisti, servatorem tuum, qui ut tu viveres matrimonium solvit*, *Calp. Decl.* 48. *Qui capitis poenas a suo fratre pro uxore dilecta petit, quid ipse meruerit, ostendit*.

¹⁵⁶ For this *lex raptarum* see above n. 96.

marriage with Son 1. When Son 1 catches her with Son 2, he kills his brother. The declamation is again a speech of disownment by the father, who judges Son 1 even more sternly than in the other cases: *Si rapuisti fratris tui sponsam, non sufficit severitas; non sum iracundus: non est haec vulgaris libido, sed incestum*¹⁵⁷. He blames Son 1 for the affair¹⁵⁸, for which parricide is again considered a disproportionate punishment¹⁵⁹. Another sickbed surrender is found, finally, in Sen. *Contr.* 6, 7, when Father renounces his young wife to lovesick Son 1 and is subsequently charged with *dementia* by Son 2. Since this would count as incest, the father makes sure to emphasize that the two were already in love before his own marriage: *Tradidi illi uxorem; sed eripueram. 'Testor' inquit 'praesides pietatis deos, amare antequam duceres coepi'*. Son 2 on the other hand prefers death to sin: *Mori potius debuit frater quam sanari turpiter. Quid enim si matrem, si sororem concupisset? Quaedam remedia graviora ipsis periculis sunt*¹⁶⁰.

Switching to figured declamations involving incest, we find two more cases of in-laws: Sen. *Contr.* 8, 3 and Calp. *Decl.* 49, both titled *Infamis in nurum*. *Contr.* 8, 3 deals with a man with two sons. Son 1 is married. While he is abroad, rumours begin to circulate concerning his wife and his father. On his return Son 1 tortures one of his wife's servants to death, then hangs himself without further comment. When Son 2 is ordered by his father to marry the widow, and refuses, he is disowned. All that is left of the *controversia* are two brief fragments. The attitude of Son 2 gives evidence of his submission to his father's power. Far from mentioning incest or even implicating Father, he pretends that his refusal is based on the fear that people will think that he himself was the adulterer. Father, on the other hand, can apparently opt for openness, though he shies from using the word incest: *Obiecisti mihi ultimum nefas et quod qui tantum suspicatus est noluit vivere*. In Calp. *Decl.* 49 a young man kills his wife in the act of adultery, but the adulterer, unrecognizable because he has covered his head, escapes. The young man is accused of murder; as his advocate, he requests his father, who was suspected of misconduct with his daughter in law. Father refuses. The small fragment left is part of the speech for the son, in which no attempts are made to pin the blame on the father; but of course the request to have him as advocate – because it is refused – is a subtle imputation¹⁶¹.

The tables are turned in DeMi 335, *Infamis in novercam vulneratus*. Father and Son (who is suspected of misconduct with his stepmother) go abroad and happen upon a gang of robbers. They flee separately; when Father comes home, he finds his wife in bed with another man. He kills his wife and manages to wound the adulterer, who escapes. Son returns, wounded – he claims – by the robbers. Father cures him, then goes to the senate to give reasons for taking his own life¹⁶². Although he professes to believe in his son's

¹⁵⁷ DeMi 286, 7

¹⁵⁸ See DeMi 286, 10 *Tu enim profecto nocens, qui sponsam abduxisti sic amantem.*

¹⁵⁹ See DeMi 286, 9 *Quod tantum scelus inveniri potest quod parricidio vindicandum sit?*

¹⁶⁰ The first epigram found its way into Sen. *Oed.* 517: *ubi turpis est medicina, sanari piget* (Winterbottom 1974 n.5 *ad loc.*).

¹⁶¹ A quite similar case is discussed in Fort. 1, 6 (RLM 85-86) as one that requires a *ductus figuratus* (see p. 84 below).

¹⁶² For the declamatory law *qui causas in senatu voluntariae mortis non adprobaverit, insepultus abiciatur* see n. 95 above.

innocence¹⁶³, his speech consists of a string of insinuations that make it clear that he is convinced that his son is guilty¹⁶⁴. The father could have killed his son, of course, but obviously prefers to have him dangle for while – providing a perfect exercise in innuendo. Calp. Decl. 22 is much more straightforward. A young tyrannicide renounces his reward¹⁶⁵ to his stepmother, who requests marriage to him. The request is opposed both by him and by his father. The father's speech, a comparatively long fragment, is redolent with frustration about age, (sexual) frustration and exclusion: *Ego primus in domo mea, fateor, erravi, qui uxorem duxi senex, cum iam esset in domo filius et quidem iuvenis. dum nimium confido pietati, oculos mulieris incestos et infanda desideria nutrivit*. He suggests, of course, that the two had been having an affair all along¹⁶⁶.

Declamations about close blood relations are rare. The only one about brother and sister, the very short and highly figured Calp. Decl. 44, has been discussed already¹⁶⁷; the sole declamation about father and daughter, DeMi 289: *Amator filiae*, centres around the avoidance of incest. A man in love with his beautiful daughter asks a friend to look after the girl, and not to surrender her if he asks him to do so. After a while, he asks for his daughter to be returned; when the friend refuses, he hangs himself. The friend is accused of having caused his death¹⁶⁸. In his defence he first dismisses the father's passion as a kind of *furor*: *tamquam melior amicus defendere filiam in qua pater furebat volui: non enim amor erat qui sic stimulabat ... libenter cedo: ipse fecit rem admirabilem, fecit ut in laudem verteret hoc ipsum, quod turpiter amabat*¹⁶⁹. He concludes by suggesting that death must be preferred to disgrace: *Neque enim ego hoc dico, redditurum me fuisse si periturum patrem scissem: optime partes amici custodissem si non reddidissem*¹⁷⁰.

The (apparent) avoidance of incest is also crucial to the figured plot of DeMi 306 – *Expositus negante matre nuptias petens* – , one of the few declamations dealing with (the possibility of) illicit relations between mother and son. A widowed heiress, who had exposed her son a long time ago, is confronted with a young man who claims to be her son and his father's heir. She contests his claim; when he, during the long drawn-out trial,

¹⁶³ See DeMi 335, 11 *Nihil est hoc loco, fili, quod me suspicari putes: non habebam causam parcendi homo periturus, ego te vere innocentem puto. Ac si hoc non credis, curavi, sanavi, alioqui te et hodie occidissem*.

¹⁶⁴ See e.g. DeMi 335, 5 *Feci aliquid et ipse scelerate. solus reversus sum, tamquam scirem filium salvum esse*; 335, 7 *Demens ego, cum talem haberem uxorem, peregre profectus sum, abducebam mecum etiam filium*¹ 335, 9 *Nescio quis fuerit – et forte persistet hic mecum et quod has manus evaserit gratuletur*; 335, 15 *Irascor manibus meis quod adulterum tantum vulneraverim: nulla ad te pertineret infamia si occidissem*.

¹⁶⁵ For the declamatory law *vir fortis optet quod volet* see n. 78 above.

¹⁶⁶ The third case about stepmother and stepson, DeMi 246 *Soporatus fortis privignus*, is doubtful. When war threatens, a young hero is given a sleeping draught by his stepmother. He is accused and acquitted of desertion, after which he accuses his stepmother of poisoning him. While the stepson suggests that his stepmother's love was out of character (246, 9 *Erubescite, matres, quae amplexae armatos iam liberos impiae tamen iam estis meae exemplo* *Inventa est tota civitate una quae magis amaret, una quae parceret: noverca*), it is proposed in the *sermo* (246, 3) that making him appear to desert from the army could have been an ingenious plot to murder him.

¹⁶⁷ See Introduction p. 59.

¹⁶⁸ On the basis of the declamatory law *qui causa mortis fuerit, capite puniatur*. It is discussed in Lanfranchi 1938, 475-77 with ref. to Dig. 48, 8, 5 (Ulp. 8 ad L. Iul. et Pap.) *nihil interest occidat aliquis an causam mortis praebeat*. Lanfranchi rightly cautions that the concepts of *dolus* and *animus* would have played a decisive role; see also Quint. Inst. 7, 3, 30-34. The law further occurs DeMi 270, 292; Calp. Decl. 16.

¹⁶⁹ DeMi 289, 4-5.

¹⁷⁰ DeMi 289, 7.

becomes a war hero, he asks marriage with her as his reward. The declamation – one of the longest excerpts in the entire collection – is for the mother, who has been burdened with a terrible dilemma: if she refuses the marriage, it will be assumed that she does so to avoid marrying her own son. The problem is solved efficiently by her advocate, who right away exposes the ruse: *illud magis vereor, ne iuvenis qui eius quam matrem esse dicebat nuptias optat videatur velle ad verum pervenire, ac vos latentium natalium credatis quod mulier, quae post amissum maritum per tot annos qui facere poterant ab infantia virum fortem sic complexa est viduitatem tamquam genus pudicitiae, hunc iungere sibi venere sera et polluere complexibus non vult filii sui, si vixisset, aetatem*¹⁷¹. He can even afford a taunting *praeteritio*: *Non tamen iuvenem pari captione ludemus. Fecisset, fecisset hoc astuta mulier, anus invecunda, ut iuveni curioso offerret hanc fatigati corporis partem*¹⁷². After this effective exposure the rest of the declamation is devoted to eulogy of the still-grieving widow and reproach of the young man.

Calp. Decl. 9 – *Pater excaecatus* – is a doubtful case. Its theme bears a strong resemblance to that of DM 18 and 19 and Sussman 1994, 120 believes that Father has unvoiced suspicions of incest between Mother and Son. His assumption is mainly based on his interpretation of the plot:

*Cum luxurioso filio pater abdita matre secessit in secretum. excaedatus rediit. petit a filio talionem*¹⁷³. *mater se fecisse dicit.*

‘After the mother was put into isolation with their wastrel son, the father of the family retired into seclusion. He returned, blinded. He seeks retribution in kind from his son. The mother says that she did it.’

(tr. Sussman 1994)

It seems more logical, however, to put *abdita matre* between commas, and to read ‘while the mother was hidden, the father of the family retired into seclusion with their wastrel son.’. This reading enhances the resemblance to DM 18 and 19 and explains why the father accuses his son of blinding him. The possibility that an incestuous affair between mother and son lies at the bottom of the family drama can, in the meantime, not be ruled out. What speaks against it is the absence of the word *infamis* in title and *argumentum*; the fact that the son is characterised as *luxuriosus* rather than *speciosus* – which hints at transgressions other than incest – and the short fragment of speech for the son, in which he urges the jury to believe his mother. The astounding resemblance to the theme of DM 18 and 19 on the other hand does point to incest. Furthermore, in the longer fragment containing the father’s accusation we find an *interrogatio* that could be construed as an insinuation to that effect: *Qui fieri potuit, ut mala fuerit uxor, quae tam bona mater est?* Finally, compare: *talis es*,

¹⁷¹ DeMt 306, 2

¹⁷² DeMt 306, 4

¹⁷³ *Talio*, ‘retribution in kind’, is an ancient principle of Roman law, which goes back to the Twelve Tables. See e.g. Mommsen 1967², 802 n. 1; Bonner 1969², 92; 96-97; 106; esp. Sussman 1994, 120

adulescens, ut excaecare volueris patrem, aut te excaecare velit pater with *DM* 19, 3: *dictus est occidere posse patrem, dictus est dignus, quem posset etiam pater occidere*¹⁷⁴.

The only declamations indubitably concerned with the most shocking form of incest are, then, *DM* 18 and 19. Their treatment of the matter differs greatly. In *DM* 19 the term 'incest' is not used once. In fact, if it were not for the *argumentum*, it would be hard to find out what Father's covert accusations are about. His suspicions can mainly be deduced from his claim that he killed Son to save both his (Son's) reputation and Mother's¹⁷⁵ and from phrases such as *qui inter nos formosum malebat agere quam filium* and *non ducere volebat uxorem*¹⁷⁶. The declamation plays along with the general repugnance with incest. This can be gleaned from the fact alone that the term is avoided throughout the speech¹⁷⁷: *non habent incredibilia vocem*, Father says; *quaedam maiora sunt quam ut illa capiat modus sermonis humani*¹⁷⁸. It is also reflected in Father's claim that Son wanted to die, that he prevented him from confessing in their final confrontation.¹⁷⁹

In *DM* 18 we find, of course, the same horror of incest. But there is no beating about the bush: Mother's advocate breaks open Father's figured construct. Incest something which must be strongly disapproved of¹⁸⁰, but in fact it is simply unimaginable. All mothers love their children as if they were in love with them¹⁸¹; the notion of an incestuous affair between Mother and Son, as well as the rumours surrounding them¹⁸², stem from the father, inspired by hatred of his son, whom he wanted to kill all along¹⁸³. In fact the very suspicion of incest where innocent, spontaneous love is concerned, is so heinous that it spoils and taints all that used to be noble and simple: *dii deaeque male perdant tam impudentes sollicitudines, tam nefarios metus! prope est ab incesto timere, ne fiat. malo simplicitatem, quae non vereatur infamiam, malo nudos adfectus inconsultamque pietatem*¹⁸⁴; further *causas illius mortis reposcit sollicitudo generis humani: stant circa liberos attoniti parentes, horrent invicem se caritas fraterna complecti, rupta est illa osculorum inter soceros generosque implicitas*.¹⁸⁵

We can conclude, therefore, that *DM* 18 and 19 take up a special position within the genre, both because of their subject and because of the way it is treated. *DM* 19 is endlessly versatile in its piling up of scandalous insinuations under the cloak of rigid moral uprightness and self-sacrifice; *DM* 18 is daring for its approach of openness and appeal for spontaneous, simple love.

¹⁷⁴ 374, 6-8; see comm. *ad loc.*

¹⁷⁵ See e.g. *DM* 19, 8 (380, 13-20), 19, 14 (386, 13-16).

¹⁷⁶ *DM* 19, 9 (380, 25 – 381, 1; 381, 9). For a detailed discussion of the father's strategy, see the section on figured speech and the commentary, *passim*, on *DM* 19

¹⁷⁷ Although this, of course, is also what makes *DM* 19 simply a perfect exercise in innuendo

¹⁷⁸ *DM* 19, 12 (384, 13-14).

¹⁷⁹ See e.g. 19, 4 (375, 10) and esp. 19, 15 (387, 13-28).

¹⁸⁰ See 18, 15 *Si nefas prodigiosis simile fabulis deprehendisti, miserere, ne sis una morte contentus* (369, 13-14).

¹⁸¹ *DM* 18, 10 (363, 14-25)

¹⁸² See e.g. 18, 4 (356, 20-24).

¹⁸³ See 18, 15 (368, 11-15).

¹⁸⁴ *DM* 18, 10 (363, 7-11).

¹⁸⁵ *DM* 18, 15 (369, 10).

The *actio malae tractationis*¹⁸⁶

It has been noted in the previous section that the mother in Sen. *Contr.* 3, 7, *DM* 8 and 18, after the father has killed their son, instead of accusing him of murder, avails herself of the *actio malae tractationis*. This declamatory *actio* was sometimes used for *controversiae figuratae*, that is, *controversiae* in which the speaker pursues a goal different from that which his formal accusation (or defence) would lead one to expect. The *controversia figurata* will be discussed in the following chapter; it is convenient first to take a look at the declamatory *actio malae tractationis*. This *actio* was, and essentially remained, a declamatory fiction conceived in Sophistopolis¹⁸⁷; yet it bears traits of attested Greek and Roman laws. These will be discussed first; subsequently, the specific features of the *actio malae tractationis* will be examined in detail.

The declamatory *actio malae tractationis* is usually associated with the attested Athenian γραφή or εἰσαγγελία κακώσεως¹⁸⁸, a law concerning maltreatment of vulnerable persons such as aged parents¹⁸⁹, orphans, and heiresses (ἐπίκληροι)¹⁹⁰. It enabled victims of maltreatment to seek redress directly with the *archon*. Κάκωσις must have been regarded as a serious offence, since it merited heavy punishment¹⁹¹; the prosecutor, on the other hand, suffered no adverse consequences if a conviction could not be secured¹⁹².

Lipsius discusses the known forms of maltreatment of ἐπίκληροι: an adopted son committed κάκωσις if he refused to marry his adoptive father's daughter while being in possession of this father's property; so did near relatives who were not prepared either to marry an impecunious heiress or to provide a suitable dowry and marry her off to a third party. A husband was guilty of maltreatment if he failed to perform his marital duties¹⁹³ or committed adultery.

While Lipsius uses historical and literary sources without distinction, Hömke 2002 is the first to separate literary samples of κάκωσις from historical sources¹⁹⁴. The former

¹⁸⁶ Roman *actio* can be termed the rough equivalent of a modern civil action. On the declamatory action for maltreatment see notably Sprenger 1911, 192-95; Lanfranchi, 1938, 235-39; Bonner 1969², 94-95; Paoli 1953, 187; Stramaglia 1999, 94-95; Hömke 2002, 161-179.

¹⁸⁷ This name was coined by Russell (1983) for the fictitious Greco-Roman society that forms the background of most declamations.

¹⁸⁸ *Mala tractatio* is a literal translation of κάκωσις. The Greek laws on κάκωσις are discussed extensively in Meier, Schomann, Lipsius 1883-87, 352-60 and Lipsius 1905, 342-53.

¹⁸⁹ The γραφή κακώσεως τῶν γονέων is the foundation for the declamatory law *liberi parentes alant aut vinciantur*, for which see Sprenger 1911, 192-94; Lanfranchi 1938, 235-39; Bonner 1969², 95-96; Paoli 1953, 187. The moral obligation to provide for one's parents became a law under Antoninus Pius (Dig. 25, 3, 5, 34, 1, 3; Cod. Inst. 5, 25, 1-3).

¹⁹⁰ Bonner 1969², 95, n 1 remarks: 'Dionysius, *Ant. Rom.* II,25 seems to imply that any wife could bring an action for κάκωσις in his day: οὔτε γαμετὴ κατ' ἀνδρὸς αἰτιομένη κάκωσιν ἢ ἄδικον ἀπόλειπιν i.e. Romulus did not permit this, as we do now. Indeed these words might almost be held to support the existence of a Roman equivalent of κάκωσις in Dionysius' day.' The view, however, that any woman could appeal to the law concerning κάκωσις, is vigorously and cogently opposed by Lipsius 1905, 343 and Sprenger 1911, 192-93.

¹⁹¹ See e.g. Is. *Pvrrh.* 47, *Cleon.* 39.

¹⁹² See e.g. D. *Pant.* 46; Ar. *Ath.* 56, 6.

¹⁹³ In compliance with Solon's law τὸ τρις ἐκάστου μηνὸς ἐντυγχάνειν πάντως τῇ ἐπικλήρῳ τὸν λαβόντα, if the husband proved impotent, the woman could marry one of his next of kin (Plu. *Sol.* 20, see also Pol. *Onom.* 8, 53).

¹⁹⁴ See Lipsius 1905, 349-51 and Hömke 2002, 170-77.

occur, for instance, in Old and New Comedy¹⁹⁵ All literary sources have in common that no distinction is made between ordinary women and heiresses Further, *κἀκῶσις* is always mentioned casually and without explanation, so that we can assume that the Greek public was familiar with the concept This leads Homke to believe that they are based on an independent literary *topos*, which may have a more obvious link with the declamatory *actio malae tractationis* than does the technical-juridical *γραφὴ κακώσεως*

To complete our picture of the reality beneath the *controversia figurata*, we must look at the Roman real-life counterpart of the *actio malae tractationis*, the Roman *actio rei uxoriae*¹⁹⁶ In *Inst* 7, 4, 11 Quintilian mentions several genuine civil actions which have given rise to declamatory counterparts:

Quibus similia etiam in vera rerum quaestione tractantur. Nam quae in scholis abdicatorum, haec in foro exheredatorum a parentibus et bona apud centumviros repetentium ratio est: quae illic malae tractationis, hic rei uxoriae, cum quaeritur utrius culpa divortium factum sit quae illic dementiae, hic petendi curatoris

The *actio rei uxoriae* to which Quintilian refers, was an action which enabled a divorced woman if she was *sui iuris* (or her *paterfamilias* if she was *filiafamilias*) to recover her dowry or at least part of it The dowry (*dos*), traditionally a woman's contribution to the household she married into, was her husband's financial responsibility Technically, the *dos* became the husband's property upon marriage However, in response to the proliferation of divorce from the third century BCE onwards, when a marriage was dissolved, means were made available to return it to the wife or whoever had constituted it The *dos* gradually came to be regarded as a kind of insurance for the wife, some jurists even dubbed it *patrimonium mulieris*.¹⁹⁷

The earliest device to reclaim the *dos* was the *cautio rei uxoriae* a stipulation concerning the disposal of the dowry in the event of a divorce or the death of either spouse. It remained in use when, some time later, the *actio rei uxoriae* was granted in cases where no stipulation had been made¹⁹⁸. It is assumed that this *actio* was originally a penal proceeding, in force only for faultless women who had been duped by their husbands. In classical times, however, it was also valid for women who had occasioned a divorce and for widows Sometimes, the husband was entitled to *retentiones*, which authorized him to keep part of the dowry If he had made his wife any gifts during the marriage, even if they were

¹⁹⁵ One of the examples she gives is of Comedy threatening the comedian Kratinos with a *γραφὴ κακώσεως* because he neglects her for Drunkenness and bottles of young wine (Schol. Aristoph. *Eq* 400), she sees the heiress recur in Roman comedy as the *uxor dotata* (2002, 176-77)

¹⁹⁶ The following summary of the main points of the *actio rei uxoriae* is based on Ulpianus, *Tituli VI De Dotibus*, Corbett 1930, 122-211, 218-249, Sollner 1969, Treggiari 1991, 350-56

¹⁹⁷ Corbett 1930, 155, 179 (with Dig. 4, 4, 3, 5 23, 3, 75, Cod. Inst. 5, 12, 30 pr.)

¹⁹⁸ The incorporation of a *cautio* was more opportune: the stipulation could be enforced by the heirs of the person who gave the *dos*, and the husband had no right to deduct from the dowry *retentiones propter mores* or *retentiones propter liberos* (for which see below)

invalid¹⁹⁹, he could reclaim them (or an equivalent) through *retentio propter res donatas*. Expenses necessary for the maintenance of the property were compensated for by a *retentio propter impensas*. If the wife had misappropriated any part of the dowry, this was restored by the *retentio propter res amotas*²⁰⁰. Had the divorce been occasioned by the wife or her *paterfamilias*, then a sixth part could be deducted for every child (with a maximum of three: *retentio propter liberos*). Finally, in case of misbehaviour on the wife's part, there was a *retentio propter mores* of a sixth part in case of adultery (*mores graviore*s) or an eighth part in case of less serious offences (*mores levio*res). If the husband did not act upon his entitlement to the *retentio propter mores* at once, he could later bring an *actio de moribus*²⁰¹. The latter two especially must have involved an investigation into the behaviour of both spouses, and thus prompted Quintilian to single out the question of guilt as characteristic of the *actio rei uxoriae*²⁰².

In sum, the Greek γραφή κακώσεως and the Roman *actio rei uxoriae* both gave married women the opportunity to punish or get even with their husbands if they had been mistreated. This must have been the starting point for the declamatory *actio malae tractationis*; but the latter does not have their peculiar characteristics: divorce is not an issue²⁰³, and the women who bring the action are never identified as heiresses. To learn more about the declamatory *actio* we will have to consult Quintilian's *Institutio* and the relevant declamations.

Apart from pointing out its resemblance to the *actio rei uxoriae* (*Inst.* 7, 4, 11), Quintilian mentions the *actio malae tractationis* on several other occasions. Cases of *mala tractatio* usually have a *status* or *constitutio qualitatis*²⁰⁴, he says, although sometimes the *status* is *coniecturalis* or *finitio*nis²⁰⁵. Along with a number of other cases, they can be said to come under the category of *officia* (*Inst.* 7, 4, 24) and of *domesticae disceptationes* (*Inst.* 7, 4, 9-10; 31). In *actiones malae tractationis*, as in actions for disowning a son, the accuser should exercise moderation (*Inst.* 7, 4, 29); sometimes an apology or plea for forgiveness takes the place of a proper defence (*Inst.* 7, 4, 31).

Concerning the grounds for the *actio malae tractationis*, Quintilian gives little information. In *Inst.* 7, 4, 26 he writes: *quod tamen factum defendi non poterit, iure nitetur*:

¹⁹⁹ In principle, husband and wife could not make each other valid gifts, see Ulp. *Dig.* 24,1,1 *Moribus apud nos receptum est, ne inter virum et uxorem donationes valerent hoc autem receptum est, ne mutuo amore invicem spoliarentur donationibus non temperantes, sed profusa erga se facilitate.*

²⁰⁰ An action for *furtum* was inadmissible, because actions that caused *infamia* were forbidden between consorts

²⁰¹ For this *actio* and the related *iudicium de moribus*, see Corbett 1930, 130-33; Sollner 1969, 78-83.

²⁰² See Sprenger 1911, 193-94.

²⁰³ Lanfranchi 1938, 237. As regards the angle of divorce, it is the declamatory *actio iniusti repudi* which shows the greater similarity to the *actio rei uxoriae*. It figures in Sen. *Contr.* 2, 5, 17 (in passing), *DeMi* 251, 262; 327, 368, 7, Calp. *Decl.* 10 and is discussed in Sprenger 1911, 193, 195-198 and Lanfranchi 1938, 235; 238-39.

²⁰⁴ *Inst.* 7, 4, 24. This *status* characterizes all cases in which the key question is not whether the defendant committed a certain crime (*status conjecturalis*), nor how this crime ought to be defined (*status finitionis*), but whether he was justified in doing what he did (*an iure fecerit*). See Herm. *Stat.* 2, 11; Cic. *Inv.* 1, 10 (*constitutio generalis*), *Rhet. Her.* 1, 24 (*constitutio iudicialis*); Quint. *Inst.* 3, 6, 10, 3, 11, 4.

²⁰⁵ *Inst.* 7, 4, 25: *et conjectura est aliquando in plerisque horum () et quid sit dementia ac mala tractatio finitur*, see also 7, 3, 2: *interim a qualitate ad finitionem descenditur; ut in actionibus dementiae, malae tractationis, rei publicae laesae. in quibus si recte facta esse quae obiciuntur dici non potest, illud succurrit: 'non est <hoc dementem esse>, male tractare, rem publicam laedere'*

et quos et quibus causis abdicare non liceat, et in quae crimina malae tractationis actio non detur, et cui accusare dementiae non permittatur – a tantalizing observation, which merely tells us that there were offences for which the *actio* was *not* granted. But from two other brief references we can infer that jealousy and outrageous suspicion could give rise to the *actio*. In *Inst* 4, 2, 30 we read *Nam quid exponet quae zelotypum malae tractationis accusat?* In *Inst* 9, 2, 80, which will receive ample discussion in the section on figured speech, Quintilian asks *Quid porro tam contrarium quam eum, qui accusetur quia summum nefas de uxore suspicere videatur, confirmare id ipsa defensione quod diluendum est?* This reference concerns the theme of *DM* 18 and 19, although note that in the *Institutio* the ground for complaint is the father's suspicion, his silence seems to be an innovation by pseudo-Quintilian.

More information is to be found in the many *controversiae* figuring *mala tractatio*. Sen *Contr* 3, 7, 4, 6, 5, 3²⁰⁶, Calp *Decl* 51, *DeMi* 363 and 383, *DM* 8, 10, 18, 19. The four *DM* are our main sources of information, since their *argumentationes* are uniquely and conveniently preceded by comments on the law on maltreatment, and especially on its applications.

Pudeat vos, o iura legesque, quod miserrimi sexus dolorem his clusistis angustis ita maritum, quod occisus est filius, malae tractationis uxor accusat? perdidit legis huius auctoritatem, quae ad illam uxorias querelas, matrimoniorum solent deferre delicias, ego illam datam miseris tantum matribus puto potest autem ab iniquo coniuge explicare divortium, et contra maritales tueretur iniurias, ut nolis praestare patientiam illis succurrit, quas nefas est abire, discedere, quas in pessimi coniugii durum perpetuumque complexum communium pignorum nexus artavit, quae malos maritos pariter et patres nec relinquere nec ferre sufficiunt facinus est ideo evadere maritum, quia damnaretur, si de illo minore dolore quereretur itaque impudenter facit, quod pro detracto ꝑ matrona cultu negatoque comitatu, fastiditis noctibus pulsataque facie filium complorat occisum?

DM 8,6 (156, 5-19)

Videtur itaque mulier infelix a dignitatis dolore secedere, quod tam<quam> uxorias in forum querelas et tamquam delicata matronae desideria pertulerit? non enim vestes nec aurum nec ambituosos quaerit ornatus, contenta est orbitas sordibus suis, ac ne pelicis quidem dolore compellitur, nec tacita gaudia mariti impatientia et muliebri vanitate complorat sed nec relictum torum desertumque genialem velut contempta vilitas uxoris ulciscitur alia longe, alia de noctibus cura est

DM 10, 9 (208, 3-11)²⁰⁷

DM 18 and 19 provide even more crucial information on the *actio malae tractationis*

²⁰⁶ Additionally, in *Contr* 1, 2, 22 we find a casual remark in the context of a different *controversia*.

²⁰⁷ The theme of *DM* 10 is *Quae amissum filium nocte videbat in somnis indicavit marito ille adhibito mago incantavit sepulcrum mater desit videre filium accusat maritum malae tractationis*.

Malae tractationis agimus. placet ergo, iudices, ut illa voce, qua matrimoniorum conquerimur iniurias, gemitu, quo corporum contumelias, damna cultus et negatos in publicum deflemus egressus, orbitates ac liberorum suprema plangantur? quid tamen facere vultis miserum dolorem, si non habet aliam sexus hic legem, si intra iuris huius angustias omnis nuptiarum querela constricta est? mater, quae de morte filii maritum malae tractationis accusat, non vindicat, sed probare contenta est, quod non debuerit occidi.

DM 18, 5 (357, 20 – 358, 2)

Malae tractationis accusat. adeone, uxor, tibi parum videor dedisse poenarum post parricidium, ut labores, ne lucrifaciat pater, quod occidit filium suum? non pudet ergo, si<c>²⁰⁸ irascere parricidae? quid tibi cum lege, quam propter alios minores accepistis adfectus? querelas habet ista, non gemitus, et matre seposita solam conplorat uxorem.

DM 19, 5 (376, 5-10)

According to these texts, the declamatory law concerning *mala tractatio* would have covered the following kinds of misbehaviour: the withholding of the finery that suits a *matrona*; the refusal to supply servants or to allow one's wife to go out in public; physical abuse; infidelity; the withholding of sexual favours. The last two offences, and probably some of the others, indicate an affinity with the Greek law on κᾠσις, literary or otherwise. They are also likely to have played a part in Roman divorce cases, and thus to have cropped up in *actiones rei uxoriae*.

There are however only a few declamations in which complaints about these subjects are actually found. We have a brief mention in Sen. *Contr.* 1, 2, 22, which concerns the failure to consummate a marriage²⁰⁹; in *DeMi* 363 a jealous husband is sued because he puts his wife's fidelity to the test; in *DeMi* 383, too, jealousy seems to have occasioned the complaint²¹⁰. But most declamations on *mala tractatio* are concerned with harm done not primarily to the wife, but to her son(s)²¹¹. In two of them, the main issue is possible discrimination of the son: in *Contr.* 4, 6 the father has two sons, one of whom stems from a previous marriage. He takes them away for a long time; at his return, they are indistinguishable, and he refuses to tell his present wife which is which. In Calp. *Decl.* 51, the father, who already has a son, acknowledges another son, who has sprung from the rape

²⁰⁸ Read *si*, as I argue in comm. at DM 19, 5 *si<c>* (376, 8).

²⁰⁹ *Cum declamaret controversiam de illa quae egit cum viro malae tractationis quod virgo esset et damnavit postea petit sacerdotium*

²¹⁰ *Nimio amore et sollicita inquisitione hic offendit uxorem* (*DeMi* 383, 1). The declamation does not deal with the offence of *mala tractatio*, but with a husband already convicted and to be punished under the law *Quae virum malae tractationis damnaverit, duplam dotem recipiat, si indotata nupserit, litem aestimet*. The law occurs in no other declamation and has special interest in that it is only here that we find a specific penalty for *mala tractatio*. It is discussed only in Lanfranchi 1938, 237-38, who merely observes that if it is fair to conclude, on the basis of *DeMi* 383, that the *actio malae tractationis* was a penal proceeding, this does not yet warrant a similar assumption about the *actio rei uxoriae*.

²¹¹ As already observed by Sprenger 1911, 193; Lanfranchi 1938, 237 and Bonner 1969², 94

of another woman. In no less than five cases, however, the *actio* serves to avenge a son's death. Sen. *Contr.* 3, 7 and *DM* 8, 18, and 19 have already been amply discussed in the section on the *vitae necisque potestas*; *DM* 10²¹² too belongs here, for the son's irrevocable interment is regarded as his second death.²¹³ Finally, we have Sen. *Contr.* 5.3, which deals with a father who had his sons trained as pancratiasts. When they have to fight each other at the Olympic games, he threatens to disinherit the one who loses, and they subsequently fight each other to the death.

We must conclude, then, that in these cases there is a flagrant disproportion between the nature of the offences and the law that their victims appeal to. Had they no other options? In real life, as long as their marriage lasted, spouses were not allowed to start penal proceedings against each other, nor *actiones* that entailed *infamia*.²¹⁴ But they could have someone else bring charges, and in the second century CE women were even granted leave to prosecute in a limited number of cases: *non est permissum mulieri publico iudicio quemquam reum facere, nisi scilicet parentum liberorumque et patroni et patronae et eorum filii filiae nepotis neptis mortem exequatur*.²¹⁵

The inadequacy of the *actio malae tractationis* is in fact commented upon in all four *DM*. This stands to reason, for it grants the opportunity to discuss the suitability and applicability of the law, which is of course a common rhetorical exercise.²¹⁶ But it is also explicitly stated that mothers (*DM* 8, 6 [156, 9-16]) or even married women in general (*DM* 18, 5 [357, 24-26]) had no alternative. This limitation of women's leave to prosecute to the *actio malae tractationis* was obviously a declamatory convention and evidently one that was strictly adhered to, given the fact that there are no declamations extant in which women prosecute their husbands for murder. The *raison d'être* for this convention should in my opinion be sought in the overwhelming importance of the *patria potestas* in Sophistopolis, where fathers killed their sons probably more easily and more frequently than in real life. Having women prosecute for *mala tractatio* instead of murder meant, in fact, granting them a voice (albeit one dictated by a male declaimer), while at the same time acknowledging the paramouncy of the *patria potestas*. It allowed the young declaimer moreover to pore over the position, the role and the mutual relations of the three most important members of his family, and more specifically, to explore the *patria potestas* from all three relevant points of view. We see this happen even in the brief fragments left of Sen. *Contr.* 3, 7 and 5, 3, but of course *DM* 8, 10, 18 and 19 present much fuller evidence.

The psychological aspects of these declamations have received thoughtful

²¹² For the theme of this declamation see n 207 above

²¹³ See *DM* 10, 1 in *uno filio iam alteram patitur orbitatem* (199, 15-16), in 10, 7 the father is called *excogitator iste mortis alterius* (205, 17-18) and *parricida* in 10, 17 (217, 5), while in 10, 12 the son is represented as alive during his nightly visits: *tamen corpus sumebat in noctes, et ad solida viventis membra revocatus praebebat se matris oculis* (211, 10-11)

²¹⁴ *Dig* 25.2.2, *Cod. Just* 5.21.2.

²¹⁵ *Dig* 48.2.1, in *Dig* 48.2.2 a second exception is made for cases involving the forgery, concealment, or defacement of certain wills. See Corbett 1930, 141-42

²¹⁶ It would involve the *status finitionis* (see n 205 above with Quint *Inst* 7, 4, 25, 7, 3, 2), one can further think of the *progymnasma* concerning *legum laus ac vituperatio*, for which see e.g. Quint *Inst* 2, 4, 33-40; Theon 128 Spengel, Bonner 1977, 272-73

treatment by Nicola Homke.²¹⁷ For her, the declamatory *actio* has its origin in the literary variant of *κᾶκῶσις*. Where this occurred in Greek comedy, she argues, there is not so much scope for profound psychological probing, because comedy is a genre in which stereotypes and caricatures are used to give over-simplified illustrations of women's sufferings and conflicts between fathers and sons. Declamation, on the other hand, affords the possibility for thorough investigation of psychological conflicts in *narratio* and *argumentatio*. Juridical aspects become subsidiary to psychological exploration, which turns declamations into *Schaustücke* (showpieces) instead of *Schulstücke* (rhetorical exercises).

Yet this distinction between *Schul-* and *Schaudeklamationen* should not be drawn too rigidly. Declamation as a means to explore not only psychological but also moral issues was a vital ingredient of Roman education. Further, Quintilian explicitly states that the *actio malae tractationis* was used in the schools.²¹⁸ From an educational point of view, its purpose was mainly intellectual and rhetorical: to set an exercise in ἥθος and in the use and treatment of a law that did not suit the offence against which it was invoked. But in the case of *DM* 18 and 19, a third assignment was involved: the construction (19) and dismantlement (18) of figured speech (*Inst* 7, 4, 11).

²¹⁷ See esp. Homke 2002: 176–82.

²¹⁸ *Inst* 7, 4, 11 cf. also 9, 2, 81.

Figured speech²¹⁹

In antiquity, the term ‘figured speech’ could be assigned to a number of concepts. It frequently referred to the embellishment of a particular text by means of figures of speech and figures of thought. But nearly as often, it was used by speakers to cloak a potentially unpalatable message in such a way as to make it acceptable for their audience. Figured speech in this sense could be confined to single words, e.g. in the form of euphemisms, but it could also govern entire rhetorical texts. Applied to the *controversia*, this would produce a *controversia figurata*, that is, an accusation or a defence which serves as a cover for achieving a different aim, implied between the lines. *DM* 18 and 19 are classic examples of this type of *controversia*, because they are governed by figured speech in all its manifestations. After a brief survey of these, we can investigate how they work both on the macro-level of the declamations as a whole and on the micro-level of arguments, sentences and even single words.

For the Romans, figured speech involved three concepts: *color*, *schema* or *figura*, and *ductus*. The three terms are related, but this does not imply that they are parts of a comprehensive system. In fact, they are used alongside one another; sometimes they overlap, often they are interchangeable. The authors best consulted on the subject are Seneca the Elder, Quintilian, and Fortunatianus.

The word *color*, in a rhetorical context, referred to style up to the elder Seneca’s time²²⁰; but for the declaimers figuring in his work the term had gained a different connotation. In a shift from style to content, *color* came to mean ‘twist of argument’²²¹ or ‘biased representation of events’. In a forensic speech, then, *color* is a coloured version of the circumstances surrounding a certain crime, which is ideally introduced in the *narratio* and sustained in the *argumentatio*.²²² Often, the *color* consists of a particular motive ascribed to a culprit.²²³

Color is discussed in a number of rhetorical *artes*. It occurs frequently in Quintilian’s *Institutio* and crops up in some of the treatises of the *Rhetores Latini Minores*.²²⁴ As for its application in practice, the title of Seneca’s collection of declamations already betrays his interest in *color*: for every *controversia* included, he gives a number of *colores* used by the various declaimers. Yet no definition of the concept occurs in any of these works, probably because *color* was such common phenomenon that it seemed unnecessary to explain it. However, a helpful characterization of Greek *χρῶμα*, a

²¹⁹ The principal modern studies on this subject are Schouler 1986, Desbordes 1993; Chiron 2000, Hillgruber 2000, Calboli Montefusco 2003. The present chapter is largely based on Breij 2006.

²²⁰ Fairweather 1983, 166, Calboli Montefusco 2003, 114 (with references to Cicero’s works and the *Rhetorica ad Herennium*).

²²¹ Bonner 1969², 55-56 defines *color* as ‘“twist of argument”, “plea”, “excuse” (.) by a slight shift of argument, by an added insinuation, or a guileless plea, [the *colores*] tone down the guilt or represent it in even more glaring colours’.

²²² See e.g. Quint. *Inst.* 4.2.94: *Non est autem satis in narratione uti coloribus nisi per totam actionem consentiant, cum praesertim quorundam probatio sola sit in adseveratione et perseverantia*. For prevailing opinions in Seneca’s set, see Fairweather 1983, 168-69.

²²³ For examples of *colores* see n. 228 below.

²²⁴ See e.g. Quint. *Inst.* 4.2.88-100, Vict. 2 and 4, 2 (RLM 375 and 387), Aug. *Rhet.* 1, 16 (RLM 146).

similar concept that underwent a development identical to that of *color*, can be found in Porphyrius' comments on Hermogenes' work on *status* theory.²²⁵ Porphyrius reports that the followers of Hermagoras, a Greek rhetor from the 2nd century BCE who was Hermogenes' paradigm, equated *χρῶμα* with *μετάθεσις τῆς αἰτίας* ('shifting the blame'). The latter phrase must refer to the *στάσις κατ' ἀντίθεσιν*, a *status* used for the defence in cases where it was agreed that a particular criminal act had taken place, but not (yet) that it was justified²²⁶. It was subdivided in four categories: *ἀντίστασις* (Lat. *comparatio*, *comparativum*, *compensatio*: the act in question had beneficial consequences); *μετάστασις* (*remotio criminis*, *translatio*: the blame was transferred to another person or a thing); *ἀντέγκλημα* (*relatio* or *translatio criminis*: the act was in some way provoked, usually by the victim); *συγγνώμη* (*concessio*, *excusatio*, *venia*: a plea for pardon, often sustained by attenuating circumstances).

The definitions make it clear that this kind of *χρῶμα* is not concerned with style, but plays a decisive part in the substance of a speech. Seneca and his contemporaries did not use the very terms, so we cannot quite take it for granted that they were familiar with all the technicalities.²²⁷ Yet, if one looks at the *controversiae*, it is quite obvious that the declaimers were well acquainted with the underlying concepts.²²⁸

The subject of figured speech as a means to convey the speaker's true intentions indirectly is absent in rhetorical textbooks up to the *Institutio Oratoria*. This does not imply that it only came into vogue in Quintilian's day. Already in Seneca's anthology we find frequent use of the terms *figura* (or *figuratus*) and *schema* (synonymously). They always occur in the sections on *divisio* and *color* and can best be described as original twists on the argumentation. Their affinity with figured speech as a form of insinuation appears from turns of phrase like *non schemate, sed <de>recto* (*Contr.* 2, 4, 10) and *illi, qui non quidem palam dicerent sed per suspiciones et figuras* (*Contr.* 7, 1, 20).

The first Roman author to treat figured speech in a theoretical setting is Quintilian. He begins with an account of *emphasis*, a figure of thought which occurs *cum ex aliquo dicto latens aliquid eruitur* (*Inst.* 9, 2, 64). Then he continues:

Huic vel confinis vel eadem est qua nunc utimur plurimum. Iam enim ad id genus quod et frequentissimum est et expectari maxime credo veniendum est, in quo per quandam suspicionem quod non dicimus accipi volumus, non utique contrarium ut

²²⁵ Porphyrius in Hermog. Sta., Rh. Gr. IV 397, 8 Walz = Hermagoras fr. 14a Matthes, cited in e.g. Fairweather 1983, 166 ff., Calboli Montefusco 1979, 275 and 280, 1986, 17 n. 16, 2003, 115 n. 6.

²²⁶ Latin: *constitutio iudicialis assumptiva*, to be found e.g. *Rhet. Her.* 1, 24 ff., *Cic. Inv.* 1, 15, 2, 69 ff.; *Quint. Inst.* 7, 4, 4 ff. (under the heading of *qualitas*).

²²⁷ Fairweather 1983, 167.

²²⁸ E.g. *ἀντίστασις* *Contr.* 10, 4, 15-16 (a man who cripples children before sending them out to beg, is accused of harming the state, a *color* for the defence is that the crippling results in making them more successful beggars), *μετάστασις* *Contr.* 7, 2, 10 (Popilius is accused of misconduct after he has killed Cicero, who had defended him on a charge of parricide, a *color* for the defence is that Popilius was forced to kill Cicero), *ἀντέγκλημα* *Contr.* 2, 6, 5-6 (a father is accused of madness when he begins to imitate his son's luxuriousness, for some declaimers, the father's defence rests on the assumption that the father's behaviour was a way to reprove or punish his son), *συγγνώμη* *Contr.* 9, 2, 20 (Flaminius is accused of lèse majesté after ordering a criminal to be decapitated in order to amuse a whore at a banquet, a *color* for the defence is that Flaminius was so drunk that he did not realize what he was doing).

in εἰρωνείᾳ sed aliud latens et auditori quasi inveniendum. Quod, ut supra ostendi, iam fere solum schema a nostris vocatur, et unde controversiae figuratae dicuntur. Eius triplex usus est: unus si dicere palam parum tutum est, alter si non decet, tertius qui venustatis modo gratia adhibetur et ipsa novitate ac varietate magis quam si relatio sit recta delectat.

(Quint. Inst. 9, 2, 65-66)

Quintilian clearly marks out the use of figured speech for three different aims: for safety, for decency and as an ornament. The first two of these are also familiar from Greek rhetoric²²⁹, the third has been added by Quintilian himself. And a little further on, he adds a fourth application:

Quaedam etiam quae probare non possis figura potius spargenda sunt. Haeret enim nonnumquam telum illud occultum, et hoc ipso quod non apparet eximi non potest: at si idem dicas palam, et defenditur et probandum est.

(Quint. Inst. 9, 2, 75)

Taking into account Quintilian's four uses for figured speech, the Romans seem to find a greater variety of occasions to use figured speech than the Greeks, who restrict themselves to safety and decorum. On the other hand, the latter distinguish three species of σχήματα, that is, three kinds of figured speech. The first is relatively straightforward, expressing controversial issues in a euphemistic way, and this is reserved for occasions where decency and safety are at stake; it is called χρώμα.²³⁰ The second is ambiguous, because although some of the speaker's aims are expressed explicitly, they are used as a vehicle to convey his secret intentions. The third, finally, is meant to effect the opposite of what the speaker pretends to want.²³¹ The Romans, by contrast, only approved of the first two kinds of σχήματα. The third was considered far-fetched and impractical:

Ut autem nemo contra id quod vult dicit, ita potest melius aliquid velle quam dicit: quo modo ille abdicatus, qui a patre ut filium expositum et ab eo educatum solutis alimentis recipiat postulat, revocari fortasse mavult, non tamen quod petit non vult.

(Quint. Inst. 9, 2, 89)²³²

²²⁹ Relevant Greek texts are, for example, Pseudo-Dionysius of Halicarnassus VIII Περὶ ἐσχηματισμένων A 2-3 (Usener-Rademacher 295-96), Pseudo-Dionysius B 2 (Usener-Rademacher 324) Ἀρσίνης Περὶ τῶν ἐσχηματισμένων (RhG I 330, Spengel-Hammer), the anonymous Περὶ σχημάτων (Rhetores Graeci III, 118-19, Spengel) and their common source Pseudo-Hermogenes Περὶ εὐρέστως (204-206 Rabe); Demetrius, Περὶ ἐρμηνείας 287 The absence of the third usage need not imply that Greek rhetoricians were unfamiliar with the concept

²³⁰ In this context, χρώμα refers to diction rather than a coloured account of events.

²³¹ The clearest and most helpful accounts of the three species of σχήματα can be found in Pseudo-Dionysius VIII A2 and B2

²³² See also Inst. 9, 2, 85 *Est et ille in hoc genere frequens error, ut putent aliud quosdam dicere, aliud velle*, DeMi 337, 1 *Quotiens hoc genus materiae dividam, necesse habeo id dicere quod iam saepe dixi, me nullam*

The first *schema* suited the Romans. However, since it mainly functions on the level of diction and hardly exhausts the possibilities of figured speech, it will stand out better in the discussion of figured speech in *DM* 18 and 19 below. The second *schema*, on the other hand, is ideally suited to give shape to the *controversia figurata*, because it uses the full potential of figured speech. Where this second *schema* occurs, the speaker uses a presentable cover to communicate his true intentions in a roundabout way. This does not mean, as it is sometimes assumed, that the speaker's formal aims are only a pretext to impart his hidden message.²³³ The speaker wants all he says he wants – and something else, as will become clear in the coming analysis of *DM* 18 and 19, in which the minor charge of maltreatment is used – among other things – to get across an accusation of murder.

Fortunatianus, to our knowledge the first author to discuss *ductus*,²³⁴ defines it as *quo modo tota causa agenda sit*, thus contrasting it with *modus*, which is used for sections of a speech, e.g. parts of the *narratio* or separate arguments. Mart. Cap. *Rhet.* 20 equates it with *color*. A plea's *ductus* depends on the speaker's *consilium* ('intention'), which in its turn is determined by the *causativum litis* (the immediate cause for the case in question). If the latter is an established fact, the speaker has no option but to be straightforward (*ductus simplex*); if the *causativum litis* is situated in the present or the future, he can colour his speech in four different way. Accordingly, Fortunatianus distinguishes five *ductus*: 1. *ductus simplex: cum simpliciter id agamus, ita ut in themate*²³⁵ *positum est*; 2. *ductus subtilis: cum aliud est in themate, aliud in agentis voluntate*; 3. *ductus figuratus: cum palam dicere pudor impedit*; 4. *ductus oblicus: cum periculum prohibet aperte agere*; 5. *ductus mixtus: quando non unus est ductus*.²³⁶

Connections with *figura* or *schema* and *color* are evident. *Color* is represented by *modus*. The *ductus subtilis* bears a strong resemblance to *figura* or *schema* and seems in fact to have been coined for the *controversia figurata*. In the *ductus figuratus* and *oblicus*, finally, we find the familiar motives of decency and safety from, among others, Quintilian's account of figured speech.

DM 18 and 19 are literally textbook examples of the way the Romans employed the rhetorical concepts outlined above. Their *thema*, and the way it used to be developed, was

voluntatem cuiusquam contra themata intellegere. A short and lucid discussion of the Roman attitude towards the third *σχῆμα* can be found in Desbordes 1993, 79-80.

²³³ See Desbordes 1993, 81: 'les Latins semblent s'être plus intéressés au dévoilement de l'intention cachée, qu'à la construction d'un discours qui demande pour ne pas obtenir. Le plus souvent, chez eux, l'orateur veut bien ce qu'il demande (.), mais il veut en même temps autre chose, dénoncer indirectement'; p. 80, n 23; compare Quint. *Instr.* 9.2.89 (quoted above). Hillgruber 2000, 10-11. We see this use of figured speech return more explicitly in George of Trebizond's *ductus simplex simulatus*, which Calboli-Montefusco 2003, 125 hails as "totally new". Vict. 22 (RLM 435) devotes some attention to the subject under the heading of *obliquitas*, although his examples point to the third *schema*, his definition fits with the second: *in obliquitate (..) et intellegi debes aliud velle, et tamen longe aliud dicendi arte perficere*.

²³⁴ Calboli-Montefusco 2003, 121 argues convincingly that Fortunatianus must have had predecessors. Later, only Martianus Capella devoted a short paragraph to the subject (Mart. Cap. *Rhet.* 20, RLM 463-64).

²³⁵ The term *thema* makes it clear that Fortunatianus' exposé is concerned with school rhetoric.

²³⁶ Fort. *Arv.* 1, 5. For the *ductus mixtus*, both Fortunatianus and Martianus Capella restrict themselves to the combination of *ductus figuratus* and *ductus oblicus*.

obviously familiar in the declamatory schools, as appears from the brief reference in Tacitus (*Dial.* 35, 5), but especially from the following observations by Quintilian

Itaque non solum si persona obstaret rectae orationi, quo in genere saepius modo quam figuris opus est, decurrebant ad schemata, sed faciebant illis locum etiam ubi inutiles ac nefariae essent, ut si pater qui infamem in matrem filium secreto occidisset reus malae tractationis iacularetur in uxorem obliquis sententis Nam quid impurius quam retinuisse talem? Quid porro tam contrarium quam eum, qui accusetur quia summum nefas suspicatus de uxore videatur, confirmare id ipsa defensione quod diluendum est? At si iudicum sumerent animum, scirent quam eius modi actionem laturos non fuissent, multoque etiam minus cum in parentis abominanda crimina spargerentur

(Quint *Inst* 9, 2, 79-80)

Quintilian's biting criticism concerns the defence of the father, who has been charged with maltreatment of his wife. This charge makes it clear that we are concerned with a *controversia figurata*: the mother reproaches the father not with the murder of his son, but with his suspicions of incest. His response to the accusation, moreover, is properly figured: instead of defending himself he takes the opportunity to repeat and underscore his suspicions, i.e. he actually accuses his wife.

DM 18 and 19 are the only extant declamations with this subject, and they deviate from the usual treatment as described by Quintilian. The original *thema* was evidently meant to form the basis of the father's defence, which is developed in *DM* 19; there is no evidence that a counterplea ever existed. *DM* 18 however contributes a speech for the prosecution, which is an innovation. Furthermore, the *thema* has undergone a radical change: the father is not accused of maltreatment because of his suspicions, but because he refuses to tell his wife whether their son said anything during the brutal interrogation.

The introduction of the father's stubborn silence allows the author of the declamations to obviate at least Quintilian's second objection, that the father 'confirm[s] by his line of defence the very charge which has to be refuted' (*Inst* 9, 2, 80). But more importantly and quite paradoxically, it is this very silence which is used as a striking form of figured speech. That is, the father contends that his silence serves to protect the reputations of both his wife and son. This claim amounts to an assertion that they have been guilty of incest, for if the father had wanted to protest their innocence, he could simply have stated that his son bravely denied his guilt until the end. The father has therefore turned his defence into a covert accusation. A similar ruse is used when the father has to answer for the murder of his son, which he cannot avoid. The father does not say outright that his son was guilty and never even specifies his suspicions – the word 'incest' does not occur in his speech at all. Instead, he confines himself to announcing that his son deserved, and even wanted, to die, yet it does not become clear if his son said anything during the interrogation, and if so, whether the father heard it at all. Nor does he leave it at that: the murder was not a crime, but a harsh duty and a sacrifice, which reconciled him to his

fatherhood. To sum up the father's defence against the charge of maltreatment serves as a vehicle to justify the murder of his son and to accuse his wife and son of incest

DM 18, the speech for the prosecution which is supposedly pronounced by the mother's advocate, also has three goals, which are exactly the reverse of those in *DM* 19. The father is accused of maltreatment because of his silence and the accusation is sincere, but also the opening for an accusation of murder. Thirdly, the advocate defends the mother against the suspicions of incest. All in all, the case is rather complicated. It is best represented in a diagram

	<u>ostensible goal</u>	<u>underlying goals</u>
<i>DM</i> 18 (for mother)	accusation of maltreatment	1 defence against suspicion of incest 2 accusation of murder
<i>DM</i> 19 (for father)	defence against accusation of maltreatment	1 accusation of incest 2 defence against accusation of murder

The diagram above demonstrates the figured character of the *themata* of *DM* 18 and 19; now we can take a closer look at how figured speech works in both declamations. There are two further levels in which figured speech is of paramount importance: the *narrationes* and *argumentationes* in which *colores*, *figura*, and *ductus* play an important part, and individual sentences, where figured speech takes the form of *emphasis*.

Both declamations have a *ductus subtilis*: the speakers have additional aims which are not explicitly mentioned in the *thema*. To achieve these aims, they use several *colores*. In *DM* 19, for instance, the father accounts for his silence by claiming that it serves to protect the reputation of his wife and son. To justify the murder of his son, moreover, he uses ἀντέγκλημα or *relatio criminis*: his son deserved to die, and wanted to. In *DM* 18, the mother's advocate claims that the rumours about incest originated from the father's attitude: he was so cold and harsh that mother and son had to take (innocent) refuge with each other. The advocate even suggests that it was the father who invented and spread the rumour. But the most important *color* is one in direct opposition to *DM* 19: the father is urged to speak out because he uses his silence not to protect his wife and son, but to imply guilt on their part. By this means, the advocate exposes the father's *color* and breaks it open, following Quintilian's advice on how to counter figured speech:

Et quidam semper ex diverso aperiendas [figuras] putaverant, sicut latentia vitia rescinduntur. Idque sane frequentissime faciendum est: aliter enim dilui obiecta non possunt, utique cum quaestio in eo consistit quod figurae petunt. Atque etiam si fuerint crebriores figurae quam ut dissimulari possint, postulandum est ut nescio quid illud quod adversarii obliquis sententis significare voluerint, si fiducia sit, obiciant palam, aut certe non exigant ut, quod ipsi non audent dicere, id iudices non modo intellegant sed etiam credant.

About the mother's motives, too, the advocate is straightforward: the accusation of maltreatment is an occasion to exonerate herself:

Ante omnia igitur, iudices, mulier infelicissimi pudoris hoc ab adfectibus publicis petit, ne vobis accusare videatur. ream se incesti, ream parricidi putat, exhibet populo conscientiam suam et adversus quemcumque sermonem, quodcumque secretum marito famaеque praestat interrogandi potestatem vellet innocentiam suis probare visceribus, vellet in eculeos, in ignes hanc miseram praecipitare pietatem

(DM 18,1 [354, 5-11]).

DM 19, on the other hand, is extremely figured. *Prooemium*, *narratio* and *epilogus* form a consistent whole. The father starts out by saying that he neither knows nor conceals anything (19, 2 *confessione mariti nihil se dissimulare, nihil scire* [373, 3-4]), then in the *narratio* proceeds to describe the deterioration of his relationship with his son, the advent of terrible rumours (unspecified) and his frenzied attack on his son. The lurid *descriptio* of this torture scene is resumed in the *epilogus*, where it turns out that the father actually prevented his son from speaking out – with the latter's full cooperation. Part of the *argumentatio*²³⁷, however, consists of an exercise in putting up smoke screens and planting red herrings: it is suggested that the young man *may* have confessed after all. This stratagem is meant to make the son look guiltier than ever and to leave his mother in permanent uncertainty. The father claims first that the son deserved to be killed even after the torture (19, 9 *vis scire, quanta tormentorum ratio fuerit? debuit etiam tortus occidi* [381, 2-3]); then, that the mother cannot but be aware of what was said during the interrogation (19, 10 *quid iuvenis in tormentis dixerit, tamquam ignoret, interrogat, nihil me comperisse non credit, tamquam sciat, quid dixerit* [383, 1-3])²³⁸. But the father was so upset after the torture that he cannot remember what he heard (19, 11 *ex maximi facinoris colluctatione veniens, quid audierim, nondum scio* [383, 26-27]), and some things are literally unspeakable (19, 12 *non habent incredibilia vocem; quaedam maiora sunt, quam ut illa capiat modus sermonis humani* [384, 13-14]). In fact the torture took place without any interrogation (19, 12 *torquebam nec interrogabam* [384, 21-22]), if the young man said anything, his father could not hear it (19, 13 *ego audire nihil potui* [386, 1]). But the young man had nothing to say (19, 14 *non sufficit, quod non habuit ille, quod negaret, quod fateretur* [386, 25-26]), or he said what his mother thinks he said (19, 14 *audi breve succinctumque responsum, quid dixerit quod quaeris, quod putas* [387, 11-12]).

Finally, all of Quintilian's four uses of figured speech are present in this case. In neither declamation is it safe to speak openly, for both parties are suspected of serious crimes. Decency is also important, for the case is a delicate one and both mother and father are anxious to appear respectable. Here, too, there is a striking difference between DM 18

²³⁷ DM 19, 9-14 (380, 22 – 387, 12)

²³⁸ Suggesting that she was guilty like her son

and 19 In *DM* 18, the mother's advocate is not afraid to bring up the subject of incest when he ridicules the father's suspicions. He even has the nerve to describe motherly love as a kind of infatuation (see *DM* 18, 10 [363, 14-19]). In *DM* 19, by contrast, the word incest does not occur. Indeed, without the *thema* to point the way, it would be difficult for readers to figure out what the declamation was about. Further, the author of these *controversiae* clearly wanted to offer his audience intellectual amusement by inviting them to unravel the complex argumentation, the hidden motives, and the insinuations. But he really excels in Quintilian's fourth use of figured speech, that is, the use of innuendo in cases where accusations cannot be proved. This reveals itself mainly in his use of *emphasis*, an important figure of thought.

Emphasis occurs *cum ex aliquo dicto latens aliquid eruitur* (Quint. *Inst.* 9, 2, 64). The figure occurs in both *controversiae*, but *DM* 19, being the more figured of the two, abounds with it. The following samples of insinuation, taken from *DM* 19, are classified according to their targets. In some cases they are phrased like *sententiae*, (pseudo-) generic sentences, to give them more weight.

Against the mother 19, 2 *ipsius animus potest scire, quid filius meus dixerit, quae me putat habere, quod dicam* (373, 6-7), 19, 4 *laudo, iudices, patientiam matris cum et ipsa semper plurimum esset domi, et ab illo secreto fortasse non longe, intervenire noluit, interpellare non ausa est* (375, 11-13)²³⁹, 19, 10 *quid iuvenis in tormentis dixerit, tamquam ignoret, interrogat, nihil me comperisse non credit, tamquam sciat, quid dixerit* (383, 1-3).

Against the son 19, 5 *ita tibi non videtur omnia respondere pro filio, qui dicit 'occidi'?* (377, 1-2), 19, 8 *mori voluit, ut taceremus* (379, 17), 19, 9 *iuvenem qui inter nos formosum malebat agere quam filium* (380, 24 – 381, 1), 19, 9 *desidem domi perdebat aetatem non ducere volebat uxorem* (381, 6-9), 19, 9 *quaestionem illud vocas? poena, supplicium et malorum meorum exitus fuit* (381, 17-18), 19, 13 *nihil ille delinquebat, quomodo liberi solent* (385, 18-19).

In fact, the father's silence and his comments on it play such an essential role in his defence that it must be regarded as a figure that governs the entire declamation. This is the figure of *apostrophe* (*reticentia, obtinentia, interruptio*), which is the conspicuous suppression of an outrageous or embarrassing fact or allegation in order to draw attention to it. On this scale, it only occurs in four other declamations and therefore deserves a treatment in some detail. All these declamations are figured: the silence is used to express a tacit accusation, to create uncertainty or to get the better of one's opponent.

In Sen. *Contr.* 4, 6, also discussed in the section on *mala tractatio*²⁴⁰, the father's refusal to reveal which son is which, is a means to force the (step)mother to treat them on an equal footing. The only counterargument for the mother is that the father is in fact giving preference to his elder son.

In Calp. *Decl.* 16 the silence of the key witness is made clever use of: it is that of a raped girl tacitly weeping before a magistrate. The magistrate condemns the rapist to death,

²³⁹ The father suggests – as in 19, 3 [374, 16]) – that the secret room was used by the amorous couple for their rendez-vous and that the mother's guilty conscience forbade her to intervene in the torture scene.

²⁴⁰ See p. 78 above.

the girl kills herself. The magistrate is charged with having caused both deaths²⁴¹. In the accusation the girl's quiet tears are not – as would be expected – interpreted as a silent plea for punishment of the rapist, but as a declaration of love and compassion. '*Tacuit inquit o mira et muta sententia!* Omnes sciunt ex uno misericordiae fonte manare, in amore vel maxime, nam isdem oculis quibus amatur et fletur

In *DeMi* 378 a son is disowned because he refuses to divulge anything about his secret negotiations with the enemy commander in a dire war. His silence becomes an occasion to assert his relative independence in the face of his father. *Dico igitur certa esse quae imperent patres, navigationem, militiam, quaedam excipi, senatoris, magistratus, iudicis sententiam, et liberos <nos> esse qua cives hanc vero novam legem, silentium crimen esse* (*DeMi* 378, 1²⁴²), *sunt quaedam secreta, iudices, et animi parentum imperius vacant* (*DeMi* 378, 4).

DeMi 328, finally, greatly resembles *DM* 19. Two brothers, who have fallen out with each other, sleep in adjoining bedrooms. One is found murdered, the father tortures the victim's servant to death and afterwards refuses to speak. Accused of *dementia* by the surviving son on account of his silence, he is acquitted, when the young man is subsequently accused of parricide, his father appears as his *patronus*. The first part of the father's *argumentatio* (*DeMi* 378, 3-6) contains arguments intended to demonstrate that it is improbable that his son is guilty, he ends with stating that his son is innocent, but deserves punishment for charging his father with *dementia*. *Quid est ergo? Mentiri ne iratus quidem possum est filius contumax, est patris sui accusator, sed fratrem non occidit. Neque ego istum in ulla alia parte absolvendum puto nec hodie veni in hoc iudicium advocatus* (*DeMi* 328, 16). Yet as in *DM* 19 he intentionally leaves room for doubt in part of the *argumentatio*. *Nihil respondeo quoniam nihil certi scio. Non respondeo quoniam non credo aliquid dicenti*²⁴³ *Non respondeo quoniam adhuc quaero. Non respondeo quoniam hoc inquisitioni meae non expedit. Non respondeo quoniam <non> illum ut interrogarem torsi* (*DeMi* 328, 11). He even deliberately undermines his own credibility. *Dura est condicio interrogationis huius, cum id quaeritur cui si respondeas non creditur. Vis enim, accusator, voce mea stari? Vis credere iudices quidquid respondero? Das enim mihi fingendi libertatem, propter hoc ipsum perdam necesse est fidem, quod mihi dicere licet quidquid voluero* (*DeMi* 328, 9).

The resemblances with *DM* 19 are striking. Not only does the father in *DM* 19 also play off the uncertainty about the outcome of the interrogation, he too comments upon his own lack of credibility in 19, 11. *et in silentium orbitate defecit ablata est mihi omnium verborum fides, omnis sermonis auctoritas, nec habet causam loquendi cui non potest credi* (384, 3-6). But he outmatches the father in *DeMi* 328: not only is he more concerned to make his son appear guilty, but he explicitly uses his silence to do so. 19, 1 *non quia occidi filium taceo, sed occisus est, ut tacerem* (372, 8-9), 19, 2 *cur filium occiderim, indicare non possum, nec paenitet, quod occidi* (373, 16-17), 19, 6 *non prodo secretum* (378, 10), 19, 7 *quisquis de tacente queritur, multo minus ferre poterit loquentem* (379, 4-

²⁴¹ For the relevant declamatory law see n. 168 above.

²⁴² For the text I follow Shackleton Bailey 2006.

²⁴³ The father refers to the servant he tortured.

5); 19, 12 *non habent incredibilia vocem; quaedam maiora sunt, quam ut illa capiat modus sermonis humani* (384, 13-14).

In spite of its roundabout accusation, *DM* 18 is less figured than *DM* 19. The mother's advocate rather picks up on the figures used by the father. Accordingly, his silence is attacked fiercely in itself, but at the same time it is exposed as a ploy to malign the mother, rather than a means to protect her reputation: 18, 1 *ideo ad vos fugiendum fuit, ut sciretis non illi praestari, quod tacet maritus* (353, 13-14); 18, 2 *parcere nunc illum cuiquam tacendo creditis? Loqui se cum maxime putat, et, si bene artes et profundae mentis consilia perspicio, respondere sibi videtur plus quam mater interrogat* (355, 3-6); 18, 16 *non fallit nos, nefande, quid captes: hoc, quod supra silentium trahis alta suspiria, quod in prorumpenti videris exclamazione deficere, mendacio paratur auctoritas, et in fidem erupturae vocis adfertur, ut fateri videaris invitus. dic tamen!* (369, 21-25).

Rather than confining himself to playing along with the figure, the advocate, following Quintilian's advice (*Inst.* 9, 2, 93-94 cited above), breaks the figure open and confronts the hidden charge of incest: 18, 1 *ante omnia igitur, iudices, mulier infelicissimi pudoris hoc ab affectibus publicis petit, ne vobis accusare videatur: ream se incesti, ream parricidii putat* (354, 5-7); 18, 6 *mater, quae de morte filii maritum malae tractationis accusat, non vindicat, sed probare contenta est, quod non debuerit occidi* (357, 26 – 358, 2).

Because of its relative forthrightness, the mother's accusation contains few specimens of figured speech on the level of the sentence in comparison with the father's defence. Where they do occur, they have an accusatory vein: 18, 1 *laudo, iudices, laudo miseram, quod interrogare noluit domi, quod nihil fecit et ipso secreto* (353, 14-16); 18, 3 *... qui unicum aspiceret animo, quo quandoque posset occidere* (356, 10-11); 18, 4 *ego vero iuxta hunc patrem non accuso rumorem. quae materia fabulae tam impudentis, qui fuerit auctor, iste probavit, qui credidit* (356, 21-23); 18, 14 *mirabar et ego, iudices, si tam nefanda quaestio alium exitum potuisset habere quam mortem* (368, 5-6).

We can conclude, then, that *DM* 18 and 19 are indeed textbook examples of how to deal with figured speech: both how to construct it (*DM* 19) and how to deconstruct it (*DM* 18). The two declamations take up a special position within the genre: *DM* 19 in its effective use of eloquent silence, and *DM* 18 in its exposure of the father's figure.

Some notes on the date of *DM* 18 and 19

Dating and authorship of the *DM* are a difficult subject. Ritter's heroic attempts to settle the question²⁴⁴ in the first major study of both *DM* and *DeMi* have unleashed a barrage of theories and comments, the most lucid and helpful surveys of which are found in Tabacco 1980, Håkanson 1986 and Stramaglia 2006. Recently Cathérine Schneider²⁴⁵ and Antonio Stramaglia²⁴⁶ have used their detailed and profound knowledge of the *DM* to tackle the problem. Going by the two *subscriptiones*²⁴⁷ after *DM* 10 and 18, both place the final draft of the collection in the second half of the 4th century CE.

Schneider takes 379/80 as her *terminus post quem*: this was the time when Augustinus dedicated his *De pulchro et apto* to Hierius, the *orator urbis Romae*, who is also, it is now agreed, the Hierius in our subscriptions. Her *terminus ante quem* is 384, when Hieronymus explicitly attributed *DM* 13 to Quintilian.²⁴⁸ She considers the collection a product of the pagan cultural campaign which centered around Symmachus.

Stramaglia²⁴⁹ is rather more reluctant to assign so precise a date. He claims that the collection is older: in his opinion, the eldest declamations date from the late 2nd century CE. They were supplemented with an uncertain number of *controversiae* in the course of time, some of which did not survive the final editing by Hierius and Dracontius. In other words, the *corpus* fluctuated over the years and only became established as a fixed collection under the hands of these two brothers.²⁵⁰

The three main arguments used by Stramaglia to substantiate his case are the following. In the *Historia Augusta* evidence is found that the number of declamations ascribed to Quintilian is growing: *Fuit autem (sc. Postumus Iunior) ... ita in declamationibus disertus, ut eius controversiae Quintiliano dicantur insert<a>e, quem declamatorem Romani generis acutissimum vel unius capituli lectio prima statim fronte demonstrat[um]*.²⁵¹ Secondly, Lactantius²⁵² mentions the titles of two declamations now lost – *Fanaticus* and *Caput obvolutum* – which in their intriguing brevity show a similarity to those of the *DM*: think of *Mathematicus* (*DM* 4) or *Gladiator* (9) and *Paries palmatus* (1), *Sepulcrum incantantum* (10) or *Venenum effusum* (17).²⁵³ Finally, there is a number of

²⁴⁴ 1967², 186-218.

²⁴⁵ Scheiner 2000, 2003; 2004, 34-37.

²⁴⁶ Stramaglia 1999, 23-43, cf. 2002, 27-28, 2006

²⁴⁷ For the subscriptions, see comm. after *DM* 18

²⁴⁸ Hier. *Epist.* 18, 1 *ad Praes. de cereo paschali* 'Et ut breviter signem, puto te Quintiliani controversiae recordari, in qua pauper causatur, dolens ob interitum apum, flores ab impotentissimo divite venenosos'. She provides an additional indication from Aus. *Comm. prof. Burd.* 1, 13-16 (dated c. 385) *Sive panegyricos placeat contendere libros / in panathenaeis tu numerandus eris / seu libeat ficatas ludorum evolvere lites, / ancipitem palmam Quintilianus habet*

²⁴⁹ 2006, 554-64.

²⁵⁰ This possibility is in itself not disputed by Schneider 2000, 621-22.

²⁵¹ *Hist. Aug. trig. tyr.* 4, 2.

²⁵² *Inst.* 1, 21, 17; 5, 7, 6-7.

²⁵³ Cf. already Stramaglia 1999, 30-31. Schneider 2003, 65 takes it that Lactantius has the *DeMi* in mind, but against that assumption Stramaglia 2006, 562 argues with Winterbottom 1984, 290 n. 1 (cf. Dingel 1988, 20) that the titles of the *DeMi* differ from those of the *DM* in that they usually give a clearer impression of the case they are about to treat.

reminiscences of the *DM* to be found in fourth-century literature, the most important of which occur in Hegesippus' translation of Josephus' *B. Iud.*²⁵⁴ and in Firmicus Maternus' *De errore profanarum religionum*.²⁵⁵

While the exact dating of the *DM* is evidently a problem and will remain so at least until all declamations have been provided with a commentary, this does not go for their relative chronology. Already Ritter²⁵⁶ used linguistic and compositional criteria to classify the *DM* in an older group I (*DM* 3, 6, 9, 12, 13) and a later group II (*DM* 2, 4, 5, 7, 8, 11, 14-19); 1 and 10 are two cases apart in his view. His division still holds, except for *DM* 10, which depends on *DM* 8²⁵⁷. Ritter's findings are confirmed in Deratani 1927 and – time and again – in the present commentary on *DM* 18 and 19.

This commentary ventures to make its own modest contribution to the relative chronology of the *DM*: it seems clear that *DM* 18 was written after *DM* 19²⁵⁸. There is a number of internal indications that point this way. In the first place, both Quintilian and Tacitus²⁵⁹ mention the case from the father's point of view; it is an innovation to add a speech for the prosecution. Further, the son is designated as *speciosus* in the *thema*. In *DM* 19 this aspect of the case hardly receives any attention²⁶⁰. In *DM* 18, on the other hand, a large part of the *argumentatio*²⁶¹ is used to demonstrate how absurd it is that a son's good looks should occasion an incestuous affair. If *DM* 18 had been written first, *DM* 19 would not have omitted to respond to the argument. Another argument for this relative chronology rests on the assumption that the *DM* were composed for use in the rhetorical schools. Since *DM* 19 is an exercise in the construction of a *controversia figurata* in which all aspects of figured speech come to the fore, *DM* 18 must have followed as a demonstration of how to deconstruct it on all its various levels.²⁶² A final indication could be the fact that the second *subscriptio* appears without exception after *DM* 18, not 19. It is quite conceivable that originally *DM* 18 concluded the collection, but that later scribes changed them about, because a speech for the defence is supposed to follow one for the prosecution rather than precede it.²⁶³

The text I use is Håkanson 1984, with ample reference to Burman 1720 and Lehnert 1905. The translation appended is by Sussman (1987). Any alterations or adaptations by myself have been recorded in the commentary.

²⁵⁴ Of *DM* 12; see Håkanson 1986, 2296 n. 75, Stramaglia 2002, 28 n. 57 with further references.

²⁵⁵ Of *DM* 4. See Becker 1902, 477-78, Håkanson 1982, 75-76, Stramaglia 1999, 30. For yet other reminiscences see Stramaglia 2006, 557-59.

²⁵⁶ 1967?, 181-203.

²⁵⁷ Convincingly demonstrated in Deratani 1927, 308-09.

²⁵⁸ This was already suggested in Stramaglia 1999, 29.

²⁵⁹ *Inst.* 9, 2, 79-80; *Dial.* 35, 5, cited resp. pp. 50-51 and p. 23 n. 109.

²⁶⁰ See comm. at 19, 4 *laudatos vultus* (375, 8).

²⁶¹ *DM* 18, 9-10 (361, 9 – 363, 21).

²⁶² This is not to say that *DM* 18 constitutes a consistent and detailed response to *DM* 19. In accordance with declamatory convention as exemplified in the Elder Seneca's *Controversiae*, it is the *thema* rather than an opponent's speech which informs a *controversia*. From the present commentary it will become apparent that *DM* 18 yet has an unusual number of points in common with *DM* 19 – not just where argument and *narratio* are concerned, but also on the level of diction and style.

²⁶³ The *DM* appear in many different sequences in their various mss. See already e.g. Dessauer 1898, 10-60.

Commentary

Declamatio Maior 18

Prooemium 18, 1-2 (353, 7 – 355, 12)

According to the rhetorical *artes*, style and content of the *prooemium* must be determined by the *genus causae*.¹ *DM* 18, however, resorts under more than one *genus*. As an accusation of *mala tractatio*, it falls under the *genus humile*, a genre in which the main function of the *prooemium* is to make the audience attentive². As a defence against suspicions of incest, however, it belongs to the *genus turpe* or *admirabile*³; in cases of this category, the *prooemium* must mainly propitiate the judges⁴. It will be seen that the *prooemium* of *DM* 18 employs *loci* supplied for both types of manipulation in *De Inventione*, the *Rhetorica ad Herennium* and Quintilian's *Institutio* to great effect, but that our author draws the line at using *insinuatio*⁵: he seems to feel that attack is the best line of defence.⁶

The author generally keeps to the rhetorical precepts for both content and style of the *prooemium*, except for one thing: he obviously assumes that the case (i.e. the *thema*) is well-known, thus going against Quint. *Inst.* 4, 1, 3 *certe prohoemium est quod apud iudicem dici prius quam causam cognoverit possit, vitioseque in scholis facimus quod exordio semper sic utimur quasi causam iudex iam noverit*.

Adhering to Håkanson's arrangement of the text, we can discern the following sections:

353, 7 – 354, 4 *Etsi – occidit*: The mother's openness is praised while the father's secretiveness is denounced.

354, 5-14 *Ante omnia – et mater*: The mother is in court not so much to make accusations as to defend herself and prove her innocence.

354, 15 – 355, 16 *Equidem – debuerit occidi*: The father's attitude is inconsistent, because his silence follows a preoccupation with rumours and gossip. The silence is exposed as a means of insinuation.

353, 1 Infamis in matrem: because of the general agreement of the titles of the *DM* in all mss. it is safe to assume that they already occurred in Dracontius' final draft of the collection.⁷ The term *infamis in* is a euphemism for 'suspected of incest / misconduct with', which seems to have originated in the rhetors' schools. See Introduction p. 69 w. n. 148.

353, 2 Malae tractationis sit actio: for this declamatory law see the third chapter of the Introduction.

¹ Cic. *Inv.* 1, 20, *Rhet. Her.* 1, 5, Quint. *Inst.* 4, 1, 40.

² Cic. *Inv.* 1, 20, 23, *Rhet. Her.* 1, 6-7; Quint. *Inst.* 4, 1, 33-39, 41; cf. also Fortun. 2, 13 (RLM 109); Victor in Cic. *Inv.* 1, 15-16 (RLM 196); Sulp. Vict. 8 (RLM 317); Vict. 15 (RLM 422-23).

³ *Genus turpe*: *Rhet. Her.* 1, 5, Quint. *Inst.* 4, 1, 40 has it resort under *genus humile* or *admirabile*. The *genus admirabile* is discussed in Cic. *Inv.* 1, 20-21; Quint. *Inst.* 4, 1, 40-41.

⁴ The relevant *loci communes* are found Cic. *Inv.* 1, 22, *Rhet. Her.* 1, 8, Quint. *Inst.* 4, 1, 6-33.

⁵ *Insinuatio* is discussed in Cic. *Inv.* 1, 20; 23-24, *Rhet. Her.* 1, 9-10, Quint. *Inst.* 4, 1, 41-50; cf. also Fortun. 2, 14-5 (RLM 109-10); Sulp. Vict. 16 (RLM 322).

⁶ See *Rhet. Her.* 1, 6 *Sin turpe causae genus erit, insinuatione utendum est (...) nisi quid nacti erimus, qua re adversarios criminando benivolentiam capere possimus*.

⁷ See Stramaglia 1999, 30-31 n. 25; 2006, 562 n. 28.

353, 2 speciosum: this designation of the son is meant to give a foundation to the suspicions of incest. The mother's advocate takes great trouble to refute it in *DM* 18, 9-10, but the father in *DM* 19 hardly makes use of it.

353, 3 tamquam: in the way of Greek ὥς, *tamquam* signifies 'weil angeblich' (Becker 1904, 73-74).

353, 4-6 interrogat illum – tractationis accusat: an innovation of the *thema* as it was rendered in Quint *Inst* 9, 2, 79-80, where the mother took the father to court because of his suspicions. See Introduction p. 84 ff.

353, 7-14 etsi, iudices ... tacet maritus: the *anticipatio* at once dispels the suggestion by the father, for which see e.g. 19, 14 (386, 13-16), that his silence serves to protect the reputation of the mother and the son. The adversative opening sentence immediately draws attention, frequent use is made of this device in the *DM*: see *DM* 1, 1 (1, 9-15), 5, 1 (85, 7-14), 6, 1 (111, 3-10), 8, 1 (151, 11-152, 5), 10, 1 (199, 6-16), 11, 1 (219, 14 - 220, 4), 12, 1 (231, 12 - 232, 9), 15, 1 (302, 1-6), 16, 1 (319, 3-10), 19, 1 (372, 1-9)⁸.

353, 7-8 facinus ... ordinavit: cf. *DM* 7, 11 (148, 9-10) *Scis profecto, percussor, facinus ordinare, disponere*, and compare Sen. *Thy* 715-16 *saevum scelus / uivat ordinare* (Burman 1720, 350, who also points out *DM* 2, 3 [23, 15-16] *dilationem* [Håkanson *delationem*] *sic ordinavit*).

353, 8-9 sive dissimularet ... sive quereretur: there is an emotional ring to both verbs (whether the poor woman appears indifferent or grieves about her son's death), but the legalistic connotation⁹ is predominant: the advocate wants to imply that the mother's reputation has already been damaged severely, whether she takes the matter to court or not.

353, 9-10 monstrorum novitate: cf. Ov. *Met* 8, 156 and 12, 175 (*monstri novitate*) and V. Max. 1, 6, 5 (*novitate monstri*). Metonymous abstract for *monstris novis*, see comm. at 18, 9 *novitas* (362, 5) for the use of *novitas* in the *DM*. The advocate stresses the outrageousness of the case to make his audience attentive. See Cic. *Inv* 1, 23 *Attentos autem faciemus si demonstrabimus ea quae dicturi erimus magna, nova, incredibilia esse*, *Rhet. Her* 1, 7, Quint *Inst* 4, 1, 33.

353, 11 infamaturus ... vel patientiam nostram vel dolorem: runs parallel with, and refers to 353, 8-9 *sive dissimularet sive quereretur*. Ritter 1967², 67 sees both paralleled in *DM* 2, 4 *infamatura velut deprehensi trepidationem, seu tacuisset caecus, seu negasset* (23, 27-28).

353, 12-13 † ne minimum ... locum: note the *hyperbaton*. *Ne* is deleted by Gronovius, while Schultingh wants to replace it with *de* (Burman 1720, 350), Lehnert 1905, 320 preserves it, but it is obelized by Håkanson, who suggests *vel* or *<sa>ne*, while Watt (1991, 57-58) suggests an emendation to *ne* (*nunc*). There is no need to condemn *ne* from a grammatical point of view: it can be a (vulgar) substitute for *ne quidem* according to KS 2, 56d, LHS 447 (from Petr. 47, 4 onwards, a *soloecismus* by *detractio* according to Quint *Inst* 1, 5, 39) and OLD *ne* 7, which cites this very sentence among its examples. But one of

⁸ See Stramaglia 1999 95 n. 4 (*DM* 5 8 10 12) 2002 92 93 n. 4 (*DM* 6 15 16): see further Ritter 1967² 160.

⁹ For *queri* meaning 'to make a formal complaint (in a court of law)' see OLD *queror* 1c and Heumann-Seckel s.v. *queri*.

Håkanson's suggestions (*vel* is slightly more common than *sane*) ought to be accepted. The loss of the son is made out to be relatively bearable compared to the actions that caused it. In itself this is not unreasonable, since the first allegation made in this declamation is that he 'arranged his crime in such a way as to blacken the mother's name in your eyes' (Sussman 1987, 217). But the small relative clause <in> *cuius – orbitas locum* does serve to remind the judges of the murder of the son. This is consistent with the advocate's strategy: the *actio malae tractationis* is used to veil the charge of murder. The same device of deliberate trivialization of important points is found in *DM* 2, 1 *iuvēnis, pro quo minimum est quod parricida non est* (20, 16-17), 16, 1 *pietatis meae conscientiam in qua minimum est, quod videor bonus amicus* (319, 6-7). Both are mentioned in Ritter 1967², 64, 67.

353, 12-13 sibi vindicat orbitas locum: for this metaphor compare Sen *Ep* 88, 24 (*liberalium artium turba locum sibi in philosophia vindicat*) and Sil 2, 504 (*iurisque locum sibi vindicat ensis*), see also *DM* 12, 1 (*ille sibi adserit locum furor*, 232, 1-4).

353, 13 ad vos fugiendum fuit: the judges are involved as the mother's only resort, she is presented as a supplicant in accordance with one of the *loci communes* for procuring *benivolentia ab nostra persona* (Cic *Inv* 1, 22, Rhet *Her* 1, 8, cf Quint *Inst* 4, 1, 13-14).

353, 13-14 ut scireretis – tacet maritus: Sussman 1987, 217 translates 'so you may be aware that the fact of her husband's silence should not render him safe', assuming that *illi* refers to the husband, which is unlikely because of *maritus* in the next clause. Also, instead of *praestari*, he seems to read *praestare* (to guarantee > render safe). Reading *praestari* and taking *illi* to refer to the wife, one is confronted with three possibilities:

1 'so you may be aware that what her husband withholds is not revealed to her' (referring to his silence, on which the charge is based)

2 'so you may be aware that the fact that the husband keeps silent is no guarantee for (= does not protect) her'

3 'so you may be aware that she is not responsible for the fact that the husband keeps silent' (she did not commit incest, so the husband's silence does not serve to protect her), taking *praestare* in its legal sense of 'being responsible' (Heumann-Seckel s.v. *praesto* 2) and *illi* as a *dativus auctoris*. The *dativus auctoris* is, however, anything but common in the *DM*.

2 seems therefore the best option, all the more since the advocate repeatedly (e.g. below 354, 3-5, 18, 2 [355, 3-4]) asserts that the father is not protecting anyone. It remains for the mother, then, to go to court and find her own protection.

Compare this assertion with *DM* 19, 1 (372, 7-8) *veni petturus a vobis, ne me scientem silentium contentioni praestare credatis*.

353, 14-16 laudo – ipsa secreto: *isocolon* with *geminatio* of *laudo* and anaphora of *quod*. The two *quod*-clauses are coreferential, but the second one contains a veiled reproach of the father. *Laudo* produces a specimen of *emphasis* by praising the mother's integrity, the advocate in fact reprehends the father's underhandedness. At the same time, the advocate tries to forestall what would be a fair question: why did not the mother interrogate the father before? Ritter 1967², 69 refers to *DM* 19, 4 *Laudo, iudices, patientiam matris cum et ipsa semper plurimum esset domi, et ab illo secreto fortasse non longe,*

intervenire noluit, interpellare non ausa est (375, 11-13). He further (1967², 67) points out a parallel in *DM* 2, 5: *laudo, iudices, innocentiam silentii, laudo fiduciam, quod interrogatus, cui parasset, non putavit sibi defendendum venenum* (24, 11-13).

353, 15 quod interrogare noluit domi: The father denounces this as symptomatic of the mother's fickleness: see 19, 4 *unde in hanc inpatientiam prorupit, exiit? domi me nihil interrogavit* (375, 19-20)

353, 16-18 hic coram – mater inquit: again the advocate emphasizes that the mother, as opposed to the father, has nothing to hide; note the emphatic anaphora of *coram*. The jurors are first referred to as citizens, to make them realize their grave responsibility, then as children and parents, to make them identify with both mother and son. The jury (or public) is addressed or referred to in the same way in *DM* 4, 12 (74, 5-6); 4, 22 (83, 25: indirectly); 5, 12 (97, 1); 7, 12 (150, 3); 18, 17 (370, 15-16); 19, 4 (375, 21 with *coram*).

353, 17 licet dissimulare parricida videatur: in *DM* 19, 4 the father contends that he has put an end to the rumour: *eripui malignitati, abstuli famae* (376, 2); see also 19, 5 *sic omnia feceram, ne quid aut quaeri posset aut dici* (376, 12); 19, 14 *ego vero me famae tuae, mulier, opposui, et inter matrem filiumque medius parricidium feci, unicum occidi, ne quid aliud loquerentur homines* (386, 13-16).

353, 17-18 coram rumore: *rumore* may refer to the rumour about the alleged incestuous relationship between the mother and the son, but according to TLL s.v. *rumor* 945-47, *coram* as a preposition only occurs with persons and parts of the body. Only in a few instances does it occur metonymously, as in *coram conventu* (Nep. *Ep.* 6, 4), or, at the boldest, *coram patria* (Tac. *Ann.* 4, 8, 5). I therefore interpret *rumore* as a metonymy¹⁰ for 'the people who (may) have spread and/or heard the rumour'. In *DM* 11, 1 (220, 8), we find another bold metonymy: *coram impatientia mea*, which can be interpreted as 'in my presence, although I cannot bear it'.

353, 18 – 354, 1 quid tormentis - morte compererit: the two *quid*-clauses are grammatically analogous¹¹ and as regards their content virtually synonymous, but they make clear that the father's crime is twofold, consisting in both torture and murder.

353, 18 unici: ellipsis of *filii*, which is a very common phenomenon in Latin literature already from Plautus. See Löfstedt 1933, 241-42 for a choice of examples among which *DM* 19, 11 *post exitum unici revertor in patrem* (383, 8).

354, 1 respondeat saltim reus, fateatur iratus: instead of *iratus*, Watt 1991, 58 suggests *in<g>ratis*, 'against his will'. But it is highly unlikely that the father is unwilling to reveal whom he purports to protect, for his 'protection' contributes importantly to his covert accusations. *Iratus* can be preserved when taken to refer not strictly to the present situation in court, but also to the torture-scene.

354, 2 cui in peracta crudelitate modestiae fronte obstitit: Håkanson wants to read *cui in peracta crudelitate modestiae frontis obstitit*, although all mss. have *cur in peracta crudelitate modestiae fronte substitit*. Burman 1720, 350 had adopted their reading,

¹⁰ Unlike Englund 1934, 15 who interprets *rumore* as a personification

¹¹ Unless one wants to preserve, with over-scrupulous Englund (1934, 75-76), *comperit*, the reading of α, explained by him as a sample of *variatio*.

adding: *an substituit*¹². *Scilicet non progressus ulterius ad arguendum uxorem. Modestiae frons est praetextus, species, ut bis terve declam. XVII. Schult(ingius). Lehnert 1905, 321 follows suit. The reading is indeed supported by DM 17, 2 querelarum fronte (333, 13); 17, 7 reliqua supplicia nostra rationis fronte protegitis (338, 16-17) as well as 5,19 frontem castigantis (105,11)¹³, while *frontis* nowhere occurs in the *DM*. Except for *cui*, none of Håkanson's emendations seem necessary (this includes replacing *substitit* with *obstitit*, which was only occasioned by reading *modestia*). Instead of 'whom the restraint of his masked feelings has protected in the cruel act which has been committed' (Sussman 1987, 217) we can read 'whom he has protected with a pretence of restraint in the cruel act which has been committed.'*

Exposing both the father's cruelty and his malice, this exhortation is exemplary of the way in which *odium* is aroused against the father in the *prooemium* (Cic. *Inv.* 1, 22; *Rhet. Her.* 1, 8; cf. Quint. *Inst.* 4, 1, 14-15).

354, 2-4 nec uxori – occidit: Like nearly all paragraphs of *DM* 18 and 19 in Håkanson's edition, this first paragraph of the *prooemium* ends with a *sententia*, in this case an enthymeme, not in its capacity of 'rhetorical proof', but as a *sententia ex contrariis*,

¹² In all *DM* the indicative mood frequently occurs in indirect questions, it is a characteristic of vulgar (or archaic) Latin (KS 2, 494, LHS 538-39 mentions the *DM* and refers to Englund), which has been commented upon by a number of scholars

Von Morawski 1881, 9 simply accepts it as one of the 'Erscheinungen, die alle zur vulgären Sprache hinneigenden Schriftwerke kennzeichnen'.

Hammer 1893, 45-46 notes the alternation of indicative and subjunctive mood in these dependent clauses and proposes to solve this inconsistency by defining them as main clauses. 'Was die indirekten Fragesätze anlangt, so werden bei der zerhackten, der losen Umgangssprache entsprechenden Ausdrucksweise der Deklamationen viele scheinbar indirekten Fragen neben *quaero, rogo, dico* u a parataktisch als Hauptsätze gestellt und haben das Verbum im Indikativ bei sich (...) Damit wechselt aber fast ebenso oft die Unterordnung bei denselben regierenden Ausdrücken'.

Reitzenstein 1909 ascribes nearly all cases of (apparently) indirect questions with the verb in the indicative mood in Lehnert's and Burman's texts to misinterpretations or simple mistakes 'dass fast alle Fälle, in denen bei ihnen der Indikativ in der indirekten Frage erscheint, auf falscher Interpretation beruhen oder ohne weiteres zu ändern sind' (47 n. 7; see also e.g. 53 n. 10 and 69 n. 6, where punctuation is changed or an interrogative pronoun replaced with a relative pronoun).

Englund's approach of the alternation of moods (1934, 63-70) is rather more careful. Concurring with Hammer 1893, 67 n. 2) he admits that many of the clauses containing a verb in the indicative mood and regarded by Burman and Lehnert, judging by their punctuation, as indirect questions, may be interpreted as direct questions (63), or are sometimes interchangeable with relative clauses (68), but often prefers to leave the question open. Moreover, he argues that there are instances where direct speech (let alone a relative clause) is out of the question in any case '(...) exemplis, quibus ante interrogationem positus est verbi respondendi imperativus 2, 24 p. 40,18 sq. (where Håkanson [41, 15] however punctuates: *respondete, per fidem, respondete, mortales: utrum hic patrem occidit an perdidit?*); 5, 4 p. 91, 12 sq. (Håkanson 88, 1); 18, 1 p. 321, 1 sqq. *respondeat saltem reus, fateatur iratus cur in peracta crudelitate modestiae fronte substitit*' (67-68). On page 70, finally, he gives an example where the indicative mood makes for poignancy.

Håkanson (1986, 2291, n.2) obviously does not approve of Englund's contribution: '(...) wo Englund, besonders S. 74ff., m E zu Unrecht, eine Reihe von Indikativen gegen ältere Kritiker wie Reitzenstein verteidigt.' In his own edition, many questionable indicatives are 'ironed out' by deft punctuation, for which he nowhere explains his principles, in fact his work seems to be inconsistent, for from a sample survey based on the series of examples given by Englund 1934, 65, it turned out that Håkanson preserved Lehnert's punctuation in those sentences that contained forms of the verb *rogare*, but turned, by means of punctuation, dependent clauses into main clauses in cases where the main verb was a form of *quaerere, interrogare* or *respondere*.

¹³ See Von Morawski 1881, 10, Ritter 1967², 67 additionally comes up with 17, 13 *frontem confessionis* (344, 12).

although the antithesis is relatively slight, contrasting *uxori* and *filio*, *scire voluit* and *tamquam sciret*. It is also an *epiphonema* *non tam probatio, quam extrema quasi insultatio*.

354, 5-6 Ante omnia – publicis petit: cf *DM* 2, 1 (21, 3-4) *hoc primum itaque publicis allegamus affectibus*; 4, 2 (62, 5) *Ante omnia igitur a gravitate publica peto*, 8, 2 (152, 16) *Ante omnia igitur illud a vobis infelicissima mater petit*, 11, 8 (227, 15-16) *hoc tantum ab adfectibus vestris omnium mortalium nomine peto*, 17, 1 *hoc primum a notissima clementia vestra peto* (331, 10-11).

354, 5 infelicissimi pudoris: *oxymoron*. In *DM* 18, 3 and 4 (355, 15 – 356, 19) it is explained that the mother's chastity and her (chaste) love for her son actually caused the suspicion of an incestuous relationship. For *infelix* meaning *non prosper*, *irritus de rebus inutilibus* see TLL s.v. *infelix* 1363, 23-53, where this instance is used as an example, as well as *infelix virtus* in Sen. *Contr.* 4, 7, Man. 4, 94, and (erroneously) Stat. *Theb.* 10, 238. Compare also, by contrast, *DM* 17, 8 (339, 9) *felicior innocentia*.

354, 6 adfectibus publicis: metonymous for the public/members of the jury. Also in *DM* 2, 1 (21, 4); 4, 6 (67, 14 also with *petere*), 11, 7 (226, 24-25); 17, 2 (333, 12-13) and in Sen. *Dial.* 4, 11, 3 (*vox publici adfectus*).

354, 6-7 ne vobis – parricidii putat: Obviously the mother *has* brought a charge, viz. that of *mala tractatio*. This charge now turns out to cover the mother's underlying goal, which is twofold: she wants both to clear her own name (and that of her son) and to have her husband punished for the murder of their son. Here we have the first explicit indication that *DM* 18 is a *controversia figurata* (Quint. *Inst.* 9, 2, 66-99), for which Quintilian distinguishes three uses. *Eius triplex usus est, unus, si dicere palam parum tutum est, alter si non decet, tertius, qui venustatis modo gratia adhibetur, et ipsa novitate ac varietate magis, quam si relatio sit recta, delectat* (9, 2, 66). The theme of *DM* 19 (the father's defence) Quintilian considers to be of the second kind (9, 2, 79-80); *DM* 18 can be assigned to both the first and the second. A straightforward accusation of murder would probably lead to the counter-charge of incest, landing the mother in the position of defendant instead of plaintiff, apart from that, the subject of incest, torture and murder of a son is painful and disgraceful. For an extensive discussion of the *controversia figurata*, see the chapter on Figured Speech in the Introduction.

354, 7-8 conscientiam: *conscientia* has been translated as 'her untroubled conscience' (Sussman 1987, 217), but there may be an ironic overtone, because a dominant sense of the word is 'complicity' (OLD *conscientia* 1b). For an overview of the development of the noun *conscientia* and its various uses in *DM* 18 and 19 see comm. at 18, 7 *haec . conscientia* (360, 18).

354, 8-9 quemcumque sermonem, quodcumque secretum marito famaеque: *fama*, like *rumor* (353, 18) is metonymous for 'the people who have heard and/or spread the rumour'.¹⁴ Note *homoeoteleuton* and *polyptoton* of *quemcumque* and *quodcumque*, note also the alliteration of *sermonem* and *secretum* (Becker 1904, 60) and the chiasmus of the nouns.

354, 9-10 praestat interrogandi potestatem: compare *DM* 19, 15 (388, 8-11), where the father in his turn offers himself for torture, further *DM* 7, which treats of a man

¹⁴ Englund 1934, 14 considers it a personification.

who demands that he be tortured in order to prove that he is speaking the truth, see also Quint *Inst* 9, 2, 81-84, where another *controversia figurata* is discussed *Tyrannidis affectatae damnatus torqueatur, ut conscios indicet accusator eius optet, quod volet Patrem qui damnavit optat, ne is torqueatur pater ei contradicit vel (quod ego maxime sequeretur) ut innocentem se in tormentis pertendat?* For *loci communes* concerning the trustworthiness of statements made under torture, see comm at 18, 11 *omnium quidem – dolore respondet* (364, 19-22)

354, 10 vellet innocentiam – praecipitare pietatem: emphatic anaphora of *vellet* and alliteration of *p*, for which compare 18, 17 *si praecipiti pietate properassem* (371, 6-7) *Pietatem* is metonymous for the mother, the two clauses are coreferential, the second explaining and concretizing the first, a stylistic device used very frequently in the *DM* For The mother's willingness to testify, compare esp *DeMi* 338, 31 *si leges sinant permittatisque vos, se torqueri velit, se imponi ignibus, se verberibus lacerari postulet*

354, 10 visceribus: compare *DeMi* 332, 5 *aperui pectus et conscientiam protuli et qua rerum natura patitur, viscera paene mea in conspectu vestro sunt* Here perhaps a metaphorical sense of *viscera* ('children') is implied, too, Sussman 1987, 217 cleverly translates 'her own flesh and blood' In *DM* 1-17 *viscera* only occurs in a literal sense, except for *DM* 10, 16 (215, 5-6) where *materna viscera* ('a mother's profoundest feelings')

torqueri is used metaphorically, but with the connotation of physical torture very much in evidence The other declaimers, too, mostly use *viscera* in a physical sense, except for the metaphorical use in *DeMi* 255, 8, 9 and 272, 13 where the word denotes the 'heart' of the community

354, 10-11 innocentiam ... miseram ... pietatem: the mother's major virtues are mentioned together, but (*miseram*) as qualities that harm her case, as in 354, 5 above (*infelicissimi pudoris*) They get somewhat lost in Sussman's translation 'this poor woman would be willing to prove her proper conduct by leaping onto the torturer's rack' (1987, 217)

354, 11 eculeos: (the plural cannot be accounted for and, except in *DM* 7, 18, and 19, does not occur anywhere else before Hrabanus Maurus [c 780-856]) the 'horse', a kind of rack see RE 1931-32 *eculeus*, especially the reference to Matthaëus, *De criminibus* 1715 p 523, who cites Carolus Sigonius, *De Antiquo Iure populi Romani* (1574), *de Iudicis* 3, 17 p 567 *Quis vero, aut qualis eculeus fuerit, qui inter antiqua tormentorum genera numeratur nemo adhuc litteris prodidit*¹⁵ *Quantum autem ex veterum non levissimis elici monumentis potest, eculeus catasta*¹⁶ *fuit lignea, cochleata*¹⁷, *ad intendendum et*

¹⁵ Sources provide us with too few details to justify a detailed theory of what *eculeus* and *fidiculae* looked like or how they functioned The minute descriptions offered by Gallonius 1668 pp 94 148 can therefore not be considered reliable

¹⁶ See further Salvanius Massiliensis *De Gubernatione Dei* 3 6 22 *eculeis catastisque*

¹⁷ A spiral shaped rack seems difficult to imagine A thorough investigation of the occurrence of *eculeus* (*equuleus*) in both classical Latin texts and fathers of the church yields only one possible source Pompon *com* 40 *et ubi insilui in coleatum eculeum ibi tolutum tortor* Nonius changed *coleatum* (with testicles) to *cochleatum* (spiral shaped) (See TLL s v *coleatus* 1570 1 s v *cochleatus* 1400) but *cochleatus* nowhere occurs in BTL nor in CLCT whereas there is one other instance of *coleatus* also in Pomponius (69)

remittendum apta¹⁸ atque ad torquendos homines, ut facti veritas eliceretur, instituta. Tormenti vero genus erat huiusmodi. Ubi catastae huic brachia (sic) pedesque rei nervis quibusdam, quae fidiculae dicebantur, alligaverant¹⁹: tum catasta intenta, atque in altum erecta, ut ex eo, quasi ex cruce quadam miser ille penderet, primum compagem ipsam ossium illius divellebant²⁰; dein candentibus eiusdem corpori laminis admotis²¹, atque bisulcis ungulis ferreis lateribus laniatis, doloris acerbitem augebant.

Eculeus and *ignes* are mentioned to remind the jury of the torture of the son. We also find them paired in Sen. *Contr.* 9, 6, 18; *Ben.* 4, 21, 6; *DM* 7, 11 (148, 19-20); 7, 13 (150, 22); 18, 11 *nondum dico ... quis inter eculeos ignesque ponatur* (364, 22-23).

354, 12 *impatientiae*: a metonym for the mother. For the significance of *impatientia* in the *DM*, see comm. at 18, 3 *impatientiam* (356, 7); for the significance of (*im*)*patiens* and (*im*)*patientia* in *DM* 18-19 see comm. at 19, 1 *hanc patientiam ... meam* (372, 12).

354, 13 *exaestuatur*: metaphor. Compare Verg. *A.* 9,798 *mens exaestuatur ira*; Ov. *Met.* 6,623 *tacitaque exaestuatur ira*; 13,559 *tumidaque exaestuatur ira*; Stat. *Theb.* 11,297 *miseraque exaestuatur ira*; *DM* 17, 6 *impatientia deceptae crudelitatis exaestuatur* (337, 8-9); cf. also 15, 13 (316, 18).

354, 13-14 *Incestum probaretur – et mater*: *epiphonema* as well as enthymeme: the *ratio*cinatio (*propositio*: incest would be proved if both parents kept silent; *assumptio*: the mother does not keep silent; *complexio*: incest cannot be proved) is condensed to its shortest possible form.

354, 15-16 *satis admirari, satis stupere*: cf. 19, 1 where the same turn of phrase is used to expose an (apparent) inconsistency in the opponent's behaviour: *Quapropter, iudices, satis admirari, satis stupere non possum, quod mulier, cuius praeter optimam sane conscientiam sexus quoque maiorem malis nostris pudorem praestare debebat, tacere non potest silentium meum* (372, 19-22). In form, it is an *asyndeton*; note the alliteration of *s* (with preceding *senis*), and the anaphora of *satis*. *Admirari* and *stupere* are synonymous (and also coupled in Cic. *De Orat.* 3, 102 and Mart. 5, 63, 6). Together with anaphoric *satis*, they make up a figure of speech called *disiunctio*.

354, 16-19 in rumore – dolore conticuit: the tetracolon contains a double antithesis. The first two cola are short and, thanks to Håkanson's supplementation of <*tam*> (1974, 139-140) have an almost identical rhythm; the third and fourth cola are nearly equal in length and end with dactylus and tribrachys (or anapaest, Quint. *Inst.* 9, 4, 105); see Quint. *Inst.* 9, 4, 93: *Clausula quoque e longis firmissima est: sed cludent etiam breves*. As

¹⁸ See for example Sen. *Contr.* 9, 6, 18 *ad intendendum eculeum*; Sen. *Ep.* 67, 3 *eculeo longior factus*; Calp. *Decl.* 7 *super eculeum corpus extenditur*, Isid. *Orig.* 5, 27, 21 *eculeus autem dictus quod extendat*

¹⁹ That the *fidiculae* were regarded not just as a means to tie the victim to the *eculeus*, but also as a separate instrument of torture for stretching and dislocating limbs, is suggested by enumerations like *fidiculis, talaribus, eculeo, igne* (Sen. *Dial.* 3, 19, 1) and *rupt enim verbera, fidiculas laxavit, solvit eculeum, laminas extinxit* (V Max 3, 3, 5 *de ext*); also by the following *intenduntur eculei, expediuntur pondera plumbea cum fidiculis et verberibus* (Amm 29, 1, 23).

²⁰ Compare *DM* 19, 12 (the father is speaking) *ideo enim eculeos movebam artifex senex, ten<d>ebam fidiculas ratione saevitiae, ut leviter sedibus suis remota compago per singulos artus membra laxaret*.

²¹ *Lam(m)inae*, metal strips that had been heated, often occur in connection with the *eculeus*, as e.g. in Sen. *Contr.* 2, 5, 6, V Max 6, 8, 1, Sen. *Ep.* 78, 19, *DM* 18, 11 (364, 15) and 19, 15 (388, 9-10)

regards content, the first and third cola are contrasted with the second and fourth. For the significance of (*im*)*patiens* and (*im*)*patientia* in *DM* 18-19 see comm. at 19, 1 *hanc patientiam ... meam* (372, 12).

354, 18 *pronus ac facilis*: this doublet of synonyms is found also in *Sal. Jug.* 80, 4; *Juv.* 9, 43 and 13, 75; *DeMi* 339, 8 ('easy'); and *Tac. Ann.* 4, 2, 3 ('willing'). Deratani 1927, 294 remarks *videmus (...) verba super necessitatem abundantia cumulari* and links *haec africanorum propria* with Apuleius' style.

This metaphorical use of *pronus* is quite common: see OLD *pronus* 6 and TLL s.v. *pronus* 1934, 75 – 1937, 12.

354, 18 in *parricidio*: not 'in killing his son' (Sussman 1987, 218) but 'as a murderer' as in *DM* 18, 14 *deinde vis videri celare facinus, et in parricidio quaeris aliunde tristitiam* (368, 13-14); cf. also *Sen. Contr.* 1, 7, 16 *ex quo vidi filium ... alterum in adulterio, tertium in parricidio*. From the positioning of the *incisum* between *in orbitate* and *<in> dolore ... conticuit* it is clear that the time after the murder is referred to. Moreover, from *DM* 19, 15 (*sub oculos subiectio* of *quaestio* and *parricidium*) it appears that the father was anything but silent during the murder.

354, 18-19 *<in> reatus quoque dolore conticuit*: compare 19,1 where the father says about his wife: *reatus quoque me dolore concussit* (372, 6-7). Håkanson's suppletion of *in* (1974, 140 n. 65) is tentative but stands to reason in view of *in orbitate*, *in parricidio*.

354, 19-20 *quo repente – desperationemque defecit*: A double *interrogatio*, beginning with *polyptoton*: *quo... in quam...* The advocate's apparent indignation and surprise are only feigned; actually, he is insinuating that he is well aware that the father is pretending to suppress his knowledge about the alleged incest. The two *interrogationes* elaborate on the previous sentence; they are virtually synonymous, but the second *interrogatio* is more explicit than the first. The stylistic device of two (or more) parallel clauses referring to the same state of affairs, but with a slight shift of emphasis, is characteristic of all declamations²² and very frequently to be found in the *DM*.

354, 20 in *quam modestiam desperationemque defecit*: compare 19, 11 *in silentium orbitate defeci* (384,3-4)

354, 20-21 *torsit – dixerit*: πάρισον (*Quint. Inst.* 9, 3, 75-76) with alliteration in an aab aab pattern, *repetitio* of *tamquam* (*Inst.* 9, 3, 34: *nec quisquam dubitavit, idem fieri posse iteratis utrinque mediis*) and *dicturum* corresponding with *dixerit*. The *sententia* is an *epiphonema*, as it sums up the situation. It seems to derive most of its significance from its form rather than from its content, but does prepare the way for the following *exclamatio*.

354, 21 – 355, 1 *fidem...vestram*: this *exclamatio* (here in *hyperbaton*) followed by *ut*, *ne* or imperative, is very frequently used in the *DM* to introduce an appeal to the judges: 2, 17 (36, 1-2); 4, 2 (62, 13-14); 4, 6 (67, 10); 4, 21 (83, 4); 7, 11 (148, 3); 11, 1 (220, 11); 11, 5 (224, 12); 11, 8 (228, 8); 13, 10 (276, 9); 16, 1 (319, 15); 19, 2 (373, 8). It is

²² Winterbottom (1983, 74-76) when writing about the Greek of Sopatros and the Latin of the Minor Declamations, observes: 'Pairs of parallel clauses, often with anaphora, repeat or elaborate a thought in more or less varied form. The phenomenon is everywhere () The trick is found in one of the Latin declaimers cited by the Elder Seneca (*Contr.* 9, 3, 2) as well as in the much later *Major Declamations* (p. 374, 9 Håkanson). On the Greek side, it surfaces in Himerius and Libanius and Dio Cassius, as well as in Sopatros.'

not used by any other authors in this way, except for Liv 9, 24, 3 (with *pro*), 29, 18, 9 (with *per*) and Apul *Met* 2, 27 (*per*)

355, 1-3 ne cui ... parricida miratur: again two clauses refer to the same state of affairs, but from different perspectives the second clause intimates the father's guilt, the first, the mother's innocence

355, 1-2 severitatis auctoritatem: the abundance of abstract nouns in the *DM* is striking and one of the reasons for critics to characterize them as turgid

355, 2 non posse defendi: the *patronus* implies that the father refuses to speak not because he is protecting others (cf 18, 1 [353, 14] and below 355, 3-4), but from an inability to defend himself, implicitly referring to the principle of Roman law that those who do not defend themselves are considered to be guilty. See Dig 50, 17, 52 (Ulp) *Non defendere videtur non tantum qui latitat, sed et is qui praesens negat se defendere aut non vult suscipere actionem*. In Kaser/Hackl 1996², 274 it is stated under Die Einlassungsweigerung (*Indefensio*) 'verlangt man vom Beklagten, nachdem der Kläger mit seiner postulatio actionis einstweilen zugelassen worden ist, eine aktive Stellungnahme er muss das Begehren des Klägers entweder anerkennen oder es dadurch bestreiten, dass er sich () auf die Verteidigung einlässt () Bleibt er dagegen passiv, indem er die eine wie die andere Stellungnahme verweigert, so ist er einer, der 'nicht verteidigt' (*non defendit*), und zwar bei der *actio in rem* nicht die Sache, bei der *actio in personam* nicht seine eigene Person. Das hat zur Folge, dass der Prator den Kläger, ohne dessen materielle Berechtigung zu prüfen, zum Zugriff auf die unverteidigte Sache oder Person ermächtigt'. See also Berger 1968² under *indefensus*, compare further Sen *Contr* 10, 2, 6 *silentium videtur confessio*

355, 2-3 ne ... suspicari nefanda malitis: *nefanda* refers to the alleged incest. *Nefanda malitis* is Dessauer's correction (1898, 95), found in ms C², for *nefandam alius* (mss), *nefanda malitia* (vulg.), see also Håkanson *app crit ad loc* Burman 1720, 351 reads *nefanda malitia*, which lands us with a dangling phrase, Lehnert 1905, 321 follows Dessauer, whose suggestion does of course lead to a highly unusual imperative

355, 3 se ... miratur Håkanson 1974, 140 mentions two conjectures for *miratur tutatur* (Schultingh) and *munire conatur* (Walter 1942, 7, relying on Cic *Fam* 9, 18, 2, Tac *Agr* 45, 12, *DM* 17, 11 [342, 17]), although both make for easier reading, I agree with Håkanson that they are not necessary, besides, *se miratur* can be interpreted as a dig at the father's (improper) moral complacency. *Se mirari* further occurs in Catul 22, 17, Tib 2, 5, 61, Sen *Ep* 92, 2, Mart 13, 2, 7

355, 3-6 parcere nunc ... mater interrogat: *anticipatio* in the form of an antithetical *interrogatio per suggestionem*. Instances of this device in the *DM* e.g. 2, 7 (26, 7-12), 5, 19 (105, 12-14), 7, 1 (138, 7-11), 8, 20 (171, 19-22), 8, 21 (172, 11-13 and 17-18), 9, 9 (182, 25-183, 1), 14, 4 (291, 18 – 292, 2), 14, 10 (298, 18 – 299, 3), 17, 1 (332, 10-11), 18, 4 (356, 20-21), 19, 9 (381, 15-17). The advocate's answer has the form of a νόημα that clearly gives evidence of its affinity with the figure of *emphasis* (cf Zinsmaier 1992, 62)

355, 3 parcere: cf 18, 1 *nec uxori potest videri parcere, de qua scire voluit, an esset incesta nec filio quem tamquam sciret, occidit* (354, 24). According to the

patronus, the father hopes that by keeping silent, he will appear to be suppressing his son's full confession

355, 4 *tacendo ... loqui se cum maxime putat*: *inopinatum* used previously by Cicero on a number of occasions *Cat* 1, 18 (*patria*) *quodam modo tacita loquitur*,²¹ *ibid* 21 *cum tacent, clamant*, *Sest* 40 *tacendo loqui*

355, 4-6 et si... mater interrogat: elaboration of *loqui se cum maxime putat* (355, 4) Ritter 1967², 67 points out a parallel in *DM* 11, 11 *si bene novi capax omnium malorum scelerumque pectus* (231, 3)

355, 5 *profundae*: there is no manuscriptal evidence for Håkanson's tentative conjecture *profunda[e]*, analogous with *DM* 2, 24 *profundum consilium* (32, 20), though it may be further supported with 4, 17 *secretae profundaeque artis* (79, 15) and 8, 15 *profundae artis* (166, 13)

355, 6 *fallitur quisquis*: for this phrase, used to introduce a *praemunitio*, see comm at 19, 3 *fallitur quisquis* (374, 11)

355, 7 *inexplicabilis doloris aestus*: metaphor Compare *DM* 5, 4 *inexplicabiles doloris aestus* (of a father's grief about his son, who has been captured by pirates and is now terminally ill 89, 3), also *Hor Serm* 1, 2, 109-110 *dolores atque aestus*, *Sen Phaed* 589-90 *Quis me dolori reddit atque aestus graves / reponit animo?* *DM* 5, 19 *paterni doloris aestus* (105, 4), 16, 11 *sattavit dolorem mater, egressit aestus* (330, 13-14), 17, 1 *per diversos miserae mentis aestus et eundem dolorem* (331, 7-8), also 4, 21 *explicate per fidem miseri pudoris aestum* (83, 15-16), 17, 2 *deprehensae impietatis aestus* (333, 1), further above *impatientiae, quae exaestuatur* (354, 12-13)

355, 7-8 et inter – miserum pudorem: not an elaboration of the previous clause, but a supplementation Both alleged causes of the father's silence are treated at length in *DM* 19

355, 8 *miserum pudorem*: also in *Ov Her* 9, 19, *Met* 10, 411 (the story of Myrrha's incestuous love for her father), *V Fl* 7, 411, *DM* 4, 21 (disgrace, 83, 16), 19, 1 (ignominy personified, 372, 1), 19, 5 (ignominy personified, 376, 11)

355, 8-11 *alium exitum – debuerit occidi*: the *prooemium* ends with an *epiphonema*, which by means of *quisquis* has been given the guise of a γνώμη, in order that it seems to convey a universal truth Note the almost caustic effect of the alliteration of p in *probare (non) potest propter*

355, 10 *debuerit*: In Mßy, occurring in Burman 1720, 351 and rightly preferred by Håkanson 1974, 140-41 to absurd *erubuerit* (other mss and Lehnert 1905, 322) or *meruerit* (Reitzenstein's conjecture 1909, 58) Cf also e.g. 18, 5 *probare contenta est, quod non debuerit occidi* (358, 2), 19, 9 *debut etiam tortus occidi* (381, 2-3)

²¹ Quoted in Quint *Inst* 9.2.32 but as an instance of *illud audacius genus προσωποποιας*

Narratio 18, 3-5 (355, 12 – 357, 19)

The *narratio* of *DM* 18 directly follows the *prooemium* in accordance with the customs of the rhetorical schools.²⁴ It conforms largely to the three main requirements²⁵: it is *brevis*, *aperta* and *probabilis*. The characterization of mother and father and their pre-history with their son greatly contributes to its probability.

Following Håkanson's arrangement of the text, we can distinguish the following sections:

355, 12 – 356, 19 *Coniungat – mater adamasse*: the *narratio* begins with a description of the family's previous history. The mother's lifelong integrity is emphasized; her abundant love of her son grew even more to make up for the father's hard-heartedness.

356, 20-24 *Questurum nunc – patrem suspicari*: in an intermezzo it is suggested that the rumor originated with the father.

356, 25 – 357, 7 *Haec sunt – ut crederetur*: the mother's ingenuousness is contrasted with the father's cruel stealth before and during the interrogation.

357, 8-19 *Ponite nunc – quod mentiatur*: the mother's love is contrasted with the father's cruelty, of which his calm behaviour after the murder is another proof.

355, 12-17 coniungat – filium meum: the transition from *prooemium* to *narratio* is effected by means of an elaborate but loosely phrased *comparatio*, which begins with an *epiphonema* (as a recapitulation and condemnation of the father's behaviour after the murder, 355, 12-15).

The focus shifts from father to mother by means of this *comparatio*. *Nocentissimus* is contrasted with *innocentissimae*; *silentium suum*, *cludat ora*, *compescat auditus* with *rumore populi* and, later, *proclamare*; moreover, the alliterative verbs *cludat* and *compescat* evoke an atmosphere of secrecy and oppression, whereas the *geminatio* of *fas est* and the mention of temples and gods suggest openness and the approval of the gods. The sharp contrast of *rumore populi* – *silentium suum* becomes even more pregnant viewed against the allegation in 18, 8 (360, 24 ff.) that it was the father who instigated the rumour.

355, 12 coniungat quantum volet: a (pseudo-) *concessio*. Compare *DM* 5, 14 *exaggera, quantum voles* (99, 1); 5, 21 *iacta, quantum voles* (108, 6-7); 19, 16 *quantum volet, laceret, occidat* (388, 14).

355, 12-13 nocentissimus senex – silentium suum: note the alliteration of *s* (*tristior etiam, si binae collidantur, stridor est, ut 'ars studiorum'* Quint. *Inst.* 9, 4, 37). As is often the case, the state of affairs is repeated from a slightly different perspective in the two following *cola*. For the epitheton of the father, compare *nocentissime senex* 18, 4 (357, 11) and 18, 9 (362, 9).

355, 13 relaturae: only in π ²⁶; BV ²⁷ (the most important mss.) have *relature*; M ²⁸ has *relaturus*, which is inconsistent with *cludat ora* and with the father's attitude in general;

²⁴ Quint. *Inst.* 4, 2, 28

²⁵ As found in e.g. Cic. *Inv.* 1, 27-30; *Rhet. Her.* 1, 14-16; Quint. *Inst.* 4, 2, 36-60.

²⁶ I base my valuation of the mss. on that of Håkanson 1974, 8-13, 1978, IV-XIX, 1983, 1986, 2282, all with references to the main editors and relevant textual criticism

²⁷ See esp. Håkanson 1983, IV-VI

²⁸ Described in Håkanson 1983, VI-VII, characterized XIV as *e codice contaminato atque interpolato descendens*

besides, m (*manus secunda*) has *vel relatura*; all remaining mss. have *relatura*, as do Burman 1720, 351 and Lehnert 1905, 322. Reitzenstein 1909, 45-46 endorses *relatura*, taken with *ora* 'auf das Gerede des Volkes kann sich *ora* gar nicht beziehen; es ist ja hinzugesetzt *relatura ordinem tristissimae sortis*, das kann niemand ausser dem Vater' (46), 'eben darum ist auch die Schreibung *relaturae* (mag er versuchen der Mutter den Mund zu schliessen) unmöglich. Der Ausdruck ist so gewählt, dass der damalige Hörer sofort den Beginn der *narratio* erkennt () Der Vater sollte die *narratio* geben und tut es nicht' (46 n 5) Håkanson 1974, 141-42 disagrees 'Gewiss handelt es hier sich um den Beginn der *narratio*, aber im übrigen hat Reitz. die Stelle vollkommen missverstanden. Warum in aller Welt sollte der VATER die *narratio* in der Rede der MUTTER (tatsächlich natürlich des Anwalts der Mutter) geben? Natürlich ist die *narratio* der Mutter gemeint, die an sich mit dem Schweigen des Vaters nichts zu tun hat. Ferner soll nicht *relatura(e) ordinem tristissimae sortis* als zu *ora* gehörig aufgefasst werden, *ora* ist *ora patris ipsius*. Der in *relature* so gut wie richtig übergelieferte Dativ heisst also "mag er versuchen (zur Schande) der Mutter seinen Mund zu schliessen."

Shackleton Bailey 1976b, 216, without further substantiating his point of view, agrees with Reitzenstein '*relaturae* is the better attested reading and defended by Håkanson () but *relatura* is obviously right "The lips which (otherwise) would tell the whole sad story"'

I can only follow suit²⁹ There is no evidence that the father wants to silence the mother, and moreover, there is nothing for her to tell. The events before and after the murder have already been set forth in the *prooemium*. The *ordo tristissimae sortis* can therefore only refer to the fatal torture, and, as Reitzenstein stated correctly, it can only be revealed by the father, who pretends to be on the verge of doing so in 18, 16 (369, 20-25)

355, 13 ordinem: in the sense of 'the steps or stages (in an action or process), course' (OLD *ordo* 9, with Vell 2, 119, 1 *calamitatis* and Petr 92, 13 *cenae* as apposite instances), *ordo* frequently occurs in the *DM*. See e.g. 2, 5 *non explicuit ordinem quaestionis* (24, 21-22); 4, 1 *ordo praedictae veritatis explicuit* (61, 9), 4, 17 *explicuit manifestius ullius fati necessitatem totus ordo responsi* (79, 8-9); 5, 2 *relaturus* () *ordinem hic malorum meorum* (86, 14), 8, 21 *ordinem longissimae curationis* (172, 15-16), 12, 4 *exponamus ordinem cladis nostrae* (234, 21-22), 19, 1 *totum miserae necessitatis*³⁰ *ordinem* () *premere* (372, 10-11), 19, 11 *totum secreti illius ordinem* (383, 12-13)

355, 14 conlata: Gronovius (in Burman 1720, 351) already suggested to read *callida* for *conlata*. He adduces a number of parallels: 18, 10 *si non est callida, non maligna simulatio* (362, 19 – 363, 1); 18, 17 *damnato supra callidissimum silentium parricida* (371, 3-4). Burman follows Schulting, who wants to preserve *collata* and explains *collatis malignitatis viribus et artibus*, cf. Plin *Ep* 7, 17, 10 *Quia in numero ipso est quoddam magnum collatumque consilium*, adding *et hoc exigit praecedens verbum coniungat*. Lehnert 1905, 322 joins in. In imitation of Gronovius, Reitzenstein 1909, 45 prefers *callida*, though it is supported by none of the mss. The 'correction' seems unnecessary. Sussman 1987, 218 translates 'with all his malice applied', an apt translation

²⁹ Sussman 1987, 218, as is evident from his translation, concurs as well

³⁰ I.e. the torture

which is obviously based on OLD *confero* 4a (to devote, apply, direct). *Ora* is a common poetic plural (see Becker 1904, 31).

355, 14-15 compescat auditus: Håkanson's *auditus* is problematic, since it occurs in the more dubious mss. and edd.(ç). B π have *adiectus*, which does not make sense; V has *abiectus*, which, used substantivally ('the villain') is of course possible, but in view of our author's style, it is more likely that the phrase should be synonymous with *cludat ora*. For the same reason, I hesitate to concur with Schulting's *adfectus*³¹, even if *adfectus* is a word that occurs on numerous occasions in the *DM*. This leaves *aditus*³², which is the reading of the other mss., chosen by Burman 1720, 351 and Lehnert 1905, 322. It is rejected by Håkanson 1974, 142: 'Im Folgenden ist *aditus* (*adiectus*, *abiectus*) gewiss mit H in *auditus* zu ändern, was gerade den zu erwartenden Sinn ergibt. TLL (3, 2061, 35 f.) interpretiert zwar das (doch nicht in BV) überlieferte *aditus* sc. *auris*, was vermutlich ein unmögliches Latein ist; so ohne weiteres wäre *aditus* unbegreiflich.' But this interpretation clearly depends on his reading of *relaturae* (355, 13). Shackleton Bailey's solution (1976b, 216) seems best, especially in view of our author's style; in his reaction to Håkanson's *auditus*, Shackleton Bailey sides with Burman and states: 'Father was not refusing to listen, he was refusing to talk. Read *compescat* <vocis> *aditus*.' Sussman 1987, 218 'let him shut his lips' obviously concurs.

355, 15 estote: for the use of the *imperativus futuri* instead of *praesentis* see LHS 340-41: 'der Unterschied der beide Imperative ist im allgemeinen noch bis auf Cicero und die Augusteer gewährt, doch erfolgte in der Umgangs- u. Fachsprache schon früher eine Bedeutungsabschwächung des Imp. Fut. infolge seiner häufiger Verwendung in allgemeinen Vorschriften (...) Daneben spielt bei dieser Nivellierung auch der Umstand mit, dass bei gewissen Verben aus formalen Gründen nur die -to-Imperative in Gebrauch waren, so stets *scito memento* (...) ferner schon früh *esto* gegenüber *es*, danach dann auch *estote* statt *este*.'

Este does not occur in the *DM*. *Estote* is used on two other occasions, both with *securi*: 4, 6 *Sed securi estote de aviditate summae potestatis* (66, 23); 15, 2 *securi estote pro innocentia nostra* (303, 15)³³.

355, 15 mortales: often used in the *DM* 'in weakened sense, with no particular emphasis on mortality: a person, soul' (OLD *mortalis* 2b), this word does give the dramatic edge that e.g. *homines* or *iudices* lack. The jury is likewise addressed in 2, 23 (41, 15-16); 8, 6 (157, 7-8); 15, 8 (310, 13); 17, 14 (345, 10-11); all instances except for 15, 8 constitute appeals to the jurors' moral sensibilities. Here, *mortales* is moreover contrasted with *superos* (355, 17).

³¹ Adopted by Reitzenstein 1909, 45

³² Watt's proposal is ingenious, albeit far-fetched: 'Although *aditus* has been the vulgate, it yields no sense and is not even the reading of the best manuscripts, which is either *adiectus* or *abiectus*. Could this author have been capable of writing *compescat a dictu* (compare TLL III.2063 61 ff. [*compesco*: a(b) aliquo vel aliqua re])?' This would be both rhythmically and palaeographically good, the final s having come from the beginning of *securi*. The old man in question uses much the same two phrases, but in the reverse order, at 341 6 "*licet comprimentur exclamationes, ora claudantur*" "The examples listed by TLL do not, however, predate the fourth century CE. For *dictus* (as a noun of the fourth declension synonymous with *dictio*) see TLL 1014, 73-81, with Stat. *Theb* 4, 175 as the only example from classical times.

³³ A third instance in Sen. *Contr* 4, 6.

355, 15 fas est: geminatio *Fas* here retains its religious-ethical connotation, differently e.g. 18, 5 *fas est, fieri solet* (358, 19), see comm. ad loc.

355, 16-17 velut in – proclamare superos: anaphora of *velut*, with *in templis* and *apud ipsos superos* as near-synonyms. In order to take a valid oath, one usually touched the altar of the god one wished to invoke as a witness (RE s.v. *iuramentum*, 1255, Pl. *Rud.* 1336, Cic. *Pro Flac.* 90, Verg. *A.* 4, 219, V. *Max.* 9, 3, 3 *de ext.*). In *DM* 19, 4 the father is prepared to take a similar oath: *Possum iam, mater infelix, coram liberis ac parentibus, possum audientibus diis hominibusque clamare et ego amavi filium meum, non osculis, non infirmitate, non lacrimis, sed viribus, dolore, patientia* (375, 24).

355, 16-17 apud ipsos ... superos: the insertion of the verb in the second *incisum* produces *hyperbaton*. The construction is familiar from most *DM*. Notable examples are e.g. 4, 14 *quod sidus immodicos solis ardores, quod severas minetur hiemes* (79, 12-13), 5, 23 *quid mihi miseras ultiones, quid triste monstratis auxilium* (109, 13-14), 19, 9 *quod otio vitam, quod desidem domi perdebat aetatem* (381, 6-7).

355, 17 amavi filium meum: a minute *sermocinatio* / ἡθοποιία, echoed in 19, 4 (375, 21-23, see comm. above at *velut in – proclamare superos* [355, 16-17]) introduces the *color* (until 355, 23) of the mother's proven chastity, which makes it even less plausible for her to commit incest with her son.

Instead of Håkanson's exclamation mark, Burman 1720, 351 and Lehnert 1905, 322 have *amavi filium meum matrona, iudices, cuius etc.*, thereby making her continue her statement until their next full stop (before *quae pudicitiae*, 355, 20). This decision they took probably because from the mouth of a mother who is suspected of incest with her son, the simple statement that she loved him is rather ambiguous. However, if we follow their reading we are left with *iudices*, which can surely refer to no one but the present judges, who would not be addressed by the mother, but by her advocate. Furthermore, the cohesion of this part of the *narratio* is disturbed if the mother is impersonated until *nisi filium* (355, 20) while the rest is pronounced by the advocate, and the concision of her first statement would be lost. The ambiguity of *amavi*, which in itself must have amused the audience, is sufficiently obviated by anaphoric *fas* and the superlative *innocentissimae*.

355, 17 matrona: with its full connotations of chastity and status, as Agricola, *De Inv. Dial.* 2, 23, 102-104 observes: '*Incipiens ergo, non "foemina", non "mater" inquit, sed "matrona", ut statim ex nominis eius reverentia favorem aliquem captet*'. This is, indeed, the beginning of the *narratio* proper, and although it goes back a long time, it does not contravene the rhetorical precepts concerning brevity¹⁴, for as Agricola comments: '*et hi quidem, qui praecipui sunt causae colores, et quibus fere causa est innixa, extra causam sunt. Ducuntur tamen ex his, quae sunt in ea, fidemque inde habent. Primae enim iuventae integritas velut certa est coram tali marito, qui fuit paratus accepta suspicione filium occidere*' (*De Inv. Dial.* 2, 23, 121-24).

355, 18 rudem ... coniugii: cf. Ov. *Fast.* 4, 332-33 *sine labe iuvencam / mactarunt operum coniuguque rudem*.

355, 19 impudens rumor: defined by Englund 1934, 7 as a personification. He employs strict criteria for personifications, restricting them to *exempla, quibus rerum*

¹⁴ See Cic. *Inv.* 1, 28, further *Rhet. Her.* 1, 14, Quint. *Inst.* 4, 2, 40-51.

nomina subiectorum locum obtinentia cum verbis agendi coniuncta sunt deinde ea, quibus inanimis rebus subiecti munere non fungentibus ea tribuuntur, quae hominum propria sunt denique ea, quibus rem quandam alloquitur is, qui dicit (1934, 1) Yet he must admit that personificationem nonnullis locis difficile ab ea figura distingui, q e abstractum pro concreto (1934, 2)¹⁵ The present instance of *rumor* seems more of a metonymous abstract for the local gossips, as in 18, 1 (353, 17-18)

355, 20 nihil ... nisi filium: not to be taken literally ("the alleged incest is the first reproach the husband could make"), but ironically ("the wife has always been beyond reproach – she has even borne her husband a son")

55, 20-21 quae pudicitiae prima fiducia est: the parenthesis consists of an independent relative clause, so that a semicolon after *filium* (or the clause between dashes) would have been more appropriate¹⁶ *Prima* has adverbial force For this use of *primus*, *audacius ponitur praedicative vel attributive, ubi potius expectes adverbia*, see TLL s v *primus* 1348, 46 – 1349, 44

The construction of this parenthetic clause is unique for the *DM* Analogous constructions occur 15, 3 *quae prima igitur medicamenti pariter ac dantis integritas est* (304, 14-15) and 18, 4 *quae integritatis prima simplicitas est* (357,1) Compare further 2, 5 *quae maxima est innocentiae contumacia* (24, 13-14), 14, 3 *quae certissima est in voluptate frugalitas* (290, 5-6)

355, 21 fiducia: for *fiducia* in the sense of guarantee, see OLD s v *fiducia* 1c and TLL *fiducia* 701, 50-66, where this instance as well as *DM* 2, 1 *fiducia veritatis* (21, 19) is cited See also *DeMi* 250, 8, Quint *Inst* 5, 6, 2 (*conscientiae suae*) and 12, 5, 4 (*verecundiae*)

355, 21-22 edidit partum – maritus agnosceret: 'literary sources refer to the father as raising (*tollere* or *suscipere*) the child as a formal acknowledgement of his paternity and, by implication, of his decision to rear the child' (Dixon 1988, 238) The consecutive subjunctive *agnosceret* underlines the import of the statement

355, 22-23 non timuit – similitudo detegeret: since this sentence is coreferential with the one preceding it, a comma or semicolon should be read after *agnosceret* as in Burman 1720, 352 and Lehnert 1905, 322 (Fear of) discovery of adultery because the resulting baby resembled the matron's lover was a veritable literary *topos*, for which see Calp *Decl* 2 (*Natus Aethiops*) with Sussman 1994, 98 who calls attention to Iuv 6, 594-601 and Mart 6, 39 See also, conversely, Catul 61, 221-25 *Sit suo similis patri / Manlio et facile insciens / noscitur ab omnibus / et pudicitiam suae / matris indicet ore*, Hor *Carm* 4, 5, 23 *laudantur simili prole puerperae*, Ov *Tr* 4, 5, 30-31 *sic similisque tibi iuventus sit natus, et illum / moribus agnoscat quilibet esse tuum*, *DeMi* 300, 6 *nihil mihi obiectum est in aetate prima, nulla fabula [ante] partum secuta est*

355, 22 stupra: according to Adams 1982, 200-201 originally 'disgrace', then sexual disgrace, and thus 'an illicit sexual act, whether an adulterous liaison or a forcible

¹⁵ Referring to Becker 1904 12 n 2 who gives a short list of the most obvious abstracta Zinsmaier 1992 109 113 implicitly points out both the difficulty and the importance of drawing a distinction between the two concepts

¹⁶ Burman 1720 352 has commas Lehnert 1905 322 has a full stop Sussman 1987 218 has obviously followed his reading

violation (...). The act might be homosexual or heterosexual. (...) the range of sexual acts which might be described thus was unlimited.’ Meyer-Zwiffelhofer 1995, 111 defines it as follows: ‘Unzucht mit Freigeborenen (...). Spezielle Formen des *stuprum* sind *adulterium*, *incestum*, und, seit den augusteischen Ehegesetzen, auch *lenocinium* – Zuhälterei. Diese Begriffe bezeichnen eine Übertretung von Regeln, die entweder als *mores* (wie sie als *mos maiorum* überliefert und an *exempla* illustriert wurden) formuliert waren oder als Gesetze (*leges*), prätoriale Edikte (die ein Gesetz ergänzten und korrigierten) und Senatsbeschlüsse (*senatus consulta*).’

355, 22 *furtivosque concubitus*: cf. 18, 5 *furtiva stupra raptosque concubitus obiciat vel falso maritus* (358, 18-19); see also Apul. *Met.* 8, 10 *furtivo concubitu*. That the term *furtivus* is appropriate in connection with love-affairs is confirmed by its frequent occurrence in Tibullus’ and Ovid’s elegiac poetry.

355, 23 *crescientis infantiae*: *abstractum pro concreto*, see TLL 1351, 12 (*meton. i.q. infans*) for this instance. See further comm. at 19, 2 *rudis unici ... infantia* (373, 20).

355, 23 – 356, 6 *natum de – filii facit*: an urgent *apostrophe* to the father.

355, 23 – 356, 1 *natum de te*: colloquial *de* replaces *ex* or simple ablative (von Morawski 1881, 7³⁷).

356, 1 *si quid ipsi creditis*: parenthetical *apostrophe* (Quint. *Inst.* 9, 3, 26) to the judges within the *apostrophe* to the father. *Si ipsi creditis* (*ipsi* a dative singular in all instances) also in 8, 2 (153, 6); 8, 8 (158, 25); 11, 1 (220, 5).

356, 1 *impatiens*: according to TLL s.v. *impatiens* 526, 66 the comparative of *impatiens* is used from [Quintilian] onward; a search of BTL however reveals the occurrence of *impatiens* in Tac. *Germ.* 8, 1 and Plin. *Ep.* 6, 1, 1³⁸. For the senses in which *impatiens* (c.q. *impatientia*) is used in the *DM*, see comm. at *impatientiam* below (356, 7).

356, 2 *reliqui*: C² and E have *reliquae*, adopted by Burman 1720, 352: *nihil muto, quia sequitur, alui<t> uberibus*; Lehnert 1905, 322 like Håkanson has *reliqui*, which is more effective, since it implies that she does not just surpass other mothers (as Sussman 1987, 218 translates), but all parents (and especially, of course, the father).

356, 2-3 *non in – fovit amplexu*: a short *locus communis*. Although it was usual for Roman mothers to employ wet-nurses and other slaves to look after their young children, it ranked as a great virtue (belonging to the good old days) for a mother to nurse her own children. See, for example, Tac. *Dial.* 28, 4: *nam pridem suus cuique filius, ex casta parente natus, non in cellula emptae nutricis, sed gremio ac sinu matris educabatur, cuius praecipua laus erat tueri domum et inservire liberis*. On the importance of breastfeeding see Tacitus’ praise of German mothers: *sua quemque mater uberibus alit, nec ancillis ac nutricibus delegantur* (*Germ.* 20) and Plu. *De Liberis Educandis* 5 and compare *De Amore Proles* 3; above all see Gel. 12, 1 where the 2nd century sophist Favorinus stresses the influence of mother milk on the development of a child. A good modern

³⁷ Von Morawski 1881, 6-8 gives a complete survey of all vulgar uses of *de* in the *DM*

³⁸ *Impatients* (or *impatiens*) is the only form to be found; it occurs thirteen times, including seven instances in the *DM*; it is used adverbially in all cases, except Calp. *Decl.* 10 and Macr. *Sat.* 7, 4, 30

account, providing additional sources, is given in Dixon 1988 ch 5, esp pp 119-129 See further Bradley 1986, esp pp 201, 214 and 219

Here note the neat antithesis of two parallel constructions *non in nutrices – nec in ministeria* and *suis aluit uberibus – suo fovit amplexu*, the second beginning with polyptoton This may be considered a case of *disiunctio initia quoque et clausulae sententiarum alius sed non alio tendentibus verbis inter se consonant* (Quint Inst 9, 3, 45)

356, 2 ministeria: metonymous abstract for *ministros / ministras*, see Becker 1904, 12 n 2, who cites *DM* 2, 5 (24, 20), 2, 9 (27, 26-27), 18, 7 (360, 2 and 8), 18, 12 (365, 8), to which apart from this instance can be added 6, 16 (128, 5), 16, 11 (128, 16), 18,5 (358, 13)

356, 3 suo fovit amplexu: echoes Verg *A* 8, 388 *cunctantem amplexu molli fovet* (Becker 1904, 55-56, adding '*Aen* IV 686 *germanam amplexa fovebat gremio fovere Aen* I 692 718 ') Vergil's phrase also inspired Luc 5, 735 *dum fovet amplexu gravidum Cornelia curis* and Sil 7, 244 *non ulla perenni / amplexu Fortuna fovet*, 8, 91-92 *inde amens nunc sideream fulgentis Iuli / effigiem fovet amplexu*, 9, 43 *nequiquam fovet extremis amplexibus artus*, compare also 8, 128 *deinde amplexa sinu late vestigia fovit*

356, 3-5 numquid et – iuvenis infamas: an ironical *interrogatio*, used to convey indignation The question at hand comes closest to the figure where *augemus crimina quae ex facili aut diluere possumus aut negare* (Quint Inst 9, 2, 53)

356, 3-4 numquid et... numquid et...: anaphora of *numquid* with synonymia of *hos annos* and *pueritiam miseri iuvenis*

356, 5-6 actum est – filii facit: the advocate supplies an indirect answer *est aliqua etiam in respondendo figura, cum aliud interroganti ad aliud, quia sic utilius sit occurritur, tum augendi criminis gratia () tum declinandi* (Quint Inst 9, 2, 12) The reply is intended to stress the morbidity of the father's suspicions, it takes the form of an *epiphonema*

356, 5 actum est de: 'it is all up with', a fairly common idiomatic expression (OLD *ago* 21c) In the *DM* it is found in 8, 16 (*peractum est velut de genere humano, si nobis pro salute aegri opus est morte hominis alterius*, 167, 1-2), 11, 1 (*actum erat de solacius meis, si liberos suos pauper mallet occidi*, 220, 12-13), 11, 6 (*actum est de rebus humanis, si de criminibus nostris tantundem mendacis licet, nec ullus innocens hucusque felix est, ut diligentiae fingentium par sit*, 225, 2-4), 16, 7 (*facinus est id tantum hominibus bene credere, quod expedit, et actum est de rebus humanis, si sola servatur utilitatum fides*, 327, 8-10) The moral indignation expressed in 8, 16, 11, 6 and 16, 7 is comparable to the present instance

356, 5 sacrorum nominum: in the *DM* *nomen* is frequently used in a pregnant sense, as when, for example, a statement is made 'in the name of mankind' (*generis humani*) in 8, 9 (160, 2), 8, 16 (166, 26-27), 11, 8 (227, 17³⁹), 15, 8 (310, 5) It can refer to major concepts like fatherhood or motherhood, as in 4, 7 (68, 6), 5, 8 (92, 9, *sacro nomini* 92, 12-13, 92, 26), 6, 9 (120, 21), 6, 14 (126, 7), 16, 6 (325, 17), 17, 3 (333, 23), 17, 7 (338, 6), 18, 14 (368, 20), 19, 9 (380, 25) In the plural, often combined with a form of the

³⁹ Cf 18 1 (354 5 6)

adjective *sacer*, it can even denote family ties⁴⁰, as in 1, 6 (*inter sacrorum infinita nominum pignora*⁴¹, 6, 16); 5, 7 (*pudet sacrorum nominum, pudet religionis humanae*, 91, 15-16); 5, 11 (*pignora de minoribus sumpta nominibus*, 95, 18-19); 5, 14 (*sacris nominibus*, 100, 2); 16, 2 (*receptas nominum persuasiones velut aliquam servitutem caritatis attendunt*, 320, 14-15).

356, 5-6 si ut – filii facit: *amplificatio* (Quint. *Inst.* 8, 4) *per incrementum* (*Inst.* 8, 4, 3-9): *Tertius quoque est modus, ad quem non per gradus itur, sed <quo ponitur> non quod est plus quam maximum, sed quo nihil maius est (...) nam et hoc augendi genus est, tantum aliquid efficere ut non possit augeri* (8, 4, 7). For similar reflections on the destructiveness of perverse interpretations of intense but innocent love, see 18, 10 (*placet ergo, ut, si filio optigerit indulgentior facies, vultus erectior, refugiat mater amplexus? si virginem usque ad notabilem speciem natura formaverit, timeat oscula pater horreatque contactum? dii deaeque male perdant tam impudentes sollicitudines, tam nefarios metus! prope est ab incesto timere, ne fiat.* 363, 4-9) and 18, 15 (*interrogari nunc te, marite, credis a matre sola? causas mortis illius reposcit sollicitudo generis humani: stant circa liberos attoniti parentes, horret invicem se caritas fraterna complecti, rupta est illa osculorum inter soceros generosque simplicitas*, 369, 6-10).

356, 6 accendebat: the beginning of a *color* (up to 356, 15) that accounts for the exceptionally close relationship between mother and son. For *accendere* in the sense of intensifying (emotions), see OLD *accendo* 5a; TLL 277, 59 – 278, 32. In the *DM* it occurs 1, 6 (*furorem*, 7, 6); 4, 7 (*impatientiam*, 68, 16; see Ritter 1967², 67); 8, 22 (*dolor*, 173, 15).

356, 6-7 hanc erga – asper maritus: a clever ordering of words. The *hyperbaton hanc ... impatientiam* symbolizes the relationship between father, mother, and son: it ‘embraces’ mother and son, while *rigidus pater, asper maritus* is significantly placed outside the phrase.

356, 7 impatientiam: LS, Georges, OLD, and TLL⁴² assign two meanings⁴³ to *impatientia*: 1 inability or unwillingness to endure (a situation) 2 freedom from emotion, impassivity⁴⁴. In the *DM*, it is used only in the first sense, which in a number of instances has been broadened significantly, often denoting ‘passion, passionate love, eagerness’. Such is the case in 2, 10 (*impatientissimis affectibus*, 28, 21; Sussman 1987, 18 ‘bonds of affection’); 2, 14 (*impatientius amet*, 32, 27; Sussman 21 ‘more ardently’); 5, 12 (*diliguntur impatientius calamitates*, 96, 14; Sussman 60 translates ‘when we can’t bear to endure them’, but ‘all the more passionately’ is quite as valid); 14, 1 (*impatientia*, 287, 15; Sussman 177 ‘desperate love’); 15, 1 (*ardoris impatientiam*, 302, 15; Sussman 185 ‘violence of (...) passion’); 16, 4 (*impatientius (...) amari semper absentem*, 323, 3; Sussman 197 ‘absence makes the heart grow fonder’); 18, 3 (*impatientius complexa*, 356, 1; Sussman 218 ‘more affectionately’); 18, 5 (*impatientia diligendi*, 358, 16-17; Sussman 220 ‘impatient affections’), and of course in the present case (Sussman 218 ‘lavish affection’). For the

⁴⁰ Compare OLD *nomen* 18 with *exx* where however the relationships are denoted more explicitly.

⁴¹ Translated by Sussman (1987, 4) as ‘within the normal powerful ties of this sacred blood relationship’.

⁴² Of *impatiens*, *impatenter*, and *impatientia* (TLL 524, 12 – 526, 11, 526, 12-27, 526, 37 – 527, 15 respectively)

⁴³ With one exception: OLD *impatiens* 4 ‘(app. in passive sense) unbearable’, citing *DM* 5, 19 (105, 11-12) and Calp. *Decl.* 10. The same sense in *DM* 1, 17 (18, 17); 5, 19 (105, 11-12), and 7, 9 (145, 20)

⁴⁴ A translation of the stoic term ἀπάθεια

significance of *(im)patiens* and *(im)patientia* in *DM* 18 and 19, see comm at 19, 1 *hanc patientiam meam* (372, 12)

356, 7-8 rigidus pater, asper maritus: the two phrases run parallel to and denote the relationships with *unicum* and *optimae matris* (356, 7)

356, 8-15 quem pro duobus - a matre: compare *DM* 10, 3 *tanto magis effusa mater et suis ac paternis vicibus occurrens* () *et ille miser intellegebat, utri promptior ex parentibus et facilius esset affectus itaque ab huius osculis, ab huius feminae cervice pendeat* (202, 3-8) Gunderson 2003, 197-99 sees erotic overtones in this part and remarks that mother and son seem an ideally matched couple

356, 8-9 quem pro duobus conferebat, adfectum: (Håkanson's comma after *conferebat* is redundant) as an *hyperbaton* the phrase echoes *hanc erga unicum optimae matris impatientiam* (356, 6-7)

356, 8 implere: in the metaphorical sense of 'to perform, deal with, carry out, etc completely' (OLD 9), for the current instance see TLL 635, 79-81, see also *DM* 2, 10 (*impleas animi satietatem* 29, 14), 4, 8 (*laetitiam civitatis implevi*, 69, 14), 7, 5 (*solacium ultionis impleo*, 142, 9)

356, 9-11 rarus hic – posset occidere: Note the increasing gravity the first two, relatively short phrases are used synonymously to denote mere coldness, whereas the last one 'foreshadows' the murder of the son, cf 19, 3 (*dictus est occidere posse patrem, dictus est dignus, quem posset etiam pater occidere*, 374, 6-8)

356, 9 rarus: for *rarus* in the sense of 'infrequent in the performance of the action indicated', see OLD *rarus* 4 and cf *DM* 19, 3 *rarus in publico* (374, 3), the use of *ad* in this context is rare, otherwise only occurring in *Apul Apol* 33 (*rara ad repperiendum*), [*Aurel Vict | Epit* 1, 16 (*rarus quidem ad recipiendas amicitias*), *Hist Aug Max Balb* 6, 1 (*ad rem Veneriam nimis rarus*)

356, 10 difficilis: (almost) synonymous with preceding *rarus*, used in the opposite sense of 18, 2 *facilis* (354, 18) For *difficilis active* see TLL s.v. *difficilis* 1089, 23 – 1090, 79, the present instance 1089, 24-26 (with *Sen Her F* 578 *lacrimis difficiles dei*)

356, 10-11 animo quo quandoque posset occidere: 'with such an attitude as might render him capable of killing him one day' ought perhaps to be preferred to Sussman's 'with the veiled intent of where and when he could kill him' (1987, 218) the subjunctive is consecutive rather than determined by a dependent question

356, 11-12 fecit, ut – caritas matris: the advocate contends that it was the father's hostility which caused the mother's love to be conspicuous, thus suggesting tacitly that it was the father's attitude that gave rise to the rumour In 18, 4 (356, 21-24) and 18, 8 (360, 24 – 361, 8), it is alleged that the rumour actually originated with the father

356, 12 omnis ... omnis: the emphatic anaphora stresses that the son was his mother's only companion – a risky stance to take, yet convincing in view of the rumour

356, 13 pariter: synonymous with *cum filio* (356, 12), the adverb is used attributively, for which see TLL *par* 284, 66-76 (*pariter esse*), esp 284, 68 with *DM* 5, 3 *si filii pariter essent* (87, 20)

356, 13 gaudebat ... quod: although *acc c inf* is more customary after *verba affectuum* (Menge 478, 2, KS 691b), *quod* can be used to add a causal nuance (Menge 542,

1, KS 2, 276 g, 277 Anm 3, LHS 358) See further comm below at *fateretur, quod* (356, 15)

356, 13-14 quod laudandus - coetueque conspicuus: in *DM* 8, the mother experiences a similar sense of pride when she goes out with her twin sons see 8, 3 *huncine fecit exitum illa modo civitate tota conspicua mater, ille indiscretus ab utroque latere comitatus, ille gaudentium dulcis error oculorum?* (153, 14-16), 8, 12 *hanc ipsam indifferentiam, quam mirantur occursus, stupent civitatis oculi* (162, 27 – 163, 1)

356, 14 occursibus: in spite of the gerundive *laudandus*, in spite also of a potential parallel in 8, 12⁴⁵ (*indifferentiam, quam mirantur occursus*, 162, 27), I do not regard *occursibus* as abstract for concrete *occurentibus* (*dativus auctoris*), but as an adverbial adjunct (ablative), parallel with *omni frequentia coetueque*

356, 14 frequentia coetueque: *hendiadyon*

356, 15 fateretur, quod: for *quod* following *verba sentiendi* and *dicendi*, see KS 2, 274e '[es] hat sich in der Volkssprache die Konstruktion der *verba sentiendi* und *dicendi* mit *quod* (st des *acc c inf*) entwickelt, sie findet sich zuerst im *B Hisp* () seit der Mitte des II Jahrh greift diese Konstruktion immer mehr um sich', see further LHS 576 For its occurrence in the *DM*, see Hammer 1893, 44, von Morawski 1881, 9 and Deratani 1927, 291-92 Deratani observes a greater frequency of *quod*-clauses replacing *acc c inf* constructions in Ritter's group II

356, 15 plus amaretur a matre: Reitzenstein 1909, 46-47 prefers the reading of π , which is *quod amaretur a matre* and which in his opinion forms a counterpart to the 'scheinbare Bekenntis' *amavi filium meum* in 18, 3 (355, 17) For him the ambiguity of both statements puts the father's suspicions in a credible perspective But given the context – a comparison of both parents' attitudes towards their son – we must agree with Helm 1911, 371 "Er bekennt, daß ihn die Mutter liebt" erscheint mir befremdlich, weil da der Gegensatz zum Vater in keiner Weise hervorgehoben ist'

356, 15-16 miseremini: see OLD *miserere(r)* 1c (imp, in earnest entreaties) 'for pity's sake' A search for this use of *miserere/miseremini* in BTL and TLL (*miserere c ut/ne*, 119, 80 – 1120, 4) reveals that it is extremely rare⁴⁶, except in the *DM*, where it occurs

1 followed by *ne + con praes* in 4, 5 (65, 25), 4, 22 (83, 21), 14, 2 (288, 18), 16, 9 (328, 10), 16, 10 (329, 16), 17, 20 (352, 11), 18, 4 (356, 15-16), 18, 15 (369, 13), 19, 6 (377, 13), 19, 15 (388, 5)

2 followed by *ut + con praes* in 7, 11 (148, 11), 10, 14 (213, 18)

3 followed by bare subjunctive in 10, 13 (212, 9)

4 followed by imperative in 10, 19 (219, 1), 16, 1 (319, 22), 16, 4 (323, 1)

356, 16-18 ne nefandas – est animum: prepares the way for the next paragraph, in which the father is accused of having invented and spread the rumour

356, 16 nefandas suspiciones: compare 18, 2 (*nefanda suspicari*, 355, 2) and 18, 10 (*nefanda suspicione*, 363, 20)

⁴⁵ Cited above and listed in Becker 1904 12 n 2

⁴⁶ Apart from the *DM* it yielded only Fronto *Ep ad M Caes* 5 3 and *M Caes Ep ad Front* 1 2 1 Claud Don Aen 12 45 Aug *Conf* 1 5 and 12 27

356, 17-18 suum rigorem ... suum animum: *hendiadyn* with emphatic anaphora of *suum*

356, 18-19 filium si ... mater adamasse: the paragraph is concluded with an *enthymema* in its capacity of *sententia e contrariis*, it is also an *epiphonema*, in that it gives a caustic summary of the father's unnatural attitude. The advocate wants to emphasize that a father who hates his own son is such a perverse being, that it is hardly surprising that suspicions of incest result from such hatred.

Both Burman 1720, 352 and Lehnert 1905, 323 end the sentence with a question-mark, which undercuts its force and occasions Reitzenstein 1909, 47 n.1 unnecessarily to suggest: *filium si non ames, <quidni> videatur mater tibi adamasse?* Håkanson 1974, 142 partly agrees with Reitzenstein, yet states that the conjecture is not necessary. 'Reitz kritisiert mit Recht diese Textkonstitution () es genügt aber, das Fragezeichen durch einen Punkt zu ersetzen: Wer selbst seinen Sohn nicht liebt, versteht nicht die Liebe einer Mutter, sondern meint, dass sie verliebt sei.' Shackleton Bailey 1976, 216 remonstrates: 'But *filium si non ames* does not mean "wer selbst seinen Sohn nicht liebt" We should need *filium qui non amet, videtur adamasse*. The simplest solution is to delete *non*.' Watt 1991, 58 agrees, adding 'The same sense can be obtained from a statement by transposing *non*, viz. *filium si ames, non videatur e q s.*'⁴⁷ Håkanson's solution is superior to the others. The *sententia* is clearly only indirectly addressed to the father: 'you' primarily means 'one', 'people in general', quite in tune with the style of the *DM*, this accounts sufficiently for the use of the potential subjunctive.

If sarcasm prevails in this section of the speech, the theme is taken up in a serious vein in 18, 10: *Me quidem, marite, si quis interroget, omnes matres liberos suos, tamquam adamaverint, amant videbis oculos numquam a facie vultuque deflectere, comere caput habitumque componere, suspirare cum recesserit, exultare, cum venerit, conserere manus, pendere cervicibus, non o<s>culis, non conloquui, non praesentiae voluptate satari hoc est ergo <in> tam nefanda suspicione saevissimum incestum non potest fingi, nisi de optima matre* (363, 14-21).

356, 18 filium si: a common *anastrophe* (see for this figure of speech e.g. Quint. *Inst.* 8, 6, 65).

356, 18-19 non ames ... adamasse: *antithesis*. Note the *paronomasia* of *ames* and *adamasse*, referring to the difference between chaste parental love and (sexual) infatuation. For the use of the *infinitivus perfecti* instead of *praesentis*, which does not yield any difference in meaning, see KS 133-35 and LHS 351-52, who both explain this use as a result of the aoristic characteristics of the Latin perfect tense; occurring originally in injunctions and after *nolo* and *volo*, the Augustan poets began to use it widely *metri causa*.

356, 20-21 Questurum nunc – accuso rumore: an *interrogatio per suggestionem*, the advocate supplies his own answer by means of a *ὀνόμα*. A similar use of this figure (the advocate pretending to inquire after the jurors' expectations of his speech, which he subsequently exceeds with his own answer) in *DM* 2, 23 (40, 13, 40, 17), 4, 6 (66, 17); 4, 10 (71, 5), 7, 10 (147, 16), 8, 14 (165, 17), 11, 10 (229, 25), 12, 10 (242, 4-5). The

⁴⁷ Their suggestions are reflected in Sussman 1987: 219: 'If you should love your son, would it appear to you that his mother has fallen in love with him?'

figure is of course also a form of *praeteritio* it is not inexpedient to direct attention for a second to the vicious character of gossip. The issue is taken up again in a vehement attack on gossip in 18, 6 (359, 10-21).

356, 20 questurum: Dessauer 1898, 101 opts for *quaesitum*, found in most mss and in Lehnert 1905, 323, while Burman 1720, 352 has *questurum*. Dessauer's preference is based on a parallel: in *DM* 15, 4 he reads *quae prosiliret orbitas de novercalibus questura commissis*. But here, too, Håkanson (305, 7-8) reads *questura*, based on *C*⁴⁸, which is better, since the sentence continues *quem pestiferis heredum medicaminibus enectum tristis conploraret adfinitas*. In view of the present context (*accuso*) the parallel turns out to be rather another reason to choose *questurum*, again found in *C*².

356, 20-21 licentia sermonis humani: abstractum pro concreto

356, 21 rumorem: *abstractum pro concreto* in spite of Englund 1934, 15 who considers it a kind of personification, see comm. at 18, 3 *impudens rumor* (355, 19).

356, 22-23 quae materia – qui credidit: the advocate insinuates that the rumour originated with the father. The insinuation again takes the form of a *vôημα* and rephrases *ego vero iuxta hunc patrem non accuso rumorem* (356, 21).

356, 22 quae ... qui: *polyptoton*.

356, 23-24 facillimum fuit – patrem suspicari: *epiphonema* and second rephrasing of 356, 21, which makes this sentence and the previous one instances of *expolitio* (*commutando verba*). The *epiphonema* gives yet another explanation for the origin of the rumour: if it was not actually launched by the father, it was caused by the outrageousness of his suspicions, which he obviously did not bother to hide.

356, 23 facillimum ... ut: the free use of *ut* is a characteristic of later Latin, not surprisingly, it occurs more frequently in Ritter's group II than in group I or in the *DeMi* (Deratani 1927, 291-92). *Facillimum ut* also in 2, 5 (24, 27), *facile ut* in 2, 10 (29, 4) and 2, 22 (40, 4), *difficile ut* in 2, 8 (27, 5), 2, 16 (34, 5), 19, 11 (384, 1-2).

356, 24 de quo mirabatur: *mirari de* is rare, but also occurs *DM* 9, 5 *haec miror de amico* (179, 11-12).

356, 25-26 secure, simpliciter, palam, coram marito, coram civitate: the συναθροισμός, which somewhat contravenes the rules for *brevitas*⁴⁹, runs into a climax. Note the alliteration of *s* in *secure*, *simpliciter* and the reduced *disunctio* by means of anaphoric *coram*.

356, 26-357, 1 referat nunc – iste secretum: a sudden transition to the father's part in the drama, his secrecy and the mother's frankness are in glaring contrast, underlined by the continued alliteration of *s*.

356, 26 – 357, 1 suum ... secretum: *hyperbaton*.

357, 1-2 iuvenem ... nihil timentem: *hyperbaton*.

357, 1 quae integritatis prima simplicitas est: for this parenthesis (as a *Gedanken-hyperbaton*, separating *iuvenem* and *nihil timentem*) in the form of an independent relative clause, and the adverbial use of *prima*, compare 18, 3 *quae pudicitiae*

⁴⁸ This manuscript belongs to familia γ, which as a contamination of αβ, is regarded as inferior to both families. It is described in Dessauer 1898, 26-28, Håkanson 1982, IX.

⁴⁹ Cic. *Inv* 1, 28, *Rhet. Her* 1, 14.

prima fiducia est (355, 20-21) Compare further 17, 4 *integritatis nimia simplicitas* (335, 11-12). For the significance of *simplicitas* in *DM* 18 and 19 see comm at 18, 6 *rupta est – generosque simplicitas* (369, 9-10)

357, 2-3 nulla proclamatio, nullus ... gemitus: *polyptoton* and *synonymia*, for this collocation see also *DM* 7, 7 *fingere proclamationes, simulare gemitus* (144, 15-16) and 8, 21 *in omni proclamatione gemituque* (173, 3-4) The word *proclamatio* (OLD 1 an outcry, shout 2 the assertion of a claim [to free status]⁵⁰) occurs only in the *DeMi* (292, 2) and *DM*, where it is further found 2, 19 (37, 13); 7, 5 (141, 16); 7, 11 (149, 6), 18, 16 (369, 27), 19, 1 (372, 14), and in the *Digests*. In most declamations, it is used in the former sense, but in 7, 5 and 7, 11 it is applied in a technical sense (TLL s v *proclamatio* 1533, 32-50)

357, 3 nullus ... gemitus: another *hyperbaton*. Note how the many *hyperbata* in this part of the *narratio* add to its dramatic character.

357, 3 rapuit, abduxit: *synonymia*, *homoeoteleuton*. Gunderson 2003, 201 points out that because *rapere* is the declamatory term for rape, the phrase has an erotic resonance, which seems far-fetched given the context

357, 3-4 verberibus, ignibus, omni crudelitatis arte: *asyndetic congeries* which in this case makes for a climax. Nearly the same expression occurs in 18, 11 *verberibus, ignibus et tota crudelitatis arte* (364, 12), while in 18, 12 we find *ignibus verberibusque* (365, 15-16). *Ignes* and *verbera* are often found together in general references to torture, thus e.g. *Cic. Ver.* 5, 14 *Verbera atque ignes et illa extrema ad supplicium damnatorum, metum ceterorum, cruciatus et crux*, *Sen. Contr.* 9, 6, 4 *non satis mihi ardere ignes videbantur, non satis insidere verbera*, 10, 5, 6 *ignes, verbera, tormenta*, *Tac. Ann.* 15, 57, 1 *illam non verbera, non ignes, non ira () pervicere*, *DeMi* 272, 10 *non dolore vincatur, non ignibus cedat, non verberibus ingemiscat*, 338, 31 *se inponi ignibus, se verberibus lacerari postulet*. In *DM* 19 the collocation refers specifically to the father's instruments of torture. It occurs very frequently and never with a third *membrum*. See 19, 3 (374, 24), 19, 4 (375, 8), 19, 9 (380, 19-20 and 381, 1), 19, 12 (385, 9), 19, 15 (387, 16)

357, 4 consumpsit: *consumere* in the sense of 'kill' occurs rather frequently, but rarely with a human *agens*, some instances can be found in TLL s v *consumo* 608, 38-49. Here, the expression is aptly chosen, since it reflects the duration of the process.

357, 4-7 quis umquam – ut crederetur: *subiectio* with the answer to the *interrogatio* in the form of an *epiphonema* which clearly brings out the absurd and disgraceful nature of the father's behaviour.

357, 5 innocentia temporum: *temporum* is metonymous for the people who live in these times (see comm at 18, 6 *miseremini temporum* [358, 22]), so 'the innocence of these times' rather than Sussman's 'his innocent years' (1987, 219)

357, 5-6 sacris adfectibus: as an expression for chaste (parental) love also in 18, 10 (362, 12) and 15, 6 (308, 13); compare further 5, 11 *circa patris adfectus sacra de pietatis contentione rixa* (96, 1-2), 15, 10 *sacrae caritatis* (313, 17)

357, 8 Ponite nunc ante oculos: introduces either a problem the speaker wants his audience to consider, as in *Cic. Parad.* 1, 11, *DM* 1, 9 *Ponite nunc ante oculos actum parricidii,prehendens difficultatem* (9, 5-6) and 16, 9 *ponite sub oculos alligatos,*

⁵⁰ Cf. Heumann-Seckel s v *proclamare*

quorum alterum amicus redemerit, alterum mater: rogo, uter plus fecerit? (328, 11-13; see Ritter 1967², 65); or a description which is meant to excite the audience, as in Cic. *Agr.* 2, 53; *Phil.* 11, 7; 12, 14; 13, 4; *DeMi* 328, 11. Here, the phrase indicates that a description is about to follow (a description which, although it is so short that it hardly merits the term, is rather effective).

357, 9 mater exclamat: 'filium amavi!' pater dicit: 'occidi.' *evidentia*. The description, which contains two of the briefest possible *sermocinationes*, takes the shape of a *disiunctio* with *exclamat* and *dicit* as (near-) synonyms and *mater-pater* and *amavi-occidi* as sharply contrasted variables. The diction of the sentence (long, open a-sounds in the first phrase, short, biting i in the second) underline the antithesis⁵¹. Compare 19, 4 where the father contrasts the mother's love for her son with his own: *et ego amavi filium meum, non osculis, non infirmitate, non lacrimis, sed viribus, dolore, patientia* (375, 23-24).

357, 9 'filium amavi !': cf. 18, 3 '*amavi filium meum!*' (355, 17).

357, 9-10 'occidi': according to the mother's *patronus*, this is the father's only 'plea'; compare 18, 15 *causas quaerente matre, quaerente populo hoc solum dicis: 'occidi.' contenta esse debet incerto?* (369, 4-6⁵²). For its occurrence in *DM* 19, see comm. ad loc.

357, 10 nefas est – putetis innocentem: either the mother was guilty of an incestuous relationship with her son, in which case the father is in the clear, the killing of his son being justified; or she is innocent, which makes the father guilty of murder.

357, 10 nefas: (or *fas*) followed by subjunctive instead of infinitive, *acc. c. inf.* or *supinum* II⁵³, is found only rarely, the only other instance being V. Fl. 5, 670⁵⁴ (*fas aliquid⁵⁵ nequeat sit femina*); Håkanson app. crit. notes: 'ut utrumque β *haud scio an recte*'; most probably it is better, since *nefas*⁵⁶ nowhere in the *DM* occurs with a bare subjunctive; it occurs with *ut* in 2, 2 (41, 18-19). *Nefas*, here, has all but lost its religious and moral connotations: it almost means (logically) 'impossible'. For instances of *fas* in a neutral sense ('possible') see comm. at 18, 5 *fas est, fieri solet* (358, 19).

357, 10-18 iam quidem – iura revereris: *apostrophe* to the father.

357, 10 iam quidem: this collocation seems to be typical of non-classical Latin. It occurs also in Pl. *Am.* 556; *Aul.* 760; *Truc.* 313; Mela 1, 34; Quint. *Inst.* 12, 2, 15; Suet. *Tib.* 21, 1; and as many as nineteen times in Plin. *Nat.*

357, 11 nocentissime senex: see comm. at 18, 3 *noctentissimus senex – silentium suum* (355, 12-13).

357, 11-12 grande depressae – expectas: the father's apparently stolid behaviour after the murder is regarded as an indication of his ruthlessness.

⁵¹ It may even be considered an enthymeme or *epiphonema* insofar as it is a *sententia e contrariis* and a succinct account of the family history

⁵² For problems with punctuation in this passage see comm. at 18, 15 '*occidi*' (369, 5)

⁵³ For which see resp. Menge 473, 2, 477, 1, 519, 1 and KS 695 f; 670f. and 718A; 725.

⁵⁴ See Wijsman 1996, 295-96

⁵⁵ Or *aliquae*, see Wijsman loc. cit

⁵⁶ This also goes for *fas*, cf. comm. at 18, 7 *si fas est, ut – audacia* (360, 4-5)

357, 13-15 non erumpis - et matrem: a series of four rapid *interrogationes* occurring *non sciscitandi gratia* () *sed instandi* (Quint *Inst* 9, 2, 7) Their effect is enhanced by the fourfold *repetitio* of *non*

357, 14 homo filii cruore perfusus: this expression might be read as a perverse variation on Sen *De Ira* 2, 33, 5, where it is said of Priamus, a prototypically humane father, that he *funestam perfusamque cruore fili manum ad os suum retulit* For instances where the phrase *cruore perfundere* is used to describe the way perpetrators are drenched in the blood of their victims, see Liv 25, 16, 19 and 30, 28, 5, Sen *Ben* 5, 15, 5, Amm 14, 5, 19

357, 14 proclamas: in the *DM*, the compound verb *proclamare*, for its expressiveness, occurs more often than the *simplex clamare* (*proclamare* 28x, *clamare* 10x) It is used for dramatic, sometimes public, statements and announcements, as in e.g. 18, 3 (355, 16), where we see an invocation of the gods as well Further compare 4, 5 (65, 26 *proclamo, testor*), 5, 21 (107, 13-14 *tota civitate teste*) for the conjunction with *testari*, and with *erumpere* 8, 5 (155, 18-19 *erumpit hoc loco mulier infelix et tota libertate proclamat*) The absolute use of *proclamare* is rare, occurring only once more in 10, 5 (204, 8-9)⁵⁷

357, 14-15 deos hominesque testaris: for the collocation *deos hominesque testari* see Sall *Con* 33, 1, Cic *Phil* 7, 20, *pro Caec* 83, *pro Rab* 15, *Fam* 10, 35, 1, Liv 2, 57, 4, 3, 72, 1, 4, 53, 5, 22, 44, 5, 28, 8, 2, Iust *Epit* 18, 7, 4 In most cases the speaker employs it to reinforce a justification or explanation of his actions Becker (1904, 20) observes a relation with Verg *Aen* 4, 492 (*testor, cara, deos*) and 12, 581 (*testaturque deos*)

357, 15 non occidis et matrem: the question stands to reason, but it is not pursued in *DM* 19, where however a similar objection from Quintilian is answered, for *Nam quid impurius quam retinuisse talem?* (*Inst* 9, 2, 80) is countered in *DM* 19, 13 (385, 21-25) *Miratur aliquis, quod non abdicaverim, nec notissima ultione patrum fuerim tantum expulisse contentus?* *tuus, mulier, nefarius, tuus inconsultus non permisit adfectus filium, cui contra severitatem meam ignoscebas, quem mecum odisse non poteras, secuta fuisses abdicatum*

In fact, it was only in really ancient times that Roman husbands were allowed to kill adulterous wives *Verba Marci Catonis adscripta ex oratione, quae inscribitur de dote, in qua id quoque scriptum est in adulterio uxores deprehensas ius fuisse maritis necare vir inquit cum divortium fecit, mulieri iudex pro censore est, imperium, quod videtur, habet, si quid perverse taetrique factum est a muliere, multatur, si vinum bibit, si cum alieno viro probri quid fecit condemnatur De iure occidendi autem ita scriptum In adulterio uxorem tuam siprehendisses, sine iudicio impune necares, illa te, si adulterares, sive tu adulterarere, digito non audere contingere, neque ius est* (Gel 10, 23, 4-5) The obsolescence of the *manus* marriage made it impossible for most husbands to exercise this right, and from 18 BCE, the *Lex Iulia de adulteris coercendis* explicitly forbade it⁵⁸ The

⁵⁷ And perhaps 12 10 (242 11) but only if *quod* is deleted

⁵⁸ As can be inferred from Paulus' comment *Maritus in adulterio deprehensus non alios quam infames et eos qui corpore quacumque faciunt servos etiam excepta uxore quam prohibetur occidere potest* (Sent 2 26 4)

Roman father had and retained the right to kill an adulterous daughter, whether she was in his *potestas* or in the *potestas* or *manus* of her husband⁵⁹

357, 15-18 scilicet modestia – iura revereris: an ironical *subiectio* to the four preceding *interrogationes*. It consists of two parts in a pattern which is familiar by now, *miser parcis – iura revereris* being a specification of *scilicet modestia – quietae patientiae*

357, 15 scilicet: occurs 21 times in the *DM* and is always used ironically, usually with overtones of indignation, except in 4, 8 (80, 22) and 7, 9 (143, 20), where it introduces explications

357, 15 modestia: ‘diffidence’ rather than ‘shame’ (Sussman 1987, 219). *DM* 18 is the only one in which the word is used, viz. in 18, 1 (354, 2), 18, 2 (354, 19), 18, 4 (357, 15) and 18, 16 (370, 5), it always refers (sarcastically) to the father’s behaviour

357, 16 scelerum tuorum: ‘the evil deeds of your family’ (Sussman 1987, 219) is the right translation. The noun phrase does not refer to the father’s own crimes (for this would clash with the ironic tendency of the sentence, esp. the second part), but to the crimes allegedly committed by his wife and son

357, 16 cum maxime: Burman 1720, 353, following a substantial number of mss.⁶⁰, has *quam maxime*, but this is found nowhere else in the *DM*, whereas *cum maxime* occurs eleven times

357, 16 tibi relinquis: *sibi relinquere*, followed by a subordinating conjunction and meaning “allowing oneself”, is a unique turn of phrase, which occurs only in the *DM*. Håkanson 1982, 357 cites 16, 1 (*qui sibi non reliquerit, ut amaret et matrem*, 319, 5) and 16, 8 (*non reliquisti tibi, ut redimeres*, 327, 19), to which can be added 7, 5 (*non reliqui mihi, ut hoc de alius probarem*, 142, 14)

357, 17 quietae patientiae: could be defined as a pleonasm, but although quietude is intrinsic to *patientia*, the term is not quite redundant, since it also refers literally to the father’s silence

Patientia, a word much favoured by [Quintilian], is a key term in *DM* 18 and 19, since it refers to a characteristic attributed to father, mother, and son. Here, it figures in a jeer, but in 19, 1 (372, 12), 2 (373, 18), 4 (375, 24), 7 (378, 17), 8 (379, 22), the father vaunts it as the time-honoured virtue that has always defined his behaviour. In connection with the mother, it occurs 18, 1 (353, 11) indirectly, as a virtue and 19, 4 (375, 11) as an aspersion (why didn’t she intervene when the father was torturing his son?). Where *patientia* is attributed to the son, it always denotes his capacity to endure physical suffering: 18, 11 (364, 14), 13 (367, 10), 14 (368, 2), 19, 4 (375, 3), 13 (385, 13). See also comm. at 19, 1 *hanc patientiam meam* (372, 12)

357, 17 parcis uxori: the advocate has already made it clear that he does not accept this claim of the father, see 18, 1 (353, 14, 354, 2-4), 18, 2 (355, 3-4)

357, 17-18 coniugales deos: Ritter (1967², 66), without further comment, enters the word *coniugalis* under the heading of Correctheit. The collocation *dei* (*du*, *di*) *coniugales* also occurs in Non 528 M (Varro), Sen *Med* 1-2 (*Di coniugales tuque genialis tori/Lucina*), Tac *Germ* 18, 2, *DeMi* 347, 5. The gods concerned with Roman

⁵⁹ Corbett 1930 127-28, 135-39; Meyer Zwiffelhofer 1995 115-117; Tellegen Couperus 2003 3-5

⁶⁰ M² πβγδ

marriage would be Iuno, Ceres, and Tellus⁶¹, Varro names Pilumnus and Picumnus, two brothers associated with dung, as *di coniugales* and *di infantum*

357, 18 lectuli iura: also in Ov *Am* 3, 13 (*lecti socialia iura*), *Her* 9, 159 (*iura sacerrima lecti*), Sen *Troad* 878 (*sancta lecti iura legitimi*), compare Ov *Am* 3, 6, 82 (*socu iura dedisse tori*), *Her* 16, 286 (*castaque legitimi fallere iura tori*), 21, 140 (*exige pollicitu debita iura tori*)

357, 18-19 o quam – quod mentiatur: Not 'Yes, what a pity – he doesn't have it in him, not even to utter a lie!' (Sussman 1987, 219) but 'He doesn't even have anything to lie about!' The *exclamatio* has the form of a *noema* and *epiphonema*. Its purport is that the father keeps silent since nothing has happened for him to lie about

357, 18 non ... nec: the double negative makes for an emphatic negation, see KS 827-28 'Wenn aber auf eine vorausgegangene Negation, wie *non*, *nemo*, *nihil*, *nusquam*, *nunquam*, eine nähere Bestimmung durch *neque neque*, zuweilen auch *non non* oder *ne quidem* folgt, so heben die doppelten Negationen einander nicht auf, sondern geben bloss untergeordnete Teile des negativen Satzes an () Selten stehen sonst zwei Negationen, wie im Griechischen, zum Ausdruck einer verstärkten Verneinung, diese, eigentlich der Volkssprache angehörige pleonastische Ausdrucksweise hat sich in ihren Überresten noch im archaischen Latein gehalten, sonst ganz vereinzelt, um dann bei den archaisierenden Autoren wieder aufzutauchen' See also Menge 150, 3 and 151, 3 and LHS 803-04

Nec can be read as *ne quidem*, for which see Becker 1904, 21 and Tosato 1912, 90

⁶¹ RE s.v. Hochzeit

Propositio 18, 5 (357, 20 – 358, 2)

357, 20 *Malae tractationis agimus*: The *narratio*, as in all other *DM*, ends with an *epiphonema*. The *propositio* is introduced very abruptly and evidently part of the *argumentatio*.⁶² It is what Quintilian calls a *nuda propositio* (*Inst.* 4, 4, 8): it consists of a mere citation of the law. This is also the case in *DM* 5; 7; 12; 14; 15; 16; 17 and 19.⁶³ There follows no proper *partitio*; instead, the *argumentatio* begins with a discussion of the suitability of the law in question.⁶⁴ I will treat it along with the *propositio*, because it is relatively formal and only loosely connected with the *argumentatio*, which is largely based on material rather than formal considerations. It consists of two *interrogationes*, which are answered with a pseudo-generic *epiphonema*.

357, 20 – 358, 2 *placet ergo – debuerit occidi*: for an account of the declamatory law concerning *mala tractatio*, its applications and its occurrence in the *DM*, see the third chapter of the Introduction.

This discussion of the law is governed by the *status ratiocinationis*, which arises when there exists no suitable law for a particular offence, so that a law must be found whose competence can be stretched far enough to cover it. This means that there is a certain similarity with the *status* of *scriptum et voluntas*, because in both instances possible areas of conflict between the wording of the law and the lawgiver's intention are explored. An important difference between the two *status* is that usually in *scriptum et voluntas* the accuser relies on *scriptum* and the defendant on *voluntas*. Conversely, where the *status ratiocinationis* is concerned, it is often difficult for the accuser to prove that a particular case falls within the scope of the literal wording of the law, so that he has to resort to its intention. About these cases, Quintilian writes: *In hoc genere haec quaeruntur: an, quotiens propria lex non est, simili sit utendum, an id de quo agitur ei de quo scriptum est simile sit. Simile autem et maius est et par et minus. In illo priore, an satis lege cautum sit, an, etsi parum cautum est, et hac sit utendum. In utroque de voluntate legum latoris.*⁶⁵

Strikingly, there is no mention at all of the offence which ostensibly provoked the charge of *mala tractatio*, i.e. the father's silence. This would probably *minus*. Instead, the mother's advocate focuses on the mother's real concerns: the loss of her son and the vindication of his innocence. It is concluded that the law concerning *mala tractatio* is inadequate (so the reason for the mother's charge is *maius*) but that there is no alternative.

357, 20-24 *placet ergo – suprema plangantur*: *interrogatio* meant to rouse indignation and pity for a woman who has no other means at her disposal to avenge the murder of her son.

⁶² See Quint *Inst.* 4, 4, 1 *Mihi autem propositio videtur omnis confirmationis initium* Quintilian takes the same position in *Inst.* 3, 9, 1-2

⁶³ 5, 7 *Liberi parentes alant* (91, 15); 7, 4 'Lex,' inquit, 'liberum hominem torquent vetat' (140, 7); 12, 11 *Rei publicae laesae accuso* (243, 3), 14, 5 *Venefici ago* (292, 7), 15, 4 *Venefici agit* (305, 5); 16, 4 *Liberi parentes in calamitate ne deserant* (323, 19), 17, 6 *Parricidii agis* (337, 17); 19, 5 *Malae tractationis accusat* (376, 5)

⁶⁴ The same procedure is found in *DM* 8, 6 (156, 5ff.); 10, 9 (208, 3 ff.); 11, 4 (223, 8ff.); 12, 11 (243, 3), 19, 5 (376, 5 ff.)

⁶⁵ *Inst.* 7, 8, 7 The *status ratiocinationis* is also discussed, among others, Cic *Inv.* 2, 149-53, *Rhet. ad. Her.* 1, 23 and 2, 18; Herm *Stat.* 11, 60-62, Lausberg 221, a comprehensive account in Calboli-Montefusco 1986, 187-196

357, 21 matrimoniorum ... iniurias: these are minor complaints, as becomes even clearer from 8, 6 (*uxorias querelas, matromoniorum delicias*, 156, 8-9), 10, 9 (*uxorias querelas, delicata matronae desideria*, 208, 4-5) and 19, 5 (*querelas .. non gemitus*, 376, 9-10) *Matrimoniorum* is abstract for concrete *uxorum* according Becker 1904, 12, the same abstract use of *matrimonium* in *DM* 2, 3 (where we also find *coniugum* in the same sense, in the same sentence 23, 1-6), 6, 10 (121, 11), 8, 6 (156, 7), 14, 8 (296, 2), 15, 2 (303, 6)

357, 21-22 illa voce – deflemus egressus: an *isocolon* with *homoiotota*; the first comma is generic, the second introduces a number of concrete examples of common *mala tractatio*

357, 22 corporum contumelias: not ‘the hardship’s of a woman’s person’ (Sussman 1987, 219) but ‘physical maltreatment’, though we are not specifically meant to think of grievous bodily harm, for the emphasis rather lies on the humiliation of such treatment Compare Liv 32, 38, 8 and 38, 59, 9, V. Max 1, 6, 3, Sen *Dial* 10, 16; Quint *Inst* 6, 1, 16 In *DM* 8, 6 we find *pulsata facie* (156, 19).

357, 22 damna cultus: Burman (1720, 353) and Lehnert (1905, 324) both have *damna, cultus*, which does not make sense Håkanson’s solution (1974, 142-43) to leave out the comma is as elegant as it is simple To clinch the matter, he refers to *DM* 8, 6 *detracto † matrona cultu* (156, 18) In 10, 9 we also find a reference to the wife’s *cultus non enim vestes nec aurum nec ambitiosos quaerit ornatus* (208, 5-6)

357, 22-23 negatos in publicum ... egressus: compare *DM* 8, 6 *negatoque comitatu* (156, 18). Both *DM* 8 and 10, furthermore, mention complaints about sexual escapades (or lack of enthusiasm) on the husband’s part as a ground for the *actio malae tractationis*⁶⁶ Here, such a reference would be less opportune in view of the husband’s suspicions

357, 23 orbitates ac liberorum suprema: *Synonymia* For *suprema* instead of *mors* see Becker 1904, 32, where *suprema* = *mors* is mentioned as a *pluralis poeticus*, this use of *suprema* also in *DM* 2, 18 (36, 8), 4, 8 (69, 1), 4, 9 (70, 12), 4, 10 (671, 18); 8, 8 (158, 26), 8, 10 (160, 18 and 161, 8), 8, 13 (164, 2), 8, 17 (168, 19), 15, 14 (317, 3), 17, 1 (332, 4), 17, 7 (338, 14), 17, 12 (343, 20), 17, 15 (346, 12), 17, 20 (352, 8), 18, 13 (367, 9), all instances refer to violent death or suicide In *DM* 12, 24 (259, 1-2) we find *supremum* for the death penalty, see Stramaglia 2003, n 282 *ad loc*

357, 24-26 quid tamen – constricta est: Burman (1720, 353) notes *Notabiliter fuit ergo lex, ne aliter matronae, quam ad summum malae tractationis agerent, etsi quid gravius esset, quod queri vellent vide decl VIII & X Schult* At *DM* 8, 6 *angustus* (156, 6) he again cites Schultingh *quod non possint mulieres accusare viros, nisi malae tractationis Decl. XVIII* He gives no further comment at *DM* 10, 9 Ritter 1881, 67 also refers to *DM* 8, 6 See for both the third chapter of the Introduction The *interrogatio* seems seems a response to the father’s reproach in 19,5 *quid tibi cum lege, quam propter alios minores accepistis adfectus? querelas habet ista, non gemitus, et matre seposita solam*

⁶⁶ *DM* 8 6 *fastidius noctibus* (156 18 19) *DM* 10 9 *ac ne pelcis quidem dolore compellitur nec tacita gaudia mariti impatuentia et muliebri vanitate complorat Sed nec relictum torum desertumque genale velut contempta vilitas uxoris ulciscitur* (208 7 10)

conplorat uxorem (376, 8-10) and may therefore be taken as an indication that *DM* 18 was written *before DM* 19

The *interrogatio* takes the form of a *communicatio*, inviting the judges to identify with the mother's plight

357, 24 *dolorem*: metonymous for one who suffers, i.e. the mother. A similar metonymous use of *dolor* in *DM* 7, 10 (147, 10), 7, 11 (148, 4), 9, 13 (in *apostrophe*, 187, 22), 10, 1 (for the mother, 199, 21), 17, 11 (342, 22), 17, 16 (348, 12). Especially relevant in this case are 8, 6 *Pudeat vos, o iura legesque, quod miserrimi sexus dolorem his clusistis angustus* (156, 5-6), 18, 9 *maritali dolore* (of a hypothetical jealous husband, 361, 11-12), 19, 2 *perditus dolor* (of the mother, 373, 6)

357, 24-26 *si non – constricta est*: *synonymia*

357, 25-26 *intra iuris ... angustias*: compare 8, 6 *angustus* (156, 6, see *dolorem* above) and *Liv* 24, 8, 7 *iuris inclusum angustus*, see also *Sen Contr* 2, 3, 10 *non est, quod putetis legem in numero dierum angustam fuisse* and 9, 4, 9 *scriptum legis angustum*

357, 26 *nuptiarum*: it is tempting to propose to read *nuptiarum* instead of *nuptiarum*, because it would make the clause more symmetrical in relation to the preceding one. *nuptiarum* would correspond with *sexus*, and *non legem* and *omnis est* would form a near-perfect isocolon. Besides, *nuptiarum* weakens the advocate's statement since it does not emphasize that this is a predicament for women especially.

357, 26 *mater* – 358, 2 *debuerit occidi*: the section ends with an *epiphonema* which summarizes the entire declamation. It is phrased generically and could in fact be used in all *controversiae* dealing with *mala tractatio* in connection with a father's murder of his son.

358, 1 *non vindicat*: Sussman's translation 'is not exacting punishment for the murder' (1987, 220) seems to read too much in a phrase which, I think, is deliberately left ambiguous. In view of the mention of *mala tractatio*, it would be wiser to assume that *non vindicat* primarily refers to this charge. The mother does not want to punish the father for his silence, she wants to break it up, so that her son's innocence can be proved from what the father has to say. The accusation of murder plays an important part, but it remains implicit.

358, 2 *probare ... quod*: *probare* is followed by an object clause introduced with *quod* instead of *acc c inf* as established by von Morawski 1881, 9. Hammer 1893, 44 and Tosato 1912, 79 also mention the use of the subjunctive for *debuerit*, Tosato without comment, Hammer in a series of subjunctives in the *DM* which occur "ohne dass an die Ursache der Meinung oder des Gefühls gedacht werden kann". He adds "Der Indikativ und Konjunktiv wechselt in den Verbindungen mit *quod* ziemlich gleichmassig, und man mochte den oder die Verfasser der Deklamationen für Zeitgenossen des Gellius und des Apuleius halten." The use of the subjunctive is indeed quite unmotivated and, if anything, it weakens the purpose of the *epiphonema*.

In the *DM*, *probare* only rarely occurs with *acc c inf* (*DM* 1, 1 [1, 17] and 4, 14 [77, 4]). Usually, a *quod*-clause follows. In *DM* 18, 16 there is a second instance. Here, too, the subjunctive is used, but more effectively this time: *quia non potest probare, quod dixerit* (i.e. that his son was supposed to have spoken, 370, 9).

Rumor

Argumentatio 18, 5-8 (358, 3 – 361, 8): refutatio.

The accusation of *mala tractatio* is a vehicle for the defence against the suspicions of incest, which must be convincing to make a case for the accusation of murder. Therefore the advocate begins with a *refutatio* of the father's imputations. This part of the *argumentatio* is structured as follows:

358, 3 – 359, 2 *Omittamus paulisper – potuit occidere* the father's suspicions alone would have merited an *actio malae tractationis*.⁶⁷ Perfect innocence is not enough to save a woman's reputation, which rests on her husband's behaviour in public, this mother is a woman of proven chastity.

359, 3-9 *Rumor – pater credidisset* the rumour is utterly incredible and completely unfounded.

359, 10-22 *Pessimum – verum diceret* an *excessus* about rumours, and especially people's attitude towards rumours, in the form of a *locus communis*: people always like to assume the worst, vehement denial fuels a rumour, rumours are completely unreliable.

359, 23 – 360, 10 *Sane sit – plures locuntur* Adultery often leaks out, because lovers are indiscreet, they cannot resist boasting about their affairs. Unspeakable crimes like incest are committed in utmost secrecy, therefore it is unlikely that they should occasion a rumour.

360, 11-23 *O misera – neglegens deprehendetur* the mother never made a secret of her abundant love. This means that her love is innocent, for if it were otherwise, mother and son would have avoided each other whenever third parties were present.

360, 23 – 361, 9 *Sed quid – agit causam* the father ought never to have believed the rumour, indeed, he should not have been aware of it. In truth, it originates with him.

358, 3 *Omittamus paulisper*: this phrase indicates a *praeteritio*, but contrary to the rhetoricians' precepts, it is not used for insinuation. Rather, it is used to support an *argumentatio comparativa ex minore*.⁶⁸ the father's suspicions already make him guilty of *mala tractatio*, not to mention the murder. A similar strategy we find e.g. in *DM* 14, 5 *Veneficu ago seposita, paulisper, iudices, noxae potionis invidia, nonne vobis videtur implere sceleris fidem, quod abstulit fidem condicio personae? veneficium, iudices, tota vita meretricis est* (292, 7-10) and 19, 6 *Finge me paulisper sepositis silentii causis hoc tantum respondere non prodo secretum* (378, 9-10).

358, 3 *orbitatis tristissimae*: a favourite expression of pseudo-Quintilian's, only to be found in the *DM*. See also 7, 1 (137, 5), 7, 8 (144, 20), 8, 1 (152, 8-9), 8, 21 (173, 10), 8, 22 (174, 11), 19, 1 (372, 1).

358, 4-5 *et in – aliunde causas*: a more specific rephrasing of the preceding sentence, juxtaposing the charge and the crime which in reality occasioned it. *In* can almost

⁶⁷ As they did according to Quint. *Inst.* 9, 2, 79-80.

⁶⁸ See Quint. *Inst.* 5, 10, 87-93 (esp. 87-88) compare Cic. *Im.* 1, 41 and 2, 41. *Rhet. Her.* 2, 29. Fort. 2, 23 (RLM 115-16). *Vict.* 6, 3 (RLM 401). Lausberg 395-97 (esp. 397).

be taken to mean 'in spite of'; for this *in adversativum* see OLD in 40c and TLL 782, 33-46.

358, 5-6 ita non – cito credidisti: A very short *sermocinatio*. For jealousy and jealous suspicions as grounds for an accusation of *mala tractatio*, see Quint. *Inst.* 4, 2, 30 and *DeMi* 363; Introduction p. 77.

358, 5-6 adulterium de me ... suspicatus es: *susplicari* regularly occurs with *de*, preferably when the internal object is an interrogative or indefinite pronoun. See e.g. Cic. *Clu.* 34 *quid de Oppianico suspicatus sit*; Sen. *Contr.* 10, 1, 10 *de te aliquid frustra suspicari*. There are exceptions, however, such as here and Quint. *Inst.* 9, 2, 80 *quia summum nefas suspicatus de uxore videatur*.

The use of *adulterium* instead of *incestum* need not surprise, for incest was regarded as a form of adultery or *stuprum*. But more importantly, the mother's advocate thus makes it clear that even a less grave suspicion merits a condemnation for maltreatment.

358, 6-11 matronalis pudor – pectoribus accipiunt: a balanced asyndetic period containing a near-identical double enthymeme or *sententia cum ratione*.⁶⁹ Both principal sentences have a personified subject; further symmetry is provided by the repetitions of *non*, *suus* and *tantum*; *innocentia* corresponds with *moribus*, *tutelam* with *totam [in]probitatis existimationem* and *habet* with *potest debere*. The clauses expressing the *rationes* are antithetical: once again they contain personified subjects and there is repetition of *omnis*, but *reverentia* and *sermone* are two opposing sides of the same coin.

358, 7 matronalis pudor: unlike coinages such as *matrimonialis*,⁷⁰ *matronalis* is not unusual; it occurs e.g. Liv. 26, 29, 14 and 38, 24, 9 and is already found in Laber. *com.* 33, also with *pudor*: *quo quidem / me matronali pudore prolubium meretricium / progredi coegit*. Here, *pudor* is used in a different sense, i.e. 'reputation'. This use is relatively late, occurring e.g. in Plin. *Ep.* 2, 9, 1 and 5, 1, 6. Like following *infirmas* it is used metonymously.

358, 8 [in]probitatis: the mss. and codd. of ς read *probitatis* instead of *inprobitatis*; they are supported by Gronovius.⁷¹ Burman 1720, 353 and Lehnert 1905, 324 both have *inprobitatis*, but Håkanson 1974, 143 rightly follows Gronovius' suggestion. He argues convincingly that *inprobitatis* would suggest that women have their own behaviour to thank for part of their *infamia*, which would harm the mother's case. Furthermore, *probitatis* accords with *innocentia* and *reverentia*. *In* was probably mistakenly added to *probitatis* under the influence of *innocentia* and *infirmas*.

358, 9-10 omnis in feminas ... reverentia: *hyperbaton*. With *reverentia*, the objective genitive (*feminarum*) is more common than a prepositional phrase; it would have suited the author's mannered style. *Reverentia in* is rare, but does occur Ov. *Pont.* 3, 6, 15-16; Tac. *Ann.* 6, 37, 4 and 13, 9, 1.

358, 11 originem de vestris pectoribus accipiunt: The mother's advocate again insinuates that the rumour originates with the father.

⁶⁹ *Rhet. Her.* 4, 24.

⁷⁰ See comm. at *DM* 19, 4 *corporalibus bonis* (374, 24) for an inventory.

⁷¹ Burman 1720, 353.

The use of *de* instead of *a(b)* with *accipere* is very rare in classical Latin (only Cic. *Brut.* 55 and *Verr.* 3, 170; next once in Liv. 4, 59, 11), but symptomatic of the partiality for the former preposition in later and vulgar Latin: see Von Morawski 1881, 6 and compare Deratani 1927, 292. In the *DM*, *a(b)* and *de* both occur four times. *Originem accipere* is less common than *originem ducere*, but is also found Front. *Aq.* 25, 1.

358, 11-13 tristior vultus – in fabulas: if a man looks grim, if he complains about his wife or visibly loathes her, people will assume that she is unfaithful and start gossiping. Although Burman, Lehnert and Håkanson all agree in reading a full stop after *coniugii*, I would prefer a colon, for all these clauses together form another asyndetic *sententia cum ratione*, a balanced period, in which *tristior vultus – est coniugii* is explained by *de pudore – in fabulas*. *Tristior vultus, querela, fastidium* together form the subject of *est*, but also of *pronuntiat* and repeated *mittit*. They are personified.

358, 11 tristior: than to be expected in normal circumstances.

358, 12 fatum est coniugii: Becker 1904, 56 reads *factum* (V) instead of *fatum* and interprets *coniugii* as *coniugis = mariti*. If he is right, it is rather difficult to read the *sententia* as a general statement, for it would mean something like ‘a face more grim, complaints and loathing arose with the husband’. The *sententia* would not really fit within the argument, which consists of a series of near-gnomic *sententiae*; furthermore, it would speak in favour of the husband.

Håkanson 1982 *app. crit.* agrees with Becker’s *coniugis* (though wisely, he refrains from interpretation as to this spouse’s sex): “*coniugii = coniugis, nisi –iugi vel iugi[s] legendum* (cf. 364, 4), *quod et meliorem clausulam efficiat.*” He rightly rejects *factum*. His reading is reflected in Sussman’s translation, which evinces the only correct interpretation of *fatum coniugii*: ‘a married woman’s ruin’ (1987, 220).⁷² For *coniugium* denoting ‘meton. a partner in marriage, husband or wife’, see OLD 3a. Here, it obviously refers to women; it is their situation which is being discussed. Further, if number has any significance, TLL has more instances of *coniugium* i.q. *uxor* (325, 16-37) than i.q. *maritus* (325, 37-46). *Coniugium* also denotes *coniunx* (wife) in *DM* 2, 3 (23, 5).

358, 12-13 mittit in ora populi, mittit in fabulas: *repetitio*; *ora populi* and *fabulas* are virtually synonymous. The expressions *mittere in ora* and *mittere in fabulas* are unique for the *DM*. A variant occurs in *DM* 14, 8 (296, 11): *hoc ipsum tibi, mulier, obicio, quod nos in fabulas sermonesque misisti* (the parallel was noted by Ritter 1967², 67). For the double role of *populi*, see comm. at 18, 3 *contra populum* (366, 22).

358, 13-14 hoc proxima ministeria narrant, hoc exteri putant: *disunctio* with *repetitio* of *hoc*. Unspecified *hoc* refers to whatever rumours a husband gives rise to by his behaviour.

358, 13 ministeria: for abstract *ministeria* instead of *ministerii* see comm. at 18, 3 *munisteria* (356, 2).

358, 14 exteri: this substantivated use of *exter* (*a familia, c. respectu consanguinitatis, adfinitatis, domini, patronatus*, TLL s.v. *exter* 1989, 5-45) is very rare

⁷² For *fatum* denoting ‘(a cause of) destruction, death, ruin, end’, see OLD *fatum* 6b and c TLL *fatum* 361, 30-43 has a section *metonymice de personis, quae alius fatum afferunt*

except in technical (usually juridical) idiom. It also occurs Sen. *Contr.* 1, 1, 12; Suet. *Nero* 36, 1.

358, 14-15 nemo peiore – credituri sunt: this section of the argument is concluded with an *epiphonema* in the form of a (quasi-)gnomic *sententia*. In a few words, it sums up once more how husbands are responsible for their wives' reputation. The generic phrasing reinforces the advocate's point.

358, 14 peiore exemplo: an expression which also occurs Liv. 3, 72, 2 and 34, 2, 4; *DM* 5, 10 (94, 8).

358, 15 credit ... credituri sunt: the *epiphora* draws even more attention to the husband's responsibility for his wife's reputation.

Credit is supplemented with a prepositional phrase introduced by *de*, but lacks a direct object. This construction seems to be slightly colloquial: it is not found in any of Cicero's works, for example, except in his letters (e.g. *Att.* 9, 9, 2 and 16, 5, 2). It is typical of later Latin, which is noted for the (superfluous) attachment of reflexive pronouns to verbs without reflexive meaning. Löfstedt 1933, 387-93 discusses the phenomenon extensively. He admits that there is no general explanation for the occurrence of *se* and *sibi* with non-reflexive verbs; for a comprehensive understanding of the phenomenon, one would have to consider the history of each verb separately. LHS 294 lists verbs accompanied by *sibi*: 'verba sentiendi und dicendi, ferner credo mihi, arbitror mihi, confiteor mihi, puto mihi ... Verben der Gemütsbewegung und allgemein der Zustandsveränderung und Bewegung.' *Sibi credere* instead of *credere* occurs for the first time in *DM* 18, 9 (Löfstedt 1933, 392); Von Morawski 1881, 4 explains *sibi* as a *dativus ethicus*, but since the *dativus ethicus* occurs only in the 1st and 2nd person, it is better to adhere to LHS 93: 'Mit dem ethischen Dat. nächstverwandt ist der reflexive Dat. mit volkstümlicher Betonung der persönlichen Interessiertheit an der Verbalhandlung.'

358, 15-19 sane faciat – nepotesque prospiciat: *concessio* in which it is explained to both the father and the members of the jury that if one loves a person strongly, an accompanying fear of losing them may lead to suspicions of unfaithfulness. The *concessio* proper (*fas est, fieri solet*) is introduced by three generic *sententiae*. It is followed by a refutation, which questions the validity of the preceding argument where decent, middle-aged mothers are concerned.

358, 16 pronos: for this use of *pronus* ('inclined to') see comm. at 18, 2 *pronus ac facilis* (354, 18).

358, 15-16 facit ... nimia caritas: too weak to be termed a distinct personification. The choice of *nimia caritas* in this context is peculiar and ambiguous.⁷³ *Caritas* usually refers to non-sexual aspects of love, e.g. between parents and children (see Forc. *caritas* 2 and 3). *Nimia caritas* and *impatientia diligendi* could therefore refer to a wife's demonstrative, but chaste love for people other than her husband. It is certainly true that in *DM* 18 *caritas* is used consistently to allude to the mother's blameless love for her son.⁷⁴

⁷³ It has no equivalents in Latin literature, except for Tac. *Ann.* 4, 11, 2, where it refers to Tiberius' sympathy for Seianus.

⁷⁴ See *DM* 18, 3 (356, 11); 18, 9 (361, 22 and 362, 9); 18, 17 (370, 21); in 18, 15 *caritas* refers to innocent brotherly love (369, 8).

But given the present context, both expressions are most probably meant to apply to husbands who are so involved with their wives that they are suspicious for fear of losing them. This interpretation is supported by the fact that in several *DM*, *caritas* is used to refer to sexual love.⁷⁵ Sussman 1987, 220 therefore correctly translates ‘Your overly abundant love’ and ‘your impatient affections’.

358, 16-17 et <ex> ... descendat ut: Most mss have *et*, but C supplements *ex* and this reading is followed by Burman 1720, 354 Lehnert 1905, 325 has only *ex* Håkanson defends *et <ex>* by appealing to *DM* 16, 7 *ex quibus . . . descendant* (364, 5) adding that ‘*asyndeton hoc loco parum aptum mihi videtur*’. *Descendere ex* is certainly right, apart from these instances, it also occurs *DM* 5, 6 (90, 17-19); 7, 1 (138, 3-4), 8, 1 (156, 4-5). But I see no grounds to object to an *asyndeton*, especially since the entire preceding passage (358, 6-15) is *asyndetic* I therefore propose to follow Lehnert’s reading *Descendere* here has the semantic value of *fi* It slightly deviates from OLD *descendere* 13 ‘to be derived (from), arise (out of)’ in that it lays as much emphasis on consequences as on origin Nor does TLL 651, 54 – 652, 42 (*descendere* i.q. *originem repetere, oriri, exire*) appreciate the difference in nuance In 651, 77-78 (*descendere ex*), *DM* 5, 6, 8, 1, 16, 7 and 18, 5 are lumped together indiscriminately *Descendere ut*, analogous with e.g. *fi ut*, is rare It only occurs Liv 45, 15, 5, Tac Ann 14, 7, 3 and (possibly) 15, 1, 2; *DM* 7, 1 (138, 3-4)

358, 16-17 impatientia diligendi: another instance of the author’s predilection for abstract, mannered expressions Compare *ardorem concupiscendi* in *DM* 14, 8 (296, 9) and *constantiam tacendi* in 19, 7 (378, 13-14) For (*im*)*patientia* in *DM* 18 and 19 see comm at 19, 1 *hanc . . . patientiam meam* (372, 12)

358, 17 credas facile, quod timeas: compare Stat. *Theb* 7, 112-13, where *Pavor* is termed a *bonus omnia credi / auctor*

358, 18 furtiva stupra raptosque concubitus: See 18, 3 *stupra furtivosque concubitus* (355, 22) with Apul *Met* 8, 10 *prolixè consentit de furtivo concubitu*, compare also Sen *Tro*. 342 *ex virginis concepte furtivo stupro* For *stuprum*, an illicit sexual act with a free Roman, see comm at 18, 3 *stupra* (355, 22) *Concubitus* is a more neutral term for sexual intercourse (OLD *concubitus* 2)

358, 18 vel falso: even if husbands’ suspicions are understandable, this does not imply that they are well-founded

358, 19 fas est, fieri solet: the two clauses are nearly synonymous *Fas* is used without its usual serious moral and religious connotations: it simply means ‘it is possible’. For this sense of *fas* see OLD 3c (in a weakened sense: that which is possible or allowable) and esp TLL *fas* 293, 28-41, where *fas est* means *facultas est per naturam rerum*, either in a strict sense or, more loosely, *ferè i q fieri potest* The earliest instances listed in TLL of both connotations are derived from Ovid (resp *Met*. 9, 385 and *Trist* 2, 213, 3, 12, 41, *Fast*. 1, 329) Peeters 1945, 131-35 plausibly contends that it was initially the word *nefas* which was given, additionally, the amoral connotation of impossible (i.e. incompatible with natural law) The earliest instance he cites is Hor *Carm* 1, 24, 19-20: *sed levius fit*

⁷⁵ See e.g. *DM* 2 7 (26, 10, the only instance wrongly adduced in Forc. *caritas* 3), 2, 14 (32-26) 14, 1 (288, 7), 14, 2 (289, 1 and 12), 14, 5 (292, 12)

patientia / quidquid corrigere est nefas The meaning of *fas* was broadened correspondingly Peeters cites the same samples as TLL, but also one which predates them Hor *Ars* 360 *verum operi longo fas est obrepere somnum*⁷⁶

In the *DM*, instances of this neutral use of *fas* (24) outnumber those with a moral and religious connotation (4 12, 27 [263, 5], 18, 3 [355,15], 18, 14 [368,15] and possibly 18, 10 [363,24]) by far

358, 19-22 parcius tamen – nepotesque prospiciat: the *concessio* is deliberately undercut by the observation that sexual jealousy is less appropriate where a middle-aged mother is concerned It consists of four conditional clauses which are closely linked by the repetitions of *si* and *iam* and of *sit* alternated with alliterating *profecerit* and *prospiciat*, it may be termed a *congeries*

358, 19 parcius: *parce* in the sense of ‘infrequently’ is relatively rare, when it occurs, it is usually in the comparative or superlative degree see TLL s v *parcius* 348, 6-30 (present instance of *parcius* 15-17)

358, 19-20 si iam – fecunditate profecerit: the two conditional clauses are near-synonymous the second, full of the kind of turgid abstract expressions favoured by the author, explicates the first They go back to 18, 3 *Quae pudicitiae prima fiducia est edidit partum, quem maritus agnosceret* (355, 20-22) and refer to younger mothers

358, 19-22 sit ... profecerit ... sit ... prospiciat: the subjunctives indicate that the scenario, though tailored to this mother’s situation, is both general and hypothetical

358, 20-21 quid si – nepotesque prospiciat: a move forward in time women with grown-up sons are at least middle-aged and, if of proven chastity, not very likely to stray The clever mention of a daughter-in-law is meant to apply implicitly to the unhappy mother of *DM* 18 if she had an incestuous relationship with her son, she would have hated to surrender him to a daughter-in-law

Becker 1904, 60 points out the alliteration of *nurum nepotesque*

358,22 – 359, 2 miseremini temporum – potuit occidere: the first argument ends with two *sententiae*, which are only loosely connected with the preceding argument In fact, they form a separate – and valid – argument in a nutshell Quint *Inst* 8, 5, 31 expresses his disapproval of the incorporation of arguments in *sententiae*, adding *nec multas plerique sententias dicunt, sed omnia tamquam sententias*

358, 22-23 miseremini temporum – moribus trahat: *sententia per exclamationem* The *sententia* is a *noema, qua voce omnis intellectus accipi potest, sed hoc nomine donarunt ea quae non dicunt verum intellegi volunt* (Quint *Inst* 8, 5, 12) It inveighs against the psychological phenomenon of projection, i.e. the attribution of one’s own attitudes, feelings, or suppositions to others the father is a wicked person, therefore he assumes wickedness in others It is also gnomic, because it pronounces on human behaviour

358, 22 miseremini temporum: *temporum* is an unusual metonymy for the people who live in these times⁷⁷ A similar use of *tempora* in *DM* 9, 13 (187, 11), 9, 14 (188, 18),

⁷⁶ Cipriano 1978 64-67 confines herself to listing and summarily discussing a few examples of neutral *fas* without trying to account for this new sense of the word

⁷⁷ It is probably based on another metonymous use for *tempora* = circumstances (OLD 12)

18, 4 (357, 5; see comm. ad loc.); 18, 15 (369, 12) and 19, 14 (387, 8). Compare also 19, 6 *parce saeculo* (377, 15).

358, 23 – 359, 2 incestum posse – potuit occidere: this second *sententia* explains how projection works in the father's case. It uses Aristotle's topic ἐκ τοῦ μᾶλλον καὶ ἧττον (*Rhet.* 2, 23, 4): if a father can kill his son (greater), then it is possible for a son to commit incest with his mother (less). See also Quint. *Inst.* 5, 10, 87-93 (esp. 87-88); Vict. *Ars* 6, 3 and Lausberg 395-97 (esp. 396); compare Cic. *Inv.* 1, 41 (*adiunctum negotio*).

359, 3 'Rumor,' inquit, 'fuit.' An *anticipatio* of the father's strongest evidence.⁷⁸ It is presented in a very short *sermocinatio*.

359, 3-4 est hercules – liberosque credatur: the first rebuttal concerns the moral implausibility of the rumour.

359, 3 est: Lehnert 1905, 325 changed *est* to *et*. Håkanson preserves *est*, but does not feel quite comfortable with it and suggests "*fort. <hic> est.*" Watt 1991, 58 believes that "*en* would be both easier and more satisfactory. There are a dozen instances of *en* in these declamations, including six in which it is followed, as here, by a relative clause with a verb in the subjunctive." In fact, of the sixteen instances of *en* in these declamations, none are followed by a relative clause, but six are followed by an interrogative clause, which explains the subjunctive.⁷⁹

Actually, any form of intervention seems unnecessary. *Est* simply echoes and adds to *fuit*: 'There certainly (and still) is, and it is one which is believed in the face of the natural order of things, in the face of (the natural ties between) parents and children!' The subjunctive is consecutive, not adhortative, as Sussman interprets: 'Yes indeed! This is something one should believe, contrary to human nature itself and to the detriment of all parents and children!' (1987, 22).

359, 3-4 contra rerum naturam, contra parentes liberosque: may be interpreted as a *hendiadys*, enhanced by anaphoric *contra* ('in the face of the natural ties between parents and children'). Again it is implied that not the mother's love, but the father's suspicions (and his subsequent behaviour) are unnatural.

359, 4 'rumor fuit.' *repetitio* of the father's presumable argument, which will now be rebutted as regards evidence.

359, 5-7 hoc ergo – adveni: an ironical *interrogatio*, which is meant to expose the lack of foundation for the rumour. The mother's advocate states, in effect, that no witnesses have come forward; let alone that the father caught his wife and son *in flagrante delicto*.

359, 5-7 conscius detulit – adveni: the four clauses form two near-synonymous pairs. The argument is resumed equally succinctly and ironically in 18, 12: *Video, qua*

⁷⁸ Stramaglia 2002, 157-58 and Schneider 2004, 159 use the term *contradictio* to refer to these imaginary objections as they are typically expressed in the rhetorical schools. They base their use of this term mainly on LHS 417-18 and Winterbottom 1984, 529. However, the authorities in question rightly do not confine their discussions of these counterarguments to the terse form in which they occur in Roman declamation *Anthypophora*, the figure that gives a verbatim expression of the opponent's objection, seems a more logical term to use. The third counterargument is also introduced by an *anticipatio*. It begins 18, 9 (361, 9)

⁷⁹ In a seventh case, the interrogative clause contains a verb in the indicative mood: 3, 5 *en quanta dilectui tuo fit invidia!* (46, 21-22) The indicative can be explained by the circumstance that these clauses can be perceived as *exclamationes* in which *en* has an almost adverbial function

possis ratione defendi, si omnia ante fecisti, ut incestum aliter erueres quid ais? interrogasti servulos, nec potuit conscius inveniri? exquisisti ancillas, non apparuit ministra flagitu? non obscena litterarum commercia, non fatentis deprehendisti nefanda blanditias? nihil invenis maritus, dominus, pater? i nunc et dic scisse rumorem! (365, 5-10)
 The father in 19, 3 insinuates, on the other hand, that he nearly caught his son in the act
inprovisus adveni et ille quidem ad conspectum meum tamquam deprehensus obstipuit refugitque trepidus, puto, ne quaererem causam (374, 18-20)

359, 7-9 rogo, iudices – pater credidisset: the *subiectio* rounds off the paragraph with a climax, it prepares the way for the following *locus*

359, 7-8 rogo, iudices – rumore mendacium: the *interrogatio* contains a sharp juxtaposition of *incestum* and *mendacium*, which is reinforced by the chiasmic phrasing of *incestum de matre – de rumore mendacium*. The contrast between the two alternatives is so glaring that the audience is easily manipulated into opting for the one placed emphatically second

Englund 1934, 65 points out the use of the indicative *putatis* in this question which, may be considered either direct or indirect. Håkanson has obviously chosen the first option

359, 7-8 credibilis ... de: “De fällt auf”, Ritter 1967², 66 merely remarks *Credibilis de* is in fact unique in Latin literature, but can be explained as analogous with *credere de*, for which see comm. at 18, 5 *credit credituri sunt* (358, 15)

359, 8-9 rem inpuidentissimam – pater credidisset: instead of a straightforward answer to the *interrogatio* (which would be *mendacium*, but the advocate can safely assume that his audience has already supplied this answer), an *epiphonema* concludes this section. It draws attention to the father’s responsibility once more

359, 9 fecerat ... credidisset: because this conditional sentence seems to be counterfactual, one would expect *fecisset* instead of *fecerat*. But *fecerat* is what LHS 328 (and see 662) a rhetorical pluperfect ‘es unterscheidet sich durch die lebhaftes Vorwegnahme des Erfolgs der Handlung, der dann durch den folgenden nisi-Satz wieder verneint wird’. Here, the audience is first informed that it was unforgivable for the people to spread the rumour, it is then meant to perceive a pause after *fecerat*, only to be told that the father, by believing the rumour, did something so wicked that it cancels out the people’s fault

359, 10-22 Pessimum – verum diceret: with its stern criticism of gossip, the preceding *epiphonema* has prepared the way for an *excessus* on rumour. This takes the form of a *locus communis* and contains a wealth of arguments against *rumores*. It is instructive to compare this passage with the rhetorical precepts given by the *Auctor ad Herennium* and Quintilian

Contra rumores dicemus primum, si docebimus multos esse falsos rumores, et exemplis utemur, de quibus falsa fama fuerit, et aut inimicos nostros aut homines natura malevolos et maledicos confinxisse dicemus, et aliquam confictam fabulam in adversarios adferemus, quam dicamus omnibus in ore esse, aut verum rumorem proferemus, qui illis aliquid turpitudinis adferat, neque tamen ei rumori nos fidem habere dicemus, ideo quod quivis unus homo possit quamvis turpem de quolibet rumorem proferre et confictam fabulam

dissipare. Verumtamen si rumor vehementer probabilis esse videbitur, argumentando famae fidem poterimus abrogare.

(*Rhet. Her.* 2, 12)

Famam atque rumores pars altera consensum civitatis et velut publicum testimonium vocat, altera sermonem sine ullo certo auctore dispersum, cui malignitatis initium dederit, incrementum credulitas, quod nulli non etiam innocentissimo possit accidere fraude inimicorum falsa vulgantium. Exempla utrimque non deerunt.

(*Inst.* 5, 3, 1)⁸⁰

359, 10-13 Pessimum, iudices – deprehensa narrantur: the *excessus* opens with a doublet of gnomic *sententiae*, the second rephrasing the first. It is highlighted by the *homoeoteleuton* *fiuntur-narrantur*, two cognate terms; the generic character of both *sententiae* is underlined by the use of the passive voice and the many adjectives used nominally (*malum, nefanda, maligni, incredibilia*). The *sententiae* denounce people's propensity to tell, and make up, tales about others (*Rhet. Her.* 2, 12).

359, 10 Pessimum ... malum: a pleonasm attested in no other classical Latin text. Later, it occurs once in Salvianus Massiliensis (c. 400-80) *de Gubernatione Dei* 5, 4, 16 and quite frequently in Hildegard von Bingen; and, most remarkably, the entire section *Pessimum malum – ex veritate* is quoted by Vincent of Beauvais, *De morali principis institutione* 28 as originating from Quintilian's *De causis corruptae eloquentiae*.⁸¹

359, 11 avidius: people prefer to think up scandals rather than innocent stories.

359, 11-13 nec umquam – deprehensa narrantur: the superordinate clause seems obscure unless one reads it as *nec umquam maius operae pretium esse putant maligni se facere sermones*.

359, 13 quasi deprehensa: *quasi* + participle occurs 'wenn die durch das Partizip ausgedrückte Eigenschaft nicht als eine in der Wirklichkeit bestehende, sondern bloß als eine subjektive, angenommene, in der Ansicht oder Vorstellung des Redenden oder einer anderen Person vorhandene bezeichnet werden soll.' The use of *quasi* (or *ut, velut, tamquam*, etc.) with participle only becomes frequent from the Augustan age onwards (KS 790-91; see also LHS 385).

359, 13-15 necesse est – ex veritate: another doublet of *sententiae*, both gnomic and *ex contrariis* this time. The two *sententiae* supplement one another and display sound psychological insight.

359, 14 contentiosius: allegations which cannot be substantiated must be voiced more pertinaciously than those which can be proved.

⁸⁰ Copied almost literally by Iul. Vict. *Arv* 6, 6.

⁸¹ The same chapter concludes with *Sed, ut Quintilianus in libro De causis asserit Facinus est id tantum credere quod expedit, ac de rebus humanis actum est si sola servatur utilitatum fides* (from *DM* 16, 7 [327, 7-10]), whereas in chapter 17 we find *ut enim ait Quintilianus, causa IIIa. "hec est superiorum condicio, ut quicquid faciunt precipere videantur, et perniciosissimus est male rei quisque maximus actor"* (from *DM* 3, 15 [55, 17-20]).

The word *contentiosus* occurs very rarely in classical Latin⁸², but is very popular with Christian authors

359, 14-15 et affirmationem – ex veritate: this *sententia* is of somewhat wider application than its counterpart: if you cannot rely on proof, you must impress your audience with your personality. For *loci* derived from the speaker's *persona*, see e.g. Cic *Inv* 1, 34-36 and Quint *Inst* 5, 10, 23-31.

The father in *DM* 19 employs this strategy on several occasions, e.g. 19, 4 (*et ego amavi filium meum, non osculis, non infirmitate, non lacrimis, sed viribus, dolore, patientia*, 375, 22-24), 19, 8 (*quis enim in hac civitate non novit taciturnitatis meae rigorem, quis ignorat, qua cuncta soleam ferre patientia?* 379, 20-22) and, of course, by repeatedly referring to the murder as the ultimate act of fatherly love. The mother's advocate uses it to great effect in the *narratio* when he describes the mother's *ante acta vita* in 18, 3 (355, 17 – 356, 3).

359, 16-21 est tamen – silentio tuo: Håkanson's punctuation obscures the text. It is better to stick to that of Burman 1720, 354 and Lehnert 1905, 325, 26– 326, 1,⁸³ reading *est tamen hoc iniquissimum de loquacitate populi quod plerumque accendit contentio non credentium famam materiam miraris rumoris, de qua nemo nec sibi credit? quam qui narrat, adsignat alii? rumor res sine teste, sine indice, res ex incertis improbissima, maligna, fallax et similis silentio tuo*

Est tamen – credentium famam then forms a separate, gnomic *sententia*, while *materiam rumoris – adsignat alii* and *rumor res – silentio tuo* is an enthymeme in the capacity of *sententia cum ratione*

359, 16-17 est tamen – credentium fama<m>: an unconventional gnomic *sententia*. It is usually assumed that rumour is confirmed and grows the more people believe in it: see Quint *Inst* 5, 3, 1 (*incrementum credulitas*, cited on 359, 10-22 *Pessimum – verum diceret* above) and compare e.g. Tac *Ann* 14, 58, 3 *v<a>na haec more famae credentium otio a<u>gebantur*. This *locus communis* is twisted round by our author, who contends, on the contrary, that it is precisely the people's vociferous refusal to believe a rumour which makes it spread like wildfire. See, later, Claud. 3, 70 *dissensuque alitur rumor*.

359, 16 tamen: *tamen* 'setzt (..) immer einen konzessiven Gedanken voraus' (KS 2, 98) and therefore seems out of place in the current context, one would expect *autem*. In later Latin, however, *tamen* usurps the 'anknupfende und weiterführende Gebrauch' of *autem* (LHS 496-97).⁸⁴

359, 16 iniquissimum de loquacitate: *de* + ablative instead of a partitive genitive, used occasionally by *comici* and even Cicero, increasingly wins ground in later Latin. See Von Morawski 1881, 7⁸⁵ and Deratani 1927, 292-93, Ritter 1967², 67 merely remarks "de fällt auf"

359,17 accendit ... fama<m>: the collocation seems unique in Latin literature, though in *DM* 19, 5 we find *materiam novi rumoris accendit* (376, 11-12).

⁸² Apart from this instance, we only find it Plin *Ep* 2, 19, 5, Apul *Met* 8, 3, *DM* 5, 1 (85, 16), 15,1 (302, 8)

⁸³ From his translation 1987, 221 it is clear that Sussman follows Lehnert's reading

⁸⁴ See also Wahlen 1930, 65, Wikström 1935, 24-26

⁸⁵ Von Morawski 1881, 6-8 gives a survey of all (deviant) uses of *de* in the *DM*

359, 18 *materiam miraris* – *adsignat alii*: the double *interrogatio*, as it occurs in Burman 1720, 354 and Lehnert 1905, 325-26, expresses all the more indignation at the scandalous and incredible character of the rumour. Note the alliteration of *m* in *materiam miraris rumoris*.

359, 18 *de qua nemo nec sibi credit*: for colloquial *credere de* see comm. at 18, 5 *credit credituri sunt* (358, 15).

For the emphatic, alliterative double negative see comm. at 18, 5 *o quam non habet nec quod mentiat* (357, 18), *nec* can be read as *ne quidem*, for which see Becker 1904, 21.

359, 19 *quam qui narrat*, *adsignat alii*: the rumour is so scandalous and incredible that no one wants to be responsible for it. Note how *quam* forms a *polyptoton* with *de qua*, its alliterative force is enhanced by *qui*.

359, 19-21 *rumor res* – *silentio tuo*: Instead of the obvious answer ('no') we get a *sententia*, which forms a *subiectio* with the preceding double *interrogatio*. It is subtle and ingenious, starting out as a gnomic *sententia* which states a number of familiar characteristics of rumours by means of an asyndetic *congeries* made even more forceful by the ellipsis of *est*, it turns into an *epiphonema* at the very end, which is also a *noema* in covert terms, both the father's silence and the rumour are exposed as means to discredit mother and son and thus justify the fatal torture of the son. It is also the beginning of a short *apostrophe* addressed to the father.

359, 19-20 *rumor res sine teste*, *sine indice*: the two modifiers are all but synonymous, their connection is underlined by anaphoric *sine*. They hark back to the previous paragraph (*tamquam si diceret*, '*consciis detulit servus, nuntiavit ancilla*', 359, 5-6). The characterization is familiar from Quint. *Inst.* 5, 3, 1 *sermonem sine ullo certo auctore dispersum*.

Lehnert 1905, 326 has *sine iudice* instead of *sine indice*, Håkanson 1974, 143 rightly follows Burman 1720, 354 '*iudice* ist dem Sinne nach nicht ganz gut, während der Doppelausdruck *sine teste*, *sine indice* in den Deklamationen gewiss am Platze ist, wie 6, 12 *sine rectore*, *sine duce* u. a. m.' To clinch the matter, we find some significant parallels in other authors: *nullo teste nullo indice* (Cic. *Clu.* 38), *quibus indicibus, quo teste probavit* (Juv. 10, 70), *adulterium obicis* '*quis testis*' '*quis index*' (Quint. *Inst.* 7, 2, 54)⁸⁶.

359, 20 *res ex incertis inprobissima*: this adjunct builds the transition from 'epistemological' to moral objections to rumour. *Incerta* is of course symptomatic for the author's penchant for the abstract use of nominalized adjectives – in fact nominalized *incertum* / *-a* occurs more often in the *DM* than attributive *incertus* – but it is hardly innovative: for instance, Plautus (*Ps.* 685) and Sallust (*Cat.* 17, 6, *Jug.* 83, 1, *Hist.* 1, 24) were already familiar with it.⁸⁷

359, 20 *maligna*, *fallax*: included by Becker 1904, 79 in his list of pairs of synonymous adjectives found in the *DM*, adduced to prove their affinity with African literature. The two terms are in fact not so much synonymous as complementary: *maligna*

⁸⁶ Compare also Cic. *Rab. Perd.* 18, Curt. 7, 1, 16, Sen. *Contr.* 7, 1, 24, Tac. *Ann.* 3, 10, 1, 4, 28, 2, 15, 55, 3, *Apul. Apol.* 70.

⁸⁷ OLD *incertus* 1c.

stresses the spiteful character of rumours, *fallax* their treacherousness. The doublet is found only here.

359, 20-21 et similis silentio tuo: the last observation in the enumeration makes it a *noema* because of its suggestiveness; although it is not the *sententia* that concludes the paragraph, it is also an *epiphonema* in its capacity of *extrema quasi insultatio* (Quint. *Inst.* 8, 5, 11).

359, 21-22 quid et – verum diceret: another *epiphonema* in the form of a *subiectio*, and again, the question is not answered directly. The obvious answer, hinted at with *et ipse*, is: you didn't believe it either. Instead, the advocate states that the father felt he had to resort to torture to verify the rumour, thereby making him out to be both cruel and morbidly suspicious.

359, 21-22 vis breviter probem: Although Quintilian does not approve of *sententiae* containing separate arguments,⁸⁸ this *sententia* clearly proves that these short arguments can be very effective; they frequently occur in all *DM*. In 18-19 alone we find 18, 14 *vindicare vis confessionem? traduc cadaver, et super illa vulnera omnes pone causas* (368, 22-23); 19, 6 *vis scire, quam non possis queri de silentio meo? felicissima fueras, si idem fecissemus omnes* (378, 7-8); 19, 9 *vis scire, quanta tormentorum ratio fuerit? debuit etiam tortus occidi* (381, 2-3).

The occurrence of a bare subjunctive after *velle* is not unusual. It is explained as 'ein unabhängiger Konj. des Wollens bzw. Wünschens,' a remnant of the originally paratactic character of spoken Latin (LHS 529-30; see also KS 227).

359, 22 an verum diceret: *rumor* is personified in the sense that it is attributed a human act.⁸⁹ The personification underlines the force and pervasiveness of the rumour. The present case does not seem to be one of *an* supplanting *num* in postclassical Latin despite Krapinger 2005, 101.

359, 23 – 360, 10 Sane sit – plures locuntur: this paragraph, in which the advocate wants to prove that it is quite unlikely that the rumour is true, consists of a near-perfect *rationcinatio* or enthymeme:

1. *propositio: Sane – fabulas* (359, 23 – 360, 2)
2. *approbatio propositionis: explicantur – iactatio* (360, 2-4)
3. *assumptio: facinus – ministeriis* (360, 4-8)
4. *approbatio assumptionis: sufficit – secretum* (360, 8-9)⁹⁰
5. *complexio: incestum – locuntur* (360, 9-10)⁹¹

359, 23 Sane sit: this phrase seemingly introduces a *concessio*,⁹² indeed, it is conceded that rumours conform to truth in some cases. The advocate proceeds, however, to

⁸⁸ *Inst.* 8, 5, 31

⁸⁹ Englund 1934, 2.

⁹⁰ It must be remarked that part of the *approbatio assumptionis* is included in the *assumptio*.

⁹¹ I have used Cicero's (*Inv.* 1, 67) interpretation of the term. A slightly different one is found *Rhet. Her.* 2, 28, Quint. *Inst.* 5, 14, 5 ff. bases his discussion of the *epichurema* on Cicero's model; helpful and enlightening surveys in Jul. Vict. *Ars* 11 (*De epichuremate*, RLM 411-13); Isid. *Rhet.* 9 (*De syllogismis rhetoricis*, RLM 511-12); see further Lausberg 371

⁹² See 18, 5 for another pseudo-*concessio* introduced by *sane*: *sane faciat vos pronos ad suspiciones nimia caritas, et <ex> impatientia diligendi plerumque descendat, ut credas facile, quod timeas; furtiva stupra raptosque concubitus obiciat vel falso maritus; fas est, fieri solet; parcus tamen, si iam sit et mater, si in fidem castitatis*

demonstrate that such is impossible in this instance,⁹³ thereby turning the *concessio* into a comparison which benefits his case, because it leads to the paradoxical conclusion that here, the very existence of a rumour precludes its veracity.

359, 23 *publici sermonis auctoritas*: see Quint. *Inst.* 5, 3, 1, where those who rely on rumour are advised to style it *consensum civitatis et velut publicum testimonium*. The expression *publicus sermo* is not encountered anywhere else except Firm. Mat. *Math.* 5, 4, 9 (*publici sermonis invidiam*) and 6, 24, 3 (*publici sermonis inexplicabiles notas*).

359, 23 – 360, 1 *ad quae fas est populi pervenire notitiam*: a reversal of the common expression *pervenire in notitiam alcs.*, which we find e.g. Liv. 22, 26, 1 *primum in notitiam populi, deinde ad honores pervenit*; Sen. *Contr.* 6, 2 *res in notitiam hominum pervenerat*; Col. 5, 8 [*Olearum genera*] *in meam notitiam decem omnino pervenerunt*; Quint. *Decl.* 258, 2 *non desiderium pervenire in notitiam tuam sufficit*; with *ad*, like pseudo-Quintilian, Firm. Mat. *Math.* 4, 22, 1 *ne publicata divina scientia ad profanorum hominum notitiam perveniat*; 4, 22, 20 <ne> *ad omnium notitiam verissima haec et immutabilis ratio perveniret*; 8, 28, 7 *ad notitiam regum amicitiamque pervenient*.⁹⁴

360, 1 *Vide[o]*: Although all mss. have *video*, Burman 1720, 355 and Håkanson follow Schultingh's suggestion "Malim, *vide*. ita infra *adhibeo*, pro *adhibe*." Both following instances of *adhibe* are clearly apostrophes addressed to the father: 18, 12 *advoca propinquos, adhibe amicos, circumpone iuveni serios senes* (366, 16-17); 18, 13 *adhibe speciosi cruciatibus hanc nimis amantem* (367, 15-16); a first person singular would not even have made sense. Here, *vide* fits well; it would in fact enliven the advocate's argument. Yet in view of the agreement of all mss. I can only argue that *video* must be preserved. Besides, *video* has the added advantage that it continues more clearly the *concessio* begun in 359, 23. A similar interference with the text is found in *DM* 14, 6, again in the face of all mss., again at the instigation of Schultingh, and again in a *concessio*: *vide[o]*, *cur sibi medicina permittat corporum vitia membrorumque morbos infusus medicaminibus expellere...* (294, 10-11). Lehnert preserves *video* in both cases (1905, 270 and 326). In 18, 12, in yet another *concessio*, *video* has been left intact in all editions (*Video, qua possis ratione defendi...* 365, 5).

360, 1 *cur*: since a cause rather than a reason is involved, one would expect *unde* or *quomodo* instead of *cur*. In fact, *cur* is hardly ever used to question a cause in the *DM*. Apart from this instance, it is only found 12, 4 *cur civitas opulenta quondam nihil frumenti ... habuerit* (235, 6-7), but preceded by *quid sit in causa*; further 8, 16 *cur ergo non eadem ratione languor admittit intellectum, qua sanitatem* (167, 1 3); 14, 6 *vide[o]*,⁹⁵ *cur sibi medicina permittat corporum vitia membrorumque morbos ... expellere* (294, 10-11), where, however, both *languor* and *medicina* may be said to be personified.

360, 1-2 *adulteria proferantur in fabulas*: obviously, *fabulae* is used synonymous with *rumor* and *fama*, as already in *DM* 18, 2 [354, 17]; 18, 4 [356, 22]; 18, 6

uxoria fecunditate profecerit quid, si sit iam iuvene quoque filio severa, iam nurum nepotesque prospiciat? (358, 15-22)

⁹³ Note vero 360, 4

⁹⁴ And 4, 14, 11 *quorum omnium + crebrorum notitia movere perveniat*

⁹⁵ *Vide[o]* was again suggested by Schultingh, though not adopted by Burman 1720, 300, nor by Lehnert 1905, 270

[358, 13], this sense of *fabula* (OLD 1b gossip, talk, rumour, 1c slanderous talk, gossip, scandal) is very common. In view of what follows, however, it also seems subtly to allude to the popular theme of adultery in poetry and myth, where as often as not, secret lovers are assisted by servants and slaves, especially nurses.

The choice of *proferre* is apt. Apart from 'bring into the world' (OLD 3b) and 'utter' (OLD 4), it also has the technical senses of 'to produce in evidence' and 'to bring up in support of a contention, adduce' (OLD 5 a and b, TLL 1682, 38-61).

360, 2 *explicantur per ministeria, per conscios*: as it has been stated above, servants often play a crucial role as lovers' go-betweens in poetry and myth. Fitzgerald 2000, 59-62 discusses this role of theirs adequately though hardly profoundly, departing from Ov. *Am.* 1, 11 and 12, a more thoughtful treatment, based on the relationship between Phaedra and her nurse in Euripides' *Hippolytos* στεφανηφόρος, can be found in Brandt 1973, 59-78.⁹⁶

Explicantur could be ambiguous. In the *DM* it is very frequently used in the sense of OLD 9 'to carry out completely, finish off, accomplish' b 'to serve the needs of'. The corresponding section in TLL (1730, 8 – 1733, 14) abounds with samples from the *DM*. For *explicare adulteria* see 1731, 1-2 (under *animi voluntatem consilium affectum voluptates*). But of course *explicare* also means 'to reveal to view, to make clear (to the understanding)', as it is stated in OLD 7, and translated by Sussman 1987, 221. The use of *per* precludes this interpretation, yet it lingers below the surface, if one thinks of e.g. 18, 12 *quid ais? interrogasti servulos, nec potuit conscius inveniri? exquisisti ancillas non apparuit ministra flagiti?* (365, 6-8).

For abstract *ministeria* instead of *ministri/ministrae*, see 18, 3 *ministeria* (356, 2), note the repetition of *per* with synonymia of *ministeria* and *conscios*.

360, 3 *habent inconsulta gaudia*: the period ends in a gnomic *sententia*, which forms an enthymeme with following, explanatory *pars voluptatis videtur esse iactatio*: clandestine lovers often cannot resist boasting about their affairs. There is a great deal of (literary) truth in the advocate's statement: one only has to think of e.g. Catullus' love poems.

360, 3-4 *pars voluptatis videtur esse iactatio*: Becker 1904, 51-52 draws the attention to three similar *sententiae* in the *DM*: 8, 10 *maxima scientiae pars esse coepit, sanare non posse* (160, 19-20), 14, 8 *prima pars sanitatis est, ut libenter accipiat* (296, 20), 19, 3 *pars secreti fuit, ut ipse torquerem* (375, 1-2). For a similar use of *genus* and *ratio* in 19, 7 and 19, 12 see comm. at *genus reverentiae* (379, 7-8) and *ratione saevitiae* (385, 7).

360, 4-9 *facinus vero – materque secretum*: A *commoratio* unlike common house and garden adultery, incest is such an outrageous crime that the culprits feel too much shame, and cannot afford to involve any third parties.

⁹⁶ In his commentary on Ovid's *Heroides* 11 (Canace) Jacobson 1974: 169 n. 30 writes: 'The wise old nurse who recognizes the signs of an illicit love affair is probably a hellenistic theme which developed and grew out of Euripides' characterization of the nurse.'

360, 4-5 si fas est, ut – audacia: ‘if it is possible that audacity seizes the human mind to that extent...’⁹⁷ *Fas* is devoid of any moral connotation, for which see comm. at 18, *5 fas est, fieri solet* (358,19). The combination with *ut* (TLL s.v. *fas* 294, 23-25) is rare and as Deratani 1927, 291-92 puts it, evidences the *usum multo laxiorem* of *ut* in Ritter’s group II. He lists all occurrences in the *DM*: 5, 5 (100, 6); 8, 14 (155, 13); 8, 18 (169, 12); 17, 12 (343, 2) and of course 18, 7 (360, 4), and adds *DeMi* 297, 4. I have found only two other instances: Flor. *Epit.* 3, 10, 9 and Iust. 13, 2, 9.⁹⁸

360, 5-6 nox profunda, densior caligo tenebrarum: *synonymia*. For *nox profunda*, see Becker 1904, 23. In connection with *DM* 5, 15 (*licet ... profunda carceris nocte membra claudantur*, 100, 22) he cites Verg. *A.* 4, 26 (*pallentis umbras Erebo noctemque profundam*) and 6, 460-61 (*quae nunc has ire per umbras, / per loca senta situ cogunt noctemque profundam*). We also find the collocation in Sil. 12, 132; Stat. *Theb.* 8, 143-44 and 10, 831-32. It is striking that in all these verses except *Theb.* 8, 143-44, *nox profunda* figures in a description of the Tartarus. In the *DM*, it is associated with guilt or punishment and captivity. Apart from 5, 15 and 18, 7 it occurs 5, 16 (*profundae caliginis nocte[m] mersus piraticis artibus specus*, 101, 18-19) and 8, 8 (*in carceribus et in illa profunda nocte poenarum*, 159, 12).

Tenebrarum in *caligo tenebrarum* is a *genitivus inherentiae* or, as Becker (1904, 87-88 with many exx. from the *DM*) puts it, an Identitätsgenitiv. According to KS, this pleonastic genitive occurred infrequently in archaic and classical Latin, usually in fixed phrases, but became widely used only in later Latin, partly under the influence of the rhetorical schools. It can in some cases be explained with an observation made by Hagendahl, ‘daß die meisten Synonimenverbindungen⁹⁹ der klass. Zeit später als gen. inhaer. wiederkommen’ (63); they often provide the *clausula* with a smooth rhythm (720).

Caligo tenebrarum has in fact several classical counterparts:¹⁰⁰ *taetris tenebris et caligine* (Cic. *Agr.* 2, 44); *caligine ac tenebris* (Verr. 3, 177); *caligine et tenebris* (Red. *Sen.* 5, 4); *confusa lux alta caligine et interceptus tenebris dies* (Sen. *Suas.* 1, 1); *caliginem ac tenebras et perpetuam noctem* (Curt. 9, 4, 18). In Apuleius on the other hand, we find *nubilam caliginem et perpetuas tenebras* (Met. 3, 16), but also *fumosis tenebris vaporosae caliginis* (Met. 9, 12) and *tenebris inlunae caliginis* (Met. 9, 33).

360, 6-7 quod nocentes – vix fatentur: forms a *polyptoton* with *cui – tenebrarum* (360, 4-6). Englund 1934, 14 cites the clause as an example where *rebus, ut non actiones, ita alia, quae hominum sunt propria, tribuuntur*.

360, 7-8 non servo – est ministeriis: *non servo, non creditur ancillae* resumes *explicantur per ministeria, per conscios* (360, 2) and is continued in *quid internuntiis, quid opus est ministeriis*. Note how the synonymy of both phrases is underscored by their parallel word order and by anaphoric *non* and *quid*.

⁹⁷ Sussman 1987, 221 connects *ut* with *circumdat*, causing *si fas est* to dangle “But here, if possible, is a crime which, in order for the audacity of the human mind to encompass it ”

⁹⁸ In Pers 5, 98-99 (*publica lex hominum naturaue continet hoc fas / ut teneat uentos inicitia debilis actus*) *ut* is explicative

⁹⁹ Becker 1904, 87 calls these collocations, usually connected by *et, que, atque (ac)*, ἐν δὲ αὐτοῖς

¹⁰⁰ As a *genitivus inherentiae* it occurs Fur Ant fr b *omnia noctescunt tenebris caliginis atrae*

360, 8-9 sufficit animus – materque secretum: another *interpretatio*. Note the *hyperbaton omne ... secretum*

360, 8 explicat: *explicat* echoes *explicantur* (360, 2). *Secretum* is metonymous for 'secret affair'. It is tempting to read *explicat secretum* as tongue in cheek, a double entendre it could mean 'reveal the secret'. On the other hand, the expression *explicare secretum* does not occur in this sense before Firm. Mat. Math. 4, 22, 1.

Tosato 1912, 39 quotes this sentence as one example of many in the *DM*, where the verb idiosyncratically agrees with the nearest of several subjects. According to KS 45, this use of the singular, familiar already in classical Latin, is prompted by the position of the verb: 'Steht das Predikat mit rhetorischem Nachdruck vor sämtlichen Subjekten, so schließt es sich meistens an das zunächst stehende Subjekt an'.¹⁰¹

360, 9-10 incestum tanto – plures locuntur: the section ends with a paradoxical quasi-gnomic *sententia*. As in 18, 6 (*plerumque accendit contentio non credentium fama* <m>, 359, 17), a conventional *locus* is given a twist. In common observations on rumour, it is claimed that it gains strength as it is spread,¹⁰² in this case, however, the rumour's dissemination reduces its credibility.

360, 10 quanto et: *et* is awkward; it would have been convenient to adhere to ms. A,¹⁰³ where it was omitted. Yet although rare, there are some instances of adverbial *et* in postposition to *quantus* to be found in TLL s.v. *et* 912, 38-43.¹⁰⁴ Its most fitting sense would be Forcellini *et* 11. 'exprimi potest pro sane, certe, reapse'.

360, 11-12 O misera – fabulas parant: The *exclamatio* in the form of an apostrophe is a *sententia ex inopinato*: contrary to what one would expect, it is not the mother's faults, but her virtues which damage her reputation. The *sententia* is turned gnomic by addressing it to the mother's sex, although it is difficult to imagine that many women would encounter such a dismal fate, it is important to stress that this mother is just one of many exemplary women.

360, 11 O misera condicio sexus: lamenting the powerlessness of women, the phrase echoes 18, 5 *quid tamen facere vultis miserum dolorem, si non habet aliam sexus hic legem* (357, 24-25).¹⁰⁵ and *infirmis huius sexus non potest totam [in]probitatis existimationem debere tantum moribus suis* (358, 7-9).

Exclamations on *miseræ condiciones* first occur in Cicero's works, where they take the *accusativus exclamationis* and comment upon the affairs of the state: *O condicionem miseram non modo administrandae, verum etiam conservandae rei publicae!* (*Catil.* 2, 14), *o condiciones miseras administrandarum provinciarum* (*Flac.* 87). In declamation, the

¹⁰¹ LHS 433 is even more precise: 'Während bei Plt. der Plur. überwiegt, bevorzugt die Dichtung von Ter. ab, die Prosa seit Rhet. Her. den Sing. in den meisten Stellen, besonders bei vorangehendem Predikat'.

¹⁰² See e.g. Verg. A 4, 175 [*fama*] *mobilitate viget viresque acquirit eundo*, Ov. Met. 9, 137-39 *cum fama loquax praecessit ad aures / Deianira tuas, quae veris addere falsa / gaudet, et e minimo sua per mendacia crescit*, Met. 12, 55-58 *confusaque verba volutant / e quibus hi vacuas implent sermonibus aures / hi narrata ferunt alio mensuraque ficti / crescit, et auditis aliquid novus adicit auctor*.

¹⁰³ Though late (15th century), A is the best ms. belonging to γ . It is however inferior to the mss. in α and β . See Dessauer 1898, 34 and Håkanson 1982, VIII-IX.

¹⁰⁴ Apart from *DM* 18, 7, they include Tert. *idol.* 10 extr., *apol.* 1.6, *praescr.* 17, 2, *test. anim.* 4, *Prop. in psalm.* 118, 154.

¹⁰⁵ Cf. 8, 6 *Pudeat vos, o iura legesque quod miserrimi sexus dolorem his clusistis angustis* (156, 5-6).

vocative case is always used, and although *misera condicio* occurs in a quasi-general sense, it refers without exception to the speaker's personal situation, see DeMi 305, 7 *O misera condicio!* *Magna necessitate victa libertas est*, 305, 17 *Misera condicio necessitatis!* 312, 6 *Misera hercule condicio mortalitatis*, DM 7, 2 *o parentum misera condicio* (138, 27), DM 11, 10 *o successuum quoque nostrorum misera condicio!* (230, 9)¹⁰⁶

360, 11-12 cuius ipsae – fabulas parant: echoes 18, 1 *mulier infelicissimi pudoris* (354, 5) *Ipse* here has an almost adversative value, which is not reflected in any (sub)section of *ipse* in OLD or Forcellini TLL is more helpful, devoting a section (345, 80 – 346, 23) to *id quod praeter opinionem fit, mirum absurdum est (hic illic in paradoxo inopinato sim)*

360, 12-16 cur ista – numquid adamavit: Gunderson 2003, 206 assumes that this *sermocinatio* is meant to represent the father's reasoning and regards it as the beginning of the paternal discourse, which in his opinion banishes the possibility of simple, i.e. uncorrupted love. He comments: 'With its *numquid* the question "expects" a negative answer, but, tellingly, the father cannot answer the question for himself in the negative ()'. The father's answer to the question to which one must say "no" is "yes." He has affirmed the unaffirmable. He has made positive a primary act of negation.'

In view of the preceding paragraph, which discusses the common origin of rumours, it would make more sense, however, to regard the *sermocinatio* as one in which the mother's advocate pretends to imagine the kind of gossip that could have circulated. What he describes is in fact hardly matter for gossip, but rather the behaviour of a supremely chaste, devoted and austere *matrona* and mother. The concluding question *numquid adamavit* is deliberately made to appear quite absurd.

360, 12-14 cur ista – ergo desiderat: the triple *interrogatio*, worked into a climax, adequately portrays the way a rumour comes into being and becomes ever more persistent.

360, 12-13 cur ista nullis in publicum gaudet egressibus: note the *hyperbaton nullis egressibus*, in 18, 3 it is explained that the mother does enjoy going out with her son: *omnis igitur miserae sermo cum filio, omnis in publicum pariter egressus gaudebat etiam, quod laudandus occursibus, quod omni frequentia coetuque conspicuus populo iam ipse fateretur, quod plus amaretur a matre* (356, 12-15).

360, 13 adversum omnes: according to TLL s.v. *adversus* 850, 54-82, prepositional *adversum* instead of *adversus* is mainly found in drama, Cato's works and the fragments of historians collected by Gellius. In the *DM*, the use of *adversus* preponderates (25 instances), but there is a second instance of *adversum* in 3, 5 (46, 22).

360, 13-14 tam rigida conversatio, tam severus affectus: *synonymia*, enhanced by the anaphora of *tam*.

360, 14 nihil concupiscit, nihil ergo desiderat: another instance of *synonymia*, this time reinforced by anaphoric *nihil*.

360, 15-16 filius possidet – iactatio est: an emphatic *tricolon* explains the mother's inclination to withdraw: she devotes herself entirely to her son. Of course it has

¹⁰⁶ And compare 14, 12 *pro miseranda condicio! rideor ubique* (300, 16).

already been explained in the *narratio* that it was the father's harshness which brought mother and son so close together (18, 3 [356, 6-15])

The tricolon takes the form of a *disunctio*, which receives the more coherence from anaphoric *filius* and synonymous *cuncta, universos, tota*

Although he does not cite *tota iactatio*, this use of *totus* is what Von Morawski 1881, 11 refers to when he remarks that the adjective sometimes occurs with nouns "wenn gesagt werden soll, dass etwas im gesteigerten, vollen Masse, oder mit dem grosstmöglichen Kraftaufwand geschieht"¹⁰⁷

360, 16 rogo, numquid adamavit: the inference is anything but obvious, and the question has in fact already been anticipated in the *narratio* *filium si non ames, videatur tibi mater adamasse* (18, 4 [356, 18-19]) In 18, 10 moreover, all mothers are attributed an all-consuming love for their children *Me quidem, marite, si quis interroget, omnes matres liberos suos, tamquam adamaverint, amant videbis oculos numquam a facie vultuque deflectere, comere caput habitumque componere, suspirare cum recesserit, exultare, cum venerit, conserere manus, pendere cervicibus, non o<s>culis, non conloquuis, non praesentiae voluptate satiari hoc est ergo <in> tam nefanda suspicione saevissimum incestum non potest fingi, nisi de optima matre* (363, 14-21)

Numquid, because it was felt to be more forceful than simple *num*, began to appear in indirect questions from Seneca (*Ep* 70, 5) onwards and in later Latin supplanted *num* (LHS 542-43) To account for the indicative *adamavit*, however, it may be more helpful to regard the sentence as a loose paratactic construction characteristic of spoken Latin¹⁰⁸

360, 17-23 mihi credite – neglegens reprehendetur: In a kind of *subiectio*, the advocate refutes the suspicions which the mother's demeanour could have given rise to If two people are guilty of such a heinous crime as incest, they will conduct their affair in such a secretive manner that no one will find out about it Therefore, if any rumour circulates about them, it can never be based on reliable evidence The argument is a complement of 360, 1-10, where the indiscreet behaviour of 'ordinary' adulterers is contrasted with the utmost secrecy observed by incestuous lovers

If taken at face value, the argument is based on a paradox as a rule, an illicit affair is brought to light by the indiscreet behaviour of the parties involved Relationships between mothers and sons, on the other hand, are characterized by extreme and explicit affection, while aloofness should be considered suspicious

360, 17 mihi credite: this expression in the *DM* signals an eye-opener the speaker is going to disprove his audience's expectations, which may have been dictated either by his opponent or by their own system of opinions and beliefs See also 12, 21 *Sed mihi credite color iste patrocini est et diu in saturo otio cogitata defensio* (256, 5-6), 13, 6 *credite mihi, iudices difficilior est venenum invenire quam inimicum* (272, 6-7), 13, 10 *credite mihi, maior lites quaestio est* (276, 12) It may have been supplied by Cicero, who uses it in exactly the same way e.g. *Ver* 1, 13, *Catil* 2, 15, *Phil* 6, 6

¹⁰⁷ Von Morawski is quoted by Zvěřina (1883 353) who subsequently discusses the development of this phenomenon in the French language

¹⁰⁸ As Englund 1934, 65 tentatively suggests

360, 17 simplicitas: *simplicitas* is a crucial concept in *DM* 18 and 19. It stands for openness, innocence, perhaps even naïveté in the love relationships between relatives (*pietas*). Gunderson 2003, 201-02 rightly remarks: ‘Sexual simplicity is the cornerstone of the mother’s defence and her advocate invokes various versions of *simplicitas* in championing her. (...) Without a simple view of human relations, the world dissolves into suspicions of incest that, in the harm they produce, are nearly as bad as actual incestuous acts. One longs for simplicity. Moreover, simplicity provides its own defence. If the mother and son had had a tryst, they would have hidden their affection rather than flaunting it: *nefas* is not so simple.’

360, 17 da, ut sit: LHS does not discuss *dare ut*; KS (224-25) only when including *dare* in “Verben des Zulassens, Zugestehens, Erlaubens, Nachgebens, Gewährens, Duldens.” In this context, one could think of e.g. Sil. 12, 644-45 *da, pater, ut sacro Libys inter proelia telo / concidat*; Mart. 4, 27, 6 *da, caesar, tanto tu magis, ut doleat*. It is easy to see how the sense of ‘allow something to happen’ could develop into ‘allow something to happen in one’s imagination.’¹⁰⁹ But only TLL s.v. *do* has a minuscule entry (1691, 4-6) *da i.q. finge, fac* and cites Quint. *Inst.* 12, 1, 43 (*da nunc, ut crimine manifesto prematur dux bonus et sine quo vincere hostem civitas non possit*); Alc. Avit. *hom.* 8, 4; cf. Hyg. *mun. castr.* 37 *nunc si datur, ut mille hominibus ... locus adsignetur*. Where *dare* in the sense of ‘suppose’ occurs in the *DM*, the following sentences usually contain what KS 42-43 terms a prospective *futurum*, ‘das angibt, was sich nach Lage der Dinge voraussehen oder berechnen läßt.’¹¹⁰ Apart from the aforementioned constructions with *ut*, we find 8, 9 *da bonum patrem: non praeponderabit alterutrum...* (159, 23-24); 18, 8 *da bonum patrem, bonum maritum; dicturum me putas, non credet?* (361, 5-6).¹¹¹

360, 18 haec ... conscientia: the *hyperbaton* reflects the closeness required for a love affair between mother and son.

Thome 1993, 370-77 gives a clear and sound survey of the development of the various senses of *consciūs* and *conscientia*, all of which are represented in *DM* 18-19. The adjective *consciūs* was originally objective, i.e. it related to the knowledge of an object; it had the simple meaning of “*qui cum alio aliquid scit*.” The object of this knowledge could be a crime, as a result of which *consciūs* could take the meaning of “accomplice”: see 18, 6 *consciūs* (359, 5); 18, 7 *consciūs* (360, 2); 18, 12 *consciūs* (365, 7). The awareness of one’s own wicked deeds yields the sense of subjective feelings of guilt, first attested in Pl. *Most.* 543-44¹¹² but made fully explicit for the first time in *Rhet. Her.* 2, 29: *nocens, consciūs sui peccati*.

The noun *conscientia* occurs for the first time in *Rhet. Her.* 2, 8, where it is used twice – both in the objective and in the subjective-reflective sense – and has a clearly negative ring. We find it here; further 18, 9 (361, 17); 19, 7 (379, 12); 19, 9 (381, 11). Cicero, next, prefers *conscientia* over *consciūs*. He uses the word as many as 80 times and raises it to a

¹⁰⁹ Neither OLD nor L&S nor Forc. devote any space to *dare* in this sense.

¹¹⁰ KS 142-43 distinguishes the prospective future from the potential future tense, not so LHS, where only the ‘Futurum der Wahrscheinlichkeit’ is discussed (311).

¹¹¹ Prospective future also Quint. *Inst.* 12, 1, 43, differently *DM* 17, 5 *date, iudices, patrem, qui filium mori nolit et credit, quis habeat, iudices, dicenti fidem?* (336, 14-15).

¹¹² *quam timeo miser: / nihil est miserius quam animus hominis consciūs*

higher level: *conscientia* is given the added sense of a guiding principle for good and wicked deeds.¹¹³ In this sense, it occurs *DM* 18, 1 (354, 7); 19, 1 (372, 20); 19, 2 (373, 14); 19, 14 (386, 25 and 387, 5). For Seneca, finally, *conscientia* becomes an independent object of philosophical reflection; the stoic philosopher is the first author to differentiate explicitly the various senses of the term.¹¹⁴

360, 18-22 parcent osculis – adfectare gravitatem: a *congeries* consisting of cola which increase in length and culminate in a somewhat pompous personification. The wording is reminiscent of 18, 3 *rarus hic namque ad oscula, difficilis amplexibus* (356, 9-10) and 19, 3 *inde rarus in publico, et tamquam patris occursus, tamquam civitatis oravitaret* (374, 3-4); this creates a certain tension, because in both 18, 3 and 19, 3, the distance is caused by the father's cold and cruel behaviour.

360, 18-19 parcent osculis palam: note the alliteration of p.

360, 19-20 omnis familiaritas substringetur in publico: Hammer 1893, 41 rightly considers *substringere* in this sense ('einschränken') an unusual expression. In its literal sense ('do up, tie up'), the verb is not uncommon, but figuratively, it hardly ever occurs. We only find it Hor. *S.* 2, 5, 95 *aurem substringe loquaci* ('prick up your ears') and, in the sense favoured by our author ('suppress'), in Quint. *Inst.* 10, 5, 4 *effusa substringere*; Iuv. 6, 432-33 *ergo maritus / nauseat atque oculis bilem substringit operis*.

Tosato 1912, 65 calls attention to *in publico* as a nominalized adjective with an adverbial value.¹¹⁵ The expression is however anything but unusual and occurs already in e.g. Cic. *Flac.* 21 and *Tusc.* 4, 44.

360, 20 sermones, occursus: maybe the collocation was inspired by the paranoid atmosphere evoked in Tac. *Ann.* 15, 58, 3 *fortuitus sermo et subiti occursus, si convivium, si spectaculum simul inissent, pro crimine accipi*.

360, 21 servulis: In the *DM*, forms of *servulus* occur more frequently than those of *servus* (19 vs. 16 times); the two words are used completely synonymously. Deratani 1927, 294 interprets the frequent use of *servulus* as another symptom of the influence of african/vernacular Latin. See also 18, 17 *lectulus* (370, 17).

360, 21 maximi sceleris ardor: the phrase *ardor sceleris*, maybe inspired by such collocations as *ardet furore et scelere* (Cic. *Att.* 10, 4, 2) or *DM* 12, 26 *ardentia scelera* (261, 10), is rather contrived. It is a personification (Englund 1934, 5) and one of many instances where an abstract noun is modified not by an adjective, but by another noun in the genitive case. See for more examples e.g. Tosato 1912, 26 and Englund 1934, 3-6.

360, 21-22 captabit adfectare gravitatem: according to Von Morawski 1881, 10 *captare* + infinitive was peculiar to poetry, until Livius introduced it in Latin prose (cf. KS 674). *Adfectare* in the sense of "feign" is first found Sen. *Suas.* 3, 4 and *Contr.* 10 *praef.* 4 (See TLL s.v. *affecto* 1184, 6-31).

360, 22 elige, parricida, quod voles: in spite of the close affinity between subjunctive mood and future tense, it is difficult precisely to account for future *voles*

¹¹³ For the first time in *Clu* 159

¹¹⁴ An unusual sense of *conscius* is found in *DM* 19, 7 *quod temporum vices, siderum cursus et profunda naturae velut conscia* ("deliberate") *ratione sanxerunt* (378, 18-19)

¹¹⁵ See also De Vico 1962, 38, who merely remarks that *publico* is neuter singular.

instead of subjunctive *velis*. KS 146 explains that ‘Wenn im Hauptsatze der *Imperativus Praesentis* steht, so kann, da dieser sowohl auf die Gegenwart als auf die Zukunft bezogen werden kann, im Nebensatze entweder das Präsens oder das Futur stehen.’ Löfstedt 1933, 127-129 is more specific: under the heading of ‘Futurum, unlogisch, von Verba des Wollens,’ he plausibly explains that in these cases the aspect of futurity, which actually belongs to the object of the verb, is transferred to the verb itself. Some other examples from the *DM* are 1, 16 *elige, utrum voles* (18, 12); 5, 14 *exaggera, quantum voles* (99, 1); *iacta, quantum voles* (108, 6-7); 18, 3 *coniungat, quantum volet* (355, 12); 18, 12 *interroget quisque, quod volet* (366, 12); 18, 14 *eligas utrum voles* (368, 16); 19, 16 *quantum volet, laceret, vel occidat* (388, 14).

Here, the command introduces a *dilemma*; this is also the case in 1, 16 (*si scivit se esse heredem, amare patrem debuit; si ignoravit, non habuit, quod speraret ex patris morte*, 18, 12-14) and 18, 14 (*aut tormenta damnes necesse est aut silentium*, 368, 16-17).¹¹⁶

360, 22-23 incestum diligens suspectum non erit, neglegens deprehendetur: Englund 1934, 7 regards this as one of the examples where *rebus, ut non actiones, ita alia, quae hominum sunt propria, tribuuntur*; this may be true, but I would rather consider *incestum* metonymous for the people who commit it.

Becker 1904, 76 n.1 calls attention to the *paronomasia* of *elige – diligens – neglegens*. In fact, this seems to be one of the few instances in *DM* 18-19 where the author is carried away by his love for a glorious form to such an extent that his message suffers from it. He obviously cannot resist inserting a pseudo-gnomic *sententia*, which forms no logical conclusion to, and in fact undermines his argument. He has contended just now that an incestuous couple will observe indifference towards each other in the company of third parties, so it is true that *incestum diligens suspectum non erit*, unless anyone would find it reasonable that coldness automatically rouses suspicions. But what is *incestum neglegens*? Within the context of the present argument, one can only think of an overtly affectionate relationship between parent and child. But this, the advocate has already argued, is always a sign of perfect innocence.

Burman 1720, 355 and Lehnert 1905, 326 follow the majority of mss. and have *deprehenditur* instead of *deprehendetur*, which may be considered the more elegant solution with regard to rhythm. Yet Håkanson is right to prefer *deprehendetur* (which can be found in the mss. of family β), because it matches *suspectum erit*. Both are gnomic *future*, i.e. they help express what must be passed off as a general truth (KS 143, LHS 310).

360, 24 – 361, 1 Sed quid – facinus unius: now that the credibility of the rumour has been thoroughly impugned, the advocate moves on to its origin by means of an *interrogatio*. It is of a type commended by Quintilian: *Ceterum et interrogandi se ipsum et respondendi sibi solent esse non ingratae vices* (*Inst.* 9, 2, 14). The answer is still somewhat indirect, but the father will finally be overtly accused of launching the rumour in 361, 4-5. Numerous insinuations have already prepared the way for this accusation: 18, 4 *Questurum nunc me, iudices, putatis de licentia sermonis humani? ego vero iuxta hunc patrem non accuso rumorem. quae materia fabulae tam impudentis, qui fuerit auctor, iste*

¹¹⁶ Compare also *DeMi* 310, 7 *vel elige quod voles, accusator, utique ex duobus: nam, si valuerit illud fuisse sententiam, alterum <non> est pro sententia*

probavit, qui credidit (356, 20-23); 18, 5 *omnis in feminas venit maritorum praedicatione reverentia, omnes sermones originem de vestris pectoribus accipiunt* (358, 9-11); 18, 6 *rogo, iudices, utrum credibilis putatis incestum de matre an de rumore mendacium? rem impudentissimam populus loquendo fecerat, nisi pater credidisset* (359, 7-9); *adfirmationem sumit ex homine quicquid non habet ex veritate* (359, 14-15). Besides, the very fact that rumour is so far-fetched makes it more credible that it was thought up by the father.

360, 24 sic ago, tamquam: this expression indicates that the author is concerned with an argument derived from the *locus comparationis a minore ad maius*. In a kind of argument *a fortiori*, it uses Aristotle's topic ἐκ τοῦ μᾶλλον καὶ ἥττον (*Rhet.* 2, 23, 4): if it is already bad that a rumour was going around (ἥττον), so much the worse that it was spread by the father (μᾶλλον). See also Quint. *Inst.* 5, 10, 87-93 (esp. 87-88) and Lausberg 395-97 (esp. 397); compare Cic. *Inv.* 1, 41 (*adiunctum negotio*).

Similar reasonings in *DM* 1, 6 *Et primum sic agam, tamquam iuvenis habeat oculos* (but he is blind, 6, 8); 5, 12 *Blandiar, iudices, paulisper calamitatibus meis, et sic agam, tamquam apud piratas invenerim utrumque sanum* (but one of the two sons he is talking about was dying, 96, 21-22); 6, 19 *Et ego sic ago, tamquam hoc tantum filius propter me fecerit* (but the son also did it for his mother, who now refuses to bury his corpse, 130, 21-22); 14, 8 *Volo, iudices, sic apud vos paulisper agere, tamquam in hoc me adfectu propinqui amicique castigent* (but in fact, no one objected, 295, 17 – 296, 2).

360, 24 inauditum, incredibile: the collocation is familiar from other, esp. rhetorical authors (Cic. *Dom.* 59; *Balb.* 13; *Sest.* 145; Curt. 9, 5, 1; Quint. *Inst.* 7, 6, 11), but expresses moral indignation only here and in *DM* 7, 2 (138, 13).

360, 25 – 361, 2 teneo – an credat: Håkanson's reading is to be preferred to that of Burman, 1720, 356 who has *Teneo in hoc sermone facinus unius mali mariti. Non interest incestum de uxore fingat, an credat*. Lehnert 1905, 327 also places a full stop after *mariti*.¹¹⁷ Reitzenstein 1909, 62 rightly proposes *Teneo in hoc sermone facinus unius. Mali mariti non interest, incestum de uxore fingat an credat* – but for the wrong reasons, asserting that in the earlier reading 'das folgende *interest* beziehungslos [wird] und der Satz unverständlich; auch ist zu *populus* der einzig richtige Gegensatz nur *unius*.'

Helm 1911, 380 defends Lehnert's reading and brushes Reitzenstein's objections aside. He is not bothered by the contrast of *populus* and *unius mali mariti*, alluding to a similar antithesis in 18, 6: *rem impudentissimam populus loquendo fecerat, nisi pater credidisset* (359, 8-9). *Non interest*, he further claims, 'heißt 'es macht keinen Unterschied', der Begriff des Interesses liegt hier fern; eine Bestimmung im Gen. kann deshalb nicht stehen.' It is true that *interest* ('it matters') is often used independently: in the *DM* alone we find it eight times.¹¹⁸ *Interest* in this sense does not, however, exclude the use of a complement in the genitive, as Håkanson 1974, 144 rightly claims in support of Reitzenstein's reading. He quotes in evidence *DM* 17, 19 *nec interest rigoris, quaedam patiaris an temptes* (351, 15-

¹¹⁷ Tosato 1912, 76, with reference to Lehnert's reading of the text, remarks upon the use of the subjunctive after *interest*. However, this subjunctive is occasioned by <utrum> *fingat an credat* an indirect question. For the absence of *utrum* (or *-ne*) in alternative questions see KS 2, 524-25, LHS 544-45.

¹¹⁸ Namely, in 2, 18 (36, 16); 8, 14 (165, 18); 9, 19 (194, 4); 11, 6 (226, 2); 12, 15 (247, 20); 13, 6 (272, 2); 14, 9 (297, 13); 16, 7 (326, 5).

16) and proves that the genitive in these cases has a different meaning: it does not signify 'it is in the interest of X,' but 'it matters where X is concerned.'¹¹⁹ Håkanson supports his (slender) evidence with the remark that *facinus unius* makes a better clausula (with *homoiototeuton*) than Lehnert's triple trochee. Yet more to the point seems to me the fact that Reitzenstein's punctuation yields a (pseudo-)gnomic *sententia* with a moral calibre (*mali mariti non interest, incestum de uxore fingat an credat*) of exactly the type that occurs so frequently in *DM* 18 and 19.

360, 25 teneo: in the sense of 'catch (out)' (OLD 6). Cf. Cic. *Verr.* 3, 152 *manifesto tenetur avaritia cupiditas hominis, scelus improbitas audacia*.

361, 1-2 mali mariti – fingat an credat: in this pseudo-gnomic *sententia*, the advocate asserts that it does not matter whether a bad husband thinks up a rumour about incest or merely believes it on hearing it. In a sense, the advocate is right, for the consequences would be the same in both cases. Yet the suggestion that it was the father with whom the rumour originated, returns time and again as a means to further discredit him. A bit further on (361, 5-7), it is stated how a good husband (and father) would react to the rumour: he would not so much as refuse to believe it, for he would not even know of its existence.

361, 1 incestum de uxore fingat an credat: "de fällt auf," (Ritter 1967², 67). For *credere de*, see comm. at 18, 6 *credibilis de* (358, 7-8); *fingere de* ('make up about' rather than 'make from') occurs only infrequently in classical Latin, but see e.g. Sen. *Contr.* 5, 4 (exc.) *parricidium de patre finxit, de fratre commisit*; Quint. *Inst.* 8, 4, 25 *M. Tullius de M. Antoni luxuria tantum fingere saltem potuisset quantum ostendit dicendo* sqq.; Tac. *Hist.* 4, 54, 1 *paria de Britannia fingeantur*; *DM* 17, 10 *si de nobis aliqua mentiantur, fingant* (341, 11-12); 18, 10 *nihil de se fingi, nihil credant posse narrari* (363, 11-12); *incestum non potest fingi, nisi de optima matre* (363, 20-21).

361, 2-3 quid? iste ergo – rumor erubuit: this sentence is problematic and self-contradictory if *iste* is not taken to refer to *rumor*. A number of suggestions have been made to clear up the text:

Reitzenstein 1909, 62 n. 4 proposes to read *iste sermo* instead of *iste ergo*: 'Da sich *iste* nicht auf *maritus* beziehen kann, müßte man es mit *populus* verbinden; dadurch aber wird bei der weiten Entfernung die Rede unklar und die Responsion der Sätze zerstört; sie verlängert ein Synonymon zu *rumor*.' Håkanson 1974, 144 on the contrary believes that '*iste=pater* ist gar nicht unklar, und derselbe Gedanke kehrt 329, 19¹²⁰ wieder: *ita tu non times monstri huius agitare secretum*.' He adds that Helm 1911 does not comment upon Reitzenstein's suggestion; this is true, probably because Helm (see p. 337) confines his remarks to issues on which he disagrees with Reitzenstein.

¹¹⁹ Two other instances adduced by Håkanson cut no ice. In *DM* 8, 7 *mali tantum patris interest, ut matri minus liceat* (158, 7-8), *interest* clearly means "it is in the interest of" (Cf. Sussman 1987, 99 'All that matters to a bad father ...'). And Calp. *Decl.* 26 *non interest orbitas, uno me vulnere feriat an pluribus* becomes *non interest, orbitas, uno me vulnere feriat*. In his own 1978 Teubner edition, followed by Sussman 1994, who remarks 'a strained apostrophe, in English at least' (178). OLD 6b is more helpful. Apart from *DM* 17, 19 it quotes *DeMi* 350, 9 *si nihil interest mortis, nihil interest criminis*.

¹²⁰ *DM* 18, 11 (364, 1-2), which I do not consider a valid parallel.

However, if we follow Håkanson, things do become unclear. In fact, if *iste* refers to the father, the sentence contains a contradiction: *iste ergo non timuit tam nefandae rei famam* would mean 'Well then, didn't the man before us fear the notoriety of such a depraved business' (Sussman 1987, 221-22) and thereby suggest that the father thought up the rumour. But in what follows, *nec ad aures patris pervenire rumor erubuit* ('and wasn't the rumour embarrassed to reach the father's ears?'), one can only conclude that it is assumed that the rumour originated somewhere within the community. Not only does the sentence become contradictory, but the transition to the rest of the paragraph, starting with resolute *dissimules licet*, is devoid of logic and consistence.

A different interpretation is therefore needed, the key to which lies in *quid*. Whenever *quid?* as a bare question occurs in the *DM*, it introduces false assumptions attributed to the speaker's opponent. These are usually phrased as a question, mockingly, even sarcastically, and briskly refuted immediately afterwards.¹²¹ The two phrases in 361, 2-3 are therefore not to be taken at face-value and rebutted in 361, 3-5 *dissimules licet, a te malignitas accepit ortum, te secutus est, quisquis hoc ausus est narrare, proferre*.

If *iste* absolutely has to refer to the father, and the contradiction between both phrases is to be undone, one should posit a disjunctive conjunction to replace *nec*, which would make the sentence run parallel with the one preceding it. *Iste ergo non timuit tam nefandae rei famam* would refer to (*incestum de uxore*) *finat*, and *ad aures patris pervenire rumor* <non> *erubuit* to *credat*. The transition to the next sentence would be smoother, for *dissimules licet* etc. would effectively rule out the two false assumptions.

But there is even more to say for Reitzenstein's suggestion that *iste* refers to the rumour. If *rumor* is the subject of both clauses, this yields a doublet in which one and the same situation is described from slightly different angles, precisely of the type which our author favours above all. Unfortunately this interpretation, too, calls for interference with the text, unless one assumes that *iste ... rumor* is a spectacular *hyperbaton*.¹²² Otherwise, one must either change *ergo* to *sermo* on Reitzenstein's suggestion, or delete *iste*, so that *rumor* serves as the deferred subject of both clauses.

361, 3 ad aures ... pervenire: *ad aures pervenire* is a common idiomatic expression, occurring in Latin prose from Cicero (e.g. *Verr.* 3, 132 and 4, 64) onwards.

361, 3 pervenire rumor erubuit: for *erubesco* + bare infinitive see TLL s.v. *erubesco* 822, 66 – 823, 9. This metaphorical sense of the verb (*fere i.q. vereri, cum quis aliquid facere dubitet*) occurs for the first time in Verg. *Ecl.* 6, 1; Livius introduces it in Roman prose (Liv. 10, 8,5; 42, 41, 2; see Becker 1904, 16 and 56). Englund 1934, 7 rightly states that *rumor* is personified; for another personification in connection with *erubescere* see *DM* 18, 15 (*temporum pudor*, 369, 11-12). It can be said that both *rumor* and *temporum pudor* refer to members of the community; therefore the personifications may be inspired

¹²¹ See *DM* 4, 20 (82, 17 ff.), 10, 16 (215, 12 ff.); 13, 4 (269, 3 ff.), 15, 9 (312, 12 ff.), 15, 13 (316, 5 ff.); 17, 10 (341, 14). Only 8, 17 (168, 1) is a doubtful case, but this is due to textual problems – among other things, *quid si* should perhaps be read as *quod si* (Håkanson 1974, 75-76).

¹²² In the reading of M. *ergo iste*, it is slightly more modest. But though slender, the possibility ought not to be ruled out altogether. We find, for example, relative clauses separating nouns and their demonstrative pronouns: *DM* 11, 11 *iste, quo pro liberts irascor, affectus* (230, 18-19), 16, 8 *iste, qui se citra filium consumpsit, affectus* (327, 22); 19, 15 *ille, quo redditur anima, singultus* (387, 24)

by such expressions as *DM* 11, 10 *erubescitis circa me populi* (230, 8-9) and 19, 8 *ut civitas stupeat, ut erubescat* (380, 17-18).

361, 3-7 dissimules licet – esse rumorem: a fierce apostrophe, in which the advocate at last openly accuses the father of launching the rumour, and reproaches him for it.

361, 3 dissimules licet: originally an impersonal verb followed by a paratactic subjunctive, *licet* came to be regarded more and more as a concessive conjunction (KS 443-44; LHS 605; Tosato 1912, 76). As such, it occurs often in the *DM*. In *DM* 18-19 alone we find 18, 1 *licet parricida dissimulare videatur* (353, 17-18); 19, 5 *licet comprimantur exclamationes, ora claudantur* (377, 2-3); 19, 8 *uras licet, durabo, perferam* (380, 6-7). *Licet dissimules* is a brief, effective phrase to signal that one sees through one's opponent and is about to expose him. It is not surprising, therefore, that it occurs in various declamations: *DeMi* 258, 12; *DM* 5, 3 (87, 23); 5, 5 (89, 6); 7, 11 (148, 15), as well as (playfully) *Ov. Pont.* 1, 6,3 *dissimules metuasque licet, Graecine, fateri*.¹²³

361, 4 a te ... te: the aggressive *polyptoton* emphasizes the father's guilt.

361, 4 malignitas: a rare noun, which is alien to classical Latin. Before, it occurs once in Plautus (*Capt.* 465), but seems peculiar to Silver Latin prose. It is found relatively often in Livius, Valerius Maximus, Seneca *minor*, Tacitus, Plinius *minor* and, of course, the *DM*. In the latter, it usually refers metonymously, or by means of a *hendiadys*, to malicious gossip: see *DM* 11, 6 (*malignitatum sermonumque*, 226, 1); 15, 2 (303, 2); 18, 3 (355, 14); 18, 16 (*sermonum malignitate*, 370, 3-4); 19, 4 *eripui malignitati, abstuli famae*, 376, 2); 19, 10 (382, 2).

361, 4 accipit ortum: the common expression is *originem ducere* (see e.g. *Hor. Carm.* 3, 17, 5; *Quint. Inst.* 1, 5, 57; 1, 6, 38; *Apul. Pl.* 1, 1; 1, 6). The variant *ortum accipere* is peculiar to the *DM*. We also find it 14, 6 (*accipient a te desideria nostra ortum, finem, modum*, 294, 6-7) and with *sumere* in 11, 6 (*quid interest, unde sumpserit rumor ortum?* 226, 2).¹²⁴

361, 5 narrare, proferre: the terms are practically synonymous, though *proferre* perhaps puts emphasis not just on the telling, but on the spreading of the rumour (TLL s.v. *profero* 1684, 54 – 1685, 3).¹²⁵

361, 5-6 da bonum patrem, bonum maritum: For *da* in the sense of *finge, fac*, see comm. at 18, 7 *da, ut sit* (360, 17). Ritter 1967², 66-67 points out two parallels: *DM* 8, 9 *inter duos liberos pari desperatione languentes da bonum patrem: non praeponderabit alterutrum, non eliget, sed, ut incertum orbitatis evadat, ipse morietur* (159, 23-25); 17, 5 *date, iudices, patrem, qui filium mori nolit et credit; quis habeat, iudices, dicenti fidem? venenum filii, quod invenerat pater, non ille potius effudit; stetit quoniam immo intrepidus, adrogans iuxta orbitatem, quam videbat, et mihi mortem, quam promiseram, quam minabar, ingressus* (336, 14-19). Both here and in the instances adduced by Ritter, the glaring contrast is exposed between what the fathers ought to have done and what they actually did.

¹²³ Slightly differently *DM* 16, 8 (328, 1), where *dissimules* has a direct object

¹²⁴ Compare also 18, 5 *originem de vestris pectoribus accipiunt* (358, 11)

¹²⁵ Compare also 18, 7 *adulteria proferantur in fabulas* (360, 1-2).

In this *interpretatio* with its emphatic *repetitio* of *bonum*, the father is referred to, and reproached for his conduct, in his roles of both husband and father. A similar device we find 18, 3 *rigidus pater, asper maritus* (356, 7-8); 18, 12 *nihil invenis maritus, dominus, pater?* (365, 9-10); 18, 16 *modestiam mariti pariter et patris accipite* (370, 5-6). The father, on the other hand, uses his various roles to emphasize the grave responsibility he has taken upon his shoulders: 19, 6 *dicturum me putas: 'parce saeculo, parce marito, parce patri?'* (377, 14-15); 19, 7 *quanto silentium gravius est in sene, verecundius in marito, sanctius in patre* (379, 14-16).

361, 6-7 dicturum me putas, non credet?¹²⁶ **nesciet esse rumorem:** a good husband and father will have such confidence in his wife and son that it will never occur to him that they may be the subject of gossip. This statement is communicated by means of a *subiectio*; with the answer that the advocate supplies to his own question, he means to exceed his addressee's expectations (paradox: see Quint. *Inst.* 9, 2, 22-23). Similar *subiectiones* we find in *DM* 2, 23 *vadit rapto patre iuvenis per ardentis crescentesque flammis, dicturum me putatis, ut evadat, ut fugiat? properat miser, ut revertatur!* (40, 12-14); 7, 10 *dicturum nunc putatis magis interesse securitatis, ut quis facinus sibi tantummodo credat, et id tutius esse inimico patr<ant>e quam conscio? plus est quod affirmo: filium in conspectu patris occidere sic operae pretium est, si illud ipse facias* (147, 16-20); 8, 9 *dicturum me putas: 'non credo renuntiantibus, non accedo, cum deserunt relinquuntque languentes?'* ego vero medicis non credo sperantibus (160, 5-8); 16, 7 *dicturum me putas: 'hoc expectat alligatus?'* expectat totum immo genus hominum (326, 14-16); 19, 6 *dicturum me putas: 'parce saeculo, parce marito, parce patri?'* tu vero parce illi, qui occisus est (377, 14-16).¹²⁷

361, 7 ite nunc ... et adhuc dubitate: *ite nunc* is an expression which, in Roman declamation, typically introduces phrases that sneeringly dare the audience to reject the speaker's point of view in the face of the evidence just adduced. Apart from this instance, we find it Sen. *Contr.* 1 *prae*f. 10 *ite nunc et in istis vulsis atque expolitibus et nusquam nisi in libidine viris quaerite oratores*; *DeMi* 252, 24 *Ite nunc et excludite campo divites et corrumpi sacra vetate, de ambitu leges conscribite: comitia nostra decem milibus rapta sunt atque translata*; 314, 17: *Ite nunc et dicite: 'demens erat cum confessus est'*; 314, 20 *Ite nunc et paribus absolvite*; *DM* 8, 20 *ite nunc et quaerite, an potuerit medico sanante vivere, qui tamdiu vixit, dum occiditur* (172, 8-10); 10, 7 *ite nunc et putate vana fuisse matris solacia; filium ista si cogitationibus et inani persuasione vidisset, adhuc videret* (206, 5-7). In the singular, the phrase challenges and defies the speaker's opponent. See Sen. *Contr.* 7, 2, 2 *I nunc et nega te parricidam*; *DeMi* 312, 8 *i nunc et nega, i nunc et alienam pecuniam converte in tuas cupiditates*; *DM* 18, 12 *nihil invenis maritus, dominus, pater? i nunc et dic scisse rumorem!* (365, 9-10).¹²⁸

¹²⁶ Sussman's translation 'do you think I will say this to him and will he refuse to believe it?' (1987, 222) misses the point

¹²⁷ Compare also Sen. *Contr.* 10, 2, 13 *Quid putatis me dicturum? fortiolem me visum? Falsum est, cum hoc quoque, quod ego fortis eram, istius esset*

¹²⁸ Contrary to the plural, the expression in the singular is not confined to declamation, though mainly used by authors who enjoyed a rhetorical education. See e.g. *Ov. Pont.* 1, 3, 61; *Ars* 2, 222 (*i nunc et dubita ferre, quod ille tulit*); *Ep.* 3, 26, 17, 57; *Sen. Ben.* 6, 35, 5; *Dial.* 10, 12, 8; 12, 6, 8; 12, 10, 10; *Ep.* 88, 37, *Nat.* 1, 16, 3, *Iuv.* 6, 310

361, 8 cuius pater agit causam: an unconventional personification. In *DM* 17, 2 we find *integritatis agere causam* (333, 9), but there, *integritas* is used metonymously for the accused.

(*ī nunc et dubita qua sorbeat aera sanna / Maura, Pudicitiae veterem cum praeterit aram*); 10, 310, 12, 57. See the discussion of irony in LHS 837, where it is remarked that "auch hier wurde manches mechanisiert, so ist etwa *ī* (*nunc*) mit Imperativ seit. Verg. fast immer ironisch, z.B. Mart. 10, 96, 13 *ī, cole nunc reges*."

Speciosus fuit

Argumentatio (refutatio) 18, 9-10 (361, 9 – 363, 21)

The second argument in this *refutatio*, which also takes the form of an *anticipatio* or more precisely *anthypophora*,¹²⁹ concerns a potential *color* for the father the son was good-looking, which (we are meant to infer) made the mother fall in love with him. The mother's advocate uses several counterarguments, most of which are introduced with the *anticipatio* '*speciosus fuit*'. They are the following

361, 9-10 '*Speciosus*,' – *in filio* there is nothing wrong with good looks in themselves

361, 10-19 '*speciosus fuit*' – *sibi credat* it is absurd to assume that there is a connection between good looks and incest. Incest is the sort of crime which presupposes a criminal *ante acta vita*

361, 19 – 362, 13 '*speciosus fuit*' – *non possit* children always look beautiful in the eyes of their mothers, because looks do not count with them. A mother loves her son from the moment of his birth, this kind of love is incompatible with sexual desire

362, 14 – 363, 2 *quid, quod – potest pater* if it is improbable that a mother falls in love with her son or vice versa, it is even more preposterous that these feelings should be reciprocated

363, 3-13 '*Speciosus fuit*' – *sollicitudine pudicae* it is not a close and spontaneous relationship between parents and children but the fear of sexual attraction between them which is truly perverted

363, 14-21 *Me quidem – optima matre* motherly love is always so intense that it bears all the marks of infatuation

361, 9 '*Speciosus*,' inquit, 'fuit.': the second *anticipatio*, a *color* derived and developed from the *thema* (*speciosum filium*, 353, 2). In fact, the issue of the son's good looks is hardly even considered in *DM* 19. We only find 19, 2 *fumus quondam, iudices, fumus felicissimi parentes, cum adhuc rudis unci nobis blandiretur infantia, duravitque domus tota prosperitas, quamdiu pariter fruebamur, pariter dileximus, quamdiu civitas de nobis hoc solum poterat loqui filium nos habere formosum ut vero in eam adolevit aetatem, in qua corporalibus bonis iuventus insolenter exultat, superbus atque adrogans in nullum vitae genus, non in privatos, non in publicos actus florentem duxit aetatem* (373, 19-27), 19, 4 *verberibus, ignibus laudatos vultus, velut illis irasceretur, opposuit* (375, 8-9), 19, 9 *iuvensem qui inter nos formosum malebat agere quam filium, verberibus ignibusque consumpsi* (380, 24 – 381, 2). Yet the connection between good looks and bad morals seems to be somewhat of a *locus*, for see Juv. 10, 295-98 *filius autem / corporis egregui miseros trepidosque parentes / semper habet rara est adeo concordia formae / atque pudicitiae*¹³⁰

¹²⁹ See for *anthypophora* comm. at 18, 6 *Rumor inquit fuit* (359, 3). Gunderson 2003: 204, who seems unfamiliar with this declamatory device, remarks that 'the father's suspicions are repeated like a mantra'.

¹³⁰ See Eyben 1991: 118.

361, 9-10 non magis – in filio: the mother's advocate first argument to deflate this insinuation is a matter-of-fact observation good looks do not automatically entail an illicit affair His counter-argument takes the form of a *comparatio ex similibus* (Cic Inv 1, 41, Quint Inst 5, 10, 87-88, Lausberg 395), it is a terse *isocolon*, aptly put by means of synonymous *facinus* and *crimen* with anthithetical *matre* and *filio*¹³¹ Its phrasing is surprising (one would have expected *non magis hoc facinus in filio est quam crimen in matre*), but demonstrates that for the advocate, his point of view goes almost without saying

361, 10 'speciosus fuit.': the *anticipatio* is repeated, which signals that a fresh argument for its refutation is about to follow It is a *sermocinatio*, resumed in 361, 11-13

361, 10-14 ut hoc – subclamatus invidia: incest is evidently the top rung of a long career-ladder in sexual misbehaviour The son's beauty can therefore only justify the father's suspicions if it caused him to go astray in the past Since this is not the case, we are meant to infer, the son is innocent

361, 10 ut hoc obici possit: for someone to be able to commit the gravest sexual crime, there must be some evidence of perversion in his past life A *locus argumenti a persona*, for which see Cic Inv 1, 35-36 *Quod eo confirmatius erit, si, cum potestas inipune aliquid faciendi minus honeste fuisse dicitur, voluntas a faciendo demonstrabitur afuisse Hoc autem ipsum genus erit eo firmitus, si eo ipso in genere, quo arguetur, integer ante fuisse demonstrabitur*, see further Quint Inst 5, 10, 23-31, esp 28 *spectantur ante acta dictaque, ex praeteritis enim aestimari solent praesentia*¹³² A classic example of the assumption that crime starts young, so that a criminal disposition could be traced back to the criminal's youth is of course Sallustius' treatment of Catilina's younger years (Sall Cat 5), esp *Huic ab adolescentia bella intestina, caedes, rapinae, discordia civilis grata fuere ibique iuventutem suam exercuit*

In 19, 13 it is precisely the absence of debauchery in the son's past which has to prove his degeneracy *fallitur, quisquis expectat, ut obiciamus illa communia ego vero proclamo non luxuriosum, non amore meretricis infamem, nihil ille delinquebat, quomodo liberi solent monstrum erat inenarrabile, quod nollem deprehendere, quod ferre non possum* (385, 16-20)

361, 11 ut debeat: an opportunity for the speaker to acquire ἥθος if the son's beauty can be objected because it has promoted misbehaviour on earlier occasions, then it must be objected, in other words, the advocate would never gloss over such a serious crime if there was serious ground for suspicions

361, 11 adice, 'et adulter et raptor: according to the advocate, adultery and rape are preliminary to incest The chronology in the argument is unusual in most cases, incest, adultery, rape and other sexual deviances and offences are heaped together indiscriminately, though incest is easily the worst crime of all See, for example, Cic Cael 35-36 (Clodia), Tac Ann 14, 2 (Agrippina), Suet Nero 28-29 (Nero) Becker 1904, 76 n 1 points out the *paronomasia* of *obici* and *adice*

¹³¹ See Lausberg 738

¹³² For the *loci a persona* see further Fort Ars 2 1 (RLM 103) Sever 13 who merely gives an apt quotation from Cic Clu 70 (RLM 361) Iul Vict 6 1 (RLM 395 96)

361, 11-12 in illa matrona maritali dolore paene percussus: a resounding phrase due to the alliteration of i, m and p, and the manifold occurrences of the vowel a. *Maritali dolore* may be regarded as a personification.¹³³ As with the two other occurrences of *maritalis* in the *DM*,¹³⁴ the adjective has the value of the more common genitive *mariti*. For the use of adjectives instead of nouns in the genitive case, see Löfstedt 1928, 83-99, who agrees with Wackernagel that the phenomenon was originally Greek and confined to the possessive genitive, but adds that in later Latin, these adjectives were also used to refer to such things and persons as were considered important or superior to others; it was felt that this use conferred dignity to one's speech.

The expression *dolore percutere* is not quite original: it also occurs Cic. *Brut.* 305; V. Fl. *Arg.* 7, 475.¹³⁵

The use of violence by the husband on the discovery of adultery was in fact regulated by Roman law from an early date. Initially, legislation was aimed at the punishment of the adulterous wife. Thus the Elder Cato: *De iure autem occidendi ita scriptum: "In adulterio uxorem tuam siprehendisses, sine iudicio inipune necares; illa te, si adulterares sive tu adulterarere, digito non auderet contingere, neque ius est."* (Gel. 10, 23, 5). A husband was also allowed to mutilate and even kill his wife's lover, as it appears from various mentionings by Quintilian, which are so casual that it is obvious that the law was well-known to a wide audience. See e.g. *Inst.* 5, 10, 39 *occidisti adulteros, quod lex permittit; Inst.* 7, 1, 7 '*Adulterum*' inquit '*cum adultera occidere licet.*' *Legem esse certum est.*¹³⁶

The *Lex Iulia de adulteriis coercendis*, carried by the Emperor Augustus in 18/17 BCE, stipulated that the husband could no longer do away with any adulterer, nor kill his wife: *Maritus in adulterio deprehensus non alios quam infames et eos qui corpore quaestum faciunt, servos etiam et liberos, excepta uxore quam prohibetur, occidere potest. Maritum, qui uxorem deprehensam cum adultero occidit, quia hoc impatientia iusti doloris admisit, lenius puniri placuit* (Paul. *Sent.* 2, 26, 4-5). If the wife was married *in manu* or still in her father's *potestas*, it was her father who could kill his daughter's lover, whatever his status.¹³⁷ For a complete and lucid account of this *ius occidendi* see e.g. Corbett 1930, 127-29 and 135-39.

Although adultery was not commonly regarded as the criminal stage preceding incest, there is plentiful evidence that – in women – it was thought to lead to murder by poison. Again Cato the Elder provides the earliest evidence: *Si causam veneficii dicat adultera, non M.*

¹³³ Tosato 1912, 63 reads (erroneously, in my opinion) in *maritali dolore* and analyses *in* as used, unclassically, to convey the circumstances of the action.

¹³⁴ Subjective genitives are substituted in 4, 3 *maritales amplexus* (63, 8) and 8, 6 *maritales .. iniurias* (156, 10) Ritter 1967², 66 incorrectly singles out *maritalis* under 'Correctheit'; for the frequent occurrence in the *DM* of adjectives in *-alis*, see comm. at 19, 2 *corporalibus bonis* (373, 23)

¹³⁵ And Tiberius Claudius Donatus, *Interpretationes Vergilianae* 12, p. 625. 1 28 *multiformiter Turnus etiam ex conflagratione turris dolore percussus est*

¹³⁶ See further Quint. *Inst.* 3, 11, 7; 5, 10, 88, 104. For mutilation, see V. Max 6, 1, 13. It has been objected that in none of the instances cited it is absolutely clear just whom the law authorizes to kill the adulterer: it might be the woman's father instead of her husband. In view of the subsequent restrictions introduced by the *Lex Julia*, however, it stands to reason that the husband was intended.

¹³⁷ He was also allowed to kill his daughter, provided that he killed both her and her paramour *in flagrante delicto*, in his own house or that of his son-in-law. His power to do so accrued to him from his *patria potestas*. See Dig 48, 5, 21 (Pap.), 48, 5, 22, 23, 2, 23, 4, 24, 1 (Ulp.)

Catonis iudicio damnata videatur, qui nullam adulteram non eandem esse veneficam dixit? (cited in Quint *Inst* 5, 11, 39) Next, there is the reasoning with which the *Auctor ad Herennium* comes out to illustrate *ratio* *cinatio* *Ratio* *cinatio* *est, per quam ipsi a nobis rationem poscimus, quare quicque dicamus, et crebro nosmet a nobis petimus unius cuiusque propositionis explanationem* *Ea est huiusmodi* “*Maiores nostri si quam unius peccati mulierem damnabant, simplici iudicio multorum malefactorum convictam putabant Quo pacto? Quam inpudicam iudicabant, ea venefici quoque damnata existimabatur Quid ita? Quia necesse est eam, quae suum corpus addixerit turpissimae cupiditati, timere multos () Quid? In viris idemne hoc observabant? Minime Quid ita? Quia viros ad unum quodque maleficium singulae cupiditates impellunt, mulieris ad omnia maleficia cupiditas una ducit*” (*Rhet Her* 4, 23) See also Sen *Contr* 6, 6 (with the significant title *Adultera venefica*), 7, 3, 6 *tamquam cum dicimus adulteram fuisse ut credatur propter hoc etiam venefica*, *DeMi* 319 (another *Adultera venefica*), Tac *Ann* 3, 22, 1 *At Romae Lepida, cui super Aemiliorum decus L Sulla et Cn Pompeius proavi erant, defertur simulavisse partum ex P Quirinio divite atque orbo adiciebantur adulteria venena quaesitumque per Chaldaeos in domum Caesaris, defendente ream Manio Lepido fratre*, 4, 52, 1 *is recens praetura, modicus dignationis et quoquo facinore properus clarescere, crimen impudicitiae, adulterum Furnum, veneficia in principem et devotiones obiecitabat* (the accused is Claudia Pulchra, related to Agrippina the Younger), Sulp *Vict Inst* 33 (a discussion of the theme of *DeMi* 319, *RLM* 331) See further Meyer-Zwiffelhofer 1995, 192-94

361, 12-13 in illa virgine publica subclamatus invidia: there were several actions for this kind of *stuprum*, depending on whether force had been used If not, a civil *actio iniuriarum* or the criminal *Lex Iulia de adulteris coercendis* could apply, imposing a fine or confiscation of part of the condemned man’s property In cases of forcible *stuprum*, on the other hand, the *Lex Iulia de vi publica* could be invoked, the penalty was *aquae et ignis interdictio* or even death¹³⁸

Rape figures in the theme of a large number of declamations It has its own declamatory laws *Rapta raptoris aut mortem aut indotatas nuptias optet* (Sen *Contr* 1, 5, 3, 5, 7, 8, 8, 6, Calp *Decl* 16, 25, 34, 41, 43, 46, 51, *DeMi* 247, 251, 259, 262, 270, 276, 280, 286, 301, 309, 343, 368, 383, see further Quint *Inst* 7, 8, 3 5 6) and *Raptor, nisi et suum et raptae patrem intra dies triginta exoraverit, pereat* (Sen *Contr* 2, 3, *DeMi* 349, see further Quint *Inst* 9, 2, 90) More in accordance with reality are *DeMi* 252 *Raptor decem milia solvat*, *DeMi* 370 *Qui ingenuam stupraverit, det decem milia* All declamatory laws have some basis in reality The fine has already been discussed, concerning the marriage option, Bonner 1949, 90 comments ‘Under Constantine rape became a statutory crime, involving capital punishment [*Cod Theod* 9, 24, 1] It is in the legislation of Justinian that we meet with an important legal allusion to the option on the part of the girl Justinian refuses this option in *Cod* 9, 13, 1, 2 *nec sit facultas raptae virgini raptorem suum maritum sibi exposcere* Now this refusal to countenance marriage in such cases may date back at least to Constantine, and it may well imply that such an option was legal before the severely

¹³⁸ See e.g. Dig 48 6 3 4 48 6 10 2 Paul *Sent* 5 4 4 Mommsen 1955’ 688 701 discusses *adulterium* and *stuprum* alongside one another

repressive legislation of that emperor.' The second law, which commands the culprit to beg both fathers for forgiveness, shows some similarity with *Dig. 48, 6, 5, 2: Qui vacantem mulierem rapuerit vel nuptam, ultimo supplicio punitur, et si pater iniuriam suam precibus exoratus remiserit, tamen sine quinquenni praescriptione reum postulare poterit.* Declamatory rape laws are discussed in Lécirvain 1891, 688; Sprenger 1911, 203-07; Lanfranchi 1938, 462-66; Bonner 1949, 89-91.

361, 12 in illa virgine: harks back to *raptor* and is anaphoric with *in illa matrona* (361,11).

361, 12-13 publica subclamatus invidia: the famous *exempla* adduced in *DM* 3, 11 (Virginia, 52, 6-13) and 17 (Titus Veturius, 57, 8-19) immediately spring to mind (see the exhaustive commentary by Schneider 2004, 174-75 and 226-27).

Publica invidia is a powerful metonymy for the disapproving public. The word *publica* is often attached to an emotive noun to attribute certain qualities or emotions to the public in the *DM*. Usually, these metonymies serve to emphasize the moral or emotional affinity between the speaker and his audience. See also *DM* 4, 2 (*gravitas*, 62, 5); 6, 3 (*humanitas*, 113, 9); 7, 1 (*suspiciones*, 137, 14); 9, 15 (*cognatio*, 189, 24-25); 9, 20 *felicitas* (195, 11); 11, 3 (*sollicitudo*, 221, 19-20); 12, 12 (*dolor*, 244, 8); 12, 16 (*spes*, 249, 5); 12, 18 (*innocentiam*, 251, 15); 12, 24 (*pudor*, 259, 1); 14, 2 (*clementia*, 288, 13); 15, 4 (*severitas*, 305, 6); 17, 2 (*gravitas*, 333, 3); for various instances of *publici affectus* see comm. at 18, 1 *ab adfectibus publicis* (356, 6). In 19, 3 we read about the son: *omnium maledictis succlamatus, omnium denotatione damnatus est, donec et ipse consensum circa se publici doloris agnosceret* (374, 1-3).

As for *subclamatus*, this personal passive use¹³⁹, which occurs only twice in the *DM*, is unique: *succlamo*, being intransitive, commonly occurs with the dative; in the passive it is normally used impersonally.

361, 13-14 quamquam haec – iuventutis excursus: the son was not even guilty of the antics familiar from many a young man's adolescence. The parenthesis reminds of Cicero, *Cael.* 27-30, where Cicero extenuates Caelius' youthful escapades; see also *DeMi* 260, 19: *quid est igitur? amavit ille meretricem et intra concessos adulescentiae lusus, licet aliud parentibus videatur, natura tamen datos, forsitan minus tenuerit cupiditatum frenos.*¹⁴⁰ It reduces to wild oats the offences that are supposed to precede incest, and thus may seem in fact to enfeeble the speaker's argument, based as it was on the assumption that incest is the culmination of a seriously criminal career. On the other hand, the speaker does contend that the son has never made himself guilty of any sexual offences, be they petty or grave.¹⁴¹

¹³⁹ See OLD *succlamo* b

¹⁴⁰ Winterbottom 1974, 311 on Sen. *Contr.* 2, 4, 10 terms this the *locus indulgentiae*; he further refers to *Contr.* 2, 6, 11 (*concessis aetati locus utor et iuvenali lege defungor*), Cic. *Cael.* 39 seq., Juv. 8, 163

¹⁴¹ A similar line of reasoning can be found in *DM* 5, 11, where a father demands support from his son: *Age tu nunc, iuvenis, ad faciendam inopiae patris invidiam, si videtur, exclama 'famem obtendis, ad quam luxuria prodigarumque voluptatum continuatione venisti exhausti senex census in pretia meretricum' quamquam et huic iubetur necessitati pietas vestra succurrere, et lex, quae inopem, quae patrem nominare contenta est, filium non remisit ad causas* (95, 4-10)

361, 13-14 intra notos decurrunt ... excursus: *paronomasia* of *decurrunt* and *excursus* (Becker 1904, 76 n.1).

For this figurative use of *decurro*, see TLL s.v. *decurro* 231, 44-69: *i.q. fieri, esse, evenire*. The examples listed, e.g. Sen. *Dial.* 1, 5, 6; *Nat.* 7, 1, 1; 7, 20, 2; *Ep.* 40, 14; *DM* 17, 3 (214, 5);¹⁴² 18, 9; Tert. *Nat.* 2, 5, 8; *Anim.* 10, 7 all use *decurro* absolutely, except *DM* 18, 9, where it occurs with the preposition *intra*. In other texts, where *decurro* is used in a literal sense, we find *inter*.¹⁴³

Excursus has been uniquely given the completely new sense of 'escapade'; it is synonymous with *excessus* (see OLD 2c and TLL s.v. *excursus* 1295, 69-70).

361, 14-16 Quid ais? – ex forma: like *quid?* (see 18, 8 [361, 2]), *quid ais?* can introduce false assumptions attributed to the speaker's opponent, which are phrased like questions, mockingly, even sarcastically, and refuted afterwards.¹⁴⁴ Here, a *tricolon* of *interrogationes* resumes and explicates the thoughts expressed in 361, 10-13: incest is not the crime of a novice, and it makes no sense to surmise it solely on the basis of the son's good looks.

61, 14-15 ab incesto libidines coeperunt: In literature they often did; think, for example, of Phaedra and her stepson Hippolytus, or the stories about Byblis and her brother Caunus (Ov. *Met.* 9, 454-666) and Myrrha and her father Cinyras (Ov. *Met.* 10, 298-502). In oratory and historiography, on the other hand, incest usually figures to cap the character assassinations of notorious villains. Obvious examples are Clodius and his sister Clodia (Cic. *Cael.* 36); Sassia and her son-in-law Melinus (Cic. *Clu.* 12); Caligula and his sisters (Suet. *Cal.* 36, 1); Agrippina and her son Nero (Tac. *Ann.* 14, 2, 1; Suet. *Nero* 28, 2).

361, 15-16 hoc primum – ex forma: the two *interrogationes* are intricately linked by anaphoric *hoc* and the persistent repetition of *um* in *primum umquam ... solum argumentum sumis*. The *homoeoteleuton* in *solum argumentum* is acceptable, but not the sequence of *um* in *primum umquam*, if we listen to Quintilian: *Videndum etiam ne syllaba verbi prioris ultima et prima sequentis sit eadem* (*Inst.* 9, 4, 41); see also Fort. *Ars* 3, 11 (RLM 127) and Vict. 20 (RLM 433).

Shackleton-Bailey 1984, 135 comments: 'The first *hoc* = *incestum*. The second has to be taken with *solum argumentum*, but is only in the way. Read *huius* (sc. *incesti*).' His interference with the text is completely uncalled for. Not only is there no evidence of *huius* in the mss., but *huius* would ruin the parallelism of *hoc primum... hoc solum...* (with *argumentum* as object complement).

361, 15-16 solum argumentum: probably for reasons of euphony; but one would expect *sola ex forma*. The *hypallage adiectivi* (Lausberg 685, 2) undermines the speaker's

¹⁴² To which may be added 4, 13 (74, 22)

¹⁴³ Verg. *Ecl.* 5, 84; Liv. 10, 27, 8; Mela 1, 90; Plin. *Nat.* 6, 69, 6, 165; M. Cetrus Faventinus *Liber artis architectonicae* 3

¹⁴⁴ Instances in the *DM* are numerous. See 1, 10 (10, 10), 5, 8 (92, 24), 5, 13 (98, 20), 5, 21 (107, 4), 7, 5 (142, 8), 7, 11 (148, 16); 8, 9 (159, 18); 8, 15 (165, 24), 14, 6 (293, 21); 15, 8 (310, 3); 15, 14 (317, 9), 17, 12 (343, 18), 18, 12 (emphasis lies more on reproach and sarcasm here, see comm. ad loc. 365, 6), 19, 10 (382, 19) For *quid dicit* see 3, 9 (49, 20), 12, 22 (256, 19) See Englund 1934, 40-49, who recommends that editors signify by their punctuation that genuine questions are concerned, *quibus plerumque ea, de quibus quaeritur, non se credenda censere significat is, qui dicit* (40-41) He discusses all instances mentioned here. Compare also Stramaglia 2002 n. 245 on *quid dicit*

point: as if there are yet more incriminating arguments to be derived from the son's good looks.

361, 16 dic potius: introduces the *subiectio deprehendi iuvenem – est armatus* (361, 16-18). It is based on a *locus argumenti a fictione*, for which see Quint. *Inst.* 5, 10, 95-99, esp. 96: *Nam fingere hoc loco est proponere aliquid quod, si verum sit, aut solvat quaestionem aut adiuvet, deinde id de quo quaeritur facere illi simile*. See Lausberg also 398.¹⁴⁵ The expression *dic potius* is also found Sen. *Dial.* 12, 9, 3 and *Ep.* 102, 21, where it announces moral encouragement.

361, 16-18 deprehendi iuvenem – est armatus: the *sermocinatio* sarcastically offers another potential reason for suspicion that is at least not as tenuous as the son's good looks alone: if the young man had been guilty of incest (and aware of his father's suspicions), he would have tried to kill his father. It is possible of course to read between the lines a reference to Oedipus, but more apropos to remain in Sophistopolis and regard the imputations supplied by the mother's advocate as an allusion to the countless declamations dealing with attempted patricide. Vesley 2003 rightly contends that there is a ' "pattern of vice" which leads up to the greatest crime' (175), adding that 'Seneca the Elder depicts parricide as the last stop on a young man's lengthy downward spiral of vice' (176). In fact, there are several *Controversiae* in which this notion finds expression: in 3, 2 a father says to his son, who was acquitted of parricide on an equal vote: *Non abdicō te propter parricidium, sed propter alia vitia, quae te fecerunt tam credibilem parricidam*. A son defends himself against the charge of parricide in the following words: *Dic quid ante commiserim: nisi forte contentus es reo obicere parricidium, parricidae nihil* (*Contr.* 7, 3, 1). Finally, in a case of *anticategoria* where a *procurator* and a son accuse each other of murdering the father of the house, the son says of the *procurator*: "*Quid*" inquit "ante peccavi?" *Dissimile est: memento enim de homicida quaeri; potest tirocinium esse homicidium, parricidium non potest*. (*Contr.* 7, 5, 2).

The same concept occurs in the *DeMi*: (against a son accused of parricide) *si occultius esset coniectura dicenda, dicerem turpem adolescentem, dicerem: abdicatus est* (281, 3)¹⁴⁶; in the defence of a son who keeps being sent to war by his father and is caught grinding poison (supposedly to commit suicide), we find an argument which comes even closer: *quid hoc est, iudices? maximum omnium reo crimen obicitur et solum: non circumscriptus amicus; cessant etiam familiaria adolescentiae crimina, et ne in scortis quidem reus male audio* (377, 2).¹⁴⁷

In the *DM*, finally, we find two *controversiae* where a son is suspected of parricide. In *DM* 1 a blind son is accused of stabbing his father to death. His advocate observes: *Interrogabo, quid ante perdit, quid flagitiose, quid impie fecerit, per quae se parricidam scelera promiserit. Innocentia per gradus certos ab homine discedit, et, ne in maximis trepidet audacia, diu vires in minoribus colligit. Nemo inde coepit, quo incredibile est pervenisse*.

¹⁴⁵ *Vict* 6, 4 (RLM 403) depends completely on Quintilian.

¹⁴⁶ See also *DeMi* 322, 3-4 for a more implicit approach

¹⁴⁷ I prefer Ritter's text to that of Winterbottom, which reads *quid hoc est, iudices? maximum omnium reo crimen obicitur et solum. non circumscriptus amicus, <non> cessant etiam familiaria adolescentiae crimina, et ne in scortis quidem <parricidum> reus male audio*.

(DM 1, 6 [6, 10-14]). DM 17 like DeMi 377 treats of a son caught grinding poison, but this time because he was unjustly disinherited three times by his father. The son objects to the charge of attempted parricide with heavy irony: *scilicet capit natura rerum, ut futurus parricida non praemiserit notas, nullis ante sit maximi sceleris inmanitas tumultuata flagitiis, et quandoque culleo, serpentibus*¹⁴⁸ *expianda feritas sub placida mente primam pertulerit aetatem?* (DM 17, 9 [340, 6-10]). In other words: quite a number of serious crimes must precede before one can legitimately assume parricide. Here, this argument is reversed: the father should have intimated that the son was about to commit the worst of crimes – parricide; this would have made it plausible that he had already committed what is here regarded as the second-worst crime: incest.

361, 17-8 in necem meam conscientia sceleris est armatus: seems to echo [Sen.] Oct. 564-66 *pertinax quorum furor / armat ministros sceleris in caedem meam*. De Vico 1962, 41 terms *in meam necem* a “complemento di fine o di scopo.” For the development of the term *conscientia* and its significance in the DM, see comm. at 18, 7 *haec ... conscientia* (360, 18).

361, 18-19 infinitum est – sibi credat: the argument is rounded off with an *epiphonema* in the form of a gnomic *sententia*.

361, 18 infinitum est, quantum: Ritter 1881, 65 refers to DM 14, 5 *infinitum est, quantum ex hoc medicamento deprehendi possit notitia peiorum* (292, 22 – 293, 1) and 16, 7 *infinitum est, quantum mihi crediderit tyrannus, si me occiderit reversum* (327, 10-11; both are *epiphonemata*). See further Plin. Nat. 18, 277 *ergo per se roscida, quotiens alget, infinitum quantum illo tempore cadentes pruinas congelat*. Zvěřina 1883, 351 (following von Morawski 1881, 2) remarks that “*infinitus* im Sinne von *multus, plurimus*, kommt in den Deklamationen ein Dutzendmal vor.” He is nearly right: of the ten instances of *infinitus*, seven are not to be taken literally (including the above); but in 4, 9 (70, 20); 4, 13 (75, 9); 11, 8 (227, 17) they are.

361, 19 de illo ... sibi credat: Tosato 1912, 50 compares this instance of *sibi credere* with *sibi mutare* in DM 17, 13 (344, 14-15) and comments: ‘Notevoli gli esempi: 312, 15 *semel sibi parentes liberique mutantur*; 327, 20 *infinitum est quantum debeat ante fecisse filius, ut de illo incestum pater sibi credat*; in entrambi i quali il dat. esprime una relazione che più chiaramente si esprimerebbe con una preposizione + acc.: nel primo caso cioè con *–inter se–*, nel secondo con *–erga se–*.’ *Sibi mutare* is in fact unique in Latin literature. The collocation *sibi credere* (‘believe’) on the other hand is typical of later Latin, which is noted for the (superfluous) attachment of reflexive pronouns to verbs without reflexive meaning. Löfstedt 1933, 387-93 discusses the phenomenon extensively. He admits that there is no general explanation for the occurrence of *se* and *sibi* with non-reflexive verbs; for a comprehensive understanding of the phenomenon, one would have to consider the history of each verb separately. LHS 294 lists verbs accompanied by *sibi*: ‘*verba sentiendi und dicendi, ferner credo mihi, arbitror mihi, confiteor mihi, puto mihi ... Verben der Gemütsbewegung und allgemein der Zustandsveränderung und Bewegung.*’

¹⁴⁸ Parricides were traditionally sewn into a sack, sometimes accompanied by snakes, a dog, a rooster and a monkey, and drowned. See Cic. *S. Rosc.* 30 and 71, *Rhet. Her.* 1, 23, Dig. 48, 9, 9, Sussman 1987, 247; Magdelain 1984, 549-50.

Sibi credere instead of *credere* occurs for the first time in *DM* 18,9 (Lofstedt 1933, 392), Von Morawski 1881, 4 explains *sibi* as a *dativus ethicus*, but since the *dativus ethicus* only occurs in the 1st and 2nd person, it is better to adhere to LHS 93 'Mit dem ethischen Dat nachstverwandt ist der reflexive Dat mit volkstümlicher Betonung der persönlichen Interessiertheit an der Verbalhandlung'

361, 19-20 speciosus fuit: the *anticipatio* is repeated for the second time and refuted with a fresh argument mothers do not mind what their children look like, they always consider them beautiful

361, 20 quis enim non est formosus filius matri: the gnomic *sententia* takes the form of an *interrogatio* in accordance with *Inst* 8, 5, 6, where Quintilian states that *sententiae maiorem vim accipiunt () mutatione figurae* Note the alliteration of f, enhanced by the repeated case-ending in *-us* The *sententia* introduces the third argument serving to refute the father's supposed allegation that the son's beauty kindled desire in his mother It consists of a *locus communis* amounting to a series of *sententiae* (361, 20 – 362, 13) The mother's advocate argues that for mothers, looks do not count where the love for their children is concerned, motherly love and sexual love are incompatible He seems to be stating the obvious with great aplomb, but in fact, *loci* which sanction lavish motherly tenderness are extremely hard to find See for example Dixon 1988, 131, who quotes the *sententia* to observe 'Mothers might desperately mourn dead children and really think them perfect, but they were not regularly expected to be overly indulgent or patient These were not their defining characteristics' The point she makes is valid and relevant for the current *locus* Roman mothers may have displayed more tenderness and anxiety towards their children than their husbands, as attested e.g. by Seneca *Non vides quanto aliter patres aliter matres indulgeant? illi excitari iubent liberos ad studia obeunda mature, feriatis quoque diebus non patiuntur esse otiosos, et sudorem illis et interdum lacrimas excutunt, at matres fovere in sinu continere in umbra volunt numquam contristari numquam flere, numquam laborare* (*Dial* 1, 2, 5) But those exemplary mothers who achieved fame (or notoriety) were in fact the ones who showed paternal characteristics by being severe and stimulating their sons in their intellectual and political pursuits Thus, we read in Tac *Dial* 28 that in ancient times, the Roman mother *non studia modo curasque, sed remissiones etiam lususque puerorum sanctitate quadam ac verecundia temperabat Sic Corneliam Gracchorum, sic Aureliam Caesaris, sic Atiam Augusti [matrem] prae-fuisse educationibus ac produxisse principes liberos accepimus Quae disciplina ac severitas eo pertinebat, ut sincera et integra et nullis pravitatibus detorta unius cuiusque natura toto statim pectore arriperet artis honestas, et sive ad rem militarem sive ad iuris scientiam sive ad eloquentiae studium inclinasset, id solum ageret, id universum hauriret*¹⁴⁹ Compare also Tac *Ag* 4 about Agricola's mother *Mater Iulia Procilla fuit, rarae castitatis In huius sinu indulgentiaque educatus per omnem honestarum artium cultum pueritiam adulescentiamque transegit Arcebat eum ab inlecebris peccantium praeter ipsius bonam integramque naturam () Memoria teneo solitum ipsum narrare se prima in iuventa*

¹⁴⁹ See Dixon 1988 chapters 5 (The Roman Mother and the Young Child pp 104-41) and 7 (The Roman Mother and the Adolescent or Adult Son pp 168 210)

studium philosophiae acrius, ultra quam concessum Romano ac senatori, hausisse, ni prudentia matris incensum ac flagrantem animum coercuisset.

361, 20-22 amant debilitates – ipsa miseratio: The advocate subtly suggests that this handsome son is not such a suitable object for excessive motherly love if ugliness and deformity (dwelt upon in three *cola*, all of them gnomic *sententiae*, of increasing length and force; contrast sparing *pulchritudo* in 362, 1) particularly inspire a mother's love. This notion is in fact alien to most literature, but in *DM* 5 similar pity and tenderness for a sick and vulnerable son is found in a father. In this declamation, a son refuses to support his father, who chose to ransom his sick brother rather than himself when both had been captured by pirates. In 5, 12 the father explains how weakness in a child can evoke tenderness: *par est in omnes liberos eademque pietas, sed habet in aliquo plerumque proprias indulgentiae causas, et salva caritatis aequalitate est quiddam, per quod tacito mentis instinctu singulos rursus tamquam unicos amemus: hunc primus nascendi locus, illum gratiorem propior fecit infantia; alium laetior vultus et blandior osculis amplexibusque facies; quosdam magis severitas probitasque commendat; in quibusdam diliguntur impatientius calamitates, et damna corporum debilitatesque membrorum notabilius miseratione complectimur* (96, 7-16); in 5, 18 he defends his choice as follows: *redemi, fateor, illum, qui dilationes, qui moras ferre non poterat, in quo mihi pirata vendeat brevia oscula, paucos dies. si mehercules uterque fuisset aeger, illum redemissem, qui prior languere coepisset. si duos pariter naufragia raperent, illi porrigerem manum, quem iam membrorum contentione lassatum fluctus hauriret. si vulneribus confectos remisisset acies, properantius ei clauderem plagas, per quas animam largior sanguis egeret. ignoscite, dii pariter atque homines: non possum de liberis, possum eligere de miseris* (103, 16 – 104, 1). Compare further Sen. *Ep.* 66, 26 *Num quis tam iniquam censuram inter suos agit ut sanum filium quam aegrum magis diligit, procerumve et excelsum quam brevem aut modicum?*¹⁵⁰

361, 21 morborum suppliciorumque pallorem: *Morbus* and *supplicium* are nearly synonymous. See for similar collocations Sen. *Dial.* 12, 11, 7 *in hoc [corpusculo] supplicia, in hoc latrocinia, in hoc morbi exercentur*; *Ep.* 95, 18 *innumerabiles morbos, supplicia luxuriae*. For the metaphorical use of *supplicium* see OLD 3c ('extreme suffering, torment [inflicted on someone or something regarded as a victim]') with Sen. *Dial.* 11, 9, 6; Plin. *Nat.* 11, 86; 11, 182; Calp. *Decl.* 10 (*nec remedia quaerenda sunt ubi maior<is> supplicii sanatio*). In the *DM* it occurs quite often; in connection with sickness, we find it 5, 17 (102, 16).

361, 22 in vires caritatis adcrecit ipsa miseratio: 'their very pity assumes the force of love' rather than Sussman's 'pity itself adds to the force of their affections' (1987, 222): *accresco* here takes the meaning of *augeri, crescere adiecta nova propria materia* (TLL s.v. *accresco* 337, 16-63; this instance 31-32). Compare *DM* 4, 8 *et ipsa cupiditas ratioque pereundi hoc ipso quo vetamur, adcrecit* (69, 23-24).¹⁵¹

¹⁵⁰ See Eyben 1991, 118.

¹⁵¹ In *DM* 15, 10 we read *honestis cupiditatibus et viribus sacrae caritatis exultans* (313, 16-17), but here *viribus* is instrumental, a late Latin use resulting in Italian *a forza di*, French *à force de* (Zvěřina 352).

In *DM* 5, 5 *miseratio* and *caritas* are contrasted *Utinam, iudices iuvenis illius vita praestaret, ut videretur non periculi miseratione sed caritate praelatus!* (89, 16-17)

361, 22 – 362, 2 non inedit – adfectus est: the enthymeme (*sententia cum ratione*) consists of two gnomic *sententiae*. It is a somewhat tepid modification of the passionate declaration that precedes it, but it is a well-balanced, terse and convincing confirmation of the cliché that love is blind

361, 22 – 362, 2 non inedit <s>acrae pietatis animum deformitas, pulchritudo non augeat: this gnomic *sententia* takes the form of an enthymeme in the sense of *sententia ex contrariis*, the chiasmic order of subjects and verbs enhances the contrast

<s>acrae is Håkanson's conjecture for the problematic options offered by the various mss. BV have *agre*, M^{BAEO} have *egre*, π has *agere*, whereas the remaining mss. have *aegre* and *aegrae*. *Aegrae*, which may have crept in due to the various ailments that occur in the previous sentence, makes no sense (for it is the mother's *pietas* that is discussed here) but was adopted by both Burman (1720, 356) and Lehnert (1905, 327). Reitzenstein (1909, 47), dismisses their reading 'aus dem sinnlosen *agre* war <m>ater<n>e zu entnehmen, *agere* ist weitere Verderbnis, *aegrae* elende Schlimmbesserung'. Helm 1911, 371 considers Reitzenstein's solution 'tadellos', aber *uerae* liegt vielleicht näher. It is true that *vera pietas* occurs in several authors who influenced the *DM*: we find it V. Max. 1, 5, 3, Sen. *Thy.* 549, Her. *O.* 984, Luc. 8, 573 and 9, 1056. Håkanson 1974, 144 mentions, but does not comment on the proposals in Reitzenstein and Helm, and writes 'die einfachste Änderung scheint mir *non inedit <int>egrae pietatis animum* zu sein, nach -it konnte -it- leicht ausfallen, und das Epithet *integra* passt gut zur vom Aussehen der Kinder unbeeinflussten *pietas*'. Lundström 1975, 65-66 disapproves of Håkanson's solution, because it ignores the better-attested reading *agre*, and because an inventory of *integer* in TLL does not yield a combination with *pietas*. He proposes *magnae* instead, but acknowledges that it is very difficult to account for the vanishing of *m* (which is of course also an issue in Reitzenstein's proposal). The latter problem is certainly not to be neglected, and although *integra pietas* is not to be found in Latin literature, there are Sen. *Cl.* 2, 1, 4 *pietatem integritatemque cum fide ac modestia resurgere* and *DM* 4, 21 *mea pietas mea laudetur integritas* (83, 6-7). But the most important reason why *magnae pietatis* is not very suitable is that it is simply not colourful enough for this pithy, striking *sententia*. Lundström points out *magna pietas* in 1, 17 (18, 21-22) and *maioris pietatis* in 8, 2 (152, 24), but they are a personification and a simple comparison respectively. Usually where *pietas* is qualified, it receives a striking epitheton such as *praeclara singularis* (1, 15 [16, 18]), *summa* (2, 1 [21, 2], 5, 18 [104, 8]), *infinita* (2, 10 [28, 23]), *miseria* (4, 2 [62, 14], 5, 1 [86, 1], 5, 4 [89, 4], 5, 15 [100, 10], 7, 13 [150, 11], 18, 1 [354, 11]), *inconsulta* (5, 4 [88, 6]), 18, 10 [363, 10]), *calamitosa* (5, 17 [103, 14]) or *praeceps* (18, 17 [371, 6]). Håkanson's second proposal (1976, 138) <s>acrae seems therefore preferable to all previous ones. *Sacer* is a grave and emotive word, closely associated with chastity, and in the *DM* often refers to family ties, i.e. *pietas*. Håkanson adduces *DM* 18, 3 *sacrorum nominum* (356, 5),¹⁵² 18, 9 *sacris adfectibus* (362, 12)¹⁵³ and 5, 11 *sacra de pietatis contentione rixa* (96, 1-2). One could further add *DM* 15,

¹⁵² Also in *DM* 1, 6 (16), 5, 7 (91, 15), 5, 8 (92, 12), 5, 14 (100, 2).

¹⁵³ Also in *DM* 15, 6 (308, 13) and 18, 4 (357, 5).

8 *sacris venerandisque pigneribus* (310, 8) and 15, 10 *sacrae caritatis* (313, 17) Watt's suggestion (1982, 33) also seems valuable he proposes 'caecae (the first letter having been lost after the last letter of *impedit*), maternal love is blind to physical characteristics' However figurative *caecus* usually has a negative connotation,¹⁵⁴ which finds expression in *DM* 19, 9 (381, 22) *dolore caeco*

362, 2 *amare liberos unus adfectus est*: for the wording compare 4, 7 *parentibus vero circa liberos unus adfectus est fuvare vitae, timere mortem* (68, 12-13),¹⁵⁵ but the present *sententia* provides a *finitio*, which presents in a nutshell the entire argument expressed in 361, 19 – 362, 13 The author seems to have followed the precepts found in *Rhet Her* 2, 17 *Primum igitur vocabuli sententia breviter et ad utilitatem causae adcommode describetur, deinde factum nostrum cum verbi descriptione coniungetur deinde contrariae descriptionis ratio refelletur, si aut falsa erit aut inutilis aut turpis aut iniuriosa* Cic *Inv* 2, 153-54 is confined to an example, Quint *Inst* 5, 10, 54-64 is an academic discussion of *genus*, *species*, *propria* and *differentia* with little practical value There is a strong connection of course with the *status finitionis* See further Lausberg 392-93

362, 2-4 *liberi, marite – homine formosius*: a triplet of gnomic *sententiae* explains in covert terms what this *unus adfectus* implies it goes beyond physical appearance, and is therefore non-sexual The first two *sententiae* are synonymous, the third, in spite of *sed*, does not produce a genuine antithesis

362, 2-3 *liberi, marite, liberi*: the *geminatio* encompasses vocative *marite* and thus emphasizes the isolated position of the father, who is often referred to, but never once addressed as *pater* in the entire declamation The word *mater* on the other hand occurs frequently in this paragraph to underline the profundity of motherly love

362, 3 *non amantur oculis*: it is, of course, a commonplace that erotic love is induced by the eyes see e g Calp *Decl* 43 *o oculi <quibus> ego primus adamavi'* *DM* 1, 6 *aliis meretriculae inmodica poscentis amor, cui renuntiant oculi* (7, 13-14), 2, 10 *Hi [sc. oculi] nos in omnia cotidie vitia praecipitant mirantur, adamant concupiscunt*, cf also Ambr *de Virg* 1, 2, 9 *Quid, percussor, moraris? Pereat corpus, quod amari potest oculis quibus nolo* The advocate contends that this kind of love cannot exist between mothers and sons See for a different view Calp *Decl* 22, where a father suspects incest between stepmother and stepson and regrets his second marriage *dum nimum confido pietati, oculos mulieris incestos et infanda desideria nutriti*¹⁵⁶

362, 3-4 *non complectitur mater ore, non vultu*: Håkanson explains his reading as follows 'complectitur dubitans retinui propter 96, 14-16' (*DM* 5, 12 *et damna corporum debilitatesque membrorum notabilius miseratione complectimur*), he rejects his earlier conjectures '[con]flectitur vel compellitur' *Flectere* only occurs in the *DM* in a literal sense,¹⁵⁷ and *compellere* always signifies 'urge, compel'¹⁵⁸ *Complectitur* can be

¹⁵⁴ See Håkanson 1974 128 on 6 15 [*caecus adfectus* (126 19)]

¹⁵⁵ Compare for this type of definition also *DM* 15 6 *meretricis unum veneficium est ne desinat amari* (307 18 19) 17 13 *hominis quem pater odisse non desinit unus exitus est ut se oderit* (344 21 22)

¹⁵⁶ For a discussion of this commonplace see Sussman 1994 145 163 215

¹⁵⁷ *DM* 1 13 (14 16) and 17 17 (349 5)

preserved (it occurs in all mss and is even more likely due to the parallel with 96, 14-16) if we accept Håkanson's far too hesitant suggestion 'ora, non vultus (vultus A)', because there is no need to extend the parallel to the preservation of ablative *ore* and *vultu* to correspond with *miseratione*; rather, *complectitur* needs an object. *Ora, non vultus* yields a doublet of synonymous *sententiae* with slightly different perspectives (the basis and the object of motherly love respectively), precisely of the type that occurs so frequently within the *DM*.

For the collocation of *os* and *vultus* see Becker 1904, 63, who cites *DM* 2, 3 *faciem vultusque* (22, 26); *oculos ora* (?¹⁵⁹); 2, 23 *vultus – facies* (41, 10); 17, 18 *oculos vultus* (350, 1); 18, 9. But there are many more.¹⁶⁰

362, 4 *sed est – homine formosius*: Sussman 1987, 222 translates: 'but because there is something in a son more beautiful than any other person.' His translation spoils the antithesis and there is no justification in the Latin text for 'any other'. The advocate means that for mothers, their sons have a kind of beauty which transcends the physical. The antithesis is not absolute; in fact, *sed* has a causal nuance, for which see LHS 488.

362, 4 *nescio quid homine formosius*: *homine* is a case of *emphasis quae plus significat quam dicit* (Quint. *Inst.* 8, 3, 83). The phrasing is typical of Cicero's philosophical writings. See *N.D.* 2, 16 *est igitur id quo illa conficiuntur homine melius*; 3, 17 *quoniam esset aliquid in rerum natura, quod ab homine effici non posset, esse aliquid homine melius*.¹⁶¹

362, 5-9 *possit forsitan – amare desinere*: the mother's advocate contends that motherly love comes into being inevitably when a son is born; it would be unnatural for it to cease and/or change into sexual desire when the son grows up. His argument is put in three asyndetic, generic sentences, concluded with a terse, antithetical *sententia per interrogationem*.

362, 5 *novitas*: *metonymia*, which is the case with every instance of *novitas* in the *DM*.¹⁶² Yet the use here is remarkable, for together with *DM* 3, 18 (58, 8)¹⁶³ it is the only instance where *novitas* does not have a negative connotation. In the other cases it either

¹⁵⁸ *DM* 1, 9 (9, 24); 4, 9 (70, 12); 9, 2 (176, 14); 10, 9 (208, 7); 15, 9 (312, 14).

¹⁵⁹ There are several, see n. 32 below

¹⁶⁰ *Vultus* and *facies*: *DM* 5, 12 (96, 12); 8, 21 (173, 10); 10, 18 (217, 10); 15, 5 (307, 14); 18, 10 (363, 5 and 16), 19, 4 (375, 8). *Vultus* and *os*: *DM* 10, 11 (with *facies* 210, 14); 10, 13 (212, 15); 16, 8 (328, 8). *Vultus* and *oculi*: *DM* 10, 18 (with *facies* 217, 10). *Os* and *oculi*: *DM* 10, 16 (214, 19), 19, 10 (382, 11); 19, 15 (387, 16).

¹⁶¹ The situation is slightly different in sentences with a negative thrust and questions where a negation is the expected answer. Thus we find e.g. Cic. *N.D.* 1, 76 *Accessit etiam ista opinio fortasse, quod homini homine pulchrius nihil videatur*; *Tusc.* 2, 21, 47 *si nihil esset aliud, nihil esset homine deformius*; Sen. *Dial.* 1, 5, 2 ... *si hominem inspexerimus. Quo quid est mitius? ... quid homine aliorum amantius?* Plin. *Nat.* 2, 25 *vel certum sit nihil esse certi nec quicquam miseri homine aut superbius*; Apul. *Pl.* 1, 12 *omnium vero terrenorum nihil homine praestabilius providentia dedit*. Here we find comparisons between species, i.e. elements that are put on a par, whereas above, the 'something' belongs to a higher, creative order

¹⁶² Except *DM* 4, 14 (76, 5).

¹⁶³ Here *novitas* stands for *homines novi*

refers to things unheard of in a context of sickness or punishment¹⁶⁴ or serves as a synonym for outrage.¹⁶⁵

Often *novitas* occurs with an explicative genitive in a kind of enallage where it replaces a form of *novus*. KS 241-42 explains: 'Nicht selten ist [die lateinische Sprache] zu dieser Ausdrucksweise durch den Mangel an Adjektiven genötigt; aber weitaus in den meisten Fällen handelt es sich darum, den für den Gedanken wichtigen und wesentlichen Begriff eines Adjektives möglichst hervorzuheben.' See also LHS 152 (*genitivus inversus*) and Tosato 1912, 26. In the *DM* we find *novitas accidentium* (5, 1 [85, 8]); *adversorum* (7, 2 [138, 15]); *malorum* (7, 2 [139, 7-8]; 11, 1 [220, 2]); *ciborum fomentorumque* (8, 15 [166, 20-21]); *poenae suppliciorumque* (11, 2 [221, 3]); *furoris* (15, 11 [314, 3-4]); *monstrorum* (18, 1 [353, 9-10]); *rerum sermonumque* (19, 1 [372, 2-3]).

362, 5 *sollicitare visus, expugnare mentes*: the *isocolon* runs from superficial attraction to passionate surrender in a rapid climax. The first metaphor recurs in Auson. *Mos.* 152-53: *inducant aliam spectacula vitea pompam / sollicitentque vagos Baccheia munera visus*. Mosshamer 1939, 40 regards the second metaphor as one of the many *imagines, quae ex sermone militum ac gladiatorum haustae sunt*. He cites no parallels, but there are quite a few, for which see TLL *expugno* 1808, 16-34 and 70-80. The earliest instances where minds are overpowered, are Cic. *Parad.* 27 *Sapientis animus magnitudine consilii, tolerantia rerum humanarum, contemptione fortunae, virtutibus denique omnibus ut moenibus saeptus vincetur et expugnabitur, qui ne civitate quidem pelli potest?* Stat. *Theb.* 4, 187-88: *iamque et fatidici mens expugnata fatiscit / auguris*. In declamation the metaphor predictably bears relation to sexual power. In *DeMi* 327, 3 it is asked about a sterile wife who had gone to law for unjust repudiation: *venenum paravit, insidiata est liberis tuis, vel, quod levissimum est, expugnare animum tuum voluit?* In the *DM* we find three parallels in the *controversiae* dealing with the call girl's hate potion: 14, 3 *quae ad corrumpendas expugnandasque mentes excogitant ingenia meretricum* (290, 15-17); 14, 5 *veneficium, iudices, tota vita meretricis est. parum se lenociniis, parum putant agere mendaciis, et, cum omnis ad expugnandas mentes cura conlata sit, <non> sufficit tamen, ut de sui caritate corpori credant* (292, 9-13); 15, 6 *cuius per hanc expugnatus animus?* (307, 22-23).¹⁶⁶

362, 6 in matris aspectu: *aspectus* refers back to *visus*: again love seems to be triggered and surrounded by visual aspects, but that is where the parallel ends.

362, 6-7 *coalescit infantia, pueritia consurgit, iuventa subrepat*: this tricolon of metonyms expresses a climax in time. It is enhanced by *homoeoteleuton* and *homoeoptoton* of both verbs and nouns; the first two cola are connected even more closely by a chiasmic word order and alliteration, while the last stands slightly apart due to a difference in significance: a child gradually grows up to be a man; but suddenly, almost imperceptibly, sexual maturity begins to assert itself.

¹⁶⁴ *DM* 7, 4 (in connection with revenge, 141, 4) and 8, 21 (in connection with unscrupulous experiments, 172, 13)

¹⁶⁵ See *DM* 4, 12 (*difficultatibus novitatibusque*, 74, 11-12); 7, 1 (*et <ad impatientiam> tristissimae orbitatis mihi quoque accessisse novitatem*, 137, 3-4), 14, 1 (*hanc quoque calamitatibus meis accessisse novitatem*, 287, 12-13)

¹⁶⁶ For more examples of *expugnare* in an erotic context see TLL 1808, 24-28 (Verg. *A.* 10, 92) and 75-80 (Pl. *Truc.* 171 ff., Prop. 3, 13, 9; Sen. *Contr.* 2, 7, 7; Luc. 10, 360).

Coalescere in the sense of ‘to take root firmly, grow strong, consolidate growth’ (OLD 4)¹⁶⁷ rarely occurs with persons, but see Apul. *Met.* 2, 3 *et in nexu germanitatis una coaluimus*; Pl. 2, 26 *talibus observationum remediis et profectibus suboles natura discrepante confecta morum proventu meliore coalescat*; Amm. 31, 2, 20 *iuventus vero equitandi usu a prima pueritia coalescens incedere pedibus existimat vile*; CIL 11, 5836 *me consurgentem valida fortuna iuuenta destituit*.

For *consurgere* “to grow towards maturity, grow up” (OLD 8) see TLL *consurgo* 622, 3-28 with Col. 4, 1, 5 *iugata vineta melius consurgunt altioribus demissa scrobibus*. *DM* 18, 9 and CIL 11. 5836 *me consurgentem ... valida iuuenta*. Mosshamer 1939, 19 categorizes this instance with the *imagines, quae de corporis actionibus et vitae condicionibus inveniuntur*. *Iuuenta subrepat* paradoxically alludes to the well-known metaphor that makes old age creep up on people. See Cic. *Sen.* 4 *qui enim citius adolescentiae senectus quam pueritiae adolescentia obrepat?* 38 *non intellegitur quando obrepat senectus*; Tib. 1, 1, 71 *iners aetas iam subrepat, nec amare decebit*; Aetna 40-41 *cur aestas ipsa senescit / autumnoque obrepat hiemps*; Iuv. 9, 129 *obrepat non intellecta senectus*; Auson. *Epigr.* 34, 3 *obrepsit non intellecta senectus*. Mosshamer 1939, 44 classifies this instance as belonging to the few *collationibus et translationibus ex animalibus petitis*.

362, 7-8 speciosum suum cotidie videt, miratur, amplectitur: another emotional climax, provokingly couched this time in the language of erotic love. It reminds of excited *asyndeta* such as Pl. *Mer.* 744-45: *nam qui amat quod amat si habet, id habet pro cibo: videre, amplecti, osculari, alloqui* and *DM* 2, 10 *oculi sunt, oculi, per quod paupertatem ferre non possumus, oculi tota nostra luxuria. hi nos in omnia cotidie vitia praecipitant: mirantur, adamant, concupiscunt* (29, 11-14).

362, 8-9 quae tamdiu – amare desinere: the conclusion takes the form of a *sententia per interrogationem* which allows for two interpretations, both equally preposterous. A mother is either required to stop loving her son when he is sexually mature (*amare desinere*), or it can be expected that her profound and chaste love suddenly turns into infatuation (*amare desinere i.e. adamare incipere*) The deliberately generic phrasing emphasizes the absurdity, which is also underlined by the oxymoron *incipiat ... desinere*, which can be found in a more mischievous context in Ov. *Am.* 2, 19, 47-48: *iamque ego praemoneo: nisi tu servare puellam / incipis, incipiet desinere esse mea*. See further Hor. *S.* 1, 1, 92 *cumque habeas plus / pauperiem metuas minus et finire laborem / incipias*.

The expression *amare desinere* seems colloquial; it is found Plaut. *Bac.* 100; *Ps.* 307; Cic. *Att.* 6, 1, 5; *Fam.* 7, 32, 3; *DeMi* 356, 2; *Fro. Ver.* 1, 12, 1; *Ant.* 7, 4; *Amic.* 1, 21, 2; and with a significant, but hardly unexpected frequency in *DM* 14 *arg.* (287, 11); 14, 1 (288, 11); 14, 2 (289, 7); 14, 4 (291, 17); 14, 10 (298, 18); 15, 2 (303, 12); 15, 7 (308, 24; 310, 1); 15, 12 (315, 16); 15, 13 (316, 19); 15, 14 (318, 7).

Shackleton Bailey 1976, 216 proposes a drastic interference with the text: ‘Read *quae tam diu amavit, quando incipiat* <ad>*amare* [desinere]? Mother had loved her son all his life; when would she start to fall in love with him (i.e. was it believable that she would start)?’

¹⁶⁷ Thus the other occurrences of *coalescere* in the *DM*, which always refer to passions: 14, 8 ([Iust] 296, 10); 15, 10 (*desideria* 313, 8); 17, 13 (*ira* 344, 17)

For this contrast cf. 329, 6,¹⁶⁸ *omnes matres liberos suos, tamquam admaverint, amant*. There was no question of Mother ceasing to love. *desinere* will have been added in an unsuccessful effort to make some sense out of *amare*.¹⁶⁹ His proposal, evidently based on nothing but his own propensity to refine these texts, is far too radical; furthermore, it ruins the oxymoron *incipiat ... desinere*; a third objection, not the least serious, touches upon the substance of the argument. After the evocation of *infantia, pueritia, iuventa*, the question *quando incipiat adamare* runs the risk of being taken at face value; the answer would be *in iuventa*.

The text is fine as it stands; yet if interference is felt to be needed, Watt's contribution (1982, 33) makes a great deal more sense: 'No attention has been paid to the reading of our two best manuscripts,¹⁶⁹ which is not *amare* but *a matre*; is it possible that this is sound, and that our passage is the earliest example of *desino* construed with a prepositional ablative (see TLL v. 1.724.82 ff. and 726.8 ff.)? If this construction can be accepted, there is no difficulty in the use of *matre* ("cease to be the mother"); compare Seneca, *Controv.* 9.3.6 "aiebam 'dum matris meminit, obliviscetur novercae'; at illa, dum novercae meminit, matris oblita est", where *mater/noverca* = "her role as mother/stepmother".¹⁷⁰

362, 9-10 non est – sed furore: now that the advocate has established the kind of love felt by mothers for their sons, he returns to the alleged incest in an apostrophe to the father.

362, 9 nocentissime senex: for this and other epitheta for wicked fathers, see comm. at 18, 3 *nocentissimus senex – silentium suum* (355, 12-13).

362, 9-10 non est opus ... caritate, sed amentia, sed furore: for the value of *caritas* in *DM* 18, see 18, 5 *facit ... nimia caritas* (358, 15); here, it forms a powerful antithesis with synonymous *amentia* and *furor*, accompanied by anaphoric *sed*.

Furor is used in a sense analogous to that in *DM* 3, where it characterizes the tribune's sexual misconduct. Schneider 2004, 74 gives a good account of this kind of *furor*.¹⁷¹ She distinguishes it from *furor* as a juridical or medical concept, for in those contexts the *furiosus*, considered to be devoid of legal capacity, was relieved of all responsibility and protected from himself until he regained his senses. She explains that 'le *furor* du tribun s'apparente en revanche au *furor* tragique en ce qu'il est rupture irréversible avec l'humanité, sous la forme d'un *scelus nefas*.' It is hardly a coincidence then that the term *furor* often refers to the destructive, disruptive force that breaks sexual taboos. We find it applied e.g. in the cases of Tereus and Philomela (Ov. *Met.* 6, 480); Byblis and Caunus (*Met.* 9, 512; 541; 583; 602); Myrrha and Cinyras (*Met.* 10, 355; 397; *Ciris* 237); Phaedra and Hippolytus (Sen. *Phaed.* 178; 184; 248; 268; [279]; 363; 584; 824).¹⁷²

¹⁶⁸ = 18, 10 (363, 14-15).

¹⁶⁹ Håkanson 1982, 362 names BV AD

¹⁷⁰ A closer parallel would be, incidentally, *DM* 19, 5 where it is said of the *lex malae tractationis* that it *matre seposita solam conplorat uxorem* (376, 10)

¹⁷¹ See also Brescia 2002, 79 (n.76)

¹⁷² There is, besides, a reference to Theseus' *furor* at *Phaed.* 96. Obviously I do not wish to imply that *furor* is reserved exclusively for these types of doomed love, which seem to merit punishment in spite of the protagonists' loss of control. In the context of love, *furor* is used countless times to refer to helpless infatuation (genuine or otherwise) – but this kind of *furor*, I would argue, has little to do with tragic *furor*, and everything with the juridical-medical type

The combination of *amentia* and *furor* is hardly original: it occurs Cic. *Ver.* 1, 7; 4, 38; *Clu.* 191; *S. Rosc.* 62; 66; *Caes. Gal.* 1, 40, 4; *Liv.* 28, 27, 6 and finally *Firm. Mat. Math.* 4, 14, 9; 8, 26, 11. In the *DM*, we find *furor* also with *insania* (1, 6 [7, 6]; 18, 15 [369, 1-2]), *dementia* (3, 12 [53, 9]), *error* (and *dementiae furor*, 5, 17 [103, 4]), *alienatio mentis* (12, 8 [239, 24]).

362, 10-13 ut in – non possit: the argument culminates in a doublet of gnomic *sententiae*, which each from a different perspective make it clear that motherly affection precludes sexual desire. The first is a *sententia ex contrariis* juxtaposing *concupiscere* and *oderit* and, pointedly, *formosus* and *filius*; the second is conspicuous for its pile-up of negative adverbs (*non ... nisi ... non*).

362, 10 in iuvene suo: as in 361, 11 and 12 (*in illa matrona, in illa virgine*) *in* has the sense of ‘in the matter of (a person or thing), when dealing with, etc.’ (OLD s.v. *in* 42). *Iuvene* may come across as a double entendre, but *iuvēnis* hardly ever figures as a synonym for lover.¹⁷³ It is obviously used to avoid emphatic *filius* in 362, 11 becoming a limp repetition. *Iuvenis* also replaces *filius* in *DM* 1, 16 (17, 14); 10, 14 (213, 12); 10, 16 (215, 11); 16, 6 (325, 9).¹⁷⁴

362, 11 concupiscere, quod: *concupisco* occurs absolute or followed by *inf.*, *acc.*, *acc. c. inf.* or (in late Latin) *gerundi(v)um* (OLD *concupisco*, TLL 104, 73 – 106, 56). The combination with *quod* is in fact unique, but can be explained from the general tendency in later Latin to replace *acc. c. inf.* constructions with object clauses introduced by *quod*, for which see comm. at 18, 3 *fateretur quod* (356, 15).

362, 11 oderit, quod: see the previous note, but note that there are a couple of parallels for *odisse*: *Ov. Am.* 1, 11, 20 *odi, cum late splendida cera vacat* and *Sidon. carm.* 5, 200 *quod viceris, odit et quos vincis amat* (see TLL *odi* 457, 31-33).

362, 12 sacris adfectibus: for this expression for chaste, parental love see comm. at 18, 4 *sacris adfectibus* (357, 5-6).

362, 12 adiuvatur in facinus: the use of *in* instead of *ad* is postclassical, occurring for the first time *Liv.* 27, 39, 4. Russell’s advice (1985, 45) ‘Read *adiuvetur* if this verb is parallel to *oderit* and depends on *oportet*’ seems unnecessary; in a manner characteristic of the paratactic style of the *DM*, the two *sententiae* are independent. *Adiuvare* has a connotation of complicity, for which see e.g. OLD s.v. *adiuvo* 1.

362, 13 illud: the mss. except for ζ have *aliud* (adopted by Lehnert 1905, 328), which makes no sense. Burman 1720, 357 already has *illud*.

362, 13 oblivionem sui: this evocative expression occurs sporadically in pagan literature: *Sen. Cl.* 1, 1, 7 *nec enim periculum est, ne te subita tui capiat oblivio*; *Victor. in Cic. inv.* 1 *praef. Sed acies quamvis perfectae animae quodam corporis crasso tegmine inretitur et circumfunditur, et ita fit, ut quandam obvivionem sui capiat* (RLM 155). It becomes fairly popular with christian authors; see e.g. *Hier. Comm. in Dan.* 2, 5 and *Lact. Inst.* 7, 12, 17 and 18.

¹⁷³ See [Tib.] 3, 9, 1-4: *Parce meo iuveni, seu quis bona pascua campi / seu colis umbrosi deua montis aper / neu tibi sit duos acuisse in proelia dentes / incolumem custos hunc mihi seruet Amor*, *Hist. Apol.* 20 *et scripsit codicillos et signatos anulo iuveni suo tradidit*.

¹⁷⁴ But see also e.g. *Sen. Troad.* 700 *sic te iuvenis excipiat tuus*; *Iuv.* 10, 310 *et iuvenis specie laetare tui*.

362, 14 Quid, quod: For the argumentative collocation *Quid, quod...* (often punctuated *Quid? quod...*¹⁷⁵) Stramaglia 1999, 110 refers to Tosato 1912, 41 and 106, but not without giving his own brief account of ‘*quid* interrogativo isolato, seguito da una dichiarativa introdotta da *quod* che aggiunge un’aggravante ad argomentazioni precedentemente esposte’, a statement which is confirmed in KS 2, 499. As such, it occurs frequently in all genres suitable for argumentation and lively discussion, from comedy¹⁷⁶ to oratory¹⁷⁷ and even philosophy.¹⁷⁸

Here, *quid, quod* introduces the first of four *interrogationes* concerning the incredibility of mutual incestuous love, concluding in an apostrophe to the father.

362, 14 hoc incredibilis est: all mss. except π have *hic* instead of *hoc*, and *hic* was accepted without comment by both Burman 1720, 357 and Lehnert 1905, 328. But *hic* weakens the following argument by gearing it to the individual case at hand; Håkanson rightly endorses Reitzenstein 1909, 47, who makes a convincing case for more generic *hoc*: ‘das Verbrechen (*facinus*) ist darum (*hoc*) um so unglaublicher, weil es den gleichen Wahnsinn auch bei dem Sohn voraussetzt.’ Alternatively, *hoc* is an *ablativus comparationis*: see Sussman 1987, 222 ‘something even more incredible than this’.

362, 14-15 quod parem duorum poscit insaniam: the sentence lacks a subject, but refers to *facinus* (362, 12). It reminds of Ov. *Met.* 10, 355, where Myrrha laments: *et o vellem similis furor esset in illo!*

362, 15-16 et ad – ut adametur: this sentence is synonymous with and explicates the preceding one (*et* is explicative).

362, 15-16 ut adamet et filius, non ut adametur: the (rather weak) *paronomasia* is enhanced by the anaphora of *ut*. For the sake of clarity, Håkanson suggests *sc. tantum* after *adametur*; Burman 1720, 357 adds *solum*; Reitzenstein 1909, 47 <modo>.

362, 16-17 ab utro – venire sermonem: the second *interrogatio* is addressed more expressly to the jurors, who are asked to join the speaker in his attempt to think through this theory about incest down to its last absurd consequences. *Venire sermonem* may contain a subtle reference to the rumour criticized in 18, 6-8 (359, 3 – 361, 8).

362, 17-18 audebit hoc – a filio: the third *interrogatio*, which explicates the previous one, takes the form of a *disiunctio* all the more forceful for its partly chiasmic structure.

362, 18 – 363, 2 hunc animum – potest pater: the fourth *interrogatio*, in the form of an apostrophe to the father, approaches the incredibility of incestuous love from a different angle by implying once more that the malicious suspicions simply originate with him.

362, 18 – 363, 1 hunc animum tuum ... interrogo: a complex utterance which may be termed indirect performative speech; only in this case not a third party, but a

¹⁷⁵ Thus Burman 1720, 357 and Lehnert 1905, 328

¹⁷⁶ Already Pl. *Bac.* 979, *Cur.* 459; *Poen.* 678, *Trin.* 412 and 413

¹⁷⁷ See e.g. Cic. *Agr.* 2, 40, *Pis.* 89; *Catil.* 1, 16, 19; *Phil.* 1, 23; 5, 9; 6, 6; *Clu.* 99; *Mur.* 23, 77 (twice); *Man.* 12

¹⁷⁸ Already in Cicero, but most especially in the Younger Seneca, who uses it no less than 36 times in his philosophical works and – remarkably – only twice in his tragedies.

metonymy for the addressee is addressed indirectly, furthermore, the question is not genuinely interrogative, but disguises a negative statement

362, 19 *quo cum maxime taces*: contrary to Burman 1720, 357, Lehnert 1905, 328 prints *quocum*, which makes no sense *quo* should be taken as a bare instrumental ablative and *cum* connected with *maxime* The clause reminds of 18, 2 *parcere nunc illum cuiquam tacendo creditis? loqui se cum maxime putat* (355, 3-4) ¹⁷⁹

362, 19 – 363, 1 *si non – maligna simulatio*: the father's silence is censured in passing as a ploy to malign both mother and son For the phrasing of the clause, compare *DeMi* 306, 1 *ne me, quod negavi, fecissi callide et maligne existimetis*, 309, 4 *non ita me prima frons causae callidissima optionis simulatione decipit*, *DM* 2, 19 *non est, iudices, quod incredibile putetis, ut quis perferat dormientis simulationem, nihil est, quod facilius humana calliditas possit imitari* (37, 57)

363, 1 *de fide tanti sceleris interrogatio*: *fides* is used in the sense of 'the range or possibility of belief, (w gen) what can be believed (of)' (OLD s v *fides* 13), cf TLL 672, 56 – 673, 49 *fides i q argumentum, documentum, testimonium* The question touches upon a *locus communis* treated by Quintilian *Quod*¹⁸⁰ *tamen ita fieri oportebit si res dubitationem non habebit alioqui prius est quod obicias verum efficere quam magnum, quia criminum invidia pro reo est priusquam probatur, difficillima est enim gravissimi cuiusque sceleris fides* (*Inst* 4, 3, 8) It occurs in Lucan's *Pharsalia* in connection with a few particularly horrible crimes *vix erit ulla fides tam saevi criminis, unum / tot poenas cepisse caput* (2, 186-87, dealing with the gruesome torture of one of Marius's relatives), *nec satis infando fuit hoc vidisse tyranno / volt sceleris superesse fidem* (8, 687-88), *haec fama est oculis victoris iniqui / servari, scelerisque fidem quaesisse tyrannum* (9, 139-140), *non primo Caesar damnavit munera visu / avertitque oculos, voltus, dum crederet, haesit / utque fidem vidit sceleris* (9, 1035-37, in the last three fragments, the *fides* is the head of Pompeius Magnus) In the *DM* we also find it 4, 18 *partem responsi futuram in alio opere iam vidisti, et, quod praecipue torquet animum, fides sceleris virtus fuit* (80, 8-10) and 14, 5 *nonne vobis videtur implere sceleris fidem, quod abstulit fidem condicio personae?* (292, 8-9)

363, 1-2 *an potest mater admittere, quod loqui non potest pater*: the *epiphonema*, a *sententia ex contrariis*, is couched as a chiasmic *interrogatio* The question is splendidly rhetorical the public must of course supply 'no' for an answer, but in fact, 'why not?' would do equally well

Both Burman 1720, 357 and Lehnert 1905, 328 punctuate *interrogo, an potest*, which produces a solecism (one would require *possit*) Reitzenstein 1909, 47 punctuates *interrogo an potest*, explaining 'Die Frage lautet natürlich, ob der Vater es glaubt Sein Schweigen verneint das Oder ist es etwa denkbar, daß der Vater das nur nicht aussprechen kann, was die Mutter doch wirklich begangen hat? Daß Lehnert mit Burmann *interrogo an potest* verbindet, erwähne ich nur, um hinzuzufügen, daß fast alle Falle, in denen bei ihnen der Indikativ in der indirekten Frage erscheint, auf falscher Interpretation beruhen oder ohne weiteres zu ändern sind' Englund 1934, 64 indignantly (and rightly) rejects Reitzenstein's

¹⁷⁹ Tosato 1912, 60 absurdly regards (*quo*)*cum* as an instance of the use of *cum* instead of a bare causal ablative

¹⁸⁰ I.e. the insertion of a digression that expresses indignation

interpretation: 'Rogat mater mea sententia, num credibile sit scelus, id quod paulo ante (laudatis a Reitzensteinio verbis!) negavit: *Quid? quod et hoc incredibilius est quod parem duorum poscit insaniam?* Non necessarium erat quaerere, crederetne pater: profecto credebat.'¹⁸¹ By inserting a colon, Håkanson manages to guarantee correctness of both grammar and interpretation.¹⁸²

Sussman's translation (1987, 223) of *admittere* ('permit' instead of 'commit') weakens the *epiphonema* and is inconsistent with *admittere* in 18, 9 *hoc primum umquam iuvenis admisit?* (361, 15); 18, 13 *si quod facinus admissum est* (367, 17); 18, 17 *si quid admisi, fatebor* (370, 17).

363, 3 speciosus fuit: the *anticipatio* is repeated for the third time, but now, it is not answered with a proper counterargument. Instead, two *digressiones* follow: the first (363, 3-13) pleads for innocent, spontaneous love between relatives, while the second (363, 14-21) resumes the third argument in 18, 9 (361, 20-362, 13) and explicitly compares intense motherly love to infatuation. They conclude and support the arguments against the probability of an incestuous affair between mother and son, but also prepare the way for the following part of the *argumentatio* (18, 10-14 [363, 21 – 368, 10]), which deals with the father's suspicions and the subsequent torture of his son.

Though their subjects are hardly common, both take the form of *loci communes*, which gives them the air of accepted truths. As such they do not fit the rather too narrow categories Lausberg reserves for *loci communes* with an amplificatory function: for him they are either *dubiae rei amplificationes*, in which case they deal exclusively with the 'Glaubwürdigkeit allgemeiner Beweismittel' (408), or purely pathetic *certae rei amplificationes*, meant to arouse indignation and pity (409).

363, 3-4 interrogare ... omnes humani generis adfectus: the urgent, pathetic quasi-apostrophe is meant to call immediate attention to a moral dilemma. *Omnes humani generis adfectus* seems a metonym¹⁸³ for "all people" but is of course aimed at the judges, who are invited to join the speaker in following the father's supposed line of reasoning to its bizarre conclusion. Similar fervent appeals can be found in *DM* 7, 3 *Vos nunc, cives, vos, omnes humani generis adfectus, miserrimus interrogo pater: suadete, quid faciam* (139, 20-22); *DM* 16, 9 *excuso me vobis, humani generis adfectus, et tibi ante omnia, mater, excuso, quod hoc fieri passus sum* (329, 4-6).

363, 4-7 placet ergo – horreatque contactum: the moral dilemma recurs in *DM* 18, 15: *stant circa liberos attoniti parentes, horret invicem se caritas fraterna complecti, rupta est illa osculorum inter soceros generosque simplicitas* (369, 8-10). It involves the audience emotionally in a way derived from the *rhetores' praecepta* for the *exordium*: the audience's attention can be focused on a case if the speaker points out its wider

¹⁸¹ To substantiate his interpretation, Englund quotes 18, 4 *quae materia fabulae tam inpudentis, qui fuerit auctor, iste probavit, qui credidit* (356, 22-23), 18, 5 *ita non iuste quereretur uxor, si diceret 'adulterium de me facile suspicatus es, cito credidisti?'* (358, 5-6), 18, 6 *rem inpudentissimam populus loquendo fecerat, nisi pater credidisset* (359, 8-9)

¹⁸² For a more elaborate account of the use of mood in (in)direct questions, see comm. at *DM* 18, 1 *cui in peracta crudelitate modestia[e] frontis obstat* (354, 2)

¹⁸³ Englund 1934, 14 regards *adfectus* as an instance where *rebus, ut non actiones, ita alia, quae hominum sunt propria, tribuuntur*

implications for the state and/or the audience. See Cic. *Inv.* 1, 23; *Rhet. Her.* 1, 7; Quint. *Inst.* 4, 1, 33.

In the present instance, it is phrased as a couple of *interrogationes*, which approach a hypothetical situation first from a mother's, then from a father's point of view. They are almost exactly parallel: *filius* (3) corresponds with *virginem* (5), *optigerit* with *natura formaverit* (6), the isocolon *indulgentior facies, vultus erectior* (4-5) with *usque ad notabilem speciem* (6); *refugiat ... amplexus* (5) with the isocolon¹⁸⁴ *timeat oscula ... horreatque contactum* (6-7) and *mater* with *pater*.

363, 4-5 *indulgentior facies, vultus erectior*: chiasmus; for the combination *facies-vultus* see comm. at 18, 9 *non complectitur mater ore, non vultu* (362, 3-4)¹⁸⁵. The comparatives *indulgentior* and *erectior* can be explained from an implicit comparison with other youths. According to TLL 1256, 74-77, *indulgens* properly means *mitis, clemens, facilis*; *ex hac notione quasi passiva saepius transit in activam significans i.q. amans*. As such we find it e.g. Sen. *Contr.* 9, 4, 14 *indulgentissimum fuisse in liberos patrem*; Sen. *Dial.* 12, 2, 4 *Avunculum indulgentissimum, optimum ac fortissimum virum ... amisisti*; Ep. 78, 2 *saepe impetum cepi abrumpendae vitae: patris me indulgentissimi senectus retinuit*; DeMi 259, 2 *pater indulgentissimus, amicus optimus ... mitissimus*; DM 1, 2 *excogitavit indulgentissimus senex, quemadmodum hic miser patri suo in eadem domo esset* (3, 15-17); 10, 13 *fili, indulgentissime adolescens* (211, 19)¹⁸⁶; 10, 19 *iuvenis piissime, iuvenis indulgentissime* (218, 22); 15, 2 *quamvis indulgentissimae puellae simplicitate frueretur* (303, 18-19).

Indulgens facies is a unique expression and slightly awkward, for one would not expect *indulgens*, an adjective that clearly refers to character traits, to apply to outward appearance.

Vultus erectus is familiar from Ov. *Met.* 1, 85-86 as the distinguishing characteristic of man vs. animal: *os homini sublime dedit caelumque videre / iussit et erectos ad sidera tollere vultus*. It returns in Min. Fel. 17, 2 *nos, quibus vultus erectus, quibus suspectus in caelum datus est* and 17, 11 *Ipsa praecipue formae nostrae pulchritudo deum fatetur artificem: status rigidus, vultus erectus*. In Quint. *Inst.* 11, 3, 134, *vultus erectior* must be taken even more literally: *vultus erectior, ut eum apud quem dicitur spectet*. But the figurative sense of *erectus* (OLD 2b: of character, thoughts etc.: aspiring, noble) also plays a part.

363, 5 *refugiat ... amplexus*: the compositum *refugio* was evidently considered more forceful than the simplex *fugio* generally used in this expression, for which see Tib. 1, 9, 73-74: *corpora foeda podagra / et senis amplexus culta puella fugit*; Luc. 3, 744-45 *veniam misero concede parenti, / Arge, quod amplexus, extrema quod oscula fugi*; Mart. 4, 22, 2-3 *merserat in nitidos se Cleopatra lacus, / dum fugit amplexus*.

¹⁸⁴ This isocolon in the apodosis balances with *indulgentior facies, vultus erectior* (4-5) in the protasis of the preceding *interrogatio*.

¹⁸⁵ See also Becker 1904, 63.

¹⁸⁶ Forc and later Georges quote this as proof that *indulgens* can also mean "passiv, dem Nachsicht zuteil wird, zärtlich geliebt". This interpretation is fiercely and convincingly opposed by Gagnér 1926, 13-16: the son is actively *indulgens* by remaining true to his mother and appearing at her bedside. The collocation with *piissime* in 10, 19 (218, 22) confirms Gagnér's point of view. If any instance of *indulgens* qualifies for a passive interpretation, it is the one in DM 18, 10.

363, 6-7 timeat oscula ... horreatque contactum: the *isocolon* may contain a surreptitious, rather risqué reference to Iuv. 6, 50-51: *paucae adeo Cereris uittas contingere dignae / quarum non timeat pater oscula*.

Timere and *horrere* produce a trite synonymy (see e.g. Prop. 1, 5, 15-16; Ov. *Met.* 6, 530; Cic. *Ver.* 5, 70; Sen. *Oed.* 743-44; Stat. *Theb.* 12, 20-21), but there is an interesting parallel with *DM* 15, 8: *remedium amoris mulier invenit. desinite nunc incestum timere, mortales, nulla pietas horreat nefandae cupiditatis instinctum* (310, 12-14).

It is ironical that the father uses similar terms to describe the son's fearful avoidance of himself in 19, 9: *timebat occursus, non audebat adire conloquia; oscula convictusque fugiebat* (381, 12-13).

363, 7-8 dii deaeque – nefarios metus: *sententia per exclamacionem* and *ex inopinato*: over-scrupulous or simply exaggerated would be the expected designation for this kind of anxiety, but instead it is condemned as perverse and criminal.

363, 7 dii deaeque: Becker 1904, 53 and 56 considers the expression derived from Verg. *A.* 6, 64 *dique deaeque*¹⁸⁷, but notes that *dii deaeque* already occurs Enn. 4, 333 (ed. Steutsch) and Cic. *Ver.* 5, 188 and *Rab. Perd.* 5.¹⁸⁸ He notes frequent occurrences in the *DM*: 2, 23 (40, 20); 4, 15 (77, 16); 5, 7 (91, 6); 5, 9 (93, 17); 5, 21 (107, 12); 7, 4 (141, 1); 11, 2 (221, 13); 16, 6 (325, 3); 16, 8 (328, 4); 17, 7 (338, 21); 18, 10; to which can be added 14, 7 (295, 8-9) and 15, 7 (309, 5-6). All instances except 18, 10 are *exclamationes* in apostrophe.

363, 7-8 male perdant: a fairly common expression, probably derived from comedy. See e.g. Pl. *Cur.* 622 *Iuppiter te male perdat: intestatus vivo*;¹⁸⁹ *Per.* 783-84 *qui illum Persam atque omnis Persas atque etiam omnis personas / male di omnes perdant*; Sen. *Dial.* 3, 14, 3 *di illum male perdant animo magis quam condicione mancipium*; *Ep.* 95, 21 *libidine vero ne maribus quidem cedunt, pati natae, di illas deaeque male perdant*.¹⁹⁰

363, 8 tam inpudentes sollicitudines, tam nefarios metus: synonymous *isocolon* with anaphora of *tam*; *inpudentes sollicitudines* can be termed an oxymoron.

363, 9 prope est – ne fiat: the gnomic *sententia* explains the preceding *sententia ex inopinato*. Gunderson 2003, 201 rightly comments: 'Without a simple view of human relations, the world dissolves into suspicions of incest that, in the harm they produce, are nearly as bad as actual incestuous acts.' But it is not just the harmful effects of the father's suspicions that are criticized here; the mother's advocate also censures what he seems to regard as the father's propensity to projection, as in 18, 6 *miseremini temporum – moribus trahat* (358, 22-23).

¹⁸⁷ See Verg. *Aen.* 6, 63-65 *uos quoque Pergameae iam fas est parcere genti, / dique deaeque omnes, quibus obstitit illum et ingens / gloria Dardaniae*.

¹⁸⁸ The expression occurs especially frequently for that matter in the works of Plautus (e.g. *Mos.* 192, 464; 655, 684, *Per.* 292, 296; 298, 666; 831; *Poen.* 460, 667, 858, 1274) and a respectable number of times in those of Terentius (*Eu.* 302; *Hau.* 808, *Hec.* 102, 134, *Ph.* 687, 976).

¹⁸⁹ The entire verse is obelized in BTL, the Oxford text (Lindsay 1903) has *Iuppiter te† male † perdat: intestatus vivo*, but Leo (Berlin: Weidmann, 1958) accepts the verse as a whole.

¹⁹⁰ See for the expression in a non-religious context Pl. *Au.* 721; *Epid.* 590; Catul. 14, 4-5; Ov. *Am.* 1, 6, 41-42 Ritter 1967², 69 refers to 19, 9 *Dii mala prohibeant, ut noveris illum dolorem, quo potest torquere filium pater!* (380, 22-23), but I fail to see any relevant connection.

363, 9-12 malo simplicitatem – posse narrari: this passionate plea for guileless love between mothers and children is seemingly enhanced by the form it takes a double isocolon with anaphoric *malo* and *nihil* Gunderson 2003, 202-3 comments ‘For all the talk of the “simplicity” of mother and son, every sign that greets the reader is doubled and duplicitous In this declamation statements of the stamp “this is simple” need to be read much like the famous paradox “I am lying” Nothing can be simple any longer Simplicity demands that *amare* have only one translation, and in so demanding simplicity demands as well that *amare* be divided against itself into *amare* and *adamare* The one is the love within the family, the other is the love that destroys family Yet one cannot save simple love by doubling it Nor can one read this declamation by simply asking the question of how the mother felt about the son or the son about the mother Rather the father is always a necessary third party’ Gunderson overinterprets the text, besides, he does not make clear how a distinction between two kinds of love doubles it, nor why this ‘doubling’ should offer no solution Yet it is clear that the speaker is unable to disregard the father’s suspicions he does not succeed in describing artless love, but instead gives a string of negations (*non vereatur infamiam, inconsultam, nihil, nihil*) directly relating to those very suspicions, and thereby gives them yet more shape and scope For the significance of *simplicitas* (*simplex*) in *DM* 18 and 19, see comm at 18, 15 *rupta est – generosque simplicitas* (369, 9-10)

363, 9-10 malo simplicitatem – vereatur infamiam: Englund 1934, 6 rightly states that *simplicitas* is indubitably personified

Ritter 1967², 67 is reminded of *DM* 18, 12 *iam iam malo venena, ferrum subito ictus improvisamque mortem* and 8, 8 *malo odium, querelas, execrationes, quam ut quis liberos affectu, quo servantur, occidat* It is true that in all three cases an alternative course of action is proposed, but there is an important difference in that in 18, 10 a genuine preference is expressed, while 18, 12 and 8, 8 merely advocate the lesser of two evils Closer parallels with 18, 10 are found in *DM* 4, 21 *du non sinant, ut inter me responsumque decernat exitus, mathematicum vincere malo quam reprehendere* (83, 8), 5, 8 *malo pro reverentia nominis nostri quicquid praestatis inviti* (92, 25-26), 8, 3 *innocentior est simplicitas desperare, si remedia non noveris, et hanc ignorantiae malo probitatem, ut languorem, quem nescias, tantum neget posse sanari* (154, 2-5)

This demand for simplicity calls to mind a number of philosophical discussions where it is stated that virtue ought to be its own reward See e.g. Cic *Fin* 2, 73 *iam si pudor, si modestia, si pudicitia, si uno verbo temperantia poenae aut infamiae metu coercerentur, non sanctitate sua se tuebuntur, quod adulterium, quod stuprum, quae libido non se proripiet ac proiciet aut occultatione proposita aut impunitate aut licentia*’ and *Leg* 1, 50-51 *Quid vero de modestia, quid de temperantia, quid de continentia, quid de verecundia, pudore pudicitiaque dicemus? Infamiaene metu non esse petulantes, an legum et iudiciorum? () [51] Quid enim? Possumus eos, qui a stupro arcetur infamiae metu, pudicos dicere, quom ipsa infamia propter rei <turp>itudinem consequatur? See further Gel 12, 11, 3 (about the Attic philosopher Peregrinus) Non enim poenae aut infamiae metu non esse peccandum censebat, sed iusti honestique studio et officio Here, both the literal*

and the metonymous sense of *infamia* are relevant it is a proof of innocent, uninhibited love if neither party realizes that their love could entail either rumours or crime

363, 10 nudos adfectus: *nudus* in the sense of 'open, undisguised' (OLD 14) Compare e.g. *Ov Am* 1, 3, 14 (*simplicitas*), *Trist* 3, 11, 16-17 (*ira*), *Stat Theb* 9, 20 (*odia*), *DM* 3, 19 *virtus* (59, 10), 7, 9 *paupertas* (146, 7) Mosshamer 1939, 25 categorizes this expression under *translationes de victu, alimento, vestitu usurpatis* He discerns two figurative senses of *nudus* 1 *spoliatus non tectus non armatus* 2 *solus*, strangely enough, the present instance is classed with the first category Under *solus*, he ranges *nuda virtus* from *DM* 3, 19 and also refers to *Sall Jug* 85, 4, which is probably 88, 4 *praesidius nudatum*, and not quite to the point

363, 10-11 inconsultam ... pietatem: *inconsultus* nearly always has a negative connotation as appears from its definitions *sine consilio, improvidus, insciens temerarius, stultus* and subsequent samples in TLL s.v. *inconsultus* 1013, 41 – 1014, 77 From TLL 1014, 19-22 it appears that *inconsultus* in a positive sense (*securam, non sollicitam*) is only found in *DM* 18 Apart from 18, 10, it cites 18, 7 *inconsulta gaudia* (360, 3) – but wrongly, for in 18, 7 *inconsulta* clearly means 'indiscreet' Nor is another reference, *Sen Contr* 9, 4, 2 *fili inconsideratae pietatis*, altogether positive the son's *pietas* is well-meaning, but precipitate *Inconsulta pietas* (meant ironically, translated by Sussman 1987, 55 as 'how irrational I was in the love for my sons') also occurs *DM* 5, 4 (88, 3)

363, 11 de se fingi: for *fingere de se* comm at 18, 8 *incestum de uxore fingat an credat* (361, 1)

363, 12 insatiabiliter, avide: included by Becker (1904, 79) in his list of synonyms, the expression anticipates the passion of motherly love as described in the next *locus communis* Deratani 1927, 294-95 considers the expression exemplary of the influence of African (i.e. mainly Apuleius') literature, which according to him is more perceptible in Ritter's group II than in I, especially where we see 'saepissime voces, eadem vel fere eadem significantes, africanorum more cumulari'

363, 12-13 tanti fama – sollicitudine pudicae: the *locus* concludes with a gnomic *sententia* which though pithy and emphatic may be counterproductive, because it implies that suspicions of incest are not quite unrealistic

363, 14-21 Me quidem – optima matre: this second *locus* approaches the same subject – that of motherly love – from a different, more positive angle instead of decrying fears and suspicions of incest and advocating spontaneous love, the speaker now assumes the existence of spontaneous motherly love and gives a description of it which is quite provoking, maybe even tongue in cheek, since he uses many terms which occur frequently, albeit not exclusively, in love poetry Gunderson 2003, 204 takes a very sombre view, commenting 'This is another instance where the advocate's advocacy reveals more than it necessarily intends Or, rather, it exposes the extent to which the father's paranoid idiom is the one in which the case must be spoken no matter how hard one tries to evade his language and dialect' It seems however more plausible that the advocate is so convinced of the mother's innocence that he can afford a little play with ambiguity

The *locus* takes the form of an apostrophe to the father and resumes, it has been said already, the effusive portrayal of motherly love given in 18, 9 (361, 20 – 362, 13)

363, 14 Me quidem ... si quis interroget: also occurring in *DM* 5, 15 (100, 4), 14, 6 (293, 16), 17, 7 (338, 10), this turn of phrase always signifies that the speaker switches to a more aggressive, even defiant approach of his subject

363, 15 tamquam adamaverint, amant: again, as in *DM* 18, 4 (356, 18-19) *paronomasia* of *amare* and *adamare*, but this time the two are not contrasted. Both cases are used to explain why the mother's love for her son resembles infatuation. In 18, 4 this impression is prompted by the contrast with the father's coldness, while here it is stated that excessive affection is inherent to motherly love.

363, 15-19 videbis oculos – voluptate satiari: the advocate explains his statement in a gushing depiction of motherly love. It is reminiscent of the language of erotic poetry and highly intricate, consisting of a tricolon (*oculos-componere*), an isocolon (*suspirare-venire*) and another tricolon (*conserere-satiari*), the last colon of which comprises three equivalent commata.

363, 15-16 oculos ... deflectere: the expression also occurs, always within a context of anxious attention or even submission, in *Liv* 21, 22, 6 *Ibi fama est in quiete visum ab eo iuvenem divina specie qui se ab Iove diceret ducem in Italiam Hannibali missum, proinde sequeretur neque usquam a se deflecteret oculos*, *V Fl* 8, 75-76 *te quoque, Phrixiae pecudis fidissime custos / tempus ab hac oculos tandem deflectere cura*, *DeMi* 291, 3 *amavi adulescens eam quae domi erat, cuius conversatio continua etiam invitos ad se oculos poterat deflectere*. Cf. also *Ov Met* 7, 787-89 *quod dextera librat / dum mea, dum digitos amentis addere tempto / lumina deflexi*, *Ciris* 259-61 *non ego consueto mortali bus uror amore / nec mihi notorum deflectunt lumina voltus / nec genitor cordi est*, see further *Petr* 9, 109 *nec manus nec faciem meam consideravit, sed continuo ad inguina mea luminibus deflexis movit officiosam manum*.

363, 16 facie vultuque: for this collocation see comm. at 18, 9 *non complectitur mater ora, non vultus* (362, 3-4).

363, 16 comere caput: note the alliteration of *c*. *Comere* is usually found with *capilli*, *coma* or *crines*,¹⁹¹ but we do find it with *caput* in *Tib* 1, 5, 8 and 1, 8, 16 (referring to loved ones), further *Gel* 10, 15, 30, *Aus Ecl praef* 6, *Mart Cap Nupt* 9, 909 (in religious contexts).

363, 16-17 habitum ... componere: found in no other classical text. A common expression on the other hand is (*se*) *in habitum componere*, see e.g. *Sen Contr* 1, 2, 10 *modo in puerilem, modo in muliebrem habitum composita*, 5, 6 *capillos in feminae habitum composuit*, 9, 6, 12 *componere te in periclitantium habitum*, further *Curt* 10, 5, 3, *Sen Dial* 2, 11, 6, *Plin Ep* 5, 5, 5.

363, 17-18 suspirare cum – cum venerit: *paromoeosis*, the strongest form of *parison*, brought about by a double *homoeoteleuton* and anaphora of *cum*.

363, 18 conserere manus: the expression *manum* (*manus*) *conserere* usually means 'to join battle' (OLD *manus* 9c) or, in a juridical sense, (*ex iure*) *manum conserere*,

¹⁹¹ Both in love poetry (e.g. [*Tib*] 4, 2, 10, *Ov Am* 2, 8, 1, 2) and in other texts (e.g. *Cic Pis* 25, *Sen Nat* 1, 17, 7).

to claim one's right of ownership (OLD *consero* 5); in its literal sense it occurs only here and in Sen. *Ben.* 1, 3, 4 *quid ille consertis manibus in se redeuntium chorus?*¹⁹²

363, 18 cervicibus: without any difference in meaning, *cervix* often occurs in the plural even when its referent is singular. Originally, the word was a *plurale tantum*, the singular occurring at first in poetry (LHS 15); see also TLL s.v. *cervix* 946, 14-16: *plurali tantum utuntur ex. gr. Plaut. Cato. Ter. Rhet. Her. Cic. (praeter carmina) Bell. Hisp. Sall. Vit.* In the *DM*, both singular and plural are used indiscriminately. Becker 1904, 56 sees a reminiscence of Verg. *A.* 1, 715 *ille ubi complexu Aeneae colloque pendit*, but there are many more poetic examples of *pendere cervice* (with bare ablative and an animate subject). See, for example, Ov. *Met.* 1, 652 *niveae pendens cervice iuvencae*; Sil. 11, 246 *mandit anhelantem pendens cervice iuvenum*; V. Fl. 1, 259 *caraque diu cervice pendit*; Stat. *Silv.* 1, 2, 103 *finis erat; tenera matris cervice pendit*.¹⁹³

363, 18-19 non osculis – voluptate satiari: the tricolon seems to have erotic overtones, reminiscent e.g. of Petr. *Sat.* 131, 6 *totoque corpore in amplexum eius immissus non praecantatis usque ad satietatem osculis fruor*; but in fact, closer parallels found in several declamations always refer to an intimate but definitely non-sexual relationship between parents and children: see Sen. *Contr.* 9, 5, 12 *sustuli, inquit, nepotem meum; non potui satiari osculis, non potui ab illo tam cito distrahi. nolite mirari: post longum tempus illum videram*; *DM* 4, 22 *hunc, quo nos retinere voluisses, in suprema mea transfer adfectum, tuis manibus compone corpus, exstrue rogos, funeri iusta persolve. deinde cum iam novissimis osculis supremaque discedens satiatum fueris amplexu...* (83, 15 – 84, 4); 8, 13 *fortius feras inter adsidentium manus, inter suorum officia labentes, cum se invicem oscula, cum se satiavere sermones, cum data suprema mandata sunt, et se scit pietas omnia fecisse pro vita* (164, 14-17); 10, 6 *mulier filium nocte videbat, die sperabat. quid attinet singula referre? 'nullis,' inquit, 'destituta sum tenebris, donec scelerata tacui; satiabar osculis, satiabar amplexibus et colloquebar et audiebam.'* (205, 1-4).

Osculis is the reading adopted not only by Håkanson, but already by Burman 1720, 357 and Lehnert 1905, 329. It goes against most mss. and is based on ζ,¹⁹⁴ yet – in view of the pseudo-erotic overtones of this *locus* – fits better within the context.

363, 19-21 hoc est – optima matre: this *sententia* sums up a large part of the *argumentatio*: a wicked mother indulging in an incestuous relationship with her son would successfully avoid becoming the subject of rumours (18, 7-8 [359, 23 – 360, 23]); but the best mother, who lavishes attention on her son, is obviously liable to suspicions of incest (18, 9 [361, 20 – 362, 13] and 18, 10 [363, 3-19]). In fact, it is a fitting conclusion to the *refutatio*; in what follows (from 363, 21 onwards), the advocate goes over to the offensive and attacks the father's course of action. I would therefore suggest to change Håkanson's arrangement of the text (adopted from Lehnert 1905, 329) by turning *execratur mehercules – filium occidere* (363, 21-25) into a separate paragraph.

¹⁹² Against 90 occurrences of the other two senses. See also TLL s.v. *consero* 416, 21-64.

¹⁹³ With *collum* Prop. 3, 12, 22 *pendebit collo Gallia pudica tuo*, Sen. *Contr.* 2, 6, 9 *meretricem <vi>di pendentem collo sentis*, Sen. *Thy.* 523-24 *vos quoque, senum praesidia, tot iuvenes, meo / pendete collo*, Mart. 14, 54, 1 *Si quis plorator collo tibi vernula pendet*.

¹⁹⁴ Interior mss. and old editions.

363, 20 nefanda suspicione: compare 18, 2 *nefanda suspicari* (355, 2); 18, 4 *nefandas suspiciones* (356, 16).

363, 20-21 incestum non – optima matre: quasi-gnomic *sententia ex inopinato*.

363, 21 fingi ... de: for *fingere de* see comm. at 18, 8 *incestum de uxore fingat an credat* (361, 1)

Tormenta

Argumentatio 18, 10-14 (363, 21 – 368, 10)

After the *refutatio*, the *confirmatio* consists of two main points of attack. The first and larger part concentrates on the merciless interrogation of the son (18, 10-14 [363, 21 – 368, 10]), while the second part focuses on the father's subsequent silence (18, 14-16 [368, 11 – 370, 11]). The first part contains a hierarchy of *concessiones*; it is structured as follows
363, 21-25 *execraretur mehercules – filium occidere*. A father who is prepared to kill his own son ought not to have believed the rumour, it would have been bad enough for him to have voiced his suspicions

364, 1-18 *Quid – neganti crediturus*. The father ought to have denied the rumour or, at the most, made discreet investigations (*concessio*). Instead he demonstrates by his outrageous course of action that he was firmly convinced that the rumour was true

364, 19 – 365, 4 *Omnium quidem – quam filium* Torture should only be used as a last resort

365, 5-10 *Video – scisse rumorem* The father ought to have used different means of investigation first (*concessio*)

365, 11 – 366, 6 *Sed – debet occidere* If any kind of torture was necessary, it ought to have been applied to the servants (*concessio*). And the father should have repudiated his wife first. Torture is never an option, whether its object is guilty or innocent

366, 7 – 367, 2 *Quodsi tormenta – paratus occidere* But if torture of the son was inevitable (*concessio*), the presence of witnesses would have been required.

367, 3-11 *Non vulvis – feci*!. It is evidence of the father's wickedness that he applied the torture himself

367, 12-18 *Non mehercules – fatebitur mater* Since the interrogation concerned the mother as well, she ought to have been present

367, 19 – 368, 4 *Inrumpere me – debet audiri* A disorderly paragraph in which the torture scene is once more evoked and the father challenged to reveal what was said, but subsequently assured that whatever he says will be deemed implausible

368, 5-10 *Mirabar et – qui occiditur* Murdering his son was the only way out for the father

363, 21 execraretur: Sussman's 'I would be cursing my client if' (1987, 223) is too interpretative. The verb is used absolutely 'I would hate it if'. For *verba affectuum* followed by *si*, see LHS 666 and KS 2, 424-425. The advocate means that in a case where to believe in the son's guilt is evil, an explicit accusation would already merit grave censure (let alone torture and murder), cf. below 18, 11 *Quid, quod non credis, nefande, sed quaeris?* (364, 1)

363, 23 si usque ad verborum processisset amentiam: paraphrases the previous conditional clause. Sussman translates 'and if he had been moved to extremes of furious words' (1987, 223), taking *verborum* as a *genitivus inversus*, for which see comm. at 18, 9 *novitas* (362, 5). This interpretation is certainly possible, but a stronger effect is produced if

we take *verborum* as a *genitivus explicativus* ‘and if he had been moved to madness in the form of words,’ implying that voicing his suspicions in *any*, not just furious words, would have been reprehensible. For the expression *procedere ad amentiam* cf. Calp. *Decl.* 9 in *tantum iuvenis processit amentiae*¹⁹⁵, [ut] *propter illum pater ut perderet oculos, mater odisset*. Mosshamer 1939, 14 correctly ranges *procedere* under the *imagines quae de corporis actionibus et vitae condicionibus inveniuntur*, he cites, additionally, Tac. *Ann.* 2, 79, 4 (*dein mutua formidine non ultra iurgium processum est*) and 6, 10, 3 (*aetas ad octogesimum annum processit*)¹⁹⁶.

363, 23-25 nemini minus – filium occidere: the short paragraph concludes with a pseudo-gnomic *sententia*, which builds the transition to the next argument (364, 1-18) ‘Nobody has less right to believe there is incest than a man who is prepared to kill his son for that very reason.’ Sussman’s translation (1987, 223) ‘nobody has less *reason* to believe there was incest than *the man who was* prepared to kill his son for that very reason’ does not do justice to the gnomic character which is meant to confer authority to the speaker, also it fails to appreciate that here, *fas* is not used in a morally neutral sense.

363, 24 credere incestum: *credere* in the sense of ‘to assume the reality or existence of, believe in’ (OLD 5b) with a non-pronominal object in the accusative case is not very common. Among the examples listed under *credere* with acc. in TLL *credo* 1142, 20 – 1143, 22, we find objects similar to *incestum*, like *perfidia* (Prop. 1, 15, 34), *adulterium* and *furor* (Ov. *Met.* 7, 717 and 13, 43 resp.), *facinus* (Sen. *Herc. O.* 361). In the *DM* we find *parricidium* (*de caeco* 2, 14 [33, 1], 4, 1 [62, 3], *de filio* 17, 7 [338, 9]), *periculum* (6, 20 [131, 16]), *adfectus* (16, 2 [320, 11]), *orbitas* (16, 8 [327, 26]), *incestum* also 18, 8 (361, 1-2), 18, 9 (361, 19),¹⁹⁷ 18, 11 (364, 6, 364, 11), 18, 12 (366, 5), 18, 14 (368, 4).

364, 1-18 quid, quod – neganti crediturus: the first argument inveighs against the father’s preparedness not just to believe the rumour but even to investigate it. It takes the form of a large apostrophe, with the last sentence (*pater qui – neganti crediturus*, 364, 17-18) addressed to both father and judges. For the locution *quid, quod* to introduce an *interrogatio*, see comm. at 18, 10 *quid quod* (362, 14).

364, 1 nefande: this rare vocative¹⁹⁸ occurs relatively frequently in *DM* 18, here, it is used to mark the beginning of a fresh argument, and as such we also find it 18, 11 (364, 7), 18, 13 (366, 20) and 18, 16 (369, 6).

364, 2 ita tu – agitare secretum: this second *interrogatio* is ironic, for the advocate contends that no *monstrum* ever took place.

Agitare is used in a sense derived from that defined in OLD 4 as ‘to scour (a district) for game’, as such, it occurs *DM* 3, 4 (*saltus agitare venatu*, 45, 14) and, more figuratively, 8, 20 (*stillantem animae sedem cruentis manibus agitantem [sc. medicum] ne festinet*,

¹⁹⁵ Håkanson 1978 reads *tantam amentiam*.

¹⁹⁶ Mosshamer has 6.10.15 but this is the only sentence that qualifies.

¹⁹⁷ *ut de illo incestum pater sibi credat* see comm. ad loc.

¹⁹⁸ Apart from *DM* 18 it only occurs *Priapeum* II. *Quid hoc novi est Vergilio vel Tibullo attributum* (Appendix Vergiliana) 14 [Sen.] *Oci* 643. *Stat. Theb.* 11.341. *DM* 15.14 (317.11).

hortatur 171, 23-24) and 10, 3 (*longum est officia praeterita debita pietatis agitare*, 202, 8-9) *Agitare secretum* was evidently coined by the author of *DM* 18 and 19. Apart from here, it occurs 19, 11 *ne parricidu me velis agitare secretum* (383, 5), compare also 18, 11 *nisi dissimulanter indicia tanti sceleris agitasses* (364, 6)

364, 2-5 ‘populus loquitur – stringe complexum: the double *anthypophora* harks back to ‘*rumor fuit*’ in 18, 6 (359, 3 and 4)¹⁹⁹ Ritter 1967², 67 comments on its resemblance with *DM* 8, 11 *medici desperaverunt, quid istud ad patrem?* *spera tu, iube sperare matrem, tuis potius affectibus, tuis crede votis* (162, 7-8). To his observation may be added 11, 9 ‘*Me,*’ *inquit, ‘occidite’* () *vides quantum feceris nefas idem pro liberis meis offerre non potui tu vero parvulos tuos tene, ut in isto potius moriantur amplexu* (228, 18-23)

364, 2-3 loquitur incestum: De Vico 1962, 25 objects to the use of the bare accusative with *loqui*, instead of *de* + ablative. He adduces the current sample and *DM* 19, 14 *loqui multa* (387, 6). In fact, it is not at all uncommon for a bare accusative to occur with *loqui*. Usually, we find the accusatives of pronouns, nouns referring to speech (e.g. *verba*) or adjectives denoting quantity (*pauca, multa*). However, TLL s.v. *loquor* 1666, 23 – 1667, 4 enumerates cases where ‘*respicitur potius argumentum sermonis, quod enuntiatur, indicatur vel fusius tractatur,*’ among which we find e.g. *Cic. Mil. 63 multi etiam Catilinam atque illa portenta loquebantur*, *Att. 9, 13, 1 hic quidem mera scelera loquuntur*, *Sen. Ep. 105, 8 quotiens alicuius scelus loquitur de suo cogitat*. Notable instances in the *DM* are 6, 22 *te omnia saecula loquentur* (133, 22-23), 15, 3 *iam leges iam iura loqueris* (304, 22), 16, 2 *homines, quos loquitur invidia* (320, 18-20).

364, 3-5 tanto magis – stringe complexum: the rejoinder to the second *anthypophora* is much more demanding: apart from denying the rumour, the father must embrace and support his wife and son. The sentence’s complexity is reflected by the different punctuations offered by the various editors. Burman 1720, 358 has *tanto magis osculare unicum & conjugem tene pariter duos circa tuum stringe complexum*. Lehnert 1905, 329 similarly punctuates *tanto magis osculare unicum et coniugem tene pariter duos circa tuum stringe complexum*. Håkanson’s punctuation is in my view to be preferred: it yields a tricolon which, though uneven, contains an imperative and a reference to both mother and son in each of its cola.

364, 4-5 duos circa tuum stringe complexum: the assumption that *circa* belongs with *tuum* – *complexum* would present an awkward enallage; it must belong with *duos*. *Circa* occurs in postposition very rarely, but is found in *Verg. G. 3, 146 est lucos Silari circa* and *Ov. Met. 3, 668-69 quem circa tigres simulacraque inania lyncum / pictarumque iacent fera corpora pantherarum* (Forc. *circa* n. 1). The expression *stringere complexum* is quite unusual. We find it with *ablativus instrumenti*²⁰⁰ in *DM* 2, 11 *tu custodies, utrum frequentius osculer, utrum stringam magis artiore complexu?* (95, 22-23) and *Auson. Ep. 21 o ab omnibus patrio stringende complexu*.

¹⁹⁹ Neither Burman 1720, 358 nor Lehnert 1905, 329 – if we go by their punctuation – which lacks quotation marks – considers the passage an *anthypophora*.

²⁰⁰ Tosato 1912, 56 rightly remarks that here – too – one would have expected an *ablativus instrumenti*.

364, 5 pro inaudita feritas: in the *DM*, *exclamationes* by means of *pro* are usually followed by an adjective and abstract noun; they are meant to rouse indignation or pity. See also *DM* 4, 4 *pro tristis necessitas* (64, 19); 5, 4 *pro inconsulta pietas* (88, 6); 14, 12 *pro miseranda condicio* (300, 16).²⁰¹ *Inaudita feritas* also occurs in *DM* 8, 19 (*numquam res ... tam horribilis inauditaeque feritatis admissa est*, 170, 15-16); here too it denotes an unnatural act of a father against his son.

364, 5-6 ita patri – potest probare: the first part of the argument (the father ought to have ignored or refuted the rumour) is concluded with an antithetical *interrogatio*, which forms the transition to the second part: objections against the father's investigations. Note the striking *repetitio* of *non*. *Quod non potest probare*, phrased to contrast with *non sufficit non credere*, is not quite accurate: in the remainder of the paragraph, he is reproached because he failed to employ more conventional and discreet means of investigation and resorted to torture to prove the incest.

364, 6-10 ferrem tamen – scrutator insiste: another pseudo-*concessio*: it would have been (barely) tolerable if the father had acted upon his suspicions with restraint and discretion. The fact that he has not makes him appear in a worse light. The figure is based on the *locus argumenti a fictione*, for which see comm. at 18, 9 *dic potius* (361, 16). A similar use of this *locus* can be found in 13, 1 where the poor man complains of the poisoning of his bees by the rich man: *quae tamen (...) aequiore animo omnia tolerarem, si cuius mihi conscius culpaee etiamsi iniustam poenam, meritam tamen iram tulissem* (265, 20 – 266, 1).

The topic receives a less dismissive treatment in 18, 12 (*Video, qua – scisse rumorem*, 365, 5-10).

364, 7 nefandissime senex: for this vocative see comm. at 18, 11 above (*nefande*, 364, 1).

364, 8 indicia ... agitasses: for this use of *agitare* see comm. at 18, 11 above (*ita tu – agitare secretum*, 364, 1-2). The proposed investigation is described in a tricolon consisting of two short and concrete chiasmic cola followed by a long one in a more general vein.

364, 8 observa sermones: in *DM* 18, *sermo* hardly ever refers to conversation, but usually to rumours,²⁰² which makes the advocate's order (unintentionally) ambiguous: the father's propensity for gossip is one of his main points of attack.

364, 9-10 sagax scrutator: note the insistent alliteration of *s*. *Sagax* originally means 'keen-scented' (OLD 1) and often occurs in connection with dogs (e.g. Cic. *Div.* 1, 65; Ov. *Rem.* 201), so that the adjective conjures up an image of dog-like watchfulness. Ritter 1967², 66 seems to doubt the correctness of *scrutator*, but the word is not uncommon in Silver Latin. In many cases, it refers in a poetic way to those who search (for e.g. metals or fish) for a living: Luc. 4, 299 *auri*; Stat. *Silv.* 3, 1, 84 *profundi*; 3, 3, 92 *pelagi Eoi*; *Theb.* 6, 880 *collis Hiberi*; 7, 720 *aquarum*; Suet. *Claud.* 35, 1 (referring to those who searched

²⁰¹ Apart from these, we find with the same function 9, 20 *pro fidem deum hominumque* (195, 4-5) and 18, 11 *pro nefas* (364, 12).

²⁰² Gossip: 18, 1 (354, 8), 18, 2 (354, 18), 18, 4 (356, 20); 18, 5 (358, 10), 18, 6 (359, 12); 18, 7 (359, 23); 18, 8 (360, 25), 18, 13 (366, 23), 18, 16 (370, 3) Conversation 18, 3 (356, 12); 18, 7 (360, 20), 18, 10 (362, 17)

the emperor's *salutatores* for weapons), Auson *Mos* 280-81 *operti / Nereos*, it seems hence that it has also come to refer to seers (Luc 5, 122 *Hesperu fati*, Amm 20, 3, 3 *causarum intelligibilum*) The present absolute use is unique

364, 10-11 quid tibi – ut torqueas: this *subiectio* breaks up the train of thought commenced in 364, 6-10 (*ferrem tamen – scrutator insiste*) and resumed in 364, 11-18 (*at tu – neganti crediturus*) It ruins the antithesis between both passages which is made explicit by the use of *tamen* (364, 6) and *at* (364, 11) Though unwarranted by manuscriptal evidence, I would propose to move the *subiectio* slightly upward to conclude and crown 364, 5-6 *ita patri non sufficit non credere incestum, quod non potest probare?*

364, 10-11 quid tibi – cum supremis: the *interrogatio* consists of an isocolon with emphatic parallelism through anaphora of *quid* and *cum* and *homoeoteleuton* (and *homoeoptoton*) of *abruptus* and *supremis* *Abruptum* is substantivized, its current sense ('drastic measure') does not occur in TLL s v *abruptum* 143, 2-48 and seems unmatched except for a second occurrence in 18, 11 at 364, 16 For *suprema* = 'death', see comm at 18, 5 *orbitates ac liberorum suprema* (357, 23)

364, 11 incestum iam – ut torqueas: the advocate obliquely answers his own question, hinting that the interrogation was in fact a vengeful act of punishment He later rephrases the point in a gnomic *sententia* to round off his argument (*pater, qui – neganti crediturus*, 364, 17-18)

364, 11 incestum ... credas: for *credere* with bare accusative, see comm at 18, 10 *credere incestum* (363, 24)

364, 11 at: according to TLL, OLD, Forcellini s v *at*, KS 2, 82-83, LHS 488-89, the adversative value of *at* may be weakened (e g when it introduces a rhetorical *occupatio* or provides continuity at the beginning of a new section of text) but is never altogether absent The sentence it introduces jars, therefore, with preceding *quid tibi – ut torqueas*, but – with *at* responding to *tamen* – fits perfectly after *ferrem tamen – scrutator insiste*

364, 12 pro nefas: the *exclamatio* expresses the speaker's outrage, together with emphatic *tu*, it serves to underline the contrast between the father's actual conduct and the discreet investigations proposed earlier Becker 1904, 24 in connection with *DM* 6, 6 *nefas*' (116, 19) points out that '*nefas more interiectionis sermoni insertum Vergilius primus* (Aen 7, 73, 10, 673 8, 688) *eumque secutus Horatius Carm* 3, 24 30 4, 6, 17 (*heu nefas*') *adhibent*' He also names Florus as an author with a penchant for the interjection (*Epit* 2, 20, 7²⁰¹) *Pro nefas* comes into use slightly later and seems especially popular with African authors It occurs Sen Ag 35, Apul *Apol* 4, 98, *Fl* 3, Calp *Decl* 10, 12, Flor *Epit* 3, 21, 11, 4, 2, 14, Min *Fel Oct* 9, 5, 28, 11, Amm 17, 9, 4, 30, 5, 10

364, 12 verberibus, ignibus et tota crudelitatis arte: for this expression, see comm at 18, 4 *verberibus ignibus omni crudelitatis arte* (357, 3-4) About the use of *tota*, Von Morawski 1881, 11 remarks 'Unter den Redensarten muss die häufige Verwendung von *totus* in Verbindung mit verschiedenen substantivis auffallen, wenn gesagt werden soll, dass etwas im gesteigerten, vollen Masse, oder mit dem grosstmöglichen Kraftaufwand geschieht' The instances he gives are *DM* 2, 23 *toto cooperitur amplexu* (40, 15), 5 20 *tota defectione conticuit* (106, 8-9), 8, 5 *tota libertate proclamat* (155, 19), 8 20 *toto corpore*

⁰¹ Further 2 19 4 3 19 1 4 2 45 4 2 81 *o nefas* 4 1 2

effringens (172, 1); 9, 7 *tota cogitatione intentus in mortem* (181, 3); 10, 7 *inveni ... arte tota, labore toto* (206, 1-2); 13, 4 *cum ... toto fortunae strepitu circumstetisset* (269, 2-3); 14, 6 *tota velocitate grassantur* (293, 19); 15, 7 *totis corporis animique viribus inple ... horrorem* (308, 21-22); 15, 14 *toto licet felicem terrore convenias* (317, 2-3). We may add 2, 4 *tota malorum suorum cogitatione confusus* (24, 6-7).²⁰⁴

364, 13-15 de qua – petulanter excuterer: the advocate is not expressing any humane sentiments with regard to slaves. In fact, evidence and testimonies given by slaves were throughout antiquity regarded as unreliable unless they had been obtained by torture,²⁰⁵ and there were but few restrictions to the use of this means of coercion: it was only to be applied in connection with serious crimes when the facts had been established, and pregnant women and children were exempt; it was advised not to use torture in the beginning of proceedings and to exercise moderation.²⁰⁶ Slaves were usually tortured in court, but they could also be tortured at home, in the presence of witnesses, by or in behalf of their masters. The evidence was then presented in the form of a written statement, which ranked as less reliable than a testimony obtained in court.²⁰⁷

What the advocate means, therefore, is that the father had no right to conduct *any* kind of *quaestio* on the basis of his outrageous and unfounded suspicions. He expresses his opinion in two synonymous clauses whose parallelism is underlined by anaphoric *de qua* and the doublet of past potential subjunctives *deberes* and *excuterer*.

The *concessio* in 18, 12 *Sed, ut torqueas, ducatur tamen quaestio per coniugis ministeria, per filii servulos, in illa potius vilitate desaeviat* (365, 11-12) is therefore not incompatible with what is put forward here.

364, 14 vernilium ... corporum patientiam: the double *metonymia* (for *vernarum corpora patientia*) corresponds with *servos*. For the import of (*im*)*patientia* in *DM* 18 and 19 see comm. at 19, 1 *hanc ... patientiam meam* (372, 12). *Corporum patientia* is a common expression, occurring Cic. *Off.* 1, 34, 122; Sen. *Contr.* 2, 5, 6; *Suas.* 7, 3; Sen. *Dial.* 4, 12, 1; Plin. *Ep.* 3, 11, 6; *Nat. prooemium*; 7, 87; Gel. 2, *cap.*²⁰⁸

Vernilis is derived from *verna* (for a slave who was born in his master's house, OLD). In comparison with its counterpart *servilis*, it occurs only rarely and always in a figurative sense (OLD s.v. *vernilis* 'of or belonging to a house-slave; typical of a *verna*, servile, obsequious')²⁰⁹, except in the *DM*, where we find (always in connection with torture) 7, 4

²⁰⁴ Zvěřina 1883, 353 adds that this use of *totus* can be recognized in later Italian and French di tutto cuore, de toute force, de tout mon coeur etc

²⁰⁵ Fasano 1997, 89-90.

²⁰⁶ Mommsen 1955², 417, on the basis of *Dig.* 29, 5, 1, 24, 48, 18, 18, 2, Augustus *Dig.* 48, 18, 1 pr. 1. 1. 20, Paulus 5, 14, 1, *Cod.* 9, 41, 3; 1, 8, 1; Paulus 1, 12, 4, *Dig.* 25, 5, 1, 33, 48, 18, 10 pr. 1. 15, 1, 48, 18, 3; 48, 18, 7.

²⁰⁷ See Mommsen 1955², 417-18 and Fasano 1997, 112-14. Both cite as the most famous case that of Sassia, who tortured a slave at home to gather evidence against Cluentius in connection with the murder of Oppianicus. See Cic. *Clu.* 63-66.

²⁰⁸ Of course one is also reminded of Sallustius' famous description of Catilina, *corpus patiens mediae algoris vigiliae, supra quam quouquam credibile est* (*Cat.* 5, 3).

²⁰⁹ See further Caecil. *Com.* 131 *nimis tamen hoc fit verniliter*; Sen. *Ben.* 2, 11, 3 *ego magis velle me scio omnia illi praestare quam adhuc praestitisse et haec ipsa non verniliter*; Tac. *Hist.* 2, 59, 2 *vernilibus blanditus*, 3, 32, 3 *vernile dictum omnem invidiam in eum vertit*. The same goes for the noun *vernilitas*: see Pl. *Bac.* fr. 4; Sen. *Ep.* 95, 2, Quint. *Inst.* 1, 11, 2; Plin. *Nat.* 34, 79. Closest to the word's literal meaning comes Hor. *S.* 2, 6, 108-09 *nec non verniliter ipse / fungitur officus, praelibans omne quod affert*.

iura, quae nos a servilium corporum condicione secernunt (140, 11-12); 7, 7 *suspectus ... in quo servilium pectorum recessus, in quo verniles excutuntur artes* (143, 20-21); 19, 12 *quaestionem ... qualis vernilibus corporibus adhibeatur* (385, 5-6).²¹⁰

364, 14 excuteret: the metaphor cannot be specified any further according to Mosshamer 1939, 60. It has no parallels, only a literal counterpart in the theme of *DeMi* 322: *cum excuteretur corpus, inventae sunt tabellae ad filium*.

364, 15-16 laminas accendis – suspicaris incestum: the pithy tricolon consists, as usually, of two short cola with a concrete substance, followed by a longer, more abstract one. Due to this last colon the *brachylogia* verges on the obscure.

364, 15 laminas accendis: *lam(m)inae* were metal strips, which were heated and applied to the skin (see Helbing-Bauer 1926, 40 and Fasano 1997, 168-69). Compare *DM* 9, 5 *accendebat ignibus laminas* (180, 12). Combined with *eculeus*, we find it *Sen. Contr.* 2, 5, 6 *exquisita verbera, laminae, eculeus*; *V. Max.* 3, 3 ext. 5 *rupit ... verbera, fidiculas laxavit, solvit eculeum, lamminas exstinxit*; 6, 8, 1 *laceratus verberibus eculeoque impositus, candentibus etiam lamminis ustus*; *Sen. Ep.* 78, 19 *flamma et eculeus et lammina*; *DM* 19, 15 *admove eculeos, flagella, laminas* (388, 9-10).

364, 15 eculeos moves: for this instrument of torture (and its plural number) see comm. at 18, 1 *eculeos* (354, 11). The normal verb is *admove* (see OLD *admove* 6b 'to bring [instruments of punishment] into operation, apply, inflict [torture etc.]'), thus e.g. *Cic. Ver.* 5, 163; *Hor. Carm.* 3, 21; *Curt.* 6, 11, 31; *Sen. Contr.* 10, 5, 4; *Dial.* 1, 4, 11; *DM* 19, 15 *admove eculeos* (388, 9), but we also find *DM* 19, 12 *eculeos movebam* (385, 6).

364, 16-18 nescis – neganti crediturus: the argument is capped by a *subiectio*. The *interrogatio* expresses anger through bogus astonishment. It is answered with a pseudo-gnomic *sententia*, though not quite directly, because *praeceptus* and *abruptum* refer of course to the murder of the son. But a direct answer had in fact already been supplied in 18, 4: *torsit filium, ut probaretur incestum; occidit, ut crederetur* (357, 6-7). And in 18, 14 we find: *Mirabar et ego, iudices, si tam nefanda quaestio alium exitum potuisset habere quam mortem* (368, 5-6).

364, 16 quod praeceptus, quod abruptum: *synonymia*, enhanced by anaphoric *quod*. For substantivized *abruptum* see comm. at 18, 11 *quid tibi – cum supremis* (364, 10-11 above). *Praeceptus* in the *DM* often modifies a vehement emotion or action in the *ablativus modi*;²¹¹ substantivized, it occurs very rarely in a figurative sense: TLL s.v. *praeceptus* 415, 45-61 (*de eis, qui inconsulto, inconsiderate, temere agunt*) only offers, apart from the present instance, *Vell.* 2, 112, 7 *pravitate animi ... in praecipitia conversus*; *Tac. Ann.* 2, 39, 2 *ad maiora et magis praecipitia*; *Cod. Theod.* 16, 8, 21 *ne ... quicquam praeceptus ... admittant*.

364, 17 nefandae diligentiae furore: *nefanda diligentia* is of course an *oxymoron*; *furor* and *diligentia* too form an awkward combination. Unsurprisingly, they are both unparallelled.

²¹⁰ Instances adduced by Ritter 1967², 67-69. For *servilis* in a literal sense one could add 2, 19 *illam servilis negligentiae quietem* (their untroubled sleep, 37, 19), 9, 7 *servilia arma* (a gladiator's, 180, 25)

²¹¹ 16, 8 *dolore* (327, 17), 17, 4 *trepidatione* (335, 16), 17, 13 *furore* (344, 13), 18, 17 *pietate* (371, 6), 19, 9 *impulsu* (381, 21); 19, 13 *festinatione* (386, 6)

364, 17-18 de incesto ... torquet: Von Morawski 1881, 11 regards *torquere de* as exemplary of the extended use of *de* in the *DM* *Torquere de* occurs rarely, it is also found *DeMi* 324, 9 *nihil illa tormenta ad confessionem sacrilegi pertinebant, non de hoc torquebatur vos de caede torquebatis, ille de sacrilegio torquebatur*, *Plin Nat* 7, 87 *simili de causa cum torquebatur*, *DM* 18, 11 *facinus, de quo pater non potest alium torquere quam filium* (365, 3-4) *De* probably crops up because the tortures accompany interrogations about particular crimes

364, 19 – 365, 4 Omnium quidem – quam filium: this paragraph does not contain a new or separate argument. Rather, the advocate resumes the argument touched upon in the previous paragraph (*quid tibi – neganti crediturus*, 364, 10-18) and now explicitly states why torture should only be used as a last resort: it is unreliable (*omnium quidem – dolore respondet*, 364, 19-22), it is not suitable for a son (*nondum dico – ignesque ponatur*, 364, 22-23), there is no evidence (*criminis – praecedant*, 364, 23-24), there are no witnesses (*non habet – quam filium*, 365, 2-4)

364, 19-22 Omnium quidem – dolore respondet: a doublet of gnomic *sententiae* that are virtually synonymous, the first, rather abstract one being explained by the one that follows. The generic sentences make use of the *locus communis de tormentis*, which is apparently so familiar that there seems little need to elaborate upon it. We find discussions of the *locus* in a number of textbooks on rhetoric.

Rhet. Her. 2, 10 offers a detailed discussion: *A quaestionibus dicemus, cum demonstrabimus maiores veri inveniendi causa tormentis et cruciatu voluisse quaeri et summo dolore homines cogi, ut quicquid sciant dicant, et praeterea confirmatio haec erit disputatio, si quae dicta erunt, argumentando isdem viis, quibus omnis coniectura tractatur, trahemus ad veri similem suspicionem, idemque hoc in testimonio facere oportebit. Contra quaestiones hoc modo dicemus: primum maiores voluisse certis in rebus interponi quaestiones, cum, quae vere dicerentur, sciri, quae falso in quaestione pronuntiarentur, refelli possent, hoc modo: Quo in loco quid positum sit, et si quid esset simile, quod videri aut aliquo simili signo percipi posset, deinde dolori credi non oportere, quod alius alio recentior sit in dolore, quod ingeniosior ad comminiscendum, quod denique saepe scire aut suspicari possit, quid quaesitor velit audire, quod cum dixerit, intellegat sibi finem doloris futurum. Haec disputatio conprobabitur, si refellemus, quae in quaestionibus erunt dicta probabilis argumentatione, idque partibus coniecturae, quas ante exposuimus, facere oportebit.*

Cic. Inv. 2, 47 merely mentions the *locus* in passing, but has a modest contribution in *Top.* 74: *Facit etiam necessitas fidem, quae tum a corporibus tum ab animis nascitur. Nam et verberibus, tormentis igni fatigati quae dicunt ea videtur veritas ipsa dicere, et quae perturbationibus animi dolore, cupiditate, iracundia, metu, qui necessitatis vim habent, afferunt auctoritatem et fidem.*

See also *Quint. Inst.* 5, 4: *1 sicut in tormentis quoque, qui est locus frequentissimus, cum pars altera quaestionem vera fatendi necessitatem vocet, altera saepe etiam causam falsa dicendi, quod alius patientia facile mendacium faciat, alius infirmitas necessarium. Quid attinet de his plura? Plenae sunt orationes veterum ac novorum. 2 Quaedam tamen in hac parte erunt propria cuiusque litis. Nam sive de habenda quaestione agetur, plurimum*

*intererit quis et quem postulet aut offerat et in quem et ex qua causa: sive iam erit habita, quis ei praefuerit, quis et quo modo sit tortus, an credibilia dixerit, an inter se constantia, perseveraverit in eo quod coeperat an aliquid dolore mutarit, prima parte quaestionis an procedente cruciatu. Quae utrimque tam infinita sunt quam ipsa rerum varietas.*²¹²

When the *locus* occurs in Roman declamation, it is usually employed to denounce the use of torture on the grounds of its unreliability. See e.g. Sen. *Contr.* 9, 6, 20, where a mother accused of poisoning names her own daughter as her accomplice: *fortasse, inquit, hanc nominavit (...) quia acerrume instabat accusator, hoc metu territus finem tormentis imponderet. fortasse nimio dolore tormentorum stupefacta nescit, quid loqueretur.* Cf. also 9, 6, 7 *Servus tortus Catonem conscius furti dixit. Quid agitis? Utrum plus creditis tormentis an Catoni?* See further *DeMi* 269, 16 *et si perseveraverint, aude dicere homines in tormentis solere mentiri*; 353, 4 (*sermo*) *infitiator dicat oportet dispensatorem suum finem tormentorum quaesisse: ideo confessum ut dimitteretur*; 379, 5 *'Tortus dixit.' Eo minus credo: mentiuntur plerumque torti.* In 338, 25-26, torture is even used to force the subject to lie: *deficientes iam per se distendis artus lacerasque verberibus iam non cohaerentem cutem, et hoc dicis: 'mentiris?' Tamdiu potest mentiri contra tuam voluntatem? Etiam cum robustissimi torquentur, etiam cum animosos asperrimus dolor temptat, plurimum tamen interest quid responderi sibi velit qui torquet (...) cum vero repetas tormenta, cum reducas carnificem, quid aliud dicis quam illud: 'torque donec mentiatur'?*²¹³ See also Calp. *Decl.* 7 *Soli omnium torti sunt, donec mentirentur.*

A significant exception is *DM* 7 where a poor father, after the murder of his son by a rich enemy, asks to be tortured to confer credibility on his accusation. He appeals, then, to the reliable character of evidence obtained by torture. See e.g. 7, 1 *postquam satis non videbantur explicare verba quod videram, confugi ad fidem doloris* (137, 1 6-17); 7, 3 *fidem tormentorum! quousque percussoris filii mei conscius ero? aperite pectus istud et totum de visceribus meis latronis egerite secretum* (139, 25-27); 7, 6 *nulla est ratio quaestionum relicta mortalibus, si adiuvant contra veritatem, et sublata est de rebus humanis necessitatis huius utilitas, si causam ultro tuetur explicatque fingentibus* (143, 4-7). The father in *DM* 19 makes no use of the *locus* but this is only natural: there were no witnesses, he refuses to disclose the outcome of the interrogation and uses it as a means of insinuation; and in the end it turns out that the torture was not so much a means of interrogation as a kind of punishment.

364, 19 Omnium ... incertorum: the *hyperbaton* gives prominence to *omnium*, thus adding force to the generic statement.

364, 20 nec bene: corresponds with *pessime* in the previous *sententia*.

364, 21 illam partem hominis: a potent personification. A converse but similar reasoning is found in *DM* 7, 6: *in quaestionibus tantum corpora sumus, et nemo non contra aliquem torquetur adfectum* (143, 13-14).

²¹² See further e.g. Sulp. *Vict.* 34 (RILM 331-32), who discusses *ille communis de fide tormentorum locus* in connection with the theme of Sen. *Contr.* 6. 6 and Calp. *Decl.* 40. For yet more material on the subject see Winterbottom's comm. at *DeMi* 269, 16.

²¹³ Cf. also 338, 10 *nunc adiecit testimonii auctoritatem et infelicissimam nutricem, quam bis torst quia verum dicebat, adversum nos mentiri coegit*

364, 21-22 quae non animo, sed dolore respondet: compare 19, 15, where the father says about his son *et ille velut exustis amputatisque, per quae dolor exit in verba, fuit adtonitus, amens* (387, 17-19) Cf also *Rhet Her* 2, 10 *dolori credi non oportere* A positive valuation of *dolor* can be found in 7, 11 *habeo adhuc ex illo multa referre secreto, quae argumenta faciet dolor* For another antithesis between mind and pain, see *Orator* 130, where Cicero explains his success in the *peroratio* *in quo ut viderer excellere non ingenio sed dolore adsequabar*

364, 22-23 nondum dico – ignesque ponatur: this *praeteritio* makes clear that the mother's advocate is employing an argument *a fortiori* ²¹⁴ it is bad enough that the father uses torture, let alone that he chooses his son for its subject Of course this reproach will not be entirely fresh, for it has already been touched upon in the *narratio* (18, 4 *iuvem, quae integritatis prima simplicitas est, nihil timentem in partem domus, qua nulla proclamatio, nullus poterat gemitus audiri, rapuit, abduxit ibi verberibus, ignibus, omni crudelitatis arte consumpsit* [357, 1-4]) and at the end of the previous paragraph (18, 11 *pater, qui de incesto filium torquet, non est neganti crediturus* [364, 17-18]) But it will figure as an argument substantiated in detail in 18, 12-14 (*Sed ut – qui occiditur* 365, 11 – 368, 10)

The *praeteritio* contains two dependent questions, whose synonymy is enhanced by *polyptoton quem quis*

364, 23 eculeos ignesque: a favoured combination found also in *Sen Contr* 9, 6, 18 *ipse ignes subiciebam, ipse ad intendendum eculeum manus admovebam*, *Ben* 4, 21, 6 (*bona voluntas*) *prodest et in eculeo, et in igne*, *DM* 7, 11 *deinde non ipse adfers eculeos, non ipse disponis ignes?* () *ego eculeos, ego posco flammam* (148, 19-22), 7, 13 *si vocem in eculeis ignibusque perdidero* (150, 22), 18, 1 *vellet in eculeos, in ignes hanc miseram praecipitare pietatem* (354, 10-11) ²¹⁵

364, 23-24 criminis argu<men>ta prius, indicia praecedant: there is some trouble with the text here All mss read *cuius arguta prius indicia praecedant*, which does not make sense Yet Dessauer 1898, 93 and Lehnert 1905, 330 unquestioningly adopt this reading, although Burman 1720, 358 had already included in his notes two alternatives suggested by Schultingh 'Lego argumenta prius indicia praecedunt vel, cujusmodi argumenta prius & indicia praecedunt' ²¹⁶ Reitzenstein 1909, 74 reads [*cuius*] *argu<men>ta prius, indicia praecedant* He regards *cuius* as an interpolation prompted by the erroneous *arguta* 'sobald argumenta in arguta verdorben war, lag das Mißverständnis des Satzchens nahe' But it is hard to see how *arguta* could have prompted the insertion of *cuius*, which makes the sentence even less comprehensible – here, as on many other occasions, Reitzenstein is too radical in his tendency simply to delete words when they do not suit his interpretation Helm 1911, 385 reads *certe* for *cuius* but retains *arguta* 'Arguta ist n m A durchaus nötig im Gegensatz zu der Anklage, die das Gerucht erhoben hat' Finally, Håkanson 1974, 145 rightly objects to *arguta* 'argutus fidet sich in den Reden

¹⁴ For this type of argument see comm at 18 5 *Omittamus paulisper* (358 3)

¹⁵ And more loosely *Sen Contr* 10 5 9 *tortor cum ignibus flagellis eculeis Dial* 5 19 1 *Torserat per omnia quae in rerum natura tristissima sunt fiduculis talaribus eculeo igne vultu suo*

¹⁶ The change of mood which weakens the statement is not nor can be accounted for

nicht und wird auch nie in dieser Weise verwendet.' The collocation of *argumentum* and *inducium* is, moreover, familiar from Cic *Ver* 17, *Cat* 3, 13, Sen *Ep* 52, 12, Quint *Inst* 5, 10, 11. But Håkanson's unmotivated rejection of Helm's *certe* in favour of the much longer word *criminus* ('better is *criminus*') is not quite convincing.

Von Morawski 1881, 3 points out the vulgar tendency in the *DM* to produce pleonasm by adding adverbs to verbs. Among the examples he names we find, apart from *prius praecedere*, *DM* 19, 10 *reddidi rursus* (382, 10).

364, 24 – 365, 4 novissimum debet – quam filium: the advocate's reasoning as expressed in this paragraph and the previous one is concluded in a triplet of gnomic *sententiae*, the first two are practically synonymous, whereas the third sentence is more independent and tries to draw a more general conclusion.

364, 24 novissimum: not just 'last' (Sussman 1987, 224), there is an overtone of 'most extreme, utmost, greatest' (OLD s.v. *novissimus* 6), as becomes clear from 365, 2 *novissimis ultimisque*. The same nuance in *DM* 19, 1 (*novissimum de malis*, 372, 3) and 19, 4 (*testimonium novissimum pudori*, 375, 9),¹⁷ but in *DM* 19, 15 (387, 22) and 19, 16 (388, 27) it simply means 'last'.

The use of the neutral gender is striking and probably intended to further objectify the generic sentence. It reminds of the very common use of *nil* (much more common than *nemo*) in generic or pseudo-generic phrases, which we find as early as e.g. Plaut *Bac* 41 and 651, Prop 1, 6, 18, Cic *Pis* 66, *Phil* 3, 16. In the *DM* it is used as a suitable means to translate particular actions or situations into generic ones. See *DM* 2, 21 *nil est innocentius caeco, qui nec in scelere deprensus est, nec in dissimulatione* (39, 5-7), 10, 8 *nil est infelicius matre, quae perdidit aliquid in filio postquam extulit* (206, 20-21), 10, 12 *nil est sceleratius prudenti orbitate* (210, 23), 11, 6 *nil est detestabilius hominibus qui leges ipsas faciunt nocentes* (224, 25-26), 19, 9 *nil est infelicius homine cui de unico suo mors sola non sufficit* (380, 23-24).

365, 1 obiter et torquet[ur] et punit: another textual problem. *Obiter* is Lehnert's conjecture (1905, 330) for what in a variety of mss. appears as *obit<c>eret* (B), *obiret* (V), *obicit* (π), *obieret* (H), *obiceret* (JO) and has otherwise been omitted, while all mss. except ζ have *torquetur et punit*.¹⁸ Dessauer 1898, 93-94 ingeniously conjectured *quicquid torquet urit punit*, to which can be objected that *torquet* and *urit* should not be ranked with *punit* rather, interrogation and punishment ought to be contrasted. Dessauer does appeal to *DM* 17, 1 *Obijcere putatis parricidium patrem pro se? Necatur, uritur, sine dubio torquetur vita* (Burman 1720, 333) – an awkward sentence, which does not really fit the context.¹⁹ But Håkanson 1974, 133 makes a convincing case for *obicere putatis parricidium patrem? pro se negat uritur sine dubio, torquetur, vitam* – this is both rhetorically and contextually sound, but cancels Dessauer's parallel for *DM* 18, 11. For 18, 11 then, we must like Helm (1911, 385) and Håkanson (1974, 145) follow Lehnert in his suggestion of *obiter*, but reject

¹⁷ And see further *DM* 4, 5 (65, 26), 6, 4 (114, 14), 6, 8 (118, 12), 8, 15 (166, 15), 9, 5 (179, 25), 14, 7 (295, 14), 17, 3 (334, 18).

¹⁸ Burman 1720, 358 has *novissimum debet esse quicquid torquet & punit* – he mentions some variants in his apparatus.

¹⁹ Lehnert 1905, 302 has *obicere putatis parricidium patrem pro se? necatur, uritur, sine dubio torquetur vitam*.

his *torquetur et punitur* for Burman's *torquet et punit*: the whole argument centres around the father's misbehaviour rather than the son's suffering.²²⁰

365, 1 obiter: Hammer 1893, 51 mentions the use of *obiter* in *DM* 1, 13 (14, 3); 4, 6 (67, 6); 10, 16 (215, 23) 'zu gleicher Zeit'²²¹ as a point of affinity with Apuleius, citing *Met.* 6, 26 *ne breviculo quidem tempore refectos obiter reducunt* to prove his point. This and two more instances can be added: *DM* 12, 22 (256, 17); 16, 6 (325, 11). It is clear from all six that simultaneity is an insufficient characterization to describe two actions that happen *obiter*; they have a – usually deliberately – causal connection.²²²

365, 1 fidem hominum deorumque: familiar especially from comedy, oratory and rhetoric (see TLL s.v. *fides* 666, 29-64), this *exclamatio* is sometimes a genuine invocation of gods and humans, but more often it simply expresses exasperation. In its oldest and most common wording, it runs *pro de(or)um atque hominum fidem*;²²³ we further find *pro de(or)um fidem atque hominum*;²²⁴ *pro deum hominumque fidem*²²⁵ and *deorum hominumque fidem*.²²⁶ In the *DM*, the word order is different, starting with *fidem*: 9, 20 *pro fidem deum hominumque* (195, 4-5); 16, 9 *fidem deorum hominumque* (328, 19); furthermore here, strikingly, men are put before gods.

365, 2 ne gravitatem putetis: this warning, a kind of disguised *prolepsis*, recurs in a bitterly sarcastic question in 18, 15: *viscera de tuis concepta vitalibus, sanguinem, qui de tua fluxit anima, non insania, non furore sed, quantum vis videri, consilio, gravitate lacerasti: potes tacere?* (368, 26 – 369, 3). *Gravitas* is of course precisely the virtue the father in *DM* 19 wants to display in order to justify his conduct. It pervades his account of the murder in 19, 9-11 (381, 4 – 383, 15; note esp. 383, 11-12 *iram nostram mors severa composuit*), but it also lays the foundation for his silence as explained in 19, 7 (378, 10 – 379, 3 and 379, 14-16; note esp. 378, 10-12 *ex omnibus, iudices, quibus humana pectora seriis gravibusque complentur adfectibus, nullam difficiliorem quam silentii credo virtutem*; 379, 14-15 *quanto silentium gravius est in sene*). For a harsh attack on this kind of *gravitas*, see *DM* 8, 7 *quam multa ideo tantum de filiis facitis, quia licet! et frequentius potestatis vestrae iactatione tamquam aliquo gravitatis genere delinquitis* (157, 23 – 158, 2). See further 17, 11 *vos adhuc in suprema nostra praecipitat auctoritas, qui filium occidere vocatis plerumque gravitatem, sicut abdicationis emendationem, sicut reliqua supplicia nostra rationis fronte protegitis, cunctosque praeigidae mentis adfectus vocabulo molliore lenitis* (338, 14-18).

²²⁰ Reitzenstein's suggestion (1909, 75) verges on the ridiculous. relying too heavily on π , he rejects *obiter* as superfluous, adding 'Seit *obicit* durch die neue Handschrift geboten ist (.) ist die einfachste Herstellung wohl. *novissimum debet esse quod, quicquid obicit, et punit*. Die Folter verbindet mit der Untersuchung schon die Strafe, darum muß sie die letzte Art der Untersuchung sein.' His reading yields a dubious Zeugma; moreover, an interrogation under torture is never automatically associated with punishment – it is the father who explicitly combines the two in *DM* 19; and here in 18, 11, he is taken to task for it

²²¹ Tosato 1912, 91 rightly defines this use as post-classical.

²²² See TLL s.v. *obiter* 67, 52 – 68, 32 for a discussion of *obiter* in *DM* 1, 13; 10, 16, 12, 22, 16, 6

²²³ Pl. *Cur* 694; *Epid.* 580, Ter. *An.* 246; Sal. *Cat.* 20, 10; Cic. *Verr.* 3, 137, 4, 7, *Div. Caec.* 7; *Tusc.* 5, 16, 48, Calp. *Decl.* 20, 34

²²⁴ Ter. *Hau.* 61; *Hec.* 198; Cic. *Amic.* 52

²²⁵ Cic. *Q. Rosc.* 23; 50.

²²⁶ Cic. *Font.* 3.

365, 2 novissimis ultimisque: a unique pair of synonyms in *homoeoptoton* and *homoeoteleuton*, harking back to 364, 10-11 *quid tibi cum abruptis, quid cum extremis?*⁷

365, 2-4 non habet – quam filium: this concluding gnomic *sententia* builds a transition to the next paragraph, which resumes the advocate's objection that the father ought first to have tried different means of investigation (18, 11 [365, 6-11]) The *sententia* is hardly suitable to conclude the argument – one would have expected an *epiphonema* to denounce once more the use of torture on the son. Nor is the *sententia* valid in itself – in the first place it has never been established that the father could not have tortured anyone else, in the next paragraphs (365, 5-12) he is in fact reproached for the fact that he evidently refused to do so. Secondly, the torture *could* have served as proof if witnesses had been present, as the advocate contends in 18, 12-13 (366, 7 – 367, 2)

365, 3 habet probationem: the collocation seems awkward, but also occurs e.g. Sen. *Ben.* 3, 10, 2 *maxima beneficia probationem non habent*, Quint. *Inst.* 5, 10, 56 *species firmam probationem habet generis*, 7, 2, 15 *si plures in persona probationes habuerit*, 7, 4, 24 *coniectura extrinsecus quoque adductas probationes habet*, *DM* 11, 6 *rumore, cuius probationes, cuius argumenta non habes* (226, 4-5)

365, 3-4 de quo ... torquere: for *torquere de*, see comm. at *de incesto torquet* above (364, 17-18)

365, 5-10 Video – scisse rumorem: this paragraph resumes 18, 11 *ferrem tamen – scrutator insiste* (364, 6-10) and advocates alternative means of investigation, which should have preceded the torture. It is another *concessio* which, like the others, qualifies and conditions the right of the father to torture his son. The figure is based on the *locus argumenti a fictione*, for which see comm. at 18, 9 *dic potius* (361, 16). For its introduction with *video*, see comm. at 18, 7 *Video* (360, 1). At 365, 5 there begins a huge apostrophe, which runs 18, 12-13 (365, 5 – 367, 2)

365, 5 qua ... ratione: *hyperbaton*

365, 6 incestum ... eruere: Mosshamer 1939, 31 categorizes figurative *eruere* with *ruere* and *ruina* as the *translationes, quae e domo ruenti sunt petitae*, part of the *architecturae imagines*. In fact, *eruere* in a figurative sense is quite common, see OLD s.v. *eruo* 2 ('to unearth [anything unknown, latent, or forgotten], search out, bring to light, elicit') and TLL *eruo* 844, 72 – 845, 21. In the *DM* it further occurs 18, 14 *quicquid est, quod eruisti, profer in medium* (367, 21), 19, 7 *quaedam non possis verberibus, eculeis eruere* (379, 7)²²⁷

365, 6 Quid ais: the first of five bitterly ironic *interrogationes* (365, 6-10). For the use of *quid ais* in the *DM*, see comm. at 18, 9 *Quid ais – ex forma* (361, 14-16). Here, the speaker sarcastically attributes actions to the father that would have justified the torture to a certain extent.

Both Burman 1720, 359 and Lehnert 1905, 330 print full stops after *inveniri flagitu blanditias pater*, thereby showing their conviction that these sentences are declarative rather than interrogative sentences. It is England 1934, 46 who proposes to follow a number

⁷ In a literal sense *eruere* occurs 3, 4 (45, 17), 6, 8 (118, 17), 10, 14 (213, 20).

of ancient editions²²⁸ and interpret them as such: "*Eas autem sententias (...) interrogativas putandas esse e praecedentibus, ni fallor, apparet: si – erueres, quippe quibus nescire se simulet is, qui dicit, utrum incestum pater eruere conatus sit necne: nescienti autem interrogandum est.*" Håkanson has evidently, and rightly, followed his example.

365, 6-8 interrogasti servulos – ministra flagitii: the two *interrogationes* are practically synonymous, which is underlined by their extreme parallelism. They refer to the first means of inquiry evidently neglected by the father and anticipate 365, 11-12 *Sed, ut torqueas, ducatur tamen quaestio per coniugis ministeria, per filii servulos, in illa potius vilitate desaeviat* but also refer back to 18, 7 *tamquam si diceret: 'conscius detulit servus, nuntiavit ancilla...'* (359, 5-6); *vide[re], cur adulteria proferantur in fabulas: explicantur per ministeria, per conscios* (360, 1-2); 18, 11 *at tu – pro nefas! – verberibus, ignibus et tota crudelitatis arte scrutaris rem, de qua non deberes interrogare servos, de qua vernilium quoque corporum patientiam petulanter excuteret* (364, 11-15). The present *interrogatio* is not inconsistent with this denunciation in 18, 11, because it is part of the series of *concessiones* presented by the advocate to demonstrate how much the father left aside in his examination. It does, however, clash with 18, 7 *facinus vero, cui, si fas est, ut illud humanae mentis capiat audacia, circumdatur undique nox profunda, densior caligo tenebrarum, quod nocentes suis quoque oculis vix fatentur, non servo, non creditur ancillae. quid internuntiis, quid opus est ministeriis?* (360, 4-8).

365, 6 servulos: for *servulos* instead of *servos*, see comm. at 18, 7 *servulis* (360, 21).

365, 7 nec: against all mss. (excepting c), Burman 1720, 359, Lehnert 1905, 331 and Reitzenstein 1909, 74 have *non*, apparently to make the first *interrogatio* attune with the others, which all contain *non*. Englund 1934, 70-72 opts for *nec* and opposes their choice: '*constat eos, qui declamationes scripserunt, concinnitati magis studuisse quam variationi; non prorsus tamen hanc vitaverunt: nonnumquam praeter necessitatem restituta mihi videtur concinnitas.*' To substantiate his position, he adduces 10, 8 *filium tuum, mulier infelix, non impositae inferis clusere terrae nec spissa perpetuae noctis caligo compescuit, non fabulosa vatibus palus multumque celebrati curvato igne torrentes* (207, 5-9) and 11, 10 *miser ego nec ad cadavera accessi, non in sepulcra maiorum meis manibus intuli, nec licuit super ipsa corpora proclamare: 'non feci!'* (229, 26 – 230, 2) as examples of *variatio* of *nec* and *non*.

365, 7 exquisisti ancillas: *exquiro* rarely occurs with a human object. TLL s.v. *exquiro* 1817, 8-9 cites only V. Fl. 734 *celer terras regemque exquirat Echion*; Stat. Theb. 10, 465 *Hopleaque exquirunt* and – puzzlingly – Tac. Ann. 12, 47, 4 *dum Pharasmanis iussa exquirerentur*. But there are some more samples to be found in the *DM*: see 2, 13 *si parricida est et exquiritur* (32, 2); 8, 16 *cur hominem vulneribus exquiris* (167, 14).

365, 8 ministra flagitii: a variation of an idiom familiar as *minister (ministra) sceleris* (Liv. 1, 41, 7; V. Fl. 2, 123; [Sen.] Oct. 466; Tac. Hist. 4, 27, 2, Porph. in Hor.

²²⁸ See Englund 46: Badius (Paris, 1519), Sichardus (Basel, 1529) and Camerarius (Basel, 1543) punctuated as follows *quid ais? interrogasti servulos, nec potuit conscius inveniri? exquisisti ancillas, non apparuit ministra flagitii, non obscena litterarum commercia, non fatentis deprehendisti nefanda blanditias? nihil invenis maritus, dominus, pater?*

Epod. 5, 3)²²⁹ or *scelerum* (*Lucr.* 3, 61; *Ov. Am.* 1, 7, 27; *Cic. Dom.* 6; *Prov.* 5; *Luc.* 6, 573; *Tac. Ann.* 4, 71, 1; *Claud.* 15, 270; *Hist. Aug. Pert.* 5, 2).

365, 8-9 non obscena – nefanda blanditias: refers back to 18, 11 *ferrem tamen adhuc suspiciones tuas, nefandissime senex, si dissimulanter indicia tanti sceleris agitasses: observa sermones, secreta custodi, omnium dierum noctiumque momentis sagax scrutator insiste* (364, 6-10) and is inconsistent with 18, 7 *da, ut sit haec inter matrem ac filium conscientia; parcent osculis palam, abstinebunt coram patre complexibus, omnis familiaritas substringetur in publico, sermones, occursus coram servulis libertisque vitabunt* (360, 17-21).

365, 8 obscena litterarum commercia: the usual term for correspondence seems to be *commercium epistularum* (*Vell.* 2, 65, 1; *Sen. Ep.* 38, 1). Here, esp. linked with *obscena*, we are probably surreptitiously reminded of another meaning of *commercium*: sexual intercourse (OLD s.v. *commercium* 5b).

365, 9 fatentis ... nefanda blanditias: an evocative personification of *blanditiae*. *Nefanda* is Reitzenstein's tempting suggestion (1909, 74) in spite of the agreement of all mss. in *nefande*.²³⁰ '*nefande*: Gewiß wird der Vater öfters so angeredet und *fatentis* (Akkusativ) könnte an sich auch allein stehen; nur scheint das mir hier nach *obscena commercia* und *flagitium* unmöglich. Die Verschränkung der Worte ist wohl der Klausel zuliebe gewählt.' But Englund 1934, 45 objects: '*Nefanda sine dubio meliorem praebebat sensum, et usurpatum est de scelere matri filioque tributo etiam* 18, 6 (359, 11); 18, 7 (360, 17); 18, 8 (361, 2). *Fieri igitur potest, ut rectum sit. Sed etiam patrem nonnullis huius declamationis locis nefandum dici Reitzenstein ipse concedit: cfr* 18, 11 (364, 1; 7); 18, 13 (366, 20); 18, 16 (369, 21). *Praeterea hoc, de quo quaeritur, loco nefande lectio difficilior esse mihi videtur. Quae cum ita sint, recte editores memoriam codicibus traditam censeo retinuisse.*' Håkanson 1974, 146 opts for Reitzenstein's proposal: 'Eine einstimmig überlieferte Lesart kann (...) nicht lectio difficilior genannt werden, und Englund scheint Trivialisierung zu meinen; sollte wirklich *nefanda*, mit der von Reitz. selbst erwähnten Verschränkung der Worte eine Trivialisierung sein, wenn, wie Englund selbst sagt, *nefande* mehrmals in der Rede vorkommt? Der Plural *nefanda* balanciert gut *obscena commercia*, während *fatentis* (absolut) *blanditias* stilistisch etwas matt wäre; andererseits gibt es gerade hier eigentlich keinen Grund, den Vater als *nefandus* zu bezeichnen.' Though aware that *nefanda* may have been prompted simply by a desire to ameliorate a text that is good enough as it is, I concur.

365, 9 reprehendisti: all mss. (except ς) have *reprehendisti*; Burman 1720, 359 has *deprehendisti* (with *reprehendisti* in the app. crit.), but Lehnert 1905, 331 opts for *reprehendisti*. Håkanson 365 app. crit. acknowledges that in Later Latin *reprehendo* is sometimes put instead of *deprehendo* with refs. to a.o. Souter, who cites *Tert. adv. Marc.* 5, 12;²³¹ Englund (1934, 45), who of course makes a case for the mss. tradition, adds *Tert. apol.* 12, 2 and 19, 4.²³² However OLD *reprehendo* 3 – 'to detect the commission of (a

²²⁹ *Ministerium sceleris* *Ov. Met.* 3, 645, *Curt.* 5, 12, 4

²³⁰ Thus also Burman 1720, 359 and Lehnert 1905, 331.

²³¹ Also *Amm.* 25, 4, 7 and *Porph. Hor. Epist.* 1, 12, 1, but these examples are not so clear-cut

²³² *Apol.* 19, 4 has traditions of both *deprehendo* and *reprehendo*, both considered valid

crime)' –cites a much earlier instance: *neque inveniens, qua ratione id furtum reprehenderet* (Vitr. 9 pr. 10); to clinch the matter, we can add Cic. Flac. 68 *Ubi igitur crimen est, quoniam quidem furtum nusquam reprehendis* and 69 *Auri ratio constat, aurum in aerario est; furtum non reprehenditur, invidia quaeritur*. It is therefore advisable to preserve *reprehendisti*.

365, 9 invenis: Reitzenstein 1909, 74 objects to the use of the present tense and writes *invenis<ti>*: 'das Perfektum ist notwendig; denkbar *invenit*, doch gegen die Responsion.' Englund 1934, 60-61 defends *invenis*, correctly labelling it as a *praesens resultativum* or *perfectivum*²³³ and presenting a convincing parallel: *sum defessus quaeritando: nusquam invenio Naucratem* (Pl. Am. 1014).

365, 10 maritus, dominus, pater: the apposition breaks down the *paterfamilias*' responsibility, which stems from his *potestas*, into three separate roles: the father as the guardian of his wife's chastity, as an authority who has his slaves under control, and as the guardian of his son's chastity. The implication is of course that he has failed miserably on all fronts.

365, 10 i nunc et dic scisse rumorem: a defiantly sneering *epiphonema*. For the expression *i(te) nunc et...* see comm. at 18, 8 *ite nunc ... et adhuc dubitate* (361, 7). Sussman 1987, 224 translates: 'Well then, go out and say that you have scotched the rumour!' His translation, which was probably prompted by 19, 9 *torquere me filium putas? invidiam facio populo: videor mihi illis verberibus lacerare famam, illis ignibus increpare rumorem* (380, 18-20), makes it clear that he reads *scisse* as syncopated *sci<di>sse*, derived from *scindere*, but that is totally unprecedented. *Scisse* must come from *scire*; for the apparently unmotivated perfect infinitive, see comm. at 18, 4 *non ames ... adamasse* (356, 18); for the omission of the pronoun (*te*) in the *acc. c. inf.* see Hammer 1893, 45 who cites this very *epiphonema* as an example of the loose treatment of pronouns in infinitive constructions in the *DM*.

365, 11-12 Sed ut – vilitate desaeviat: this third *concessio* seems superfluous after 365, 6-8 *interrogasti servulos – ministra flagitii*. It could be explained if we assume that in the earlier passage, emphasis is on interrogation, whereas here the focus lies on torture. On the other hand, slaves were always tortured when interrogated, since otherwise the evidence obtained was considered unreliable.²³⁴

365, 11 quaestio ... ducatur: an unusual idiom. The common expression is *quaestionem habere* (thus e.g. 15 times in Cicero and 12 times in Livy; and see Quint. *Inst.* 5, 4, 2 cited above at 18, 11 *Omnibus quidem – dolore respondet* [364, 19-22]), but that does not occur in any declamation, except Calp. *Decl.* 40.

365, 11-12 per coniugis – filii servulos: the isocolon, enhanced by anaphoric *per*, prepares the way for surprising imagery. For the metonymous abstract *ministeria*, see comm. at 18, 3 *ministeria* (356, 2); for the use of the diminutive *servulos*, see comm. at 18, 7 *servulis* (360, 21).

365, 12 in illa potius vilitate desaeviat: an impetuous metaphor combined with an audacious metonym; the latter is highlighted by the *hyperbaton* caused by *potius*. *Vilitas*

²³³ KS 117-19; LHS 305-06.

²³⁴ See comm. at 18, 11 *de qua – petulanter excuteret* (364, 13-15).

as a metonym for a despised person is also found *DM* 2, 7 *quid, si huic uxoriae vilitati novercale nomen adiungas* (26, 18-19), 4, 4 *ut patriae praestaret aliquid vilitas mei* (65, 5-6), *haec inprudencia crudelissimae vilitatis* (167, 7-8), 10, 9 *nec relictum torum desertumque genialem velut contempta vilitas uxoris ulciscitur* (208, 9-10)

Burman 1720, 359 notes the use of the ablative where an accusative would be expected and refers to *DM* 15, 6 *in te ergo solo* (1720, 312, Håkanson 308, 1) where he comments ‘*in te solum videtur Ascensius voluisse, vel solum in te, credebant nimirum in hoc sensu accusativum requirere, sed & passim veteres ablativum adijungebant Decl XVIII in ista [sic] potius vilitate desaeviat & decl XIX 6 Novum uxoris in marito crimen Ut ibi legendum est ex scriptis Just I 6 nepotem in illo magis quam victorem egit VIII 6 scelestus in utroque Senec Thyest 309*²³⁵’

365, 13-14 prius est – grande secretum: the two *ut*-clauses refer to the same state of affairs. Since the advocate is still discussing possible means to uncover the incestuous affair other than torture of the son – his suggestions end with the following *epiphonema* *excedit omnem – nocens torqueatur* (365, 14-15) – he now mentions the repudiation of the wife as an action that would reveal possible wrongs. This is why *fiat* makes no sense: if there was a secret, it had already existed for some time and would not come into being simultaneously with the divorce – but it *would* come to the light. Shackleton Bailey’s emendation (1976², 216), though unmotivated (‘Read <pate>*fiat*’), must therefore be accepted.²³⁶

365, 13 ut repudietur uxor: according to the *Lex Iulia de adulteris coercendis* (18-16 BCE), a husband was obliged to divorce his wife upon his discovery of her unfaithfulness, or he would be considered a *leno* and liable to be punished accordingly.²³⁷ See *Dig* 48, 5, 30 pr (Ulp) *Mariti lenocinium lex coercuit, qui deprehensam uxorem in adulterio retinuit adulterumque dimisit debuit enim uxori quoque irasci, quae matrimonium eius violavit tunc autem puniendus est maritus, cum excusare ignorantiam suam non potest vel adumbrare patientiam praetextu incredulitatis*. See further *Dig* 48, 5, 2 *Lenocini quidem crimen lege Iulia de adulteris praescriptum est, cum sit in eum maritum poena statuta, qui de adulterio uxoris suae quid ceperit, item in eum qui in adulterio deprehensam retinuerit*

365, 13 in domo: Tosato 1912, 51 explains the use of *in domo* instead of locative *domi* as *rhythmi causa*: for her, this is a clear instance of rhythm influencing syntax. KS 483 agrees that the use of prepositions with *domus* is often prompted by the pursuit of *concinntas*. There is however a difference in meaning which is relevant here: *dom(u)s* is an affective term, it means ‘at home’ (OLD 1c, see also KS 482 ‘wenn es nicht sowohl das Gebäude, als vielmehr das Heim, die Heimat, die Vaterstadt bezeichnet’), whereas *in domo* is more neutral and therefore more appropriate in the present context.

365, 14-15 excedit omnem – nocens torqueatur: this *epiphonema*, a gnomic *sententia*, concludes the objections against torture in general and the torture of the son in

²³⁵ 310 *In patre facient quidquid in patruo doces*

²³⁶ Sussman 1987 224 rightly translates ‘and for this immense secret to be revealed in the house through the divorce’

²³⁷ I.e. like an adulterer: usually with *relegatio*. See e.g. Corbett 1930 127-46; Treggiani 1991 ch. 10

particular. The rest of the argument (*unicum pater – qui occiditur* 365, 15 – 368, 10) is concerned with the way the interrogation was conducted; it would therefore be preferable to make this *sententia* the last of the present paragraph and to begin a new one at *unicum*.²³⁸

Excedit omnem... is one of the author's pet phrases, used to introduce apodictic statements that usually involve a fair amount of pathos. See *DM* 4, 19 *excedit omnem calamitatem innocentiae suae non credere, diebus ac noctibus timere, suspectum habere animum suum, calumniari manus, incausare visus et parricidalem agere cogitationem* (81, 8-11); 5, 11 *excedit omnem scelerum comparationem patrem mendicum facere nec pascere* (95, 11-12); 8, 7 *quod omnem modum feritatis excedit, captatis in magna calamitate laudari* (158, 4-5); 8, 14 *hoc est, quod omnem comparationem feritatis excedit: filium pater propter hominem occidit, quem non putavit posse sanari* (164, 20-22); 16, 1 *excedit omnem querelae meae complorationem, quod me tam diversis meorum conatibus adversa conveniunt, ut videar eligere* (319, 11-14).²³⁹

365, 15 *nocens*: most mss. have *innocens*, but a number of good mss. have *nocens*;²⁴⁰ Burman 1720, 359 and Lehnert 1905, 331 opt for *innocens*, but Reitzenstein 1909, 74 n. 14 proposes *nocens* and Håkanson follows him. *Nocens* seems the right choice. If we paraphrase both options and contrast them, we get 'chances are he is innocent' vs. 'chances are he is guilty'; the latter makes guilt on the son's part seem much less probable and the torture therefore all the more preposterous.

365, 15 – 366, 6 *unicum pater – debet occidere*: this new paragraph builds the transition to the second part of the argument, in which it is taken for granted that the father tortured his son, but an attack is made on the circumstances and method of the torture. Presently, two thoughts are voiced: what would a torturing father do if his son maintained his innocence? (365, 15 – 366, 4); if the father really believed that incest took place, he ought simply to have killed his son (366, 4-6).

365, 15 – 366, 1 *unicum pater – rursus admoveas*: in two heavily ironical *interrogationes*, the mother's advocate wonders what the father would do if his son turned out to be innocent. He anticipates the expression of his true thoughts, which we find in 18, 14: *Mirabar et ego, iudices, si tam nefanda quaestio alium exitum potuisset habere quam mortem. hic est parricidii pudor, sic desinunt, quae incipere non debent. facinus quaestionis operis scelere maiore: exire tibi videris per orbitatem* (368, 5-8). Here, he puts a scenario to the father in a type of ἡθοποιία that is in a way similar to *evidentia*: it is a sketch of his hypothetical actions. For 'silent' ἡθοποιία, see Quint. *Inst.* 9, 2, 58 and Lausberg 824.

365, 15 *unicum pater*: note how both participants in the drama are emphatically placed at the beginning of the sentence, drawing attention to the relationship of father and only son, so that the former's acts seem even more unnatural.

²³⁸ Reitzenstein 1909, 74 n. 14 expresses his unease with the structure of the text by proposing that *torqueatur* be followed immediately by *Quodsi tormenta . . . audiente populo* (366, 7-11). He makes no suggestions as to where the text in-between should be placed. Fortunately, such drastic interference is made superfluous with the assumption of a fresh paragraph.

²³⁹ The only other instances of the expression are Amm. 31, 2, 1 and – very late – Boeth. *herm. sec.* 6, 13. The *DM* in which it occurs all belong to Ritter's group II.

²⁴⁰ Bō according to Håkanson; BJ according to Lehnert 1905, 331; Bπ according to Reitzenstein 1909, 74 n. 14.

365, 15-16 ignibus verberibusque: for this collocation see comm. at 18, 4 *verberibus, ignibus, omni crudelitatis arte* (357, 3-4).

365, 16 quid factururus: ellipsis of *es*. Note however that according to Tosato 1912, 104-05, the omission of a finite form of *esse* in the *coniugatio periphrastica* should not be labelled ellipsis; there exist, on the contrary, two equivalent possibilities. A mere participle or gerund makes for sharpness, while a finite form of *esse* may be added for euphonic reasons. Apart from this instance, she cites 19, 12 *atquin multo minus creditura quid dixerit* (384, 18-19) to demonstrate her point.

365, 16 pernegaverit: '*pernegare* is the conventional verb to express denial in the face of torture.' (Sussman 1994, 114 with exx. from Calp. *Decl.* 7; 13; *DeMi* 269 *th.*; 4; 307 *th.*; 8; *DM* 18, 12.²⁴¹

365, 17 videlicet: followed by two *ut*-clauses in which terseness and pathos are contrasted; because they do not propose decidedly different courses of action, it is not necessary to accept Shackleton-Bailey's emendation (1976², 216) <*a*>*ut amplectaris*. The combination *videlicet ut* is pleonastic, because both words have an epexegetic function. Epexegetic *ut* occurs only very rarely without an antecedent (usually a pronoun; see OLD *ut* 49; LHS 645).²⁴²

365, 18 perusta vitalia: cf. *DM* 7, 13 *cum flammis urentur nuda vitalia* (150, 13-14), also in a context of torture. For *perustus*, OLD has only 'scorched by the sun, torrid' (of tropical countries and their inhabitants), but see – apart from this instance – also *DM* 14, 4 (*virus*) ... *iam perustis, iam laborantibus visceribus infudit* (291, 13-14); 18, 17 *laceros artus et perustum ... corpus* (370, 18); TLL s.v. *peruro* 1891, 40-57. For the present instance, compare also *DM* 19, 6 *laceratis exustisque illis sanctoribus carioribusque vitalibus* (377, 7-8).

365, 18 laceri pectoris vulnera: Becker 1904, 88 classifies *laceri pectoris* as a *genitivus inheretiae*,²⁴³ but the phrase is not so pleonastic that the genitive could not be taken as a simple *possessivus*. *Pectus lacerum* (*lacerare*) usually occurs in connection with laments of the dead; see e.g. Prop. 2, 13b, 27; Sen. *Dial.* 6, 6, 1; Luc. 7, 38-39; Petr. 111, 9.

365, 18 pietati ... admoveas: *pietati* is an ironical metonymy for 'loving father'; also ironical may be *admoveas*, because this verb is often used for the deployment of instruments of torture: see comm. at 18, 11 *eculeos moves* (364, 15).

366, 1-2 solus superest ... †ut torquere debuerit†: in *DM* 19, 11 the father describes his state of mind after the murder as follows: *est quidem difficile, ut aliquem pati pudorem parricida videatur, verumtamen stupore<m>, amentia<m>* (384, 1-3).

It is unclear why *ut torquere debuerit* should be obelized. Burman 1720, 359 and Lehnert 1905, 331 accept the three words without comment, nor is there any evidence of difficulties in the mss. If the clause is at first sight problematic, Håkanson's solution in the app. crit. – *ut* as a concessive conjunction – is fine. Even without adding <*etiam*> it produces a

²⁴¹ To which can be added V Max 8, 4, 2, Quint *Inst.* 7, 2, 25; Suet. *Nero* 35, 2

²⁴² Tosato 1912, 76 remarks that here, *videlicet* is regarded as a conjunction; I would rather say it has the function of an adverb.

²⁴³ For this genitive see comm. at 18, 7 *nox profunda, densior caligo tenebrarum* (360, 5-6).

statement *a fortiori*,²⁴⁴ reflected in Sussman's translation (1987, 224): 'Shame alone remains for a man who has tortured his only son, even if he ought to have tortured him.' This implies: so much the worse for this father, who ought *not* to have tortured his only son.

Nevertheless Håkanson's *cruces* have provoked two textual critics to try and emend the text. Shackleton Bailey 1984, 135 regards *ut* as *ut explicativum* and proposes: 'Read *ut torquere desiderit*. Father has done the unforgivable, and the only way he can show shame or remorse is to stop doing it – a mighty poor way.' It is doubtful whether *pudor* can be used to denote a manifestation of shame or remorse,²⁴⁵ and if so, whether this author would have used it in such a sense. Furthermore, although the expression *superest ut* is found frequently in the *DM*, it is either preceded by an anticipatory pronoun or there is no antecedent at all, but we never find a noun with this function.²⁴⁶ Then, the sentence advanced by Shackleton Bailey as a parallel to support his emendation in fact invalidates it: in 18, 14 *hic est parricidii pudor, sic desinunt quae incipere non debent* (368, 6-7), *pudor* obviously denotes 'shameful deed',²⁴⁷ and the end referred to is obviously death. Finally, it becomes unclear what *res ista* (366, 2) should refer to.

Watt 1991, 58 concurs with Shackleton Bailey on the import of *ut*, but reads *ut torquere* †*debuerit*† and proposes to replace *debuerit* with *damnaverit*: 'A better way might be for him to discredit the torture procedure, i.e. *ut torquere damnaverit*; cf. § 14 (p. 368, 16) *aut tormenta damnes necesse est aut silentium*. For an infinitive as the object of *damnare* see ThLL 5, 1, 18, 25 ff.; as the object of other transitive verbs, Kühner-Stegmann 1, 665f.' The suggestion is hardly convincing. Apart from the difficulty dealt with above of interpreting *ut* as epexegetic, the parallel Watt adduces may make a case for *tormenta damnaverit*, but hardly for *torquere damnaverit*. *Damnare* with infinitive does not occur in the *DM*; in fact it occurs extremely rarely. A closer look at TLL s.v. *damno* 18, 25 ff. reveals that in most instances the object of *damnare* is not a bare infinitive, but an *acc. c. inf.*, except for Sil. 3, 331 *damnatum vivere paci* (where *vivere* is subject) and 5, 62 (*ales*) *damnavit vesci planctuque alimenta refugit*; KS 665-66 has some samples of infinitive objects where one would have expected nouns, but none with *damnare*.

366, 2 *res ista*: the torture.

366, 3-4 *oderis oportet* – *non possis*: note the parallel constructions *faciat te necesse est ... oderis oportet... Oportet* expresses logical necessity: the father can only hate – and this makes him kill – the son to whom he cannot make amends for his suspicions and the heinous interrogation.

²⁴⁴ For statements and arguments *a fortiori*, see comm. at 18, 5 *omittamus paulisper* (358, 3).

²⁴⁵ None can be found in OLD, Forc., LS or Georges.

²⁴⁶ See *DM* 2, 20 (*hoc solum*, 38, 11-12); 4, 14 (77, 2-3); 5, 15, (100, 14); 6, 16 (127, 13); 12, 6 (*unum*, 237, 15); 12, 11 (*id*, 243, 18); 12, 19 (*hoc unum*, 253, 9); 14, 12 (*hoc*, 301, 6)

²⁴⁷ The principal metonymous sense of *pudor*, for which see Forc. *pudor* 12: *de probro, dedecore pudorem afferente Parricidii* is a *genitivus explicativus*

366, 4-5 iamiam malo – improvisamque mortem: the proposed lesser of two evils rightly reminds Ritter 1967², 67 of *DM* 8, 8 *malo odium, querelas, execrationes, quam ut quis liberos affectu, quo servantur, occidat* (159, 2-4).²⁴⁸

Here, it is argued that if the father really believed that incest had taken place, he ought to have killed his son spontaneously and instantaneously. The advocate implies that the torture was an act of vindictiveness inspired by hatred. The father in *DM* 19, 9 forestalls this objection and implies his son's guilt by contending that death alone did not suffice: *Dii mala prohibeant, ut noveris illum dolorem, quo potest torquere filium pater! nihil est infelicius homine, cui de unico suo mors sola non sufficit* (380, 22-24). In 19, 3 he claims that the torture happened spontaneously: *inrumpe festinanter, avide, sine liberto, sine servulo, sicut me deprehenderat temporis illius fatum, manibus, ictibus et quaecumque ex obviis dolor in telorum transtulerat usus, ultra vires senectutis adgressus; ignes ex proximo raptos, verbera, quae casus obtulerat, non diviso dolore, non per partes nec per intervalla suspenso, sed semel, sed pariter invado* (374, 20 – 375,1). But he contradicts this in 19, 9-10: *poena, supplicium et malorum meorum exitus fuit. (...) quanta tamen mihi fuit et in quaestione moderatio! [10] non enim praecipiti raptus impulsu exsilui repente, subito, nec captus dolore caeco inpatientiae meae velox vulnus inflixi* (381, 18-22).

Deratani 1927, 294 regards the *geminatio iamiam* as a sample of African *abundantia*. He may be right, but it should be noted that *geminatio* of *iam* occurs in all genres and periods (TLL s.v. *iam* 119, 6-80).

366, 5-6 incestum qui – debet occidere: the passage is concluded with a tightly structured gnomic *sententia ex contrariis* (enthymeme), a forceful *epiphonema*. Note how in this isocolon the two subordinate clauses run parallel, while the main clauses are juxtaposed chiasmically. For *credere incestum*, see comm. at 18, 10 *credere incestum* (363, 24).

In 19, 9 the father asserts: *torquere me filium putas? invidiam facio populo (...) quaestio de infami filio unam rationem habet, ut probes innocentem* (380, 18-21).²⁴⁹

366, 7 – 367, 2 Quodsi tormenta – paratus occidere: the next part of the argument consists of a fresh *concessio* phrased, like the previous one, as if there were still a choice, and again in the form of an apostrophe. If torture of the son was inevitable, it should have happened in public (i.e. in court), or at least (another *concessio*) before a *consilium domesticum*. Now the father has robbed his son of the opportunity to prove his innocence and thereby added fuel to the fire of rumour. In 19, 12 the father turns this argument upside down: *'Quid,' inquit, 'dixit, cum occideres?'* *miseram parricidii innocentiam, quod hoc me non potestas, non magistratus, non propinquus aliquis, non amicus, non ille semper loquax populus ac malignus interrogat! quiescitis, tacetis; me infelicem, numquid scitis omnes?* (384, 8-12)

366, 7-9 Quodsi tormenta – perdas quaestionem: the interrogation should not go wasted through a lack of witnesses. The two conditional clauses, with anaphora of *si*,

²⁴⁸ The other instance of *malo* he adduces, 18, 10 *malo simplicitatem, quae non vereatur infamiam, malo nudos affectus inconsultamque pietatem* (363, 9-11) is less apropos (see comm. *ad loc.*).

²⁴⁹ Of course he invalidates his assertion when later on he reveals that the torture was in fact a slow form of capital punishment

refer to the same state of affairs, but atypically it is the first one that is couched in more concrete terms. Of course the advocate had already discredited the rumour in 18, 5-8 (358, 3-361, 8), but it still exists, moreover, the very people who listened to it and maybe spread it, could have witnessed the son profess his innocence.

366, 7-8 si praestanda est satisfactio tam nefanda rumori[s]: *satisfactionem praestare* for *satisfacere* is a clear (and unique) example of the vulgar tendency to prefer periphrasis to single verbs. *Nefanda rumori[s]* is Håkanson's excellent conjecture for *nefando* (B) / *nefandam* (M) / *nefundī* (πβγδ) *rumoris*. *Nefanda* is found in V, (*nefando*) *rumori* was already proposed by Francius, as recorded by Burman 1720, 359. Håkanson 1974, 146 explains: 'Wie tormenta etiam filii zeigt, kommt es hier nicht darauf an, ob das Gerucht schandlich ist oder nicht, sondern die *satisfactio* wird als *nefanda* beschrieben' () Vgl. in derselben Rede 18, 14 *nefanda quaestio* (368, 5)'

366, 8-9 ne perdas quaestionem: Sussman's translation 1987, 224 'lose the benefits of' is too weak. For *perdere* in the sense of 'to impair the effectiveness etc. of, spoil, ruin' see OLD s.v. *perdo* 2a, in the *DM*, the only other occurrences of *perdere* in this sense are 19, 9 *quod otio vitam, quod desidem domi perdebat aetatem* (381, 5-6) and 19, 15 *non perdidit unici mortem* (388, 6-7).

366, 9-11 in media – audiente populo: the highly stylized appeal consists of two near-synonymous *isocola* introduced with anaphoras (*in media civitate, in ipsa constitue fama* and *advoca illos malignos, illos loquaces*) placed almost chiasmatically and coming to a climax in the somewhat contrived third colon *saeculi rem exquire audiente populo*.

366, 9 in ipsa constitue fama: ellipsis of the direct object *eam* (*quaestionem*), *constituere quaestionem* is a technical term found *passim* in Cicero's works (see also OLD s.v. *constituo* 9).

Fama is metonymous for the people who have heard and/or spread the rumour, compare its occurrence in 18, 1 where the advocate describes the mother's willingness to help reveal the truth in a *quaestio*: *exhibet populo conscientiam suam et adversus quemcumque sermonem, quodcumque secretum marito famaeque praestat interrogandi potestatem* (354, 7-10). The father on the other hand in 19, 9 seems convinced that the private torture-scene has defused the rumour: *torquere me filium putas? invidiam facio populo videor mihi illis verberibus lacerare famam, illis ignibus increpare rumorem* (380, 18-20).

366, 9-10 advoca illos malignos, illos loquaces: Compare 19, 12 *ille semper loquax populus ac malignus* (384, 10-11). *Advoco* is a common technical term for the summoning of witnesses etc. (OLD s.v. *advoco* 3b), below in 366, 16 it is used to refer to the summoning of a *consilium domesticum*.

366, 10 saeculi rem: a number of scholars feel uneasy about this expression. Reitzenstein 1909, 75 proposes *saeculi <rubo>rem*, referring to 18, 15 *si nihil factum est, quod debeat erubescere temporum pudor* (369, 11-12). Winterbottom²⁵⁰ suggests *saeculi <pudo>rem*, pointing out *temporum pudor* in 18, 15 and in 4, 6 (67, 2), *haud scio an recte* (Håkanson comments). Håkanson's doubts are justified, for in both instances adduced by Winterbottom, *pudor* clearly means something like 'decency'. *Ruborem* ('that which causes one to blush or feel ashamed', OLD 3) would be better, although there are no other

²⁵⁰ In Håkanson s. app. crit.

occurrences of the word in the *DM*. Håkanson hesitantly settles for *rem*, adducing *DM* 6, 7 *narretur res saeculo nostro diversa* (117, 15) and 18, 11 *scrutatis rem* (364, 13). He is right, but for the wrong reasons. *Saeculi* occurs a number of times in the *DM* to denote something exceptional. Thus we find *exemplum saeculi* in 6, 7 (117, 8) and *exempli mulier, saeculi decus* in 6, 10 (121, 15-16; see LHS 70 for its classification as *genitivus qualitatis* lacking an attribute); cf. 9, 22 (197, 9). This makes *res saeculi* less outlandish. Comparable to the present instance is Sen. *Oed.* 875-76: *saeculi crimen vagor / odium deorum, iuris exitium sacri*.

366, 11-12 coram omnibus – omnes locuntur: an apodictic gnomic *sententia*, the structure of which is enhanced by *polyptoton omnibus-omnes* and chiasmic word order. The father too emphasizes the ubiquitousness of the rumour: *dii immortales, quantus qualisque circa iuvenem rumor ingemuit! omnium maledictis succlamatus, omnium denotatione damnatus est* (19, 3 [373, 27 – 374, 2]).

366, 12-13 suis auribus, suis credat oculis: a double personification where *suis* is emphasized by means of anaphora and *hyperbaton*: people should not heed the father, but form their own judgment. The expression is rather commonplace, especially for eyes.²⁵¹ In *DM* 8, 16 we find a variation: *crede de his ante omnia sensibus, oculis tuis* (167, 20).

366, 13-14 cur in – iuvenis abducitur: compare 18, 4 *iuvenem ... nihil timentem in partem domus, qua nulla proclamatio, nullus poterat gemitus audiri, rapuit, abduxit* (357, 1-3). The father in 19, 3 claims that he met his son in this secluded part of the house, tagging on an insinuation as to what the young man was doing there: *Est in miseris penatibus pars remota, seposita, profunda tenebris, tristis accessu, omnibus apta flagitiis, et in qua audeat facere facinus et pater. illo ... inprovisus adveni* (374, 14-18). Here, note the synonymy of *abditam* and *semitam* and a feeble *paronomasia* of *abditam* and *abducitur*. The *interrogatio* is not answered directly, but does form a *subiectio* with following *secretum quaestionis – nec innocenti* (366, 14-15).

366, 14-15 secretum quaestionis – nec innocenti: the *subiectio* takes the form of a (pseudo-) gnomic *sententia*, enhanced by the sharp contrast (with *homoeoprophoron*) of *incesto* and *innocenti*. As an *epiphonema* it concludes this part of the argument. For the sentiment compare Calp. *Decl.* 32 *Publicae utilitatis est omnium reorum iudicari causas, ne aut nocens evadat poenam aut innocens patiatur infamiam*. For *secretum quaestionis* (*genitivus inversus*) instead of *secreta quaestio* see comm. at 18, 9 *novitas* (362, 5).²⁵²

366, 15-20 dabo adhuc – si pernegaverit: a *concessio* within the *concessio*. If the father cannot stomach a public trial, he can opt for a compromise and appoint what romanists have called a *consilium domesticum*. This council, consisting of relatives and sometimes magistrates, traditionally (but not mandatorily) assisted at this type of domestic proceedings and decided upon the guilt or innocence of the son.²⁵³

²⁵¹ Eyes: Liv. 39, 49, 8; Sen. *Dial.* 7, 2, 2, Stat *Theb.* 9, 538, Quint *Inst.* 11, 3, 68, Plin *Ep.* 6, 4, 2, Apul *Met.* 9, 23. Eyes and ears Liv. 6, 26, 5; Sen. *Ep.* 6, 5, Plin. *Pan.* 64, 2. Ears do not occur without eyes.

²⁵² Tosato 1912, 28 mentions *secretum quaestionis* as an example of one of many substantivized abstract adjectives with an attributive adjunct in the genitive case, but in fact it is *secretum* that modifies *quaestionis*. Sussman's translation 'A secret place for the questioning' is too explicit.

²⁵³ For the *consilium domesticum* see Introduction pp. 51-52.

366, 15 *dabo adhuc*: *adhuc* occurs with a future tense in poetry from Luc 7, 213, in prose from Plin *Nat* 35, 61 onwards Tosato rightly remarks that it may have a limitative value (cf OLD s v *adhuc* 5b ‘even in those [hypothetical] circumstances’, also citing Luc 7, 213)

366, 15 *publicationem*: *publicatio* is a rare word It usually means ‘appropriation by the state, confiscation’ (OLD 1, thus Cic *Cat* 4,10, *Planc* 97, *Fin* 4, 9, 22, *DeMi* 320, *th*, Firm *Mat Math* 6, 10, 5, Hist *Aug Pius* 7, 3, Fort *Ars* 1, 24), derived from *publicare* in the sense of OLD 2 ‘to appropriate to the state, confiscate’ In the sense of ‘disclosure, publication’ (OLD s v *publicatio* 2, derived from post-classical but quite common *publicare* 3 ‘to make public, make generally known’, Forc s v *publicatio* 2 *actus exhibendi publico conspectui*) it only occurs here and in the works of a number of Fathers of the Church, where it means ‘unveiling’ sometimes in a literal, sometimes in a figurative sense See e g Tert *paenit* 10, *virg vel* 3 and 14, *pudic* 1, Ambr *off* 3, 5, 29, Paul Nol *Epist* 29, 11

366, 16-19 *advoca propinquos – civitas fidem*: the advocate alludes to the assembly of a *consilium domesticum* consisting of relatives, friends, and magistrates We find a similar allusion in *DM* 2, 14 *exheredaturus filium pater non advocat propinquos, non contrahit amicos*? (33, 10-11) The father is explicitly reproached for his high-handed actions in *DM* 8, 4 *non propinquos consuluit, non amicos, sed sua tantum persuasione medicique contentus, quod nocentius est, quam si ipse occidisset, alterutrum potuit eligere* (155, 1-4), see also 8, 11 ²⁵⁴ *de tua feritate sentirem, si in quacumque filii curatione non adhiberes propinquos, non interrogares amicos, non respiceres ad matris animum* (162, 12-14) ²⁵⁵ In *DM* 19, 4 the father contends that the absence of a *consilium domesticum* was essential for a successful *quaestio sed et manibus meis gratulor, quod non propinquus aliquis, non amicus inrupit, occidisset, quisquis me tunc ausus fuisset interrogare pro filio* (375, 13-16), compare 19, 12 ‘*Quid, inquit, dixit, cum occideres?*’ *miseram parricidi innocentiam, quod hoc me non potestas, non magistratus, non propinquus aliquis, non amicus, non ille semper loquax populus ac malignus interrogat!*’ (384, 8-11)

The fivefold appeal, which covers all possible candidates for a *consilium domesticum*, is carefully structured It begins with three imperatives, the first two of which are synonymous and form an isocolon that is enhanced by *homoeoprophoron* and *homoeoteleuton* with *homoeoptoton* The third imperative has a longer complement, which builds a transition to two *coniunctivi adhortativi* also with their complements increasing in length

366, 16 *advoca ... adhibe*: both verbs can be used as technical terms for the summoning of witnesses, and audience etc, for *advoca* see comm at 18, 12 *advoca illos malignos, illos loquaces* (366, 9), for *adhibe* see OLD s v *adhibeo* 3a We find both verbs similarly combined Cic *Quinct* 47 and Liv 25, 31, 3 *Assisto* (366, 17) too can have a legal sense ‘to present oneself in court, attend’ (OLD 3b)

²⁵⁴ The preceding text seems to be corrupt see *app crit*

²⁵⁵ See also Ritter 1967², 68

366, 17 circumpone iuveni serios senes: the use of the dative is postclassical according to Tosato 1912, 47. In fact, the earliest instance seems to be *B. Alex.* 72, 2.²⁵⁶ Note the alliteration in *serios senes*, of which Quintilian (*Inst.* 9, 4, 37) would not have approved.

366, 18 habere ... fidem: Von Morawski 1881, 10 regards this periphrastic construction as typical of vulgar Latin. He cites *DM* 8, 11 (162, 10) and the present instance as examples, to which may be added 2, 23 (40, 19) and 17, 5 (336, 15). The expression is not that vulgar, however, for it occurs many times in Cicero's works. See e.g. *Verr.* 2, 131; *Clu.* 159; *Planc.* 26; *Flac.* 60; *Font.* 15; *Inv.* 1, 71; *Off.* 2, 21; 2, 31; 2, 33.²⁵⁷

366, 18-20 praestare debes – si pernegaverit: a disjunctive argument in the form of a *sententia e contrariis* with juxtaposition of *tibi-filio* and *confessus fuerit-pernegaverit*. It is ironic that the advocate does not seem to realize that it would be in everyone's interest, the father's not the least, that the son can prove his innocence. For the use of *fuerit* with past participle *confessus*, see comm. at 19, 4 *ausus fuisset* (375, 15); for the verb *pernegare*, see comm. at 365, 16 *pernegaverit* above.

366, 20-22 at tu – tortus est: gives substance to 18, 12 *quaestionem perdere* (366, 8-9): the son was not allowed to defend himself – either publicly or semi-publicly – against the suspicions of incest, so that the purpose of the *quaestio* has been defeated. Even if he had stayed alive there would have been little opportunity for him to clear his name, while by his death and his father's subsequent silence this opportunity has been taken away forever.²⁵⁸ Cf. 18, 4 *torsit filium, ut probaretur incestum; occidit, ut crederetur* (357, 6-7). The father in 19, 9 contends that *quaestio de infami filio unam rationem habet, ut probes innocentem* (380, 20-21); he intentionally tortured his son in seclusion to make away with any rumours, but complains that his wife now ruins his strategy: *Rursus ad populum vocas miserum pudorem, materiam novi rumoris accendis; perdidisti ergo rationem secreti mei. sic omnia feceram, ne quid aut quaeri posset aut dici* (19, 5 [376, 11-13]).

366, 20 nefande, crudelis: *nefande*²⁵⁹ refers to the father's violation of justice in general, *crudelis* to the fact that he made his own son his victim.

366, 20-21 tollis quaestionis alteram partem: the speaker refers to the principle of natural law that all parties in a dispute be heard.²⁶⁰ But we may probably read in these

²⁵⁶ DeVico 19622, 25 cites Hor. *S.* 2, 4, 74-75 *primus et inventor piper album cum sale nigro / incretum puris circumposuisse catillis* as the earliest example, but *puris ... catillis* may depend upon *incretum*.

²⁵⁷ I have only chosen examples where *fidem habere* means 'trust'. In another sense it means 'be reliable'

²⁵⁸ Gunderson 2003, 206 comments: 'The father's advocate complains that the father has forged a broken declamation that always and only works according to the rules he instituted ... With the murder of his son the father has also made permanent his ambiguous and double mode of thought. Paradoxically, then, the father has rhetorically simplified things in eliminating the other side, but he does so only by forever banishing the simplicity of love.'

²⁵⁹ For this rare vocative see comm. at 18, 11 *nefande* (364, 1).

²⁶⁰ Coenraad 2000, 158-59 remarks that the famous Latin adage *audi et alteram partem*, also phrased as *audiatur et altera pars*, is originally medieval. In the history of Roman law, there is only one source that makes use of the term *alteram partem audire*: in an imperial edict (BGU II 628) probably by Caracalla or Alexander Severus we read .. *scirent fore u[t] a[lt]era parte audita ver[u]a[re]t[u]r sententia*. The edict concerns a situation in which only one party has been heard; its appearance in the edict demonstrates that this was exceptional, according to Coenraad 2000, 165. She points out that the expression appeared much earlier in literary sources, citing Sen. *Apoc.* 12, 3 *Deflete virum, quo non alius / potuit citius discere causas / una tantum parte audita / saepe et neutra* and 14, 2

words also a subtle allusion to declamation, for in those collections which contain speeches pro and con, the term *altera pars* is invariably used to introduce (parts of) speeches for the opposite point of view²⁶¹

366, 21 *efficio, ne*: De Vico 1962², 49 seems surprised at the occurrence of *ne* instead of *ut non*. However, OLD *efficio* 3 'to bring it about that, be the cause that' clearly states that *efficio* in this sense is as a rule followed by *ut* or *ne*, besides, the advocate's point is stronger if he contends that the impossibility of innocence is the aim rather than the consequence of the father's actions

366, 22 *quid agunt – tormenta secreta*: the *interrogatio* in fact recapitulates the preceding argument, the answer is, of course, nothing. The question forms a *subiectio* with the next sentence (366, 22-24), which argues that the secret interrogation has achieved worse than nothing, since it has added fuel to the rumour

366, 22 *contra populum*: cf. *DM* 19, 9 *torquere me filium putas? invidiam facio populo* (380, 18-19)

The *populus* plays a double role in *DM* 18. On the one hand, it is responsible for the dissemination of the rumour,²⁶² on the other, it has witnessed and must become the judge of the relationship between mother and son²⁶³. Here, as in 18, 5 (358, 13) it plays both roles at once. In *DM* 19, by contrast, the *populus* is always associated with the rumour, except in 19, 16 (388, 16) where it refers to the court

366, 22-23 *praedico, testor*: one of the author's favourite pledges, this pair of near-synonyms also occurs *DM* 4, 21 (83, 1²⁶⁴), 15, 13 (316, 15), 17, 20 (352, 11), 19, 15 (388, 10)²⁶⁵. We also find it *Col* 1, 4 (*quasi testificandum atque saepius praedicandum habeo*), but both are almost anaemic compared to Cicero, who in his *Philippics* declares *testificor, denunti[at]o, ante praedico* (6, 5) and *monebo, praedicam, denuntiabo, testabor semper deos hominesque* (7, 20)

366, 23 *dantur malignis alimenta sermonibus*: the metaphor of 'feeding rumours' is not quite original. We find it *Liv* 28, 4, 1 *libidine alendi de industria rumores*, 35, 23, 10 *addidit alimenta rumoribus*, *Tac Hist* 2, 96, 2 *alimentum famae erat*, *Claud* 3, 70 *dissensuque alitur rumor*; *Min Fel Oct* 28, 6 *fama, quae semper insparsis mendacius alitur*

366, 24 *in maius reditur incertum*: *hyperbaton* for reasons of euphony, as in 366, 23 *malignis alimenta sermonibus*

366, 24 – 367, 2 *coram omnibus – paratus occidere*: this generically phrased *epiphonema* recapitulates the preceding argument. It harks back to 18, 12 *coram omnibus torqueri debet, de quo locuntur omnes* (366, 11-12), but now the father is focused on. With its similar disjunctive structure, it also refers back to 18, 12 *praestare debes aut tibi, ut probare possis, si confessus fuerit, aut filio, si pernegaverit* (366, 18-20)

illum altera tantum parte audita condemnat, Med 199-200 *qui statuit aliquid parte inaudita altera / aequum licet statuerit haud aequus fuit* (168-69)

²⁶¹ We find it 41 times in Seneca the Elder and 10 times in Calpurnius Flaccus

²⁶² In 18, 3 (355, 13), 18, 4 (356, 23), 18, 6 (359, 9, 359, 16), 18, 8 (360, 25), 18, 11 (364, 2)

²⁶³ In 18, 1 (354, 7), 18, 3 (356, 14), 18, 7 (360, 1), 18, 12 (366, 11), 18, 15 (369, 5)

²⁶⁴ Aptly proposed by Becker 1904, 20 instead of *protestor*

²⁶⁵ See also Ritter 1967², 68

367, 3-6 Non vultis – potius adhiberi: a triple *interrogatio* The first emphasizes the father's cruelty in undertaking to perform the tortures personally, while the following pair offers alternatives

367, 3-4 Non vultis ... accedat: *Non vultis* is problematic It is found in all mss except V, where we find *vultus*, which is even worse Lehnert 1905, 332 hesitantly suggests *non videtis*? Håkanson 1974, 146-147 is convinced that *vultis* is corrupt, but rightly finds *non videtis* 'syntaktisch bedenklich angesichts des Konj *accedat* statt *accedere*' He proposes to read *ult<um>*, referring to Ov *Her* 1, 95-96 *Irus egens pecorisque Melanthius actor edendi / ultimus accedunt in tua damna pudor* and 15, 71 *ultima tu nostris accedis causa querelis* Shackleton Bailey 1976, 78 objects that the subjunctive is still not accounted for and prefers to read *nunc ultimum* (followed, I take it, by a *coniunctivus optativus*), Watt 1982, 33 seems to prefer a *coniunctivus potentialis* he proposes *non cumulus*, adding a large number of instances of *cumulus* with *accedere* taken from TLL s v *cumulus* 1387, 66ff Cic *Clu* 74, *Marc* 34, *Att* 4, 19, *Fam* 12, 26, 1, 15, 12, 2,²⁶⁶ Ov *Pont* 2, 5, 36, *DM* 6, 1 (112, 2) Because of the overwhelming amount of possible parallels, Watt's proposal is attractive, but does not explain the subjunctive, so that Shackleton Bailey's suggestion seems better But a more obvious explanation of the subjunctive is its dependence on *vultis*, which may not be corrupt after all In the app crit of his 1982 text, it appears that Håkanson has changed his mind He writes *Non vultis non sine dubitatione recepti interpretatus = nonne vobis videtur*, adding as a parallel *DeMi* 260, 20 *non vultis in his causis, in hac criminum summa misereatur hominum, qui dicunt 'et tu iuvenis es'?* *Velle* here has the sense of 'to maintain, claim, have it (that)' (OLD s v *volo* 18), a sense in which it is also found *DeMi* 254, 16 *vos quid dicitis? mentitum eum vultis?* and *DM* 4, 3 *Quid aliud hoc esse vultis, P C, quam* (63, 14-15) The subjunctive is awkward, but can only be explained on account of *vultis*, and it does have a parallel in *DeMi* 260, 20

367, 3 facinus ... quaestionis: the same explicative genitive in 18, 14 *facinus quaestionis operis scelere maiore* (368, 8-9)

367, 4 quod ipse torsit filium pater: cf Quint *Inst* 5, 4, 2, where it is said that it in case of an interrogation, it is important *quis et praefuerit, quis et quo modo sit tortus* In 19, 3 the father says *pars secreti fuit, ut ipse torquerem* (375, 1-2) – a self-evident statement which is meant to justify the secrecy of the torture and actually explains nothing But it is clear from the beginning that the father presents the torture as a personal act of fatherly love and reconciliation, provoked by a grave offence See 19, 9 *Du mala prohibeant, ut noveris illum dolorem quo potest torquere filium pater* (380, 22-23), 19, 11 *in gratiam me cum filio reduxit orbitas, iram nostram mors severa composuit () quantam ego debeam reverentiam filio, quem potui torquere solus, quem potui solus occidere!* (383, 10-15)

367, 4-6 adeone non – potius adhiberi: in Roman trials, the *interrogatio* was conducted by the *quaesitor* (*praetor* or *iudex*), while the accompanying tortures were consigned to the *tortor*, who was employed by the tribunal²⁶⁷ It seems that tortures at home

²⁶⁶ We may add 6 9 2 13 17 2 13 55 1 Further Suet *Tib* 17 1 Plin *Ep* 2 1 6 Firm Mat *Math* 5 1 34 6 23 7 6 30 14 7 22 2 8 20 8 Iust *Ept* 17 2 1 22 7 1 Amm 31 4 3

²⁶⁷ See Mommsen 1955² 416 n 2 Fasano 1997 94 95

were also carried out by *tortores*.²⁶⁸ Sussman lists the Roman declamations in which a *tortor* is employed: Sen. *Contr.* 2, 5, 3;²⁶⁹ 5; 9 (in a tyrant's castle); 8, 1 (in court); 9, 6, 18; 19 (in court);²⁷⁰ *DeMi* 338, 15; 27 (at home); *DM* 7, 7; 9; 12 (in court); 16, 11 (in a tyrant's castle). In Calp. 24 on the other hand, a son who is to be executed in accordance with the *lex indemnatorum* demands that his father execute him personally instead of using a *carnifex*, while in Calp. 7 a rich *imperator* is made to look especially cruel because he takes over from the *tortor*: *super eculeum corpus extenditur, et irato imperatori tortor non sufficit*.

367, 4 adeone: Ritter 1967², 68 points out a parallel with 2,14 *adeone non potest fieri idem postero die?* (33, 6-7). In fact *adeone* is not such a rare particle. In the *DM* it is found several times, always – like here – introducing reproachful questions: see 5, 9 (93, 15, also with *non*); 12, 24 (259, 9); 19, 5 (376, 5); 19, 13 (*non*, 386, 12). *Adeo* is quite common in Latin literature, occurring in large numbers in e.g. Cicero's works (though usually followed by *ut*).

367, 5 servulis: for the use of the diminutive see comm. at 18, 7 *servulis* (360, 21).

367, 5 necessitas ista: from 18, 11 (364, 1) onward it has been argued extensively that the torture was unnecessary. *Necessitas ista* is therefore sarcastic: not 'difficult duty' (Sussman 1987, 225) but 'this task you obviously found imperative'. *Necessitas* is used as a metonymy extremely frequently in the *DM*; in *DM* 19 too it is used for the murderous torture. See 19, 1 *utinam totum miserae necessitatis ordinem fas esset intra pectoris huius premere secretum* (372, 10-12); 19, 10 *sola est huius necessitatis ratio de morte* (382, 6-7).

367, 5 carnifex: formally there is an important difference between *tortor* and *carnifex*. The *tortor* or torturer had a regular job in court; the function of *carnifex* or executioner entailed *infamia*, which is why it was reserved for public slaves, who must live outside the *pomerium*. In practice the two terms were used indiscriminately already in classical times.²⁷¹ But the *DM* distinguish rather strictly between the two. The *tortor* – who only tortures – appears in *DM* 7, 7 (143, 22; 144, 11; 144, 13); 7, 9 (145, 19); 7, 12 (149, 17), whereas the *carnifex* is a genuine executioner in *DM* 1, 10 (11, 5); 6, 9 (120, 19); 11, 10 (229, 20); 11, 11 (230, 22); 15, 14 (317, 12); 16, 5 (325, 1); 16, 9 (328, 22).²⁷² Here *carnifex* is probably preferred because of the (deliberately) fatal ending of the interrogation.

367, 6-11 pater in – 'feci': a powerful *descriptio* (*sub oculos subiectio*) of the torture scene, which contains quite a number of similarities with *DM* 7 and 19. It ends in an *exclamatio* in the form of a *sententia ex inopinato*.

367, 6-7 non aversos tenuit oculos: *oculos avertere* is the done thing in the face of horror and moral outrage as is evident from a large number of occurrences from Silver

²⁶⁸ Cic. *Clu.* 177, referred to by Mommsen 1955², 418 n.1, Fasano 1997, 113-114.

²⁶⁹ Here, they are styled *carnifices*.

²⁷⁰ A very special case of torture at home is Sen. *Contr.* 10, 5 where the Athenian painter Parrhasius hires a *tortor* to torture an old man into a lifelike model of Prometheus.

²⁷¹ Fasano 1997, 94-95.

²⁷² In 8, 19 it is used figuratively ('slaughterer', 171, 10) whereas in 16, 11 *carnifex* and *tortor* seem to double as jailers (330, 19).

Latin onwards.²⁷³ But given the phrasing, we are also reminded of Verg. A. 1, 482 *diva solo fixos oculos aversa tenebat* and 6, 469 *illa solo fixos oculos aversa tenebat*. In 19, 6 the father uses similar expressions to describe the torture scene: *ad quaedam facinora sufficit claudere oculos, vultus avertere, tacere, mirari et incredibilis calamitates relinquere suis causis* (377, 11-13)

367, 7 vestes scidit, velamenta laceravit: an isocolon whose synonymy is emphasized by the alliteration of v.²⁷⁴ The tearing of clothes seems a routine element in torture scenes. See also Liv. 3, 58, 8 *scissa veste tergum laceratum*; V. Max. 2, 7, 8 *scissa veste spoliatoque corpore*; Tac. Hist. 4, 27, 2 *scissa veste, verberato corpore*; DM 7, 5 *si scindo vestes, nudo corpus, ignes, flagella depono* (141, 19-20); 7, 7 *scissa lacerataque veste* (144, 1); *scissas ... vestes* (144, 11-12); 7, 11 *ego scindo vestes, tu intremiscis* (148, 20-21).

367, 7-8 flagella concussit, renovavit ignes: a near-isocolon in chiasmic structure evokes two exemplary elements of the torture-scene. For the combination of whips and fire, see comm. at 18, 4 *verberibus, ignibus, omni crudelitatis arte* (with *verbera*, 357, 3). *Flagella* and *ignes* are found in 7, 5 *ignes, flagella depono* (141, 19-20); 7, 6 *inter ignes ac flagella* (142, 21-22); 7, 11 *inter ignes, inter flagella* (149, 5). For *renovo* in the sense of 'relight' (OLD *renovo* 1f) compare e.g. Stat. Theb. 10, 926 *renovare faces*; Sil. 6, 76 *renovata focus et paupere Vesta*.

367, 8-9 mori filium contentione non sivit: *mori contentione* ('to die in the struggle') rather than *contentione non sivit* (Sussman 1987, 225: 'vigorously refused') – the advocate implies that the father tried to prevent his son from dying in order to protract his suffering. His claim does not really tally with the story of the father, who states in DM 19, 14 simply that *nihil ad certum indubitatumque perduxit. hoc est quin immo, propter quod ad mortem usque contendit* (386, 22-23); but in 19, 15 he does concede that he continued torturing right until the end: *deficientem in manibus meis filium vidi, aspexi ora pallentia, frigidus anhelitus, interrupta suspiria et animam magno silentio exeuntem. non tamen tormenta laxavi, non subtraxi restinxique flammam* (388, 1-4).

367, 9 diduxit os: a common term for opening one's own or somebody else's mouth (TLL s.v. *diduco* 1018, 4-20). In the DM it is associated with force: see DM 17, 18 *quid restat, quam ut recusantis ora diducas* (349, 20); 19, 11 *instas tamen et miseri senis ora diducis?* (383, 25).

367, 9 suprema clauderant: for *suprema* in the sense of 'the closing moments or end of an existence' (OLD s.v. *supremus* 4c) see comm. at 18, 5 *orbitates ac liberorum suprema* (357, 23). Here, as in 8, 10 (*longe ventura suprema*, 160, 18) and 8, 13 (*suprema iunxerunt*, 164, 2), it is personified. It is of course common imagery for eyes to be closed by death, as e.g. in Verg. A. 10, 746 and 12, 310; Prop. 2, 13b, 17; Ov. Met. 3, 503.

367, 9-10 fovit animum: it is clear that *animus* here = *anima* in the sense of 'breath' (OLD 1) or 'the characteristic or quality whose loss constitutes death, life, consciousness' (OLC 3), cf. Verg. G. 2, 134-35 *flos ad prima tenax, animas et olentia Medi*

²⁷³ Ov. Met. 2, 770, Liv. 1, 28, 11; 9, 5, 13; Sen. Contr. 9, 2, 7; 10, 3, 5; V. Max. 1, 5, 6; 2, 10, 1, Sen. Ben. 7, 28, 1, Ep. 66, 30, Luc. 9, 1036, Phaed. 4, 12, 3, Sil. 2, 460, Sen. Her. O. 262, Plin. Pan. 66, 4

²⁷⁴ Also mentioned by Becker 1904, 61 in his survey of alliteration in the DM.

/ ora foveo illo. The use of *animus* instead of *anima* is extremely rare. TLL 105, 7-12 lists Cic. *N.D.* 2, 18 *animum ... illum spirabilem*;²⁷⁵ Man. 2, 165 *tenax animi cancer*;²⁷⁶ Cael. *Aur. Chron.* 3, 2, 15 *angustia animi*;²⁷⁷ Aug. *civ.* 9, 11 *beatos εὐδαιμόνας quod boni sunt animi*.²⁷⁸ In the *DM* there is one other instance where *anima* would seem more appropriate than *animus*. This is 19, 12, where the father says about his son: *consumptus est spiritus silentio sui, et verbera ignesque animum pariter vocemque cluserunt* (385, 9-10).

367, 10 patientia: metonymous for the son. For the significance of (*im*)*patientia* in *DM* 18 and 19, see comm. at 19, 1 *hanc ... patientiam meam* (372, 12).

367, 10-11 o dignum – ‘feci’: *epiphonema, sententia ex inopinato*. It seems wise to take *dignum* as absolute rather than connected with *cui* (*cui* accounts for the consecutive subjunctive *dicat*). It is hardly effective for the advocate to claim that the father deserved that his son made a false confession; instead, he complains in bitter irony that the father is so unworthy that his son would make a false confession to him. This interpretation is reflected in Sussman’s translation (1987, 225), which reads ‘How worthy a father, one to whom even an innocent son would say, “I did it.”!’ The *exclamatio* returns to the *locus communis de tormentis* discussed above in 18, 11 *omnium quidem – dolore respondet* (364, 19).

367, 12-18 Non mehercules – fatebitur mater: the advocate next argues that the mother ought to have been present at the torture scene, because the father’s suspicions concerned her as well. And her presence would have had an additional advantage for the father: if she was truly *nimis amans* and had an affair with her son, she would have confessed, for she would not have been able to see him suffer. The passage takes the form of an apostrophe.

This part of the text forms one of the few serious discrepancies with *DM* 19, where in cp. 11 the father reproaches the mother for her absence from the interrogation. She should even have taken part in it in order to obtain a full(er) confession: *invicem te, mulier, interrogo, cur, si tanto opere volebas scire, quid interrogarem, quid ille loqueretur, non inruperis in quaestionem, quam nullis ministris, nullis custodibus vallaverat pater. quanto melius, mater, ipsum adisses, quanto fortius interrogasses una, quanto tibi plura dixisset! quis te, mulier, adfectus abegit, tenuit, exclusit? agnosco verecundiam tuam: timuisti, credo, ne, si in illo secreto fuisset omnes, occidisse filium diceretur et mater* (383, 16-24). Note how the father pretends to ignore the mother’s possible involvement in the incest (see comm. *ad loc.*).

367, 12 Non mehercules inprobe: An energetic introduction of the next sub-argument. *Non inprobe* is of course a litotes, which is made into a *hyperbaton* by the insertion of the *interiectio mehercules*.

²⁷⁵ TLL comments: *consulto animum dixit pro eo quod expectes animam* Pease 1958, 594, though unable to find the Manilian reference (see below), hesitantly accepts *animum* on the basis of the evidence in TLL

²⁷⁶ This citation is completely wrong. In Man 4, 162-65 we find *Cancer ad ardentem fulgens in cardine metam / quam Phoebus summis revocatus cursibus ambit / articulum mundi retinet lucisque reflectit / ille tenax animi* (‘tenacious by nature’) *nullosque effusus in usus / attribuit varios quaestus artemque lucrorum*.

²⁷⁷ But Caelius Aurelianus wrote rather late (fifth century CE?)

²⁷⁸ Set slightly apart, obviously as a doubtful case

367, 13-14 hominem – matre torqueri: the core of the argument takes the form of a gnomic *sententia*, which is made more effective by the chiasmic repetition of *torquere* and *mater*.

367, 13 torquetur in matrem: *in* expresses ‘in order to extract evidence against’ according to OLD *torqueo* 3b. It seems a technical term, for OLD further mentions occurrences in Paul. *Dig.* 29, 5, 6, 2; Ulp. *Dig.* 48, 18, 1, 19, whereas it does not crop up in any other literary texts. Tosato 1912, 57 considers *in* synonymous with *causa* (in postposition).

367, 14-15 a sua causa, a sua quaestione: the anaphora of *a sua* and near-synonymous use of *causa* and *quaestio* emphasize that the mother is not just involved because of her son, but also on her own behalf.

367, 15 adhibe: for this technical term see comm. at 18, 12 *advoca ... adhibe* (366, 16).

367, 15-16 speciosi ... hanc nimis amantem: ironical designations, for the advocate has already amply demonstrated that this mother did not love too much, i.e. was not infatuated with her handsome son.²⁷⁹ In the *peroratio* of 18, 17, which consists of a huge *sermocinatio*, the advocate makes the mother say explicitly that *nemo umquam filium nimis amavit* (370, 24).

367, 16-17 huius gemitus – oculosque custodi: the mother’s reactions will make clear whether the two are guilty or innocent. The near-isocolon is tightly constructed: anaphoric *huius* introduces the cola while forming a *polyptoton* with preceding *hanc* and there is strong parallelism in the word order of the imperatives and their objects, which are almost synonymous.

The combination of *gemitus* and *suspiria* is also found, apart from Sen. *Contr.* 2, 23 (*Quid sibi volunt altiores gemitus et fortiora inter lacrimas suspiria*) and Petr. 113, 9 (*gemitusque suspirio tectus*), in 19, 8 where it refers to the father (*ne occisurus quidem suspiria gemitusque praemisi*, 379, 22-23) and 19, 12 where it refers to the son (*videbatur mihi premere gemitus, tenere suspiria*, 385, 10-11). *Suscipere gemitus* also occurs in 19, 13; *auris praestare verbis, excipere gemitus, aestimare singultus* (386, 4-5). *Oculos custodi* seems to be a clever variation upon a fairly common expression: it is usually the eyes that keep watch (cf. Cic. *Phil.* 12, 22; Vell. 2, 41, 3; Col. 12, 1; Sen. *Nat.* 7, 16, 2; *DM* 1, 17 [19, 8]; Apul. *Met.* 8, 31).

367, 17-18 si quod – fatebitur mater: the paragraph closes with an enthymeme that explains why it would have been to the father’s advantage to have the mother present: unable to see her son suffer, she would have confessed promptly. It remains to be seen, of course, whether such a confession would be reliable.²⁸⁰

367, 19 – 368, 4 Inrumpere me – debet audiri: this section of the text is rather muddled.²⁸¹ The advocate uses another apostrophe to the father to give a hypothetical *sub*

²⁷⁹ See e.g. 18, 4 (356, 18-19), 18, 9 (361, 20 – 362, 9), 18, 10 (363, 14-21)

²⁸⁰ The *sententia*’s construction is illogical: the son will be tortured whether a crime has been committed or not. But to change the construction would mean to ruin the antithesis in the apodosis.

²⁸¹ Ritter 1967², 138 comments: ‘Hier sind so unzusammenhängende Sätze zusammengenhaut, dass man nicht mit Bestimmtheit zu sagen vermag, was eigentlich der Sinn und Zweck derselben sein soll und ob dieser wirklich mit

oculos subiectio (indicated by *puta*, for a more common use of *puta* in the *DM* see comm at 19, 11 *puta* [383, 25]) in which he plays a part of his own. He paints a picture of himself interfering with the interrogation and inviting the father to divulge the results, then he abruptly dissociates himself from the scene and stresses that the interrogation is useless, since the father's acts have lost him all credit. Only the son's confession in person would lend credibility to the father's point of view.

367, 19 *me cum maxime*: in his app. crit. Håkanson notes *me cum me quam π metum A me tum* Lehnert. In fact Burman 1720, 360 and Lehnert 1905, 332 both have *tum maxime* but, as Lehnert claims, following families α (the excellent BVM) and β (PS) where *cum maxime* was apparently emendated into *tum maxime*. Having no access to these or indeed any mss. it is impossible for me to decide who is right. I can only say that there is no significant difference in meaning, but that *cum maxime* occurs ten times in the *DM* and *tum maxime* only once.

367, 19-20 *illud tuum, parricida, secretum*: the reproachful vocative is all the more dramatic because it breaks up the noun phrase and turns it into an *hyperbaton*.

367, 20 *inicio properanti quaestioni manum*: cf. 17, 17 *si non inices manum ad praecipitia properanti* (349, 4-5). In both cases we have a subtle play upon a common juridical term. *Manus iniectio* was an out of court procedure 'the symbolic act (touching the debtor's shoulder) performed by a plaintiff when he summoned a (reluctant) debtor into court' (Berger), also a 'Besitzergreifungshandlung an einen Unfreien' (Taubenschlag in RE), in court the *legis actio per manus iniectionem* was a 'form of personal execution on the debtor for specific claims' (Berger). In the *DM* *manum inicare* often means to confiscate or seize – thus 3, 9 (50, 5),²⁸² 6, 1 (111, 25), 6, 9 (120, 5), 10, 11 (210, 13) – but, as Zinsmaier 1993, 110 remarks 'in weniger rechtsspezifischer Bedeutung ist in den Größeren Deklamationen die Rede, wenn jemand eine Person aufgrund irgendeiner *potestas* an einer Handlung zu hindern sucht'. He adduces *DM* 16, 4 (323, 4), 16, 5 (324, 20), 17, 19 (351, 9), 19, 4 (375, 17), we can add 17, 17 (349, 4) and the present instance. For an elaborate survey of *manum inicare* in all possible senses see TLL s.v. *manus* 360, 19 – 361, 32.

Quaestio is personified, as in *DM* 19, 12 *nihil aliud quaestio illa captavit quam silentium* (385, 2-3).

367, 20-21 *inhibe ictus, subtrahe ... ignes*: Becker 1904, 59 includes *ictus ignes* in his survey of alliteration in the *DM* together with 19, 4 *omnis ictus except in faciem verberibus, ignibus laudatos vultus opposuit* (375, 7-9)²⁸³ – much less powerful than the present instance which is enhanced by *inhibe* and a tight parallelism of the imperatives and their objects. *Subtraho* recurs in 19, 15 *non subtraxi restinxique flammam* (388, 4).

367, 21 *eruiisti*: for the use of this verb in a figurative sense, see comm. at 18, 12 *incestum erueres* (365, 6).

dem hier Angegebenen getroffen ist. Der Form nach ist es ein excessus zu Anfang eine Art Hypotyposis bietend. Halt ein, sage was du bisher durch die Folter erpresst hast! Lass hören was jener selbst sagt!

²⁸² See comm. by Schneider 2004, 160 n. 162.

²⁸³ See comm. at 19, 4 *ictus* (375, 7).

367, 21-22 profer in medium: *profero in medium* is a common expression (OLD s.v. *profero* 7), for the various appropriate senses of *profero* see comm at 18,7 *adulteria proferantur in fabulas* (360,1-2).

367, 22 – 368, 1 memento te – debeat credi: rather than Sussman's 'But remember that you have done this in a case concerning your son, and for this reason nobody should believe you' (1987, 225) I would translate 'Remember that with regard to your son, you have done something on account of which nobody should believe you' In other words: you have ruined your chances of being believed, so it will be difficult for you to convince anyone

367, 22 te fecisse de filio: What has the father done? The speaker can refer either to the father's torture of his own son as such, or to the exclusion of witnesses, or to the killing of his son Since we are still present at the torture scene – as appears from *quid spiritum – crudelitate continuas* (368, 1-3) – one would have expected *facere* instead of the highly illogical perfect infinitive *fecisse*

Von Morawski 1881, 6 lists the present instance of *de* under those samples which form an extension of what would in classical Latin fall under *facere ex*;²⁸⁴ but it would fit in better with his next category: "jemandem etwas anthuen" (thus 8, 2 *de languente filio rem inauditam, rem facere crudelem* [153, 11], 8, 7 *quam multa ideo tantum de filius facitis, quia licet*! [157, 23-24], 8, 16 *quod de fratribus, quod de geminis, quod pater hoc facit non consentiente matre* [166, 25-26], 11, 7 *fecisset omne de numinibus suis facinus audacia* [227, 9-10]). See Zvěřina 1883, 252 for the *Nachleben* of this expression.

368, 1-3 quid spiritum – crudelitate continuas: in this double *interrogatio* the mother's advocate makes it clear that the interrogation is pointless under the present circumstances. The two questions pertain to its two most important facets. first its breath-taking (and lethal) pain, then the intermissions inserted in order to prolong the young man's suffering They are closely connected by their parallel word order, anaphora of *quid* and *homoeoteleuton* of *praecipitas* and *continuas*, also the brusque sounds of p and c in *praecipitas* recur in the doubly alliterative *patientiae pertinaci crudelitate continuas*.²⁸⁵

368, 1 quid spiritum dolore praecipitas: probably not 'why do you destroy his life with suffering' (Sussman 1987, 225), but 'why do you rush his breathing with pain' – if we compare Petr 118, 6 *Non enim res gestae versibus comprehendendae sunt, quod longe melius historici faciunt, sed per ambages deorumque ministeria et fabulosum sententiarum tormentum† praecipitandus est liber spiritus, ut potius furentis animi vaticinatio appareat quam religiosae orationis sub testibus fides*

368, 2 miserae ... patientiae: compare Sen *Contr* 2, 5, 6 *Describam nunc ego cruciatus et miram corporis patientiam inter tyrannica tormenta saevientia* In 2, 2, 11 the expression refers to mental suffering *utcumque potero desiderium misera et crudeli patientia perferam*, as in 19, 2 where the father uses it to refer to himself *Infelix senectus, misera patientia, sic quoque quam multa dicenda sunt*! (373, 18-19)

²⁸⁴ See further comm at 19 1 *de filio fieri* (372 16)

²⁸⁵ In the aa bb pattern as defined by Becker 1904 58 who discerns a similar predilection for this solemn stylistic device in Ammianus Marcellinus See further Zinsmaier 1993, 132 Stramaglia 2002 126 n 107

For the significance of (*im*)*patientia* in the *DM*, see comm at 19, 1 *hanc . patientiam meam* (372, 12).

368, 2 *pertinaci crudelitate*: maybe inspired by Sen *Contr* 7, 1, 8 *o crudelis et pertinax noverca*¹

368, 3-4 [*si*] *frustra – debet audiri*: the paragraph concludes with a problematic sentence. It picks up on *profer in medium* (367, 21-22) and, whether *si* is preserved or not, its basic assumption is that the father thinks it will help his case if he reveals what was said during the interrogation. This seems inconsistent with the rest of the declamation, in which the father's reliance on stubborn silence is denounced – unless it points forward to 18, 16, where it is suggested that the father is on the point of speaking out (369, 21-25).

This difficulty set aside, *si* is awkward. It could be preserved under either one of two premises, but neither is tenable without reservations. The first proposition is that the first part, *si – proferre*, is a complete sentence, the protasis consisting of *si frustra credis* with *acc c inf tibi sufficere quod audieris*, the apodosis of *nuntiare, proferre* as two *infinitivi pro imperativis* ('If you mistakenly believe that what you heard is adequate for you, tell it, let us know'). The *infinitivus pro imperativo* occurs however very rarely until the late Latin period²⁸⁶ and I have found no other samples anywhere in the *DM*. Alternatively, the main clause is *incestum – audiri*, while the subordinate clause runs *si – proferre*, the *acc c inf* consists of *tibi sufficere quod audieris, nuntiare, proferre* with *si = etsi*, a concessive subordinator²⁸⁷ ('Even if you mistakenly believe that it is adequate for you to tell, to let us know what you heard') – but then one would expect a subjunctive: *crederes*, or at least *credas*.

It seems therefore that Shackleton Bailey is right to delete *si* – though for the wrong reasons. He comments (1976, 216-17) 'Mother is supposed to be appealing to Father to go more gently with his torture of Son. In his own interests he should not kill the young man, because if he does the story of incest will not be believed'. In the first place, it is not the mother who is addressing the father, but the advocate. Secondly the speaker is not supposed to be appealing but – assuming that the torture of the son by the father is inevitable – to be acting as a witness. Thirdly, if the father lets his son live, it is even less likely that the story of incest will be believed: silencing his son by murdering him and subsequently taking a high moral stance is the father's only chance. It is unclear, anyway, what this explanation has to do with the deletion of *si*.

A better reason for leaving out *si* is the immediate context. If *si* is left out, the sentence becomes more closely connected to the preceding double *interrogatio* beginning with emphatic *frustra* in first position, it makes clear once more that the *quaestio* in its present form is pointless. The connection also becomes stronger on a stylistic level: the double *interrogatio* is answered not with a sprawling compound sentence, but with two supplementary laconic statements, which are more fitting at the end of an argument.

368, 3 *frustra ... credis*: a fairly common expression for delusion: see e.g. Catul 77, 1, Ov *Am* 2, 7, 13, [Sen.] *Oct* 540, Gel. 12, 1, 14; Amm 26, 2, 4.

²⁸⁶ KS 666. It does not even occur in LHS.

²⁸⁷ A common phenomenon. See KS 426-27, LHS 671, OLD s.v. *si* 9.

368, 5-10 Mirabar – qui occiditur: in the final part of his argument against the interrogation under torture, the speaker detaches himself from its particulars to conclude that to avoid being blamed for his false suspicions and the torture scene, the father had no choice but to silence his son by killing him

368, 5 et ego: like the *iudices*, whom the advocate addresses here By assuming that the audience and himself share a common way of reasoning, the advocate can present his conclusion as self-evident ²⁸⁸

368, 6 exitum: *exitus* here obviously means ‘result’ (OLD 5), but two other relevant senses play a part below the surface ‘death’ (OLD 3b), anticipating *mortem*, and ‘way out’ (OLD 2), anticipating *exire* in 368, 8 For a similar reasoning from the victim’s point of view see *DM* 17, 3 *non habet alium quam mortis exitum filius, qui nec reconciliari potest nec abdicari* (334, 20 – 355, 2)

368, 6-7 hic est – non debent: the coreference of the pair of sentences is underlined by the *homoeoteleuton hic-sic* Note the alliteration of *parricidu pudor*, contrary to 8, 21 *vitam parricidu pudore fugiebat* (173, 3 ‘he kept trying to escape life through shame for his brother’s murder’, Sussman 1987, 108) *parricidu* is an explicative genitive The second sentence, a *sententia* by its pithy and antithetical phrasing, may have been inspired by Sen *Ep* 72, 11 (about occupations that divert the mind from philosophy) *Principis illarum obstemus melius non incipient, quam desinent* ²⁸⁹

368, 7-8 facinus quaestionis operis scelere maiore: that the interrogation was evil and unjust has been demonstrated from 18, 11 onwards (and cf 18, 13 *facinus indignissimae quaestionis* [367, 3]). Afterwards, the father has made it impossible to find out about its circumstances and outcome by resorting to the greater crime of permanently silencing his son Using one crime to cover up another is something of a *locus communis* We also find it Cato *Dict* 46 *quod metuis cumulas, si velas crimine crimen, Orat* 8, 1 (Gel 13, 25, 12) *tuum nefarium facinus peiore facinore operire postulas*, Sen *Phaed* 721 *venerem arguamus scelere velandum est scelus*, Iust 37, 3, 7 *Laodice soror quasi admissum facinus maiori scelere tegere posset, venenum advenienti paravit*

368, 8-9 exire tibi videris per orbitatem: cf *DM* 10, 12 *nihil est sceleratius prudenti orbitate* (210, 23) Here the expected term would be *parricidium*, but *orbitatem* is much stronger Because it is a more emotional term, it emphasizes the lengths to which the father has gone to cover his tracks It also implies that the advocate expects that the father will try to capitalize on his loss and appeal for pity. And in fact in 19, 5 we read *adeone, uxor, tibi parum videor dedisse poenarum post parricidium, ut labores, ne lucrifaciat pater, quod occidit filium suum?* (376,5-7) ²⁹⁰

368, 9 scimus: a plural in the proper sense the advocate involves the jurors in his claim

²⁸⁸ To accept Shackleton Bailey’s hesitant proposal to replace *mirabar* with *mirar* (1984: 136) would mean to lessen the effect of the advocate’s address

²⁸⁹ Shackleton Bailey’s unmotivated order For *quae* read *qui* must be ignored after *parricidu pudor* *quae* clearly refers to (things like) torture

²⁹⁰ 368, 7-9 forms a beautiful example of how punctuation can either mar or make a text Lehnert 1905: 333 had the near incomprehensible *facinus quaestionis operis scelere maiore exire tibi videris per orbitatem*

368, 9 contentio: here i.e. *pertinacia*, a sense not found in OLD or TLL, but analogous with *contentiosus*: 'persistent, obstinate' (OLD *contentiosus* 1; TLL *contentiosus* 677, 53-75). A similar sense in 7, 13 *veritatis contentio* (150, 18); 9, 8 *nimia contentione adfectus* (182, 8).

368, 9-10 nihil extorsit saevitia misero: this would stand to reason, for the most part of *DM* 18 up to now was devoted to proving the son's innocence. Yet the advocate had to take into account the possibility that the son would have made a false confession to end the torture (*DM* 18, 11 [364, 19-22]; 18, 13 [367, 10-11]). Now it is assumed for the first time that nothing was said; the claim recurs in 18, 17 *cum damnato supra callidissimum silentium parricida nihil te dixisse constiterit* (371, 3-5). In *DM* 19, the father claims several times that his son has said nothing, or at least that he himself heard nothing, from 19, 11 (383, 25) onwards.

Saevitia is used metonymously to refer to the father; *extorqueo* is a common metaphor for obtaining information under duress (see TLL s.v. *extorqueo* 2043, 60 – 2044, 16 and esp. 2044, 17-35); it recurs in 19, 8 (380, 5) and 19, 14 (387, 10 for the mother's attempts to get the father to speak).

368, 10 vincit torquentem qui occiditur: the argument closes with an *epiphonema* in the form of a strongly moral *sententia ex inopinato*. The father in 19, 16 states that he has gone through a similarly sobering experience: *Quamquam, miserrime iuvenis (...) exprimere mihi nullus poterit dolor. quantum volet, laceret, vel occidat; vincere me tormenta docuisti* (388, 12-15).

Silentium

Argumentatio 18, 14-16 (368, 11 – 370, 11)

In the second, much shorter part of the *confirmatio*, the mother's advocate attacks the father's silence. The division into two paragraphs corresponds with two separate arguments, which have in common that – more or less explicitly – they denounce the silence as a form of innuendo. They largely take the form of an apostrophe to the father and can be summed up as follows:

368, 11-24 *Iamiam – cur occideris*: the father must be consistent and speak out about his son's guilt and his own. If the son was guilty, he was not punished enough.

368, 25 – 369, 18 *Quid ais – neutrum sciamus*: the father's heinous deeds have repercussions on society as a whole, therefore society has a right to know. If incest has taken place, the mother must be punished as well.

368, 11-14 *Iamiam – aliunde tristitiam*: a short *enumeratio* builds the transition from the first part of the *confirmatio* to the second. Its compact but emotive diction makes it quite effective.

368, 11-13 *Iamiam – soli tibi*: the mother's advocate indicates that the brutality of the interrogation accounts for the father's speechlessness. His words are deliberately ambiguous: superficially, he refers to the common phenomenon that people are often rendered speechless by a horrendous event. But he also wants to make clear that the way the father conducted the interrogation has robbed him of all arguments whatsoever to defend his course of action. In 19, 11 the father comments upon his speechlessness: *in silentium orbitate defecti ablata est mihi omnium verborum fides, omnis sermonis auctoritas, nec habet causam loquendi, cui non potest credi* (384, 3-6).

368, 11 *Iamiam*: for this *geminatio* see comm. at 18, 12 *iamiam malo – improvisamque mortem* (366, 4).

368, 11 *non miror quod*: a notably less subtle introduction than *mirabar et ego* above (368, 5). For *quod* instead of *acc c inf* after *verba affectuum* see comm. at 18, 3 *gaudebat quod* (356, 13).

368, 11-12 *non habes vocem, verba non invenis*: two synonymous clauses, phrased chiasmically. *Vocem habere* (in the sense of 'being able to speak') is familiar from *Ov. Ars* 1, 574 *saepe tacens vocem verbaque vultus habet*, *Pub. Sent. D* 20 *damnati lingua vocem habet, vim non habet*, *H* 9 *heu dolor quam miser est qui in tormenta vocem non habet*, *Quint. Inst.* 5, 10, 99 *'si res publica vocem haberet'*, compare also the father's claim in *DM* 19, 12 *non habent incredibilia vocem, quaedam maiora sunt, quam ut illa capiat modus sermonis humani* (384, 13-14). To give *verba invenire* the same sense seems to be typical of the *DM*. It also occurs 7, 9 *non invenit multa verba vidisse* (146, 3-4) and 17, 18 *non querelas post hoc invenio, non verba, non lacrimas* (350, 17-18). Becker 1904, 61 points out the alliteration of *vocem-verba*.

368, 12-13 *unicum sine – soli tibi*: another doublet of (near-)synonymous clauses, again phrased chiasmically, but now enhanced by anaphoric *unicum* and the *homoeoteleuton*.

of *lacerasti-occidisti*. For the collocation of these verbs, see comm. at *DM* 19, 11 *laceratus, occisus* (383, 28).

368, 13 soli tibi: synonymous with *sine teste*, but it also denotes ‘in your own selfish interest’ (Sussman 1987, 226). Both Burman 1720, 361 and Lehnert 1905, 333 had *unicum occidisti. soli tibi deinde vis videri celare facinus*. Håkanson’s punctuation gives balance to the first sentence and bite to the second.

368, 13 vis videri celare facinus: an extremely brief account of the reasons behind the father’s silence: using an extremely cunning form of insinuation, he wants to give the impression that with his silence he is suppressing an account of the unsavoury affair between mother and son. But this ruse has already been exposed: see e.g. 18, 1 (*nec uxori potest videri parcere, de qua scire voluit, an esset incesta, nec filio, quem, tamquam sciret, occidit*, 354, 2-4) and 18, 2 (*parcere nunc illum cuiquam tacendo creditis? loqui se cum maxime putat, et, si bene artes et profundae mentis consilia perspicio, respondere sibi videtur plus quam mater interrogat*, 355, 3-6).

368, 13-14 in parricidio quaeris aliunde tristitiam: forms a doublet, linked by *et*, with preceding *vis videri celare facinus*; it is more than likely, therefore, that the two sentences are co-referential. That is, the father’s apparent sadness²⁹¹ concerns the alleged incest and the measures he thinks he was forced to take, not the murder itself. *Aliunde* is contrasted with *in parricidio*, so that *in* has an adversative nuance, as in the similar phrase in 18, 5 *in parricidio malae tractationis reddamus aliunde causas* (358, 4-5; see comm. *ad loc.*).

368, 15 deinde erubescere: *erubescere* means ‘to blush for shame, feel ashamed’ (OLD *erubesco* 1); Sussman 1987, 226 translates ‘and then to feel remorse’. This seems logical, because it *would* be a *praepostera res*. But it makes no sense within the broader context of *DM* 18: there is no evidence that the father feels any remorse whatsoever. Indeed, from *DM* 19 we can only infer that the father is proud of what he has done: see, for example, *DM* 19, 4 *unicum ... eripui malignitati, abstuli famae* (375, 24 – 376, 2); 19, 5 *maioris adfectus est filium occidere quam vindicare* (376, 24-25). We must conclude, therefore, that *erubescere* here has a slightly different sense: not ‘be ashamed of’, but ‘be ashamed to, hesitate, feel diffidence’ (see TLL s.v. *erubesco* 822, 66 – 823, 9: *i.q. vereri, cum quis aliquid facere dubitet*) – that is, to reveal what was said during the torture scene. *Erubescere* in a similar sense is found in *DM* 1, 10 *ille trepidat, ille cogitat, ille erubescit* (11, 11; note that here, too, it is used absolutely); 3, 3 *pudicitiam in milite etiam laudare erubesco* (45, 2); 18, 8 *nec ad aures patris pervenire rumor erubuit* (361, 3). In this sense, it also provides an obvious connection with what follows: *fas non est non esse notum, propter quod se parricida putat innocentem* (368, 15-16)

368, 15 fas non est: *fas* has – by exception – a strong moral component here. For the usual connotations of *fas* in the *DM*, see comm. at 18, 5 *fas est, fieri solet* (358, 19).

368, 16 eligas utrum voles: introduces a *dilemma*. For its wording and the use of the future indicative, see comm. at 18, 8 *elige, parricida, quod voles* (360, 22). The use of

²⁹¹ I cannot agree with Sussman’s translation ‘the appearance of stern righteousness’ (1987, 226) *Tristitia* always denotes sadness in the *DM*.

the subjunctive replacing the imperative is originally characteristic of spoken Latin (KS 185 'bei bestimmtem Subjekte in guter Prosa nur selten, LHS 335-336).

368, 16-17 aut tormenta – aut silentium: the *dilemma* is specious, because despite the seemingly watertight formula, the two components are not mutually exclusive. If the father condemns his own silence, there is no logical necessity for him either to condemn or condone the torture; if he condemns the torture, he will automatically condemn the silence as well

368, 17-18 quod non debet indicari, non debet quaeri: the mother's advocate means that the father ought not to have interrogated the son about the alleged incest if he could divulge nothing about it afterwards. He makes his point by means of a gnomic *sententia ex contrariis*, tightly structured with anaphora of *non debet* and *homoeoteleuton* of *indicari-quaeri*. The argument could harm his case, however, because the father could say exactly the same thing about the mother's accusation of *mala tractatio*. An argument that can be employed by both sides is called an *argumentum commune*: *commune est quod nihilo minus ab adversarius, quam a nobis facit* (Cic. *Inv.* 1, 89). Quintilian on a number of occasions recommends to avoid this type of argument (*Inst.* 3, 3, 5, 6, 5, 1, 7, 3, 20, 8, 3, 57), but where he treats it somewhat more extensively (*Inst.* 5, 13, 29-33), he distinguishes between its use for the accusation and for the defence in a way that is quite appropriate here: *communia bene adprenduntur non tantum quia utriusque sunt partis, sed quia plus prosunt respondentis (.) communia qui prior dicit, contrarium facit, est enim contrarium quo adversarius bene uti potest* (5, 13, 29-30).

368, 18-22 posses videri – morte est: a rather difficult passage, whose obscurity is mainly due to its lack of conjunctions. The speaker means: if the son was still alive, the father's silence could be interpreted as an attempt to safeguard his son's reputation (and therefore, indirectly, as an indication of the son's guilt, cf. 368, 13 *vis videri celare facinus*). But by his relentless cruelty the father has only brought shame upon fatherhood – unless his son was guilty, in which case he has been far too lenient.

368, 18 posses: *posses* is Håkanson's conjecture for *possis* (all mss., Burman 1720, 361, Lehnert 1905, 333)²⁹² and an amelioration in view of the present counterfactual construction that ought to be sustained. In his app. crit. Håkanson refers to a similar change from *possit* to *posset* in 18, 3 (*qui unicum aspiceret animo, quo quandoque posset occidere*, 356, 10-11), in his introduction (XXI) he points out that e-i *saepissime permutantur*.

368, 18 fortassis: an archaic alternative for *fortasse* / *forsitan*. Deratani 1927, 295 indicates that as an archaism it was popular with such African authors as Apuleius and Minucius Felix and the author of Ritter's group II. It is true that *fortassis* only occurs in *DM* 2, 4, 5, 7, 8, 11, 14, 17, 18, 19. TLL s.v. *fortasse* 1143, 56-58 reports that *pedestres scriptores* generally prefer *fortassis* before a vowel (see also Tosato 1912, 13).

368, 18-19 crudelissime senex: for this and other terms of abuse directed at the father, see comm. at 18, 3 *nocentissimus senex – silentium suum* (355, 12-13).

368, 19 silentium filio praestare: for *silentium praestare* see comm. at 19, 1 *silentium praestare* (372, 8).

²⁹² Also suggested by Watt 1982: 33, who inexplicably claims that to retain *possis* would require <qua>si instead of si.

368, 19-21 consumpta est – sublata reverentia: a doublet of succinct and poignant *epiphonemata*, asyndetically linked to what precedes and to each other. They are coreferential and practically synonymous. Although the mother's advocate refers to the murder and the subsequent silence, Gunderson 2003, 203 has a point in remarking that '[i]f the *religio* has indeed been used up, the father abolishes his own title as soon as he imagines the disruption of the erotic economy of the house over which he is head'. Sussman 1987, 226 translates *paterni nominis religio* as 'the sanctity of fatherhood', Gunderson 2003, 203 offers 'the sanctity of the father's name'. They may be right, but in view of the *sententia*'s parallelism with the next *epiphonema*, *paterni nominis* should first of all be regarded as an objective genitive, 'the regard for fatherhood'. A number of similar occurrences of *religio* confirm this interpretation: see e.g. Plin. *Pan.* 77, 3 *quanta religio aequitatis, quanta legum reverentia*, Apul. *Met.* 10, 3 *nec te religio patris omnino deterreat*. We find two significant echoes in the *DM* 5, 8 *malo pro reverentia nominis nostri quicquid praestatis inviti* (92, 25-26), 19, 9 *iuvensem, in cuius animo perdiderant nomina nostra respectum* (380, 24-25).

Patrum nomen in a non-technical sense (i.e. 'father' as a title) also occurs Pac. *trag.* 143 *quod iam et mehe / piget patrum nomen, matrum pudet / profari*, Sen. *Contr.* 2, 4, 11 *certe morietur salvo patrum <nomine>, suo puro*,²⁹³ V. Max. 7, 7, 3 *Tettius procreato filio summa cum iniquitate patrum nomen abrogaverat*. See also Dig. 48 5 23 4 (Papin. *liber primus de adulteris*) *ideo autem patri non marito mulierem et omnem adulterum remissum est occidere, quod plerumque pietas patrum nominis consilium pro liberis capit ceterum mariti calor et impetus facile decernentis fuit refrenandus*.²⁹⁴

Nor is the sentence counterfactual, it should read, 'As it is, regard for fatherhood is destroyed' rather than 'But then, [it] would be destroyed' (Sussman 1987, 226).

The use of *sublata* was probably inspired by Cicero, who apart from *ND* 1, 3 *pietate adversus deos sublata* uses *religionem tollere* on numerous occasions.²⁹⁵

368, 21 si hoc ille meruit: i.e., if he was guilty, an illogical euphemism, for in what follows it is made clear that he would have deserved a far harsher punishment if he was guilty.

368, 21-22 parum in – morte est: neither torture nor death would be sufficient punishment for someone guilty of incest. Note the emphatic anaphora of *parum* followed by parallel constructions, see further *DM* 11, 4 *queri de hac lege, tamquam parum nobis in ultione prospexerit* (223, 8) and compare 17, 9 *innocentis filii ultio est mori* (340, 21).

368, 22 vindicare vis confessionem: note the alliteration of *v*, *confessio* functions awkwardly as a metonymy for the guilty son.

368, 22-23 traduc cadaver – pone causas: the disclosure of all the crimes to which he is supposed to have confessed would be the ultimate punishment for an incestuous son.

²⁹³ In Hakanson's Teubner edition Winterbottom & Loeb has *certe morietur <in> solo patrum suo puro*.

²⁹⁴ For this rule and its connection with the *vitalis necisque potestas* see Introduction n 151.

²⁹⁵ Always in a religious context. See *ND* 1 3 1 115 1 118 1 119 *Att.* 4 1 7 *Phil.* 2 110 *Div.* 2 148 *Leg.* 1

368, 23 super illa – pone causas: Compare 18, 15 *super vulnera unici, super exustos artus metuendus adsisitis* (369, 3-4) In both *DM* 18 and 19, the confrontation with the boy's corpse is evoked as a moment of openness and confession for both parents. See 18, 17 *coute in funus, omnes liberi, omnes parentes, custodite planctus meos, observate suspiria si quid feci, si quid admisi, fatebor* (370, 15-17), 19, 16 *eamus ad tumultum, misceamus supra busta lacrimas ibi aut tacebimus pariter aut invicem confitebimur* (388, 22-24) In other declamations too, vigorous and/or emotional statements are made while standing over dead bodies 7, 3 *haerent auribus verba super cadaver habita exultantis inimici* (139, 24-25), 11, 10 *nec licuit super ipsa corpora proclamare non feci!*' (230, 1-2), 17, 12 *trepidatio, ne super cadaver meum proclamare posses 'certe merito timui, merito praedixi'* (343, 7-8)

368, 23-24 non est – cur occideris: the argument closes with a gnomic *sententia e contrarius* which is both logically sound and tightly structured *eiusdem* is followed by an isocolon enhanced by anaphora of *cur* and *homoeoteleuton* of *torseris* and *occideris*, while the two infinitives *fateri* and *tacere* are sharply contrasted

368, 23-24 non est eiusdem: the expression denotes logical inconsistency Compare *DM* 1, 10 *non est eiusdem consiliu novercae parcere, ut substituat ream, et gladium relinquere, quo ipse deprehendatur* (10, 18-20, see Ritter 1967², 68) Tosato 1912, 44 absurdly defines *eiusdem* as a *genitivus pretii*

368, 25 – 369, 3 Quid ais – potes tacere: *Quid ais, severissime parricida?* introduces a doublet of *interrogationes* expressing strong indignation The *interrogationes* are firmly structured, being both composed of a number of doublets (*per flagella per laminas, viscera, sanguinem, non insania, non furore, consilio, gravitate*) and concluded with epiphoric *potes tacere*

368, 25 Quid ais: *Quid ais* usually introduces false assumptions attributed to the speaker's opponent, which are, mockingly or even sarcastically, phrased like questions, and refuted afterwards see comm at 18, 9 *Quid ais – ex forma* (361, 14-16) Here, it is an indignant challenge for the father to speak out, keenly contrasted with epiphoric *potes tacere*

368, 25 severissime parricida: for this and other terms of abuse directed at the father, see comm at 18, 3 *nocentissimus senex – silentium suum* (355, 12-13) Note that in 18, 2 the father is denied *severitas ne cui praestet magnae severitatis auctoritatem non posse defendi* (355, 1-2)

368, 25-26 consumpsisti per flagella, per laminas: *consumo* in the sense of (of personal or impersonal agencies) 'cause the death of, kill' (OLD 1b) is common, see TLL s v *consumo* 607, 37 – 608, 59 Where it occurs in the *DM*, it usually refers to a slow death due to a lingering illness, as in 6, 22 (134, 1), 8, 18 (169, 21), 10, 5 (203, 4), to hunger, as in 5, 9 (93, 13), 12, 2 (233, 8) and 12, 11 (243, 4)²⁹⁶ or to pain as in 5, 21 (107, 15) If it occurs in connection with death inflicted by man, it is likewise associated with a long drawn-out and painful death As such we find it, apart from this instance, also in 12, 1 (232, 15) and 19, 9 *juvenem verberibus ignibusque consumpsi* (380, 24 – 381, 2)

²⁹⁶ In gruesome puns since this declamation involves cannibalism

Von Morawski 1881, 8 considers the use of *per* a deliberate avoidance of the instrumentative ablative, symptomatic of postclassical Latin; De Vico 1962², 38 claims that this already occurs in the best classical authors; his point of view is confirmed in KS 556-557, cf. LHS 240. *Flagella* and *laminae* are also found together in DM 9, 6 *hic ferrum acuebat, ille accendebat ignibus laminas, hinc virgae, inde flagella adferebantur* (180, 11-13); 19, 15 *admove eculeos, flagella, laminas* (388, 9-10).

368, 26 *potes tacere*: mss. have *potes agere*, adopted by Lehnert 1905, 333. Gronovius already suggested *potes tacere*, which seems better as regards both content and style and was already taken over by Burman 1720, 361. It is moreover forcefully repeated below (369, 3).

368, 26 – 369, 3 *viscera de tuis concepta vitalibus ... lacerasti*: *viscera lacerare* is a trite expression (see e.g. Ov. *Met* 4, 424; Cic. *Tusc.* 2, 8, 20; Sil. 12, 141; [Sen.] *Oct.* 636-637; Apul. *Met.* 5, 27; Firm. *Mat. Math.* 1, 7, 27); in connection with torture it occurs DeMi 307, 6 *meos artus, mea lacerari viscera putabam*; DM 19, 5 *viscera unici lacerare suffeci: ignosce* (376, 19).

Viscera and *vitalia* are used almost synonymously; their equivalence is underlined by the alliteration of v. They are used to expose the father's actions as a cruel paradox: after giving life to his son, he has now taken it away. For a father who appeals to his life-giving *viscera*, see DM 5, 10 *has, quas subtrahis manus, haec verba, quae negant, de meo spiritu, de meis visceribus hausisti* (94, 14-15); cf. also 5, 11 (94, 19-21) and 17, 12 (for *sanguis* and *viscera* representing family ties: *quae sanguine visceribus constricta sunt, non laxantur diducta, sed pereunt*, 344, 5-6).

369, 1 *sanguinem, qui de tua fluxit anima*: the colon's synonymy with the preceding one is underlined by the repetition of the *hyperbaton de tuis concepta vitalibus – de tua fluxit anima*; it fits less easily with *lacerasti*. As for its literal content, there is no known theory in antiquity that blood originated in the *anima*; it was usually thought to be produced by the liver.²⁹⁷ Galen thought that *pneuma* was added to it in the left ventricle to grant consciousness, sensation and voluntary movement.²⁹⁸ Or maybe we are to think of Aristotle's theory of male semen²⁹⁹, which in his view consisted of ὕδωρ ('concentrated' blood) and πνεῦμα (hot air, similar to ether, as *causa formalis* and life-principle). But in all fairness and likelihood our author is probably just varying a theme without too much concern for biological principles.

369, 1-2 *non insania, non furore, sed ... consilio, gravitate*: the two pairs of asyndetic synonyms are sharply contrasted.

As for the father's state of mind during the murder, the mother's advocate has already suggested several times that the murder was premeditated: see e.g. 18, 3 *qui unicum aspiceret animo, quo quandoque posset occidere* (356, 10-11); 18, 4 *torsit filium, ut probaretur incestum; occidit, ut crederetur* (356, 10-11). The father in DM 19 gives mixed

²⁹⁷ Phillips, 1971, 370.

²⁹⁸ Nutton 2004, 234.

²⁹⁹ Arist. *GA* 730a-b; 736a-737a. Morsink 1982, 112-113 comments: 'It is not entirely clear whether Aristotle thought the soul to be identical with this *pneuma* or very closely connected with it (...) Aristotle calls it a soul-principle and not merely soul *per se*. That is, the *pneuma* is the moving principle and carrier of the soul.'

signals. On the one hand, he claims that the killing was deliberate, ensuing from his *gravitas*, this at least emerges from his account of the murder in 19, 9-11 (381, 4 – 383, 15, note esp 383, 11-12 *iram nostram mors severa composuit*, and the taunt for his wife at 19, 12 [384, 14-15] *tu vero crede nihil aliud fuisse quam furorem, insanisse me puta*. See also 19, 5 *filium pater non demens, non insanus occidit* (377, 5), further comm. at 18, 11 *ne gravitatem putetis* [365, 2]). On the other hand, probably to avoid the impression of cold-blooded calculation, he wants to make it clear that the torture itself was performed in a rush of emotion. Thus 19, 3 *fallitur, quisquis me putat quicquam fecisse consilio* (374, 11-12), 19, 15 *stabam senex furus monstrosae feritatis accinctus* (387, 14-15), *consiste aegedum, mulier, loco meo, et in habitum paterni furoris accincta* (388, 8-9).

Furor and *consilium* are similarly contrasted in Cic. *Verr* 5, 85, *Phil* 3, 17, *Liv* 7, 20, 5, cf. also Cic. *Red Sen* 19, *Rab perd* 4.

Insania and *furor* are used without distinction in the *DM*, though there is a difference according to Cicero, who in *Tusc* 3, 11 defines *insania* as a relatively mild and permanent disorder, while *furor* is more vehement and can even afflict a wise man. We find the terms used synonymously also in Cic. *Pis* 46, 50, *Apul Apol* 53, cf. further *DM* 19, 12 (384, 14-15 cited above), *Sen Dial* 3, 13, 2, *Stat Silv* 2, 2, 26-27, *Flor Epit* 3, 21, 7, *Firm Mat Math* 3, 3, 16, 4, 14, 19, 6, 29, 15, 8, 9, 4. *Gravitas* and *consilium* are terms that occur very frequently as virtues in Cicero's works. Thus in *Pis* 19, *de Orat* 1, 214, and as part of a catalogue of virtues in *Pis* 23, *Phil* 14, 37, *Rab Perd* 26, *Flac* 3, *Man* 68, *Font* 24, *Fam* 11, 27, 6.

369, 2 quantum vis videri: See the previous note. This parenthesis could be regarded as evidence that *DM* 19 was written *before DM* 18.

369, 3-5 super vulnera – solum dicis: a subtly structured sentence. Tension is built up by *metuendus adsistis* flanked on each side by a ponderous anaphoric *isocolon*, then released abruptly in anticlimactic *hoc solum dicis*.

369, 3 super vulnera unici, super exustos artus: cf. 18, 14 *super illa vulnera omnes pone causas* (368, 23), 19, 6 *vides senem sanguine suo fluentem, laceratis exustisque illis sanctoribus carioribusque visceribus super exanimis unici corpus cruentis manibus iacentem* (377, 7-9), 19, 15 *super ora, super oculos iacentis adsistens clamabam* (387, 16-17).

Exustos is only found in ms. D, all others have *exutos*, followed by Lehnert 1905, 333. *Exutos artus* may be a lugubrious allusion to Verg. *A* 5, 422-23 *et magnos membrorum artus, magna ossa lacertosque / exuit* – with the son's *artus* stripped not of clothes, but of flesh. But Schultingh suggested to adopt *exustos*, Burman 1720, 361 and Håkanson complied. They may be right in view of the frequent occurrence of scorched body-parts: 18, 12 *perusta vitalia* (365, 18) and 18, 17 *laceros artus et perustum corpus* (370, 18), further 19, 6 (377, 7-9, cited above) and 19, 15 *exustis amputatisque, per quae dolor exit in verba* (387, 18).

369, 4-5 quaerente populo: Shackleton Bailey 1984, 136 comments that '*quaerente populo* should be excised in view of *contenta esse debet* and *a matre sola*'. I cannot agree. The excision of *quaerente populo* would unbalance the sentence, nor is it

necessary in view of *contenta esse debet* and *a matre sola* if Håkanson's punctuation – for which see the following note – is rejected

369, 5 'occidi': this is Burman's (1720, 361) and Lehnert's (1905, 333) punctuation and in my view to be preferred to Håkanson's '*Occidi*' the father is represented making this laconic statement several times in both *DM* 18 and 19 18, 4 *mater exclamat 'filium amavi!'* *pater dicit 'occidi'* (357, 9-10), 19, 5 *ita tibi non videtur omnia respondere pro filio, qui dicit 'occidi'?* (377, 1-2), 19, 8 *passus sum iam, quod erat difficilius occidi* (380, 7-9), 19, 13 *Quod sufficit igitur, interrogantibus respondeo, mulier occidi* (385, 15-16) *Contenta debet esse incerto?* then corresponds with *causas quaerente matre, interrogari nunc te, marite, credis a matre sola?* with *quaerente populo*, while both *interrogationes* are generally answered with *causas mortis illius reposcit sollicitudo generis humani* Håkanson's objection '*sed tum aut interrogari vel tale quid expectaveris*' (app crit) is easily overcome given the declamation's loose paratactic style, *aut* would render the passage smoother, but it is not unusual for two coreferential *interrogationes* to occur in *asyndeton* and to be answered in a single *sententia*

369, 5-6 contenta esse debet incerto: cf 18, 13 *a quaestione seposita in maius reditur incertum* (366, 23-24) Of course the mother is aware of what occurred or did not occur between her son and herself, but it is essential for her to know what was said during the interrogation The father cleverly refuses to make this distinction in his insinuations see e.g. 19, 2 *ipsius animus potest scire, quid filius meus dixerit, quae me putat habere, quod dicam* (373, 6-7), 19, 10 *quid iuvenis in tormentis dixerit, tamquam ignoret, interrogat* (383, 1-2), 19, 14 *audi breve succinctumque responsum, quid dixerit quod quaeris, quod putas* (387, 11-12)

369, 6-7 interrogari nunc – generis humani: *subiectio* *Nunc credis* signals that a misconception on the part of the addressee is about to be corrected, compare comm at 18, 2 *parcere nunc mater interrogat* (355, 3-6), 18, 4 *Questurum nunc – accuso rumorem* (356, 20-21) The *subiectio* and the *expositio* (369, 7-10) attached to it resume the argument given in 18, 10 (363, 4-13) that the father's suspicions and subsequent actions sully, indeed make impossible any type of spontaneous and innocent affection See comm *ad loc*, esp *placet ergo – horreatque contactum* (363, 4-7) ³⁰⁰

369, 7 reposcit: the use of the compound verb is not just due to later Latin's predilection for *composita*, it has the fitting sense of 'to claim as one's due, right, etc., demand' (OLD s.v. *reposco* 2)

369, 7 sollicitudo generis humani: cf 18, 10 *libet interrogare omnes humani generis adfectus* (363, 3-4), the speaker refers to the *genus humanum* to give his position a touch of universality, as in *DM* 4, 9 *possum publica quadam voce generis humani respondere* (70, 16-17), 8, 9 *queri totius generis humani nomine volo* (160, 2-3), 15, 8 *puellae publico generis humani nomine gratias agimus* (310, 5-6) *Sollicitudo generis humani* is used metonymously for 'the concerned public', ³⁰¹ similar metonymies we find *DM* 4, 3 *ut ad illum hominum sollicitudines metusque confugerent* (63, 19-20), 8, 4 *cui*

³⁰⁰ For the symbolic value of particular crimes and their impact upon society at large compare Schneider 2004 n 14 at *DM* 3.1 (43.5.6)

³⁰¹ Agreed upon by Englund 1934 3

pietas patris, cui credere sollicitudo debuerit (154, 21-22), 8, 9 *quam multas artes, misera mortalium sollicitudo, fecisti!* (160, 3-4), 8, 14 *si quid de continuatione curae sollicitudo laxasset* (165, 4-5), 11, 3 *bellum mihi fatumque publicae sollicitudinis credidistis* (221, 19-20) For the present sense of *sollicitudo*, Gunderson 2003, 202 alludes to 18, 10 *tanti fama non est, ut amet filium mater sollicitudine pudicae* (363, 12-13), translated as ‘anxious about her reputation for chastity’, but *sollicitudo* here refers to a wider concern for the survival of pure and generous love between relatives

369, 7-10 stant circa – generosque simplicitas: a short, trenchant *expositio* in the form of a *distributio*, note the dramatic effect of the verb in initial position in all three cola. It makes use of a *locus* intended for the arousal of indignation in the *peroratio*. *Secundus locus est per quem illa res ad quos pertineat, cum amplificatione per indignationem ostenditur, aut ad omnes aut ad maiorem partem, quod atrocissimum est* (Cic. *Inv* 1, 101), cf. *Rhet. Her* 2, 48. *Secundus locus est, cum consideramus, illae res de quibus criminamur, ad quos pertineant utrum ad omnes, quod atrocissimum est etc*

369, 7-8 stant circa liberos attoniti parentes: note how the colon’s word order underlines its content, *circa attoniti parentes* enclosing *liberos*. The phrase seems to have been inspired by Luc. 3, 713-14 *stat lumine raptō / attonitus mortisque illas putat esse tenebras*, 7, 339-40 *stat corde gelato / attonitus*, cf. further Stat. *Ach* 1, 613 *attonito stat turba metu*, Silv. 5, 3, 14 *stant circum attonitae vatem et nil dulce sonantem*, *DM* 8, 20 *Stat iuxta medicum pater apertis visceribus inhians* (171, 22-23)

369, 8-9 horret invicem se caritas fraterna complecti: cf. 18, 10 *tineat oscula pater horreatque contactum?* (363, 6-7). *Caritas fraterna*, denoting ‘loving brothers’, is another metonymy.³⁰²

Fraterna substitutes the genitive *fratrum* in a way that is typical of later Latin, for this phenomenon see comm. at 18, 9 *in illa matrona maritali dolore paene percussus* (361, 11-12). Another postclassical element (Von Morawski 1881, 4) is pleonastic *invicem se*. Its first occurrence may be dubious. Cic. *Fat* 2 *fatum est conexio rerum per aeternitatem se invicem tenens* (cited in Serv. *ad Aen* 3, 376). It is followed by Mela 3, 52, Plin. *Ep* 3, 7, 15, 10, 96, 7, *De Mi* 305, 2, 321 *arg*, Calp. *Decl* 35 *arg*, *DM* 2 *arg*³⁰³, 8, 13 (164, 15-16), then becomes common from the 4th century onwards. *Horreo* with infinitive is poetic according to the same author (1881, 10), but LHS 347 and KS 668 both came across it in Cicero (KS cites *Agr* 2, 101, *Har* 37). See for more exx. TLL s.v. *horreo* 2981, 23-41.

369, 9-10 rupta est – generosque simplicitas: cf. 18, 10 *malo simplicitatem, quae non vereatur infamiam* (363, 9-10). Both mother and son are explicitly associated with *simplicitas* in *DM* 18. See 18, 4 (*iuvēnem, quae integritatis prima simplicitas est* 357, 1) and 18, 7 (about mother *non est nefandorum ista simplicitas*, 360, 17). Gunderson 2003, 201 rightly notes that ‘[s]exual simplicity is the cornerstone of the mother’s defence and her advocate invokes various versions of *simplicitas* in championing her’. In 19, 14 *o bonae conscientiae incauta simplicitas* (387, 5) the father uses it in an ironical reference to the mother.

³⁰² Cf. England 1934 3.

³⁰³ Also *DM* 1 *arg* but this was supplied by Valla.

369, 9-10 soceros generosque: used in a fairly broad sense 'in-laws, distant relatives' (see *socer* OLD 1b, Forc 3, *gener* OLD 1c, Forc 4, 5, nota)

369, 10-13 quousque nos – interpretatione committis: the *interrogatio* expresses helpless indignation

369, 10 quousque: *quousque* in a direct question signifying 'how long' till when?' (OLD 1b) usually occurs with future tense (LHS 655) The present tense seems to remove emphasis from the issue of duration, directing it to irritation with the present We also find it Cic *ND* 1, 113, Sen *Ben* 2, 11, 1, *Ep* 33, 7, 93, 9, Plin *Ep* 2, 20, 8, Calp 52, Hist Aug *Tac* 17, 5, and in *DM* 7, 8 in a similar context *quousque me metus simulatione deludis?* (145, 6-7) The present tense is difficult to explain in 19, 14 *quousque taceo, in quod tempus differo illam vocem?* (386, 16-18)

369, 10-11 nos cum silentii tui interpretatione committis: *committere cum* is used in a sense occurring exclusively in *DM* 18 and signifying something like 'confront or bother with', or perhaps (Sussman 1987, 226) 'engage in' It occurs again in 18, 16 *nos cum perpetua sermonum malignitate committis* (370, 3-4) TLL s v *committo* 1902, 19-20 has the present instance resort merely under *ponere, collocare, conferre latiore sensu*, but both come closest to *committo cum* in the sense of 'to pit against' (cf OLD s v *committo* 5b),³⁰⁴ see Sen *Ben* 5, 5, 1 *neque enim minus fortis sum, si cum invulnerabili hosti me committis*, Tac *Ger* 10, 3 *captivum quoquo modo interceptum cum electo popularium suorum, patris quemque armis, committunt*, Mart 7, 24, 1 *Cum Iuvenale meo quae me committere temptas*

369, 11-14 si nihil – morte contentus: a *dilemma* There are two options either mother and son are innocent, in which case the father should speak up for them, or they are guilty, in which case the father has been too lenient for his wife Whichever prevails, the father has acted wrongly

369, 11-12 quod debeat erubescere: *erubesco* with internal acc is rare in classical Latin (see TLL s v *erubesco* 821, 59 – 822, 2), it occurs nowhere else in the *DM*, but see *DeMi* 268, 11 *quidam in totum deos sustulerunt, quidam, dum hoc erubescunt, cura vacare utique dixerunt*, 271, 16 *illud autem plus quam verecundum et erubescendum nobis est* There is no need then to concur with Franciscus' *quo[d]* (Burman 1720, 362)

369, 12 temporum pudor: unlike 4, 6 *mihi praestate salutem patris, innocentiam meam temporum pudorem* (67, 1-2), *pudor* is personified³⁰⁵ But we also find *pudor* personified in 9, 15 *nisi ulterior aliqua necessitas pudori vim fecerit* (189, 21), 12, 8 *non habitant una pudor et fames* (239, 16-17), 14, 11 *a lupanari deducebat pudor* (300, 14), 15, 12 *discedant, quos pudor, quos satietas, quos paenitentiae ratio dimittit* (315, 8-10), 19, 5 *ad populum vocas miserum pudorem* (376, 11)

Temporum is metonymous for the people who live in these times, for this metonymy see comm at 18, 6 *miseremini temporum* (358, 22) Compare also comm at 18, 4 *innocentia temporum* (357, 5)

369, 12-13 verba media, suspensa: refers to repeated *occuldi* (last in 369, 5) because the father refuses to account for the murder, this pronouncement remains vague

³⁰⁴ This is why England 1934 15 regards the expression as akin to personification

³⁰⁵ England 1934 5

and inconclusive *Media* and *suspensa*, in *asyndeton*, are used synonymously For *verba suspensa* (OLD s v *suspensus* 3b ‘vague, inconclusive’) cf Tac Ann 1, 11, 2 *suspensa semper et obscura verba*, 11, 34, 1 *quin suspensa et quo ducerentur inclinatura responderet* For *medius* in a similar sense see OLD *medius* 8a (‘non-committal’) and TLL s v *medius* 591, 65-79 (*anceps, dubius, suspensus*) where DM 16, 8 (mistakenly *oculos in media orbitate fudisti*, 327, 20) and 18, 15 (*non est media res, ut neutrum sciamus*, 369, 17-18) are referred to

369, 13 nefas prodigiosis simile fabulis: hardly a euphemism, for the speaker has used the word ‘incest’ without restraint throughout his speech, the masked phrase should rather be termed a form of *emphasis* Above all however, it is a learned mythological allusion and may thus be considered an *exemplum* that is not spelled out because the audience is quite familiar with the matter For myths concerning incest between mothers and sons, see Introduction pp 63-64

The phrase is much akin to DM 15, 11, where noble love and sexual infatuation are contrasted *praestat igitur ille mortalibus liberos ac duratura coniugia pietate, hic incesta, libidines, adulteria, meretrices referam nunc fabulosas inmodici furoris prodigiosasque novitates, conceptum nescientibus oculis ignoti hominis affectum, formam suis in se luminibus ardentem, virgines patrum senectute flagrantem, mortalium ferarumque coitus usque in monstruosa fecunditatis onera perlatus?* (314, 2-8)

369, 13 miserere: clearly not meant literally, for the father is urged to be even more pitiless For *miserere / miseremini* in the sense of ‘please, for pity’s sake’ see comm at 18, 4 *miseremini* (356, 15-16)

369, 14 ne sis una morte contentus: the father would have had even less right to kill his wife, guilty or not See for the husband’s *ius necandi* (and that of his wife’s father) comm at 18, 9 *in illa matrona maritali dolore paene percussus* (361, 11-12)

369, 14-16 incestam gravius – videtur irasci: if the mother is guilty, she exhibits great insolence instead of showing remorse, she pretends to be innocent and takes her husband to court All this is expressed in a *congeries* that takes the form of a tricolon

369, 14-15 gravius odisse debes: compare Cic Phil 12, 8 *senatum enim secuta non arbitratur se graviore odio debere esse in Antonium quam senatum*, further Tac Ann 14, 62, 2, Gel 12, 8, 5, Claudius Claudianus (*dubium*) *carmina minorum vel spuriorum vel suspectorum appendix 2, 27*

369, 15-16 audaciam innocentis imitatur: *audacia* and *innocentia* are two concepts that are often found juxtaposed see Cic Verr 4, 7, Phil 8, 16, S Rosc 7, 14, 85, DM 2, 9 *caecum vel hoc faciet innocentem, quod, licet viribus, licet sufficiat audacia, non habet persuasionem hominis, qui possit imponere* (28, 12-14) This is also the case in DeMi 351, 1 *sed in illis quoque diu non fiducia innocentiae verum audacia nescio qua omnia fingendi atque dissimulandi latuisse*, a passage which underlines that it is usually *fiducia* which is associated with innocence, as in Liv 33, 16, 9 *cum tanta fiducia quantam innocentia dabat*, DeMi 305, 4 *innocentiae fiducia contra opes istius steterant*, 371, 5 *apparuit certa innocentiae fiducia*, Apul Apol *quod non ex innocentiae fiducia potius habeant defendere*, cf further Liv 2, 52, 6, V Max 3, 7, 7, DeMi 250, 8, Apul Apol 90

Here *innocentis* forms a playful oxymoron with *audacia*, indicating that the innocence would be feigned.

369, 16 *tacenti videtur irasci*: if the mother were guilty, the father's silence would serve to protect her and it would be unreasonable for her to be offended by it.

369, 16-18 *cum filium – neutrum sciamus*: an *epiphonema* concludes the argument and summarizes the son's case in its entirety.

Peroratio 18, 15-17 (369, 19 – 371, 7)

The *peroratio*³⁰⁶ as a rule consists of three parts: *enumeratio* (ἀνακεφαλαίωσις, *recapitulatio*, *renovatio*: a short overview of the case to refresh the judges' memory), *indignatio* (*amplificatio*, *exaggeratio*: to arouse indignation against one's adversary) and *commiseratio* (*conquestio*: to arouse pity). *Enumeratio* is present in the various *epiphonemata*; *indignatio* is achieved with the use of *loci communes* and the generally more aggressive discourse employed by the mother's advocate. The *peroratio* proper is totally concerned with *commiseratio*. It consists of a large *sermocinatio*³⁰⁷ in which the advocate pronounces two apostrophes on behalf of the mother:

369, 18 – 370, 13 *Mala quidem – tormenta matris*: the father pretends to be on the point of speaking out against his will; but he lacks proof and arguments and therefore still relies on insinuation. This part is an *amplificatio* in the form of an apostrophe and because of its summary of the grounds for the *actio mala tractationis* may be said to contain an *enumeratio*. Because it continues the attack on the father's silence, it forms a smooth transition from *argumentatio* to *peroratio*.

370, 12-23 *Audi quid – nimis amavit*: apostrophe to the father, in which the mother testifies to her innocence and her love and grief for her son.

370, 24 – 371, 7 *Excuso tibi – morte rumore*: apostrophe to the son, in which the mother promises to follow her son in death as soon as she has cleared both their names.

Of all *DM* conducted by an advocate, only *DM* 2 and 15 do not conclude with a *sermocinatio*. In *DM* 1, 17 the advocate puts the blind son on the stage (19, 14-19); in *DM* 8, 22 (173, 21 – 174, 13) and 10, 19 (218, 22 – 219, 3), as in *DM* 18, 17 (370, 24 – 371, 7), the mother is impersonated pronouncing an apostrophe to her dead son.

369, 19-21 *Mater quidem – esse dicturus*: the advocate claims that the father is trying to heighten the insinuating effect of his silence by pretending that he can no longer hold his tongue. He implies that it adds to the mother's innocence that she does not perceive this ruse; but that others know better. The contrast is not obvious in Sussman's translation (1987, 227).

369, 19 *Mater ... innocentissima*: cf. 18, 3 (355, 15-16). *Innocentissima* here has the double sense of both innocent (of incest) and guileless (which makes her a helpless victim of her husband's machinations).

369, 19-20 *hoc complorat, hoc ferre non potest*: synonymous *isocolon* with anaphora of *hoc*.

³⁰⁶ Useful discussions of the *peroratio* (*epilogus*, *conclusio*, *cumulus*) are found in Cic. *Inv* 1, 98-109; *Rhet. Her.* 2, 47-50; Quint. *Inst.* 6, 1, Fortun. 2, 31 (RLM 119-20); Victorin. in Cic. *Inv* 1, 52-55 (RLM 256-57); Sulp. *Vict.* 23 (RLM 324-25); Iul. Sever. 24 (RLM 370).

³⁰⁷ *His praecipue locis utiles sunt prosopopoeiae, id est fictae alienarum personarum orationes. Quando enim <pro> litigatore dicit patronus, nudaes tantum res movent. at cum ipsos loqui fingimus, ex personis quoque trahitur affectus. Non enim audire iudex videtur aliena mala deflentis, sed sensum ac vocem auribus accipere miserorum, quorum etiam mutus aspectus lacrimas movet: quantoque essent miserabiliora si ea dicerent ipsi, tanto sunt quadam portione ad adficiendum potentiora cum velut ipsorum ore dicuntur, ut scaenicis actoribus eadem vox eademque pronuntiatio plus ad movendos affectus sub persona valet* (Quint. *Inst.* 6, 1, 25-26)

369, 21 iamiamque: even stronger than *iamiam*, for which see comm at 18, 12 *iamiam malo – inprovisamque mortem* (366, 4-6), cf *DM* 3, 12 *iamiamque in acie staturum* (53, 5), 14, 3 *credulus iam iamque securus amator* (290, 10-11)

369, 21-25 non fallit – videaris invitus: *non fallit* is a litotes introducing an *anticipatio* the father exhibits an inner struggle and a great reluctance to speak in the hope that his words will automatically appear truthful, but the mother's advocate is on to his ruse This kind of *anticipatio* can be used in the *peroratio* to prevent the defendant from exploiting the judges' mercy (Quint *Inst* 6, 1, 20)

369, 21 nefande: for this vocative see comm at 18, 11 *nefande* (364, 1)

369, 22-25 hoc – videaris invitus: the father suddenly figures in a type of *descriptio* that is pre-eminently suited to arouse emotion in *perorationes*, but has its risks according to Quint *Inst* 6, 1, 42-43 *qui a stilo non recedunt aut conticescunt ad hos casus aut frequentissime falsa dicunt Inde est enim "tendit ad genua vestra supplices manus" et "haeret in complexu liberorum miser" et "revocat ecce me" etiam si nihil horum is de quo dicitur faciat* 43 *Ex scholis haec vitia, in quibus omnia libere fingimus et impune, quia pro facto est quidquid volumus, non admittit hoc idem veritas, egregieque Cassius dicenti adulescentulo "quid me torvo vultu intueris, Severe?" "non mehercule" inquit "faciebam, sed <si> sic scripsisti ecce!" et quam potuit truculentissime eum aspexit* See also 6, 1, 37-41

369, 22 supra silentium: an evocative expression, as if the father pretends to have locked the secret away in his chest, cf 19, 7 *quae in potentia est effringere rigens sacra dissimulatione pectus* (378, 19 – 379, 1)

369, 22-23 trahis ... suspiria: more dramatic than commonplace *suspiria ducere*, also found Ov *Met* 2, 753, V Fl 8, 457, Sil 1, 530

369, 23 in prorumpenti ... exclamatio: this metaphor for sound is not uncommon, see Sil 3, 699 *vox prorumpit in auras*, *DM* 11, 3 *unde illae fabulae repente proruperint* (221, 23-24), cf Apul *Met* 6, 17, *DM* 8, 16 (167, 23), 19, 6 (377, 21), TLL s v *prorumpo* 2164, 36-46, cf 2164, 46 – 2165, 1

369, 24 mendacio paratur auctoritas: cf 18, 2 *ne cui praestet magnae severitatis auctoritatem non posse defendi* (355, 1-2), for the present expression compare Min Fel 23, 7 *ut vitus hominum quaedam auctoritas pararetur*

369, 24-25 in fidem ... adfertur, ut: a variation upon the common expression *fidem adferre* (Cic *Top* 74, Liv 25, 12, 4, 42, 13, 2, Quint *Inst* 4, 2, 125, 5, 10, 8, 26, 7, 2, 57, 9, 2, 18, 10, 1, 111, Plin *Nat* 8, 61, 9, 179, Mar *Vict Expl* 2, 13) For the use of *ut*, see OLD s v *ut* 38b, *adferre ut* is not unusual, see TLL 1202, 52-57 (citing Cic *Orat* 170, *Tusc* 5, 113, Q Cic *Pet* 27, Quint *Inst* 12, 1, 36, Cassiod *Hist* 11, 8), but the use of the passive¹⁰⁸ is unique, and likewise the occurrence of *in* (Cf KS 330, 266)

369, 24-25 erupturae vocis: another metaphor forming a parallel with *prorumpenti exclamatio* (369, 23), for the emission of sound, *erumpo* is much more common than *prorumpo* See TLL s v *erumpo* 840, 19-38, cf 840, 64-83 (with *in* and *ad*)

¹⁰⁸ Probably prompted by passive *mendacio paratur auctoritas* (369 24)

369, 25 fateri ... invitus: cf Hor S 2, 1, 75-77 *tamen me / cum magnis vixisse invita fatebitur usque / invidia*, but esp DM 7, 6 *exigam quaestionem, an recusem, quid interest tormentorum, brevi futurous similis homini, qui fateatur invitus?* (143, 14-16)

369, 25-26 dic tamen! – ut mentiaris: a defiant παρομολογία the advocate appears so confident in the mother's innocence that he can challenge the father to do his worst Note how his discourse becomes increasingly aggressive, working up to the release of pathos in the *commiseratio*

369, 26 matris integritas: *genitivus inversus*³⁰⁹ metonymous abstract for the innocent mother

369, 26 – 370, 1 o quanto – proclamatione discutere: a taunting *exclamatio*, Ritter 1967², 68 draws attention to DM 7, 12 *O quantopere nunc, inimice, torqueris, quod te coram iudicibus interrogo, quod hoc non potes mihi fateri!* (149, 12-13)

369, 27 – 370, 1 instantem ... discutere: a similar metaphor also in Cels 3, 2, 76 *instans gravis morbus discutitur* *Instare* also occurs of the mother in DM 19, 11 *Perseveras cogis, instas?* (383, 16), *Instas tamen et miseri senis ora diducis?* (383, 25)

369, 27 proclamatione: for this rare noun see comm at 18, 4 *nulla proclamatio, nullus gemitus* (357, 2-3)

370, 1-2 non verba – probatione deficeris: a doublet of synonymous *epiphonemata* in the form of *enthymemata* (*sententiae e contrariis*), their symmetry is enhanced by anaphora of *non* and *sed*, and *homoeoteleuton* of *verba argumenta* and *voce probatione* *Verba* and *voce* could be interpreted as a subtle reference to the rumour, *deficeris* sneeringly refers back to *videris deficere* (369, 23)

370, 2-3 quod solum datur: Sussman's translation 'the only evidence provided' (1987, 228) seems the only interpretation possible The outcome of the interrogation is the only thing that is given, but the father's insinuations ruin the chance of its serving as evidence to rehabilitate the mother (or son)

370, 3 relinquis infamiae: for *relinquo* in the sense of 'abandon', see OLD *relinquo* 12b Compare Cic Att 1, 16, 2 *satus esse illum in infamia relinqui*

370, 3-4 nos cum perpetua sermonum malignitate committis: rephrases and explicates *relinquis infamiae* the father's insinulative behaviour makes sure that gossip about mother and son will never die down For *committere cum*, see comm at 18, 15 *nos cum silentii tui interpretatione committis* (369, 10-11), for *sermonum malignitas* compare *maligni sermones* in 18, 6 (359, 12), 19, 8 (380, 12), 19, 10 (382, 9) *Malignitas* is used metonymously for rumour in 18, 8 (361, 4), 19, 4 (376, 2), 19, 10 (382, 2)

370, 4-5 qui interrogantem ... contentus est: the enthymeme (rhetorical syllogism) is a gnomic *sententia* by form, but hardly by content For *rumore contentus est*, compare 18, 15 *contenta esse debet incerto* (369, 5-6) *Contentus est* is a form of *emphasis*, because it is used pregnantly the father does not just put up with the rumour, he is in fact utterly satisfied with it, because it justifies the murder of his son and blackens his wife's name forever

370, 5-7 modestiam mariti – incesta credatur: a bitterly sarcastic appeal to the judges introduces another *epiphonema* that summarizes the mother's entire case

³⁰⁹ See comm at 18 9 *novitas* (362 5)

370, 6 mariti pariter et patris: *pariter* is a common reinforcement of *et* (TLL s.v. *par* 285, 9-24); in the *DM* it is often used when two incompatibles occur together, as in 4, 12 (74, 10); 8, 12 (162, 20); 19, 13 (386, 4). Here it is used to refer to the father in his two different roles within the family, for which ‘*distributio*’ see comm. at 18, 8 *da bonum patrem, bonum maritum* (361, 5-6); compare further 8, 6 *quae malos maritos pariter et patres nec relinquere nec ferre sufficiunt* (156, 14-16).

370, 6-7 quae convinci non potest: because she is innocent, but even if she weren’t, the father has made it impossible to prove her guilt. If it had been possible, she could have been condemned under the *Lex Iulia de adulteriis coercendis*.

370, 7 sufficere ... ut: *sufficit* as an impersonal verb occurs with *ut* relatively late, and probably in analogy with *satis est* (KS 2, 242-43; LHS 348). We first find it Tac. *Dial.* 32, 1; Plin. *Ep.* 1, 24, 4; 9, 21, 2; Pan. 30, 5; *DM* 14, 5 (292, 12); 15, 11 (314, 19; 17, 16 (348, 1-2)).

370, 7-10 quis umquam – non dixerit: an intricately structured *interrogatio per suggestionem*, meant to arouse indignation. The question consists of a *disiunctio* with anaphora of *tam*; it is answered in an enthymeme (*sententia ex contrariis*) with isocolon ending in *complexio* (*quod dixerit – quod non dixerit*).

370, 8 nefandas artes: usually associated with sorcery, as in Luc. 8, 588-89 *tunc arte nefanda / sumnota est capiti tabes*; Apul. *Apol.* 25 *scelera immania et inconcessa maleficia et artis nefandas*; Amm. 14, 1, 2 *artium nefandarum calumnias*.

370, 9 captat ut: *captare* with *ut* instead of acc. or inf. is rare; apart from here, it only occurs *DM* 2, 5 *captaverit, ut videretur mulieris cupiditati iam non obstare privignus* (24, 26-27); 19, 8 *nec captavi, ut illum mecum et mater odisset* (380, 3-4). See OLD 5a (with *DM* 18, 16); TLL s.v. *capto* 379, 24 which adds Petr. 141, 10 (with *ne*); *DM* 17,13 (150, 10 but wrongly); Boeth. *Mus.* 4,3.³¹⁰

370, 10-11 dissimulas, taces, saeve, crudelis: it would be preferable to retain the question mark Burman 1720, 352 and Lehnert 1905, 335 have after *crudelis*: this would yield a second *interrogatio per suggestionem*, where the *subiectio* – an *epiphonema* – explains that the torture of the mother consists of the father’s dissimulation and silence. The sentence (be it declarative or interrogative) consists of two doublets of synonyms; for the first see Cic. *Planc.* 48 *quid taces, quid dissimulas, quid tergiversaris?* *Off.* 1, 108 *celare tacere dissimulare insidiari praeripere hostium consilia*; Ov. *Trist.* 5, 1, 50 *tacitus casus dissimulare tuos*; Mart. 11, 108, 4 *taces dissimulasque? vale*. The collocation of *saevus* and *crudelis* is common, not to say trite:³¹¹ Ov. *Fast.* 5, 469; Sal. *Rep.* 4, 2; Sen. *Phoen.* 34 (*semper cruenta saeve crudelis ferox*); Luc. 5, 692; *DeMi* 309, 14; 329, 9; *DM* 5, 2 (86, 18); 5, 8 (92, 13-14); 7, 9 (*saeve, crudelis*, 146, 19); 8, 19 (170, 12); 10, 9 (*o mage saeve, crudelis*, 207, 22); 11, 4 (223, 22); 11, 8 (228, 1-2); 11, 9 (*saeve, crudelis*, 228, 19); 15, 7 (308, 23-34); 17, 6 (*parricida saevus, parricida crudelis*, 337, 5-6).

³¹⁰ There are no relevant entries in KS and LHS.

³¹¹ Becker 1904, 1979 includes it in his list of characteristic synonyms; Ritter 1967², 68 names some, but not all parallels from other *DM*

370, 11 invenisti tormenta matris: All mss., followed by Burman 1720, 353 and Lehnert 1905, 335 have *patris* instead of *matris*. Håkanson 1974, 147 defends his alteration with a perfectly just appeal to the *epiphonema*'s context.

370, 12 simplicissimo dolore: for the significance of *simplex* and *simplicitas* in *DM* 18-19, see comm. at *DM* 18 *rupta est – generosque simplicitas* (369, 9-10).

370, 12 proclamet: 'proclaims', not 'would proclaim' (Sussman 1987, 227), for this is a lively *sermocinatio*; the subjunctive depends on *quid*. Compare below *inquit* (370, 25).

370, 12-13 non efficies ... ut non: one would expect *ne* instead of *ut non* in accordance with *KS* 2, 212 where it is stated that *efficio* in the sense of 'machen, bewirken' is followed by *ne*, while *ut non* occurs where *efficio* is used in the sense of 'folgern, schließen' (*KS* 2, 235). However *LHS* 642 states that 'nach *facio*, *efficio* u.ä. von Anfang ab ein Schwanken zwischen konsekutiver und finaler Auffassung besteht'; in the *DM* we find, in similar apostrophes, 11, 7 *non tamen ullis efficies artibus, ut non potius miserear rei publicae meae* (226, 14-16); 15, 1 *non efficiet tamen nefandum praesentis reatus indignumque discrimen, ut misera puella gratuletur sibi* (302, 4-6), but also 17, 14 *tamen hoc non effecit, ne mori velim* (345, 13).

370, 13 callidissime parricidarum: the vocative *callidissime* occurs only in the *DM*. Compare 11, 11 *omnium mortalium callidissime* (230, 25); further 18, 1 *callidissimus parricida* (353, 7).

370, 14 vero incesta sum: mss. B β A δ all have *vera* according to Håkanson app. crit., while Lehnert 1905, 335 reports that B β have *vera* and VM δ *vero*. His own conjecture *vere* (cf. OLD *vere* 1: 'really, truly, indeed (opp. apparently, nominally, etc.) would suit best, but does not occur in any mss. nor in any other *DM* apart from 3 and 13. We will have to make do with *vero*, which can be used similarly (Forc., LS s.v. *vero*): see in the *DM* 2, 4 *tunc vero attonitus* (24, 6) and 13, 9 *illa vero admiranda sedulitas* (275, 9-10). *Incesta*, used in a pregnant sense that conflicts with the sexual delict of which the mother is excused, is a form of *distinctio*; the sentiment harks back to the moral indignation expressed in 18, 10 (363, 4-13).

370, 14-15 moderari gemitus, conprimere lacrimas: synonymous isocolon. As for the collocation of *gemitus* and *lacrimae*: in his excursus on alliteration (1904, 58-64) Becker additionally provides an inventory of sets of (near-) synonymical terms that often occur together in the *DM*, among them *lacrimae* and *gemitus*, which also occur 2,6 (25, 21 - 26, 1); 5, 18 (104, 12); 5, 19 (105, 15); 17, 4 (336, 2); 17, 20 (352, 13); 19, 2 (373, 10-11)³¹². The collocation is trite, occurring numerous times in Latin literature.³¹³ Two notable examples: Verg. A. 10, 464-65 *magnumque sub imo / corde premit gemitum lacrimasque effundit inanis*; Sen. Contr. 3, 5 *premo interim gemitus meos et introrsus erumpentes lacrimas ago*.

³¹² Becker leaves aside 6.8, where *questus* is added as a third term (118, 14-15), and 11. 11, where the two terms also occur with different verbs (*differte lacrimas, abite gemitus*, 230, 23-24)

³¹³ Cic. Verr. 2, 50; Verg. A. 10, 505, Liv. 28, 32, 4, Sen. Contr. 2, 2, 3; 2, 3, 6; Suas. 6, 19; V. Max. 4, 7, 4; Sen. Dial. 6, 1, 2; Luc. 7, 724, 9, 146; Petr. 91, 8; V. Fl. 5, 645, Sil. 6, 102, 6, 415, 14, 167, Stat. Theb. 3, 692; 8, 654; Mart. 11, 99, 4, Nemes. Ecl. 1, 46, Amm. 22, 14, 4

370, 15-16 coite in funus, omnes liberi, omnes parentes: may be a variation upon Cicero's eleventh *locus* for the *conquestio, per quem liberorum aut parentum aut sui corporis sepeliendi aut alicuius eiusmodi rei commendatio fit* (Inv. 1, 109). The invocation introduces a short, hypothetical *sub oculos subiectio* (*coite – misera formosum*, 370, 15-20). The advocate addresses the jury as children and parents to make them empathize with the mother, a device for which see comm. at 18, 1 *hic coram – mater inquit* (353, 16-18); cf. especially *DM* 4, 22 where the prospective suicide discusses his funeral and says to his father: *relinquo tibi pro me omnes <liberos, omnes> parentes* (83, 24-25).

In 19, 4 the funeral is evidently already over: *sepelivi tamen lacera membra, funus indulsi, ossa collegi. non iniecit uxor lectulo manum, non inter exequias planctibus elisisque uberibus mihi fecit invidiam* (375, 16-18). But in 19, 16 the father invites the mother to go and visit the grave together: *eamus ad tumulum, misceamus supra busta lacrimas. ibi aut tacebimus pariter aut invicem confitebimur* (388, 22-24). For the present exhortation, Ritter 1967², 68 (40) adduces the following parallels: 2, 10 *transferet in facinus hunc caecitatis suae iuvenis favorem, ad quem cotidie laudatura civitas coit, cui assident omnes liberi, omnes parentes?* (28, 24 – 29, 3); 6, 8 *adeste, universi utriusque sexus parentes, dum matrem in exequias filii rogo* (118, 26 – 119, 1); 7, 12 *concurrite, omnes liberi, omnes parentes, urite, lacerate hos, hos primum patris oculos* (150, 3-4).

370, 16-17 custodite planctus – fatebor: compare 18, 13 *adhibe speciosi cruciatibus hanc nimis amantem, huius gemitus excipe, huius suspiria oculosque custodi; si quod facinus admissum est, torquebis quidem filium, sed fatebitur mater* (367, 15-18). Again a point is made for the mother's *simplicissimus dolor*: in the midst of her grief, she will not be able to simulate innocence.

370, 16 custodite ... observate: for this *synonymia*, compare Q. Cic. *Pet.* 55 *fac ut se abs te custodiri atque observari sciant*, but esp. 18, 11 *observa sermones, secreta custodi* (364, 8-9).

370, 17 si quid – fatebor: the two conditional clauses form a synonymous isocolon with anaphora of *si quid*. For the collocation of verbs compare Ter. *Ad.* 408-09 *haec in flagitia facere te! haec te admittere / indigna genere nostro!*

370, 17 ecce: *ecce* in the *DM* serves either to enliven descriptions, as here and in 1, 9 (9, 6; 9, 12); 1, 17 (19, 14); 2, 17 (35, 22); 2, 18 (36, 21); 2, 19 (37, 25); 5, 19 (104, 20); 10, 7 (206, 13); 10, 14 (213, 3); 12, 17 (250, 10); or to bolster a drastic statement, as in 3, 3 (44, 12); 4, 17 (80, 1); 11, 9 (229, 4); 14, 11 (249, 20); 19, 14 (386, 18).³¹⁴

370, 17 lectulum: the use of *lectulus* for 'bier' instead of *lectus* is rare and characteristic of later Latin (the few instances in TLL s.v. *lectus* 1095, 68-80 include *DM* 18, 17 and 19, 4; Tac. *Ann.* 16, 11, 1 and Apul. *Met.* 2, 29, 1; 2, 29, 5; 3, 8, 2; 3, 9, 5;). As is the case with *servulus* instead of *servus*, the use of the diminutive is insignificant.³¹⁵

370, 17-18 laceros artus et perustum complexa corpus: cf. 18, 12 *ut amplectaris perusta vitalia et laceri pectoris vulnera* (365, 17-18) with comm. at *perusta vitalia* (365,

³¹⁴ A special case where *ecce* relates to only one word is 3, 14 *his ecce Cimbris* (55, 2, see Schneider 2004, 208-209). See also Hammer 1893, 50 who mentions most instances of *ecce* 'mit demonstrativer Bedeutung in affektvoller Rede'.

³¹⁵ In the *DM*, *lectulus* (in its various meanings) occurs nineteen times; *lectus* only once.

18) *Laceri artus* we find already Lucr 4, 844 and Ov *Met* 9, 170, but the expression is especially popular in Silver-Latin descriptions of (war) casualties, for which see Sen *Oed* 440, Luc 2, 165, 177, Manil 1, 911, 4, 185, Sil 3, 433, Stat *Theb* 5, 605, 9, 259, 12, 411, Mart *Sp* 9, 5, Tac *Agr* 37, 3, Plin *Pan* 52, 5, *DM* 12, 9 (240, 20), Claud 5, 431 For *corpus perustum* see Hyg *Astr* 1, 9, Luc 9, 783, compare Sen *Contr* 2, 5, 5 and Plin *Nat* 8, 136, 26, 3 See further comm at 18, 15 *super vulnera unici, super exustos artus* (369, 3) For the passionate embrace of the dead son compare furthermore 8, 19 *ubi est <im>patientia, qua vix dimittitur cadaver in rogos, qua corpus exanime detinetur amplexu?* (170, 10-12)

370, 19 velit nolit invidia: *invidia* is personified, but primarily a dig at the father For formulary *velit nolit* see LHS 657 (parataktische u. konjunktionslose Bedingungssätze) The formula developed over time, referring first to inevitable obligations for the subject of the main clause, expressed in *gerundivum*, *necesse est* or subjunctive (Cic *N D* 1, 17, Sen *Contr* 9, 3, 8, *Dial* 7, 4, 4, 10, 8, 5, *Ep* 117, 4, *Apoc* 1, 2, V Max 3, 7, 3, Petr 71, 11, Plin *Pan* 20,6), later, it is used to underline the inevitability of certain facts Thus apart from the current instance, *DeMi* 315, 18 *fortiter fecisti, plurimum rei publicae tuae praestitisti, velis nolis*, *DM* 5, 3 *velit nolit, iudices, ipsa quoque querela iuvenis, quid de patris fateatur animo, probat* (87, 13), 5, 21 *contulit mihi grande, velit nolit, fortuna in orbitate solacium* (107, 2), Calp *Decl* 37 *amor velis nolis in senectute frigidior est*, see further Min Fel 29, 4, Auson *Comm* 19, 14, *cent nupt ep ad Paul* In 24 Becker 1904, 64 refers to Otto *velit* 1, see further Nachtrage 119-20

370, 19-20 meum misera formosum: posed chastically with *unicum meum*, note the striking *hyperbaton* and the abundant alliteration of mournful m The mother is *misera* not only because she has lost her son, but also because he has been mauled so badly that he is no longer *formosus*

370, 20-22 hoc erat – exagitabat adfectus: introduces an *epiphonema* Cf 5, 17 *hoc est ergo quod de te praecipue queror moriturum mihi praetulisti* (103, 4-6), 8, 14 *hoc est, quod omnem comparationem feritatis excedit filium pater propter hominem occidit, quem non putavit posse sanari* (164, 20-22), 8, 22 *hoc est tamen, quod de tristissima orbitate praecipue ferre non possum propter fratrem videris occisus, nec tamen umquam constare poterit, an tu sanaveris fratrem* (174, 10-13)

370, 21 ultra solitae caritatis ... adfectus: the expressions seems to have been derived from the adverbial phrase *ultra solitum*, first found Plin *Nat* 18, 361, then Tac *Ann* 4, 64, 1, 6, 50, 2, *Hist* 1, 18, 1, 4, 13, 2, later *Amm* 16, 4, 3, 16, 12, 36, 20, 9, 2 (*ultra modum solitae indignationis*), 30, 2, 7, compare further *DM* 6, 9 *ultra hostium adfectum* (121, 2), 6, 10 *in hoc mutuae caritatis affectu* (121, 10)

370, 21-22 amabam ... periturum: the *epiphonema* is also a *noema* it hints at the murder that was to destroy the mother's love In its explanation of the mother's excessive love, it harks back to 18, 3 *accendebat hanc erga unicum optumae matris impatientiam rigidus pater, asper maritus qui unicum aspiceret animo, quo quandoque posset occidere* (356, 6-11) The father too refers to his son as dying *filium, qui moriebatur, occidi* (19, 15 [388, 6]) His statement is ambiguous the son was dying as a result of the torture, but also doomed to die because of his alleged crimes

370, 22 infames: a jussive subjunctive without a negative is colloquial and rarely occurs in prose texts (LHS 335-36; 'bei bestimmtem Subjekte in guter Prosa nur selten' KS 186). Here, it has concessive force.

370, 22 impatientiam: For the significance of *impatientia* in the *DM*, see comm. at 18, 3 *impatientiam* (356, 7); for the significance of (*im*)*patiens* and (*im*)*patientiam* in *DM* 18-19 see comm. at 19,1 *hanc patientiam ... meam* (372, 12).

370, 23 defuisse, cessasse: the synonyms, which form a *homoeoteleuton* with following *perdidisse*, refer to the past in which the mother could not protect her son and felt that even her love was insufficient (18, 3 *sibi videbatur parum implere, quem pro duobus conferebat, adfectum* [356, 7-9]), but they also anticipate *Excuso tibi ... quod supremis tuis nondum praestiti misera comitatum* (370, 25-26) and *ignosce, quod ad iudicium istud orbata duravi* (371, 5).

370, 23-24 multum de laetitia, multum ... de gaudiis: another case of *synonymia*, now enhanced by anaphoric *multum de*. *De* with ablative is a colloquial replacement of the partitive genitive. Compare 7, 11 *multum de auctoritate primae proclamationis amisi* (149, 4). The lament reminds of Cicero's twelfth *locus* for the *peroratio*, *per quem disiunctio deploratur ab aliquo, cum diducaris ab eo quicum libentissime vixeris, ut a parente filio, a fratre familiari* (*Inv.* 1, 109).

370, 24 nemo umquam filium nimis amavit: a gnomic *sententia* concludes this part of the *peroratio*. We find a similar sentiment expressed in *Plin. Ep.* 7, 28, 3: *mihi numquam persuadebunt, ut meos amari a me nimis unquam putem*; and it recurs as a jibe in *DeMi* 327, 3: *Novum et inauditum antea crimen: noverca nimium dicitur amare privignos*. Compare further 18, 13 where the mother is ironically designated as *hanc nimis amantem* (see comm. at 367, 15-16 *speciosi ... hanc nimis amantem*), but there is also an echo of the abundant motherly love glorified in 18, 9 (361, 20 – 362, 8) and 18, 10 (363, 14-21).

370, 25 – 371, 7 Excuso tibi – morte rumore: the *peroratio* concludes with a highly pathetic apostrophe to the ghost of the son. The same procedure – see Stramaglia 1999 n. 121 – in *DM* 8 (8, 22 [173, 22 – 174, 13]); 10 (10, 19 [218, 22 – 219, 3]); cf. 19, 16 (388, 12-15). Here, the mother asks her son to forgive her for having as yet failed to kill herself; she will follow him in death as soon as, through the conviction of the father, her son's name has been cleared.

370, 25 excuso tibi: compare *DM* 12, 2 where the accuser apologizes to his dead fellow-citizens, who have been eaten during a famine: *ego quidem me consumptis excuso* (233, 8). The present apology is resumed antonymously further on: *ignosce, quod ad iudicium istud orbata duravi* (371, 5).

370, 25 inquit: not 'would continue' (Sussman 1987, 228) but 'continues': the mother is represented as speaking at this very moment.

370, 25 iuvenis innocentissime: compare 10, 19 where the mother addresses her son in the *peroratio* as *iuvenis piissime, iuvenis indulgentissime* (218, 22).

370, 25 quod: *excuso quod* is common from *Caes. Gal.* 4, 22, 1 onwards. See TLL s.v. *excuso* 1302, 14-18.

370, 25-26 supremis tuis: *suprema* in the sense of 'remains' is rare. It is not listed in OLD; *Forc. supremus* 10 defines τὰ λείψανα, *reliquiae et cineres cadaveris* and cites

Sol 1, Amm 25, 9, 12, LS 2 *suprema* δ gives the same examples In the *DM* we also encounter 4, 22 (84, 1), 17, 12 (343, 10), 19, 11 (383, 7)

370, 26 praestiti ... comitatum: the expression occurs exclusively in the *DM* We also find it in 15, 7 where it refers to a 'stalker' *adsides, sequeris, haeres, praestas comitatum, favorem, laudas ubique, miraris* (309, 13-14)

370, 26 – 371, 2 vivere quidem – non potui: a highly stylized *enthymema* Note the parallel constructions of infinitive followed by *abl abs* and negated finite verb, enhanced by *repetitio* of *non* and *homoeoteleuton* of *potui-debui*, but also by the antitheses *vivere – mori, te defuncto – marito tacente* A similar sentiment in Sen *Contr* 3, 7 *non mirum est quare vivat quae filium perdidit vivit qui occidit* (i.e. the father) Compare – conversely – 19, 16 where the father concludes *Iamiam miser mori possum explicui[t] te, sollicitudo, pietas () et ego moriar in tormentis meis* (388, 25-27) followed by an entreaty to stop interrogating him

371, 2 rumpam taedium lucis invisae: Becker 1904, 56 asserts that this expression originates in Verg *A* 4, 641 *invisam quaerens quam primum abrumpere lucem*, cf 12, 62-63 *simul haec invisae relinquam / lumina* He also refers to *DM* 12, 17 *lucis odium* (discussed 1904, 40) and – in the opposite sense – 4, 8 *vitae voluptates, gaudia lucis* (discussed 1904, 21) Stramaglia 2002 n 188 notes another, earlier connection Lucr 3, 79-80 *vitae / odium lucisque videndae* and draws attention to *DM* 8, 21 *oderat lucem* (173, 2) We can add Sen *Contr* 1, 7, 10 *tu lucem non videbas, ego etiam oderam* A number of later instances indicate that the expression must have become somewhat trite in the course of time Ov *Trist* 4, 10, 116 *nec me sollicitae taedia lucis habent*, Luc 2, 524-25 *omnis / lucis rumpe moras*, Sen *Dial* 6, 3, 3 *invisae haerebis in luce*, Tro 939 *abrumpere ense lucis invisae moras*, [Sen] *Oct* 19-20 *tempore ab illo lux est tenebris / invisae magis*, Claud 28, 316 *quid moror invisam lucem?*

Becker 1904, 88 regards *lucis invisae* as a *genitivus inherentiae*, but it can as well be classed as objective or explicative

371, 2 si: all mss, followed by Burman 1720, 363 and Lehnert 1905, 335 have *sed*, *si* was suggested by Francius and adopted by Håkanson If *sed* is preserved, *licuerit* is a voluntative subjunctive, but its occurrence in the perfect tense is quite restricted (see KS 185-86, cf LHS 330-31) *Si* is better because it allows a future perfect, which moreover runs parallel with *constiterit* (371, 4)

371, 3 coram civitate: again the mother's openness is emphasized, cf comm at 18, 1 *hic coram – mater inquit* (353, 16-18) and 18, 4 *secure, simpliciter, palam, coram marito, coram civitate* (356, 25-26)

371, 3 manibus tuis: the use of the plural for a single *anima* occurs – according to Becker 1904, 22-23 – for the first time Verg *A* 3, 303¹¹⁶, 4, 427, 6, 119, usurped by Liv 3, 58, 11 In the *DM* he has found it 5, 23 (109, 19), 10, 19 (218, 23), 18, 17, 19, 16 (388, 13), to which can be added 4, 11 (73, 12), 5, 4 (89, 5)

373, 3 iusta persolvere: the mother seems to refer to the impending funeral (cf above *coite in funus, omnes liberi, omnes parentes* [370, 15-16]) *iusta persolvere* is an

¹¹⁶ Becker hesitates here (*libabat cineri Andromache manisque vocabat*) but must be right to include the example for Hector's ghost is referred to

idiom that without exception denotes the performing of last rites. It is further found Curt 4, 12, 2, 6, 6, 19, Sen *Oed* 998, *DM* 4, 22 (84, 3), Granius Licinianus *Operis historici fragmenta codice rescripto servata* 35, 25, *Statii Thebaidos argumenta antiqua* 12, 2, Dictys Cretensis sec translationem L. Septimii, *Ephemeris belli Troiani in lat versa atque retractata* 6, 13. For *iusta de exsequiis*, see OLD *iustum* 3b, TLL *iustus* 722, 26-53. Here, *iusta* is an *ambiguum*. It also has the underlying sense of 'due observances, ceremonies' (OLD *iustum* 3, TLL *iustus* 722, 9-25), that is, the mother still owes it to her dead son to prove his innocence. This underlying sense is expressed more clearly in the following phrase *cum damnato – dixisse constituerit* (371, 3-5).

371, 3-4 damnato supra callidissimum silentium parricida: Sussman 1987, 228 translates 'after your killer has been condemned for his clever and cunning silence', but there are no parallels for *damnare* or *condemnare supra* (or *super*, for that matter) in this sense. Forc *supra*, apart from the observation that it equals *super*, is no help, OLD *supra* 9 ('= *super* 11, on the subject of, about') yields but one instance *P. Mich* 471, 21 *litem (h)about pater (m)eus supra vestimenta mea*, nor are there any comparable instances in the *DM*. Maybe it is better to read, therefore, 'after your killer has been condemned on top of (a conviction for) his clever and cunning silence'. The action is after all one of *mala tractatio* and the mother and her advocate can only hope that a conviction for murder can come out of it. Compare, incidentally, 18, 16 *supra silentium trahis alta suspiria* (369, 22-23) where *supra* must also be interpreted from its local sense, and even 19, 7 *fortiter supra sua secreta morientis* (379, 10).

The silence is *callidissimum* because it is actually regarded as a means of insinuation. Cf 18, 1 *callidissimus parricida facinus suum sic ordinavit* (353, 7-8), 18, 2 *callidissimam dissimulationem* (354, 12-13), 18, 10 *hunc animum quo cum maxime taces, si non est callida, non maligna simulatio* (362, 18 – 363, 1), 18, 17 *callidissime parricidarum* (372, 13).

371, 5 ignosce, quod: a rephrasing of *excuso tibi* (370, 25). *Ignoscere quod* is common already in Cicero's time, see e.g. *Phil* 2, 34.

371, 6-7 ad exitum ... properassem: the expression has a more dramatic sense than usual, cf M. Iunius Brutus *Epistulae ad Ciceronem et Atticum servatae cum Ciceronis Epistulis ad Brutum* 1, 17 (*ad Atticum*), 5 *ad eum exitum properat vir optimus ut sit illi Octavius propitius*, Sen *Ep* 110, 9 *in quem exitum tanta rerum velocitas properet*.

371, 6 impatientia: For the significance of *impatientia* in the *DM*, see comm. at 18, 3 *inpatientiam* (356, 7), for the significance of (*im*)*patiens* and (*im*)*patientiam* in *DM* 18-19 see comm. at 19, 1 *hanc patientiam meam* (372, 12).

371, 6 praecipiti pietate: note the alliteration of p (triple because of *properassem*), for which see Becker 1904, 62 and Zinsmaier 1993, 126 (the popularity of p among declaimers).

371, 7 faceret alium parricida de mea morte rumore: if the son's name had not been cleared, the mother's suicide could be interpreted as prompted by a guilty conscience. Note the hyperbaton *alium rumorem* and the alliteration of m, Deratani 1927, 292-93 interprets *de* as a replacement of *e(x)*, but in fact it means 'about', cf 19, 6 *potest populus aliquem de me facere rumorem* (378, 2-3).

The manuscripts belonging to families α and β , as well as A (in family γ) have the following *subscriptio* under *DM* 18: descripsi (scripsi β) et emendavi (om. π) Domitius (domis tuis V : drachontius domitius π) Dracontius (-iuus P) de codice fratris hieri (hieronis S : heri A) feliciter mihi et usibus meis et dis (diis M π β A) omnibus.

Brother Hierius has been identified with reasonable certainty as the *orator urbis Romae* to whom Augustinus dedicated his *De pulchro et apto*³¹⁷ (compare the *subscriptio* found under *DM* 10 in family β). *Dis omnibus* ought in all probability to be read as *d<iscipul>is omnibus*, as already suggested by Haase 1860/61, 6.³¹⁸

³¹⁷ *Conf* 4, 13, 20- 14, 21 *et scripsi libros 'de pulchro et apto' — puto duos aut tres tu scis, deus, nam excidit mihi non enim habemus eos, sed aberraverunt a nobis nescio quo modo quid est autem quod me movit, domine deus meus, ut ad Hierium, Romanae urbis oratorem, scriberem illos libros? quem non noveram facie, sed amaveram hominem ex doctrinae fama, quae illi clara erat, et quaedam verba eius audieram et placuerant mihi* This identification has given some indication as to the date of origin of the *DM*, see the last chapter of the Introduction.

³¹⁸ Endorsed by Ritter 1967², 207; Håkanson 1986, 2283 (with some caution) and Stramaglia 1999, 28-29; 2006, 559 n 17 Burman 1720 does not print the *subscriptio*nes; Lehnert 1905, 335 retains *dis* Important contributions to the study of the two subscriptions, with full bibliographies, can be found in Håkanson 1986 (2282-83), Stramaglia 1999, 27-29, Schneider 2000b (45-47)

Commentary

Declamatio Maior 19

Prooemium (372, 1 – 373, 17)

According to the rhetorical *artes*, style and content of the *prooemium* must be determined by the *genus causae*.³¹⁹ Like *DM* 18, however, *DM* 19 resorts under more than one *genus*. As a defence against the charge of *mala tractatio*, it falls under the *genus humile*, a genre in which the main function of the *prooemium* is to make the audience attentive³²⁰. But as a defence of the murder of the son, and a vehicle to get across the accusation of incest, it belongs to the *genus turpe* or *admirabile*³²¹; in cases of this category, the *prooemium* must mainly propitiate the judges³²². It will be seen that the *prooemium* of *DM* 19 employs *loci* supplied for both types of manipulation in *De Inventione*, the *Rhetorica ad Herennium* and Quintilian's *Institutio* to great effect, but that our author draws the line at using *insinuatio*³²³. Instead, he seems to adhere to *Rhet. Her.* 1, 6 *Sin turpe causae genus erit, insinuatione utendum est (...) nisi quid nacti erimus, qua re adversarios criminando benivolentiam capere possimus*. By emphasizing the necessity of the murder, the father presupposes his son's guilt and – by implication – his wife's. The author generally keeps to the rhetorical precepts for both content and style of the *prooemium*, except for one thing: he obviously assumes that the case (i.e. the *thema*) is well-known, thus going against Quint. *Inst.* 4, 1, 3 *certe prohoemium est quod apud iudicem dici prius quam causam cognoverit possit, vitioseque in scholis facimus quod exordio semper sic utimur quasi causam iudex iam noverit*. His speech is more covert in this respect than *DM* 18: if it were not for the *thema*, we would not even know of what his son was suspected.

Adhering to Håkanson's arrangement of the text, we can discern the following sections:

372, 1-18 *Debeatur quidem – meruerit occidi*: after the horrendous torture, the father cannot and will not speak out. He reproaches his wife for opening the wound.

372, 19 – 373, 3 *Quapropter – quod dicam*: the mother is criticised for inconsistency; the father denies that he knows anything, but if he did, the mother would know what it is about.

373, 8-17 *Fidem igitur – quod occidi*: the judges are requested to pity the father more than the mother.

371, 8-13 Infamis in – tractationis accusat: title and *thema* of the *controversia* are exactly that of *DM* 18, except for a slight variation in word order, and *filio* (353, 5) instead of *iuvene* (371, 12); see comm. ad loc.

372, 1-9 Debeatur quidem ... ut tacerem: for the frequent use of adversative opening sentences in the *DM*, see comm. at 18, 1 *etsi, iudices ... tacet maritus* (353, 7-14); cf. Ritter 1967², 68.

³¹⁹ Cic *Inv* 1, 20, *Rhet. Her.* 1, 5, Quint. *Inst.* 4, 1, 40

³²⁰ Cic *Inv* 1, 20; 23; *Rhet. Her.* 1, 6-7; Quint. *Inst.* 4, 1, 33-39; 41, cf. also Fortun. 2, 13 (RLM 109), Victor in Cic *Inv* 1, 15-16 (RLM 196), Sulp. Vict. 8 (RLM 317); Vict. 15 (RLM 422-23).

³²¹ *Genus turpe*: *Rhet. Her.* 1, 5 Quint. *Inst.* 4, 1, 40 has it resort under *genus humile* or *admirabile*. The *genus admirabile* is discussed in Cic *Inv* 1, 20-21, Quint. *Inst.* 4, 1, 40-41

³²² The relevant *loci communes* are found Cic *Inv* 1, 22, *Rhet. Her.* 1, 8, Quint. *Inst.* 4, 1, 6-33

³²³ *Insinuatio* is discussed in Cic *Inv* 1, 20, 23-24; *Rhet. Her.* 1, 9-10, Quint. *Inst.* 4, 1, 41-50; cf. also Fortun. 2, 14-5 (RLM 109-10), Sulp. Vict. 16 (RLM 322).

372, 1-2 Debebatur quidem – taceremus omnes: *debebatur quidem tristissimae orbitatis misero pudori, ut iam taceremus omnes* is the reading of V and the only one making sense against BMπ *quia iudices multa signa processerunt pudorem (pudor est π) ut iam maceremus omnes*, which is nonetheless preferred by Gronovius (Burman 1720, 363), see further Reitzenstein 1909, 56

372, 1 Debebatur ... ut: it is impossible not to agree with Hammer 1893, 45 ‘auffallend *debere* 19, 1’, for the use of *debere* with *ut* is extremely rare TLL s v *debeo* cites three instances, two of which are in fact cases of *ut explicativum* (100, 6-7 and 103, 8-10) The only parallel – also in the passive voice – is Heges 3, 1, 4 *debebatur, ut cessaret superstitio* (98, 9)

372, 1 tristissimae orbitatis: for *tristissima orbitas*, a locution only to be found in the *DM*, see comm at 18, 5 *orbitatis tristissimae* (358, 3)

372, 1 misero pudori: for other instances of this expression, see comm at *DM* 18, 2 *miserum pudorem* (355, 8) Here, it denotes personified ignominy

372, 2 omnes: the father includes himself, his wife, and also the judges, subtly implying that they ought to refrain from pronouncing on his case

372, 2-3 prodigiosas rerum sermonumque novitates: the idiom *novitas rerum* (albeit exclusively in the singular) is rather common, to be found e.g. *Lucr* 1, 139 and 3, 964, *Cic Verr* 3, 10, *Nat* 2, 96, *Ov Pont* 3, 4, 1, *Met* 2, 31, the combination with *sermonum* is unique for the *DM*, as is the addition of nearly pleonastic *prodigiosas*, which also occurs in *DM* 15, 11 (314, 4) *Novitates* is, of course, a metonymous abstract for *novos* compare 18, 1 *monstrorum novitate* (353, 9-10), note also 7, 2 (*inaudita malorum novitate*, 139, 6), 8, 15 *ciborum formentorunq[ue] novitates*, 166, 19) For the use of *novitas* in the *DM* see comm at 18, 9 *novitas* (362, 5) The phrase is used to make the judges attentive to the case by stressing its outrageousness, in compliance with *Cic Inv* 1, 23, *Rhet Her* 1, 7, *Quint Inst* 4, 1, 33

372, 3 oportuerat: with accusative and infinitive, it makes for *variatio* after *debebatur + ut* Both terms are meant to suggest a certain objectivity on the father’s part

372, 3-4 hoc esse – filium pater: the father suggest that the murder was an evil that befell his family, as if it was inevitable and outside his control At the same time, in accordance with Quintilian’s advice (*Inst* 4, 1, 45) for cases where denial is impossible, he claims that he has been punished sufficiently

372, 3-4 novissimum de malis: for the use of *de + ablative* instead of partitive genitive, see comm at *DM* 18, 6 *iniquissimum de loquacitate* (359, 16), for the use of *novissimum* in *DM* 18-19 see comm at 18, 11 *novissimum* (364, 24)

372, 5 super cuncta: not ‘regarding all those things’ (Sussman 1987, 229) but ‘on top of all those things’, resumed in *quoque* (372, 6)

372, 6-7 reatus ... dolore: note the *hyperbaton* The expression is otherwise only found in *DM* 18, 2 <in> *reatus quoque dolore conticuit* (354, 18-19)

372, 7 dolore concussit: see *Verg A* 12, 411 (*hic Venus*,) *indigno nati concussa dolore*, *DM* 14, 4 *dolore concussit* (291, 15-16), compare also *Cic Brut* 305 *me dolor percussit*, *V Fl* 7, 475 *tum vero extremo percussa dolore*, *DM* 18, 9 *maritali dolore paene percussus* (361, 11-12)

372, 7-8 veni petiturus – praestare credatis: compare *DM* 18, 1 (353, 13-14) (*matri*) *ideo ad vos fugiendum fuit, ut scireretis non illi praestari, quod tacet maritus*: in both speeches the main appeal to the judges concerns the occasion for the complaint. In *DM* 18 the suggestion gradually becomes more explicit that the father's silence is a means to intimate the mother's guilt. See also 18, 1 (354, 3-5) and 18, 2 (355, 3-4).

372, 7 scientem: an *ambiguum*. It can be interpreted, with Sussman 1987, 229 as 'intentionally', but could also be taken literally, anticipating the father's claim that he knows nothing (see e.g. 19, 2 *confessione mariti nihil se dissimulare, nihil scire* [373, 3-4]).

372, 8 silentium contentioni praestare: see *Ov. Ars* 2, 603 *exigua est virtus praestare silentia rebus / at contra gravis est culpa tacenda loqui*; in a different sense: *Mart. Ep.* 3, 82, 30-31 *silentium rhonchis / praestare iussi*; but see above all *DM* 18, 14 *posses videri fortassis, crudelissime senex, silentium filio praestare, si viveret* (368, 18-19) and 19, 12 *nihil aliud quaestio illa captavit quam silentium, quod praestare vita non poterat* (385, 2-3). Håkanson *app. crit.* alludes to *DM* 2, 1 *ne quid hodiernae sollicitudini praestari putetis* (21, 9).

Gronovius' proposal to read *confessione* instead of *contentioni* (Burman 1720, 364) is uncalled for and conflicts with the father's claim that nothing was said during the interrogation.

372, 8-9 non quia – ut tacerem: enthymeme (*sententia ex contrariis*). *Occisus est* after *occidi* not just for the sake of variety; rather, the passive genus, by shifting the focus from the perpetrator to the event itself³²⁴, suggests, again, the inevitability of the murder.

372, 9-12 utinam – premere secretum: in two coreferential exclamations, enhanced by anaphoric *utinam*, the father expresses a double unaccomplished wish.

372, 10 negare ... quod: for the replacement of the infinitive with a *quod* clause after *verba sentiendi et declarandi*, see comm. at 18, 3 *fateretur, quod* (356, 15). This instance also in Hammer 1893, 44.

372, 10-11 totum ordinem miserae necessitatis: compare *DM* 4, 17 *ecquando umquam, pater, explicuit manifestius ullius fati necessitatem totus ordo responsi?* (79, 8-9). For *ordo* in the sense of 'the steps or stages (in an action or process), course' (OLD 9) see comm. at 18, 3 *ordinem* (355, 13); again, the events are represented as outside the father's control.

372, 11 fas: for this weakened use of *fas* see comm. at 18, 5 *fas est, fieri solet* (358, 19).

372, 11-12 intra pectoris ... secretum: the manuscripts, followed by Lehnert 1905, 337, have *intrare et oris*. Burman 1720, 364 after listing a number of conjectures from earlier editors³²⁵, proposes his own: *Forte, intra pectoris hujus premere secretum; quod minimum recedit a vulgata*. Håkanson 1974, 147-48³²⁶ embraces his suggestion: 'intrare ist hier ganz sinnlos. Wie Burmann richtig sah, handelt es sich nur um die triviale

³²⁴ See LHS 288: '(Dagegen ist nach Ausweis der altlateinischen Szenikersprache speziell umgangssprachlich) die Verwendung des Passivs als indirekter Ausdrucksweise, um die Nennung der handelnden Person zu vermeiden.'

³²⁵ The most noteworthy being: "Intrare Suspectum celare aut simile quid quaerendum. Forte, intra me & oris hujus p s aut non omisum, non intrare, quod magis placet. Schult. Intra me & oris hujus pr s. Obr."

³²⁶ Cf 1982, praef. XXII.

Verwechslung zwischen *p* und *r*, die dann eine falsche Trennung der Wörter verursachte.' The conjecture may be supported by the two following fragments: *numenque sanctissimum intra pectoris mei secreta conditum* (Apu. *Met.* 11, 25); *intra secreta pectoris divina mysteria silentio tegite* ([Apu.] *Ascl.* 32).

372, 12-14 miratur hanc – consumptus est: *subiectio*; cf. 19, 13 *Miratur aliquis – fuisses abdicatum* (385, 21-25). This is the first explanation given by the father for his silence.

372, 12 hanc ... patientiam meam: *hyperbaton*.

In *DM* 18 and 19 alike, our author plays a subtle game with the concepts of *patientia* and *impatientia*. *Impatientia* is a characteristic nearly always attributed to the mother. In *DM* 18 it is, naturally, presented as a positive quality, referring either to her inability and refusal to put up with her husband's actions³²⁷ or to her boundless love for her son³²⁸. In *DM* 19, on the other hand, where *impatientia* is attributed to the mother, it denotes her impetuous inconsistency³²⁹. The word occurs twice in connection with the father: he denies that he is impetuous³³⁰, but claims that his love is even more boundless than the mother's³³¹. *Patientia* is used to refer to all three members of the unhappy family. In 18, the mother might be called patient after her son's death³³²; the father's tenacious silence is characterized as inconsistent³³³ and as a ruse to throw suspicion on the mother³³⁴, where as the son is pitied, because he suffered the torture so patiently³³⁵. In 19, the mother is called patient once, as yet another proof of her inconsistency³³⁶. The father's *patientia* is, of course, a virtue, whether it refers to his tenacious silence³³⁷, his stoicism³³⁸, or the stern and manlike way in which he loved his son³³⁹. When *patientia* is ascribed to the son, he is admired, not pitied, for his patient suffering of the torture he deserved and even desired³⁴⁰.

372, 12-15 ardor ille – orbitate conticuit: The two phrases *ardor ille, qui me modo inpegit in filium, ipsa sui immanitate consumptus est* and *quicquid erumpere posset in proclamationem, parricidio peractum est, in orbitate conticuit*, are virtually synonymous, although the second is slightly more concrete. The father repeats himself in 19,12: *consumptus est spiritus silentio sui, et verbera ignesque animum pariter vocemque cluserunt* (385, 9-10).

³²⁷ 18, 2 (354, 12), 18, 17 (370, 22 and, together with an impatient desire to follow her son in death, 371, 6).

³²⁸ 18, 3 (356, 1 and 356, 7); 18, 5 (358, 16, indirectly).

³²⁹ 19, 2 (373, 1), 19, 4 (375, 19), 19, 10 (382, 20), underscored by such interjections as *mulier inmodici semper adfectus* (372, 1) and *o inconsultam muliebre semper amentiam!* (382, 22 – 383, 1)

³³⁰ 19, 9 (381, 22)

³³¹ 19, 2 (*maior me impatientia, maior urit adfectus*, 373, 15-16)

³³² 18, 1 (353, 11)

³³³ 18, 2 (*in rumore tam suspicax, post tormenta < tam > patiens*, 354, 16-17).

³³⁴ 18, 4 (357, 17)

³³⁵ 18, 13 (367, 10), in 18, 14 (368, 2) his suffering is referred to

³³⁶ In spite of her impetuousness, she did not interfere during the torture, 19, 4 (375, 11).

³³⁷ As in this instance, also 19, 2 (373, 18), 19, 7 (silence as an old-fashioned virtue, 378, 17)

³³⁸ 19, 8 (379, 22), maybe also 19, 2 (373, 18)

³³⁹ 19, 4 (375, 24)

³⁴⁰ 19, 4 (375, 3) and 19, 13 (385, 13).

372, 12 ardor: for metaphorical *ardor* as a frame of mind, see TLL s.v. *ardor* 490, 69 – 492, 5. It also occurs in *DM* 19, 3 ('rage', 374, 12) and 18, 7 ('forbidden passion', 360, 21).

372, 13 impegit: *impingo* with two animate complements is quite rare, see TLL s.v. *impingo* 617, 68 – 618, 12 which yields only two results: *DM* 4, 13 (*Nescioquae me prodigiosa feritas in patrem [...] inpingit*, 74, 14-15) and Firm. Mat. Math. 4, 14, 9 (*filios ...ad fraternas neces*).

372, 13 sui immanitate: from Seneca (*filius*) onwards, the genitive case of the reflexive pronoun is often used instead of the possessive pronoun. See LHS 61, where Svennung 313 is cited: '*mei, tui, sui* usw. ist ein Gen. des Neutr. *meum, tuum* usw. und drückt statt der Person das für sie Eigentümliche aus'; KS 598-99: 'Zuweilen wird statt des Possessivpronomens der Genetiv des Reflexivpronomens mit Nachdruck gebraucht, indem die Person sich selbst entgegengestellt und dadurch der Begriff der Persönlichkeit hervorgehoben wird. (...) Häufig bei den Späteren.'

Apart from the present specimen, the following instances occur in the *DM*: 1, 15 *conversatio[ne] nostri* (17, 8); 4, 4 *vilitas mei*³⁴¹ (65, 6); 6, 5 *pretium tui*³⁴² (115, 4); 11, 1 *vindicta mei* (220, 2); 11, 2 *sui vilitate* (221, 9); 13, 13 *vim sui* (279, 17-18); 15, 2 *facultate (...) sui* (303, 23); 15, 7 *amatorium sui* (308, 20); 17, 13 *sui (...) effectum* (339, 6); 19, 12 *silentio sui* (385, 9)³⁴³.

372, 14 erumpere ... in proclamationem: for metaphorical *erumpo*, see comm. at 19, 8 *erupturum ... per orbitatem patris animum* (379, 23-24); for the term *proclamatio* see comm. at 18, 4 *nulla proclamatio, nullus ... gemitus* (357, 2-3). Note the sustained alliteration of p: *posset in proclamationem, parricidio peractum*.

372, 14-15 parricidio peractum est, in orbitate conticuit: *isocolon*. The two short parallel phrases describe the same situation, but from different perspectives in time.

372, 15 in orbitate conticuit: compare 19, 11 *et in silentium orbitate defeci* (384, 3-4).

372, 16 patiar, audiam, feram: *congeries*; synonymous *patiar* and *feram* bracket *audiam*, which suggests that the father did hear a confession. Sussman's 'bear' for *audiam* (1987, 229) must be an oversight.

372, 16-18 utrumque de filio - meruerit occidi: the first paragraph of *DM* 19 is concluded by an *epiphonema* in the form of an enthymeme (rhetorical syllogism). We miss *maior* and *minor*, but they are both implied in the *conclusio*. Its explicit structure would be: *Ma*. It is impossible for a father both to kill his son and to admit why he deserved to die. *Mi*. I killed my son.

Co. It is impossible for me to admit why he deserved to die.

The categorical phrasing of the enthymeme deftly conceals the absurdity of its content: nothing would have prevented the father from explaining his course of action.

³⁴¹ *Vilitas*, having the metaphorical meaning of 'contempt', occurs quite often with an objective genitive (e.g. Curt. *Hist.* 5, 9, 6; Sen. *Clem.* 1, 3, 4; *Ep.* 121, 24; Plin. *Ep.* 9, 3, 2; *De Mi* 260, 21 and 388, 16). However, it does not signify contempt in the *DM*.

³⁴² Approximates to an objective genitive.

³⁴³ A different use of the objective genitive, also belonging to later Latin, we find *DM* 14, 6: *gratia tui* (293, 10), for which see LHS 133, KS 422-23.

372, 17 de filio fieri: 'de fällt auf' (Ritter 1967², 68), but not as derivative of classical *fieri ex* (Von Morawski 1881, 6), in view of following *ut, fieri* signifies 'to happen' and *de* has the sense of 'concerning'.

372, 19 satis admirari, satis stupere: this *asyndeton* with alliteration, anaphora and *disiunctio* is also found in *DM* 18, 2 (see comm *ad loc* , 354, 15-16), there, too, it conveys amazement at the opponent's supposed inconsistency

372, 20 quod: for *quod* following *verba sentiendi et dicendi* see comm at 18, 4 *fateretur, quod* (356, 15)

372, 20-21 optimam sane conscientiam: refers to the supposedly high moral standards of the Roman *matrona* in general, but there is, of course, an overtone of sarcasm according to her husband, she has a very bad conscience

Sane (Von Morawski 1881, 4) is a colloquial reinforcement of adjectives For the development of the term *conscientia* and its significance in the *DM*, see comm at 18, 7 *haec .. conscientia* (360, 18)

372, 21-22 maiorem ... pudorem praestare: the mother would evince a greater modesty if she did not interrogate her husband Like *conscientia*, *pudor* is used ambiguously, for it also refers to her supposed sexual behaviour Note the aabb alliteration of m and p

372, 22 tacere (...) silentium: being both unexpected and contrived, this figure bears some resemblance to παράδοξον or *inopinatum* Gunderson's translation 'My silence can't keep quiet' (2003, 204 n 40) is neither correct nor to the point

372, 22 – 373, 1 novo quin immo fabulosoque: *correctio* Tautological *quin immo* occurs frequently in post-classical Latin prose texts, esp the *DM* and Plin *Nat* According to von Morawski (1881, 2-3), it is derived from vulgar Latin with its "Neigung, alles klar und umständlich darzulegen.", cf. LHS 492, 498 Here, the emphatical expression is further enhanced by *que* Compare Tac *Germ* 14, 3 *pigrum quin immo et mers*

373, 1 impatientiae: for a short survey of the occurrences of this term and its antonym *patientia*, see 19, 1 (372, 12)

373, 2-3 queritur de populo, quod loquatur, de patre, quod taceat: explains 373, 1-2 *secum dissentit* The *sententia* must be termed an *enthymema* (*sententia e contrarius*) and *epiphonema* The *isocolon*'s thorough parallelism accentuates the antithesis

It is obviated in 18, 4 *Questurum nunc me, iudices, putatis de licentia sermonis humani? ego vero iuxta hunc patrem non accuso rumorem* (356, 20-21) In 18, 5 (358, 6-17), moreover, the mother's advocate contends forcibly that any rumours concerning wives and mothers originate in their husbands' behaviour Even when in 18, 6 (359, 10-22) he lets fly at the garrulity of the people, it is obvious that his harangue is in reality directed at the father

373, 3-4 nec contenta – auctoritate testantis: a *color*, for the *thema* simply states *nolentem dicere*

373, 3-4 nihil se dissimulare, nihil scire: emphatic anaphora of *nihil*, ellipsis of *se*

As for the father's claim of ignorance, see e.g. 19, 11 *puta me hoc solum dicere ex maximi facinoris colluctatione veniens, quid audieram, nondum scio* (383, 25-27), 19, 13 *finge iuvenem dixisse nescioquid, ego audire non potui* (386, 1), 19, 14 *fateor igitur nihil ad certum indubitatumque perduxit* (386, 21), 19, 15 *super ora, super oculos iacentis adsistens clamabam 'furiose, demens, tace!' antequam mentiretur, occidi* (387, 16-17, 28)

But note the deliberate contradictions e.g. in 19, 6 *non prodo secretum* (378, 10), 19, 12 *puta me, mulier, hoc tibi respondere non habent incredibilia vocem finge me respondere nihil dixit, nihil locutus est non credis? atquin multo minus creditura quid dixerit* (384, 12-14, 17-19), which is in its turn contradicted in the very same *caput torquebam nec interrogabam si qua ad aures tuas ab illa quamvis remota domus parte perlata vox est, meus genitus fuit* (384, 21-23)

373, 4 reatus auctoritate testantis: a deceptive phrase, for obviously, the statements of defendants did not count as testimonies. See also 19, 14 *ecce reatus iudicium pronuntio*³⁴⁴ *ego tamen scire me nego* (386, 18-19) and 12, 2, where it is said about the defendant that he *opinionem suam defenditur, et, quae res minime coargui potest, utitur se teste* (254, 15-16). For the metonymous use of *reatus*, see comm. at 19, 14 *ecce reatus iudicium pronuntio* (386, 18)

373, 4-5 mavult - facere secretum: This may be regarded as a case of the pot calling the kettle black, for if anyone shrouds his silence in secrecy, it is the husband. On *facere de* (instead of *ex*) in the *DM* as characteristic of later Latin, see von Morawski 1881, 6

373, 5-7 orbitatis istud – quod dicam: a covert *subiectio* forms a closing *epiphonema*, the answer is an *enthymema*. For this use of *viderit*, see OLD *video* 18b, in the *DM* it is used to put forward a tentative suggestion, from which the speaker subsequently dissociates himself, often by means of a cut-and-dried *sententia*. The same device is found in *DM* 2, 1 (21, 18-22), 4, 8 (68, 22-23), 8, 5 (*fortuna viderit*, 155, 16-18), 19, 11 *viderit, quid meruerit, iuvenis ille, ego iam possum suprema revereri et post exitum unici revertor in patrem* (383, 6-8). For the present reasoning, compare 19, 10 *o inconsultam muliebrem semper amentiam! quid in iuvenis in tormentis dixerit, tamquam ignoret, interrogat, nihil me comperisse non credit, tamquam sciat, quid dixerit!* (382, 22 – 383, 3)

373, 5 orbitatis: metonymous reference to the mother

373, 5-6 amentia sit an innocentia: note the *homoeoteleuton*, the two concepts are not quite incompatible, and therefore do not build a genuine contrast. The *amentia* refers to what the father regards as the mother's inconsistency, *innocentia* can be read at face value as a reference to the mother's ignorance about her son's bad behaviour (see below *felicem ignoracione conscientiam matris, quae sufficit interrogare*, 373, 14-15) or as heavy irony.

373, 6 perditus dolor: like *orbitatis* above a metonymous reference to the mother³⁴⁵, *perditus* is conveniently ambiguous (OLD s.v. *perditus* 2 'ruined, reckless', 4 'morally depraved')

³⁴⁴ I cannot agree with Håkanson's *pronuntiatio* see comm. ad loc.

³⁴⁵ For metonymous *dolor* in the *DM* see comm. at 18, 5 *dolorem* (357-24). Englund 1934: 5 considers this instance a personification.

373, 6-7 ipsius animus – quod dicam: a suggestive, but perfectly valid *enthymema* (i.e. abridged syllogism). A similar train of thought is to be found in 19, 10 *quid iuuenis in tormentis dixerit, tamquam ignoret, interrogat, nihil me comperisse non credit, tamquam sciat, quid dixerit!* (383, 1-3), see also 19, 14 *si potes scire, mulier, an mentiar, scis, quid dixerit* (387, 6-7). Obviously, although all *sententiae* are intended as insinuations, they hold equally good in case the mother is innocent. His insinuations bring the father on dangerous ground: *vitandum est ne contumeliosi maligni superbi maledicti in quemquam hominem ordinemve videamur, praecipueque eorum qui laedi nisi adversa iudicum voluntate non possint* (Quint. *Inst.* 4, 1, 10).

373, 6 ipsius animus: yet another metonymous reference to the mother. A similar use of *animus* in 19, 7 (379,6) and 19, 8 (vocative, 380, 13).

373, 8-11 Fidem igitur – conveniunt: the two synonymous clauses together form a type of *prolepsis*.

373, 8 Fidem igitur vestram: *hyperbaton* and *exclamatio*, see comm. at 18, 2 *fidem vestram* (354, 21 – 355, 1).

373, 8-9 ne vos – sola mater: compare *DM* 8, 2 *mater petit, ne maximi sceleris ideo decrescat invidia, quia pati videtur et reus ex orbitate tantundem* (152, 16-18), 17, 2 *Licet igitur inmitissimus senex confundere publicos conetur adfectus querelarum fronte mutata* (333, 12-13) and see also 8, 8 (159, 13) and 9, 16 (190, 13) for instances where the verb *confundere* is used to denote manipulation of pity. The father tries to rouse *invidia* against the mother by inverting a traditional *locus*: instead of exposing her arrogance, superiority or misuse of power (cf. Cic. *Inv.* 1, 22, *Rhet. Her.* 1, 8, Quint. *Inst.* 4, 1, 14), he warns the judges that they must not be taken in by her weakness and emotionalism.

373, 10 resedissee sensum: *resedissee* seems to be a technical-philosophical term for the presence of consciousness, see Cic. *Tusc.* 1, 104 and *Fam.* 5, 16, 4. Mosshamer 1939, 18 mentions it as a metaphor *e vita humana hausta*.

373, 10-11 vos lacrimae gemitusque conveniunt: for this collocation see comm. at 18, 17 *moderari gemitus, comprimere lacrimas* (370, 14). Tosato 1912, 12 mentions the non-classical use of the accusative *vos*, which is due to its metaphorical use (OLD *convenio* 2 'to visit, approach, resort to' mentions, among other instances, *DM* 19, 2).

373, 11-14 mei magis – et feci: *comparatio* as a form of *amplificatio*³⁴⁶

373, 11-12 magis ... in uxoris conparatione: this use of *in conparatione* with genitive instead of *quam* is unique in classical Latin texts. Being a periphrasis, it must be characteristic of vulgar / later Latin³⁴⁷, indeed, it recurs a number of times in the works of the Latin Fathers, see e.g. Aug. *Doct. Christ.* 2, 42, in *Psalms* 63, 4 and 105, 2.

Ritter 1967², 69 compares *in uxoris conparatione* to *DM* 7, 2 *in mei conparatione* (139, 6), leaving out of consideration 5, 2 *in fratris conparatione* (86, 20), 5, 15 *in conparatione sani* (100, 13) and *in cuius conparatione* (100, 21). But in fact, none of these instances form adequate material for a comparison, since they do not contain adjectives or adverbs in

³⁴⁶ Not to be confused with *comparatio* as a *genus causae* (*status* or *genus probationis*).

³⁴⁷ More examples of periphrasis: other than the use of prepositions instead of bare case endings: in Von Morawski 1881: 8, 10, 11 and Zvěřina 1883: 352, 53.

the comparative degree And although *in comparatione* is not quite correct³⁴⁸, it is hardly unusual, occurring e.g. Curt 3, 11, 20 and Tac *Hist* 1, 30, 1 Zvěřina 1883, 352 reminds of Italian *in comparazione* and French *en (par) comparaison*

For *magis* replacing *potius*, which is probably the case here, see LHS 166

373, 12 et perdidit et occidi: *homoeoteleuton* with emphatic anaphora of *et*

The father tries to convince the jury that the killing of his son is as deep a source of grief as his loss, thereby again suggesting that the killing was a miserable necessity (compare 19, 1 [372, 3-4 and 10-11]) The use of *perdere* may strike one as ironic in this context, for it can mean 'to kill, destroy' (OLD 1) as well as 'to lose' (OLD 3) That our author likes to play with the contrast between *occidere* and *perdere* emerges from such *lumina* as 2, 23 *respondete, per fidem, respondete, mortales utrum hic patrem occidit an perdidit?* (41, 15-16), 5, 21 *filium, qui relictus mea fuit moriturus invidia, non occidi, sed perdidit* (107, 3-4), 8, 2 *non perdidit filium, quisquis occidit* (152, 18-19), cf. 19, 15 *filium, qui moriebatur occidi Non perdidit tamen, non perdidit unici mortem, fortuna, non perdidit* (388, 6-7), compare further *DeMi* 315, 18 *et filium occide, et parum sit tibi perdere*

373, 12-14 ego sum – et feci: an explanatory paraphrase of preceding *mei magis – et occidi*

373, 14 et patior et feci: echoes *et perdidit et occidi* (372, 12), cf. also *DM* 11, 5 *explicata est, iudices, explicata legis invidia, cum quis, quod patitur, et fecit* (223, 2-25) The father presents himself as a victim of his own actions, thus making an insidious use of the *loci ab nostra persona* for procuring *benivolentia si quae incommoda acciderint aut quae instant difficultates, proferemus* (*Cic Inv* 1, 22, see also *Rhet Her* 1, 5) The two verbs have *quicquid ista conplorat* as their object, which does not appear from Sussman's translation (1987, 230)

373, 14-15 felicem ignoratione – sufficit interrogare: an ironical *exclamatio* Especially relevant here is Quint *Inst* 9, 2, 49 on irony *cum ea quae nolumus videri in adversarius esse concedimus eis* The possibility of seriousness on the part of the father is ruled out by a sentence in the previous paragraph *ipsius animus potest scire quid filius meus dixerit, quae me putat habere, quod dicam* (373, 6-7)

Instead of *ignoratione*, Lehnert 1905, 337 relying on mss. MJ³⁴⁹, put *ignorantiae* This reading had already been contested by Gronovius and Schulting, and queried by Burman 1720, 365 all three prefer *felicem ignoratione* Håkanson 1974, 148 follows suit, arguing that *felix* with genitive is poetical and supplying some more reliable mss. with *ignoratione* For the development of the term *conscientia* and its significance in the *DM*, see comm. at 18, 7 *haec conscientia* (360, 18), as for the *exclamatio*'s purport, compare 19, 14 (387, 5) *o bonae conscientiae cauta simplicitas!*

373, 15 sufficit interrogare: *sufficere* with infinitive is used synonymous with *posse* Ritter 1967², 41 and 68 enters the locution under the heading of 'Correctheit', Von Morawski 1881, 10 and Tosato 1912, 77 regard it as characteristic of late Latin, whereas Becker 1904, 22 includes it in his chapter on Vergiliana, since the first instance of *sufficere*

³⁴⁸ One rather expects either *ex comparatione* or *in comparationem* see OLD s.v. *comparatio* 1 See also Zvěřina 1883 352

³⁴⁹ See Håkanson 1982 VI VII and X XI with further refs

with infinitive occurs Verg A 5, 21-22 *nec nos obniti contra nec tendere tantum / sufficimus* In the *DM*, it appears 4, 20 (82, 15), 8, 6 (156, 15), 8, 7 (157, 19), 19, 5 (376, 19)

373, 15-16 maior me impatientia, maior urit adfectus: the comparison is sustained with these clauses, which contain anaphora of *maior*, respective *ellipsis* of *urit* and *me* and two *hyperbata* (*maior impatientia* and *maior adfectus*) (355, 16-17), for the significance of the concept of (*im*)*patientia* in *DM* 18 and 19, see comm at 19, 1 (372, 12) In the previous sentence, the father foisted ignorance upon his wife, a quality which he attributed to himself in the previous paragraph (373, 3-4) Now, he arrogates two qualities which seemed to belong pre-eminently to her see e.g. 18, 2 (*ignoscite, iudices, impatientiae, quae contra callidissimam dissimulationem libertate doloris exaestuat*, 354, 12-13,) and 18, 3 (*impatientius complexa*, 356, 1, *quem pro duobus conferebat adfectum*, 356, 8-9)

373, 16-17 cur filium – quod occidi: the *prooemium* is concluded with an *epiphonema* in which the two cornerstones of the father's position are briefly stated he refuses to speak out, but the murder was justified

Narratio (373, 17 – 376, 4)

The *narratio* of *DM* 19 directly follows the *prooemium* in accordance with the customs of the rhetorical schools³⁵⁰ It conforms largely to the three main requirements³⁵¹ it is *brevis*, *aperta* and *probabilis* – obviously except for the fact that no crime on the son's part is specified All its main elements return in the *probatio*, for which it has efficiently prepared the way³⁵²

Following Håkanson's arrangement of the text, we can distinguish the following sections 373, 18 – 374, 13 *Infelix senectus – non possunt*, as in *DM* 18, the first part of the *narratio* describes the family's previous history: bliss and harmony when the son was a little boy, deterioration of the relationship with his father when he became a vain, inactive young man, the emergence of the rumour

374, 14 – 375, 10 *Est in – occisus est* a graphic description of the interrogation, which happened on the spur of the moment, but was welcomed by the son, who actually wanted to die

375, 11-20 *Laudo – nihil interrogavit* the father would not have tolerated any interference, but he is surprised that the mother did not intervene, in fact remained passive until now.

375, 21 – 376, 4 *Possum iam – potius occidi* by way of conclusion, the father declares his own 'tough' love for his son and contrasts it with the mother's soft love

373, 18 *Infelix senectus, misera patientia*: the *exclamatio* puts yet more emphasis on the father's miserable situation, while at the same time it offers a point of departure to treat of the past It is thus a suitable transition from *prooemium* to *narratio* An *exclamatio* in the nominative case is unusual, but not impossible See KS 274 Anm. 6, LHS 48 Alternatively, we are dealing with an *exclamatio-cum-apostrophe* (KS 274 Anm. 7), which would make the case vocative *Infelix senectus* then has two parallels in *DM* 5, 18 (104, 7) and 7, 13 (150, 18) where it is used metonymously (for *senex*) by a father talking to himself

For the significance of (*im*)*patiens* and (*im*)*patientia* in *DM* 18 and 19, see comm. at 19, 1 *hanc patientiam meam* (372, 12)

373, 18 *sic quoque*: not 'also' (Sussman 1987, 230) but 'yet' (OLD s.v. *sic* 9b), as on every other occasion in the *DM*. see 9, 14 (188, 7), 11, 5 (224, 20), 11, 9 (229, 12), 13, 2 (266, 14) The father means that, in spite of his inability to disclose the reasons for the murder and the absence of remorse (373, 16-17), there are things he needs to explain

373, 19 *fuimus ... fuimus*: this *geminatio* in the perfect tense emphasizes that these times have irrevocably passed Becker 1904, 57 considers it to be based on Verg. *A* 2, 325-26 (*fuimus Troes, fuit Ilium et ingens gloria Teucrorum*)

373, 20 *rudis unici ... infantia*: *hyperbaton* with *infantia* metonymous for *infans* as in *DM* 18, 3 (355, 23) and 5, 7 (91, 7), for *rudis* in this sense Burman 1720, 365 refers to *DM* 18, 3 (*prima rudisque coniugu mens*, 355, 18) and Quint. *Inst* 1, 1, 20 (*rudes annos*).

³⁵⁰ Quint. *Inst* 4, 2, 28

³⁵¹ As found in e.g. Cic. *Inv* 1, 27-30, *Rhet. Her* 1, 14-16 Quint. *Inst* 4, 2, 36-60

³⁵² Quint. *Inst* 4, 2, 54

373, 21-22 pariter fruebatur, pariter dileximus: the *isocolon* with *anaphora* of *pariter* stresses the harmonious relationship of the little family while the son was still a boy. The emphatic *anaphora* of *quamdiu* in the same lines gives warning that things are about to change. *Variatio temporum* presumably on account of the prose rhythm, see Tosato 1912, 65-69.

373, 22 civitas: the consistent use of *civitas* instead of *cives* is both striking and effective. It presents the members of the community as a solid body of citizens, which has been and will be unanimous in its judgement of mother, father, and son. The same application is found in the other *DM* in fact, the word *cives* is used only 8 times (twice in vocative case), while *civitas* occurs in 92 instances.

373, 22-23: hoc solum ... filium nos habere formosum: *emphasis* of the second type, *quae [significat] etiam id quod non dicit* (Quint *Inst* 8, 3, 83), i.e. the father suggests that the city can (and does) now add that we had an incestuous son.

373, 24 ut vero ... duxit aetatem: introduces a *color* the alleged incest is explained from the son's self-obsession and his refusal to go out and make himself useful.

373, 24 corporalibus bonis: for the purist Ritter (1881, 68), *corporalis* is conspicuous as regards "Correctheit". He seems to take offence at the many adjectives in *alis* occurring in the *DM* and singles out *matrimonialis* in 1, 13 (14, 9), *parricidalis* in 4, 19 (81, 11) and 17, 18 (350, 1), *corrivalis* in 14, 12, *coniugalis* in 18, 4 (357, 17³⁵³), *maritalis* in 4, 3 (63, 10), 8, 6 (156, 11) and 18, 9 (361, 11), *corporalis* in 19, 2. *Matrimonialis* is indeed a very special case, since it is a *hapax* in classical Latin. In later Latin, it is rare, but does occur in Augustine's works fifteen times. *Parricidalis* occurs frequently in late Latin, but is rare in the period before, occurring once in Petronius (80, 1) and once in Florus (*Epit* 3, 21, 1). *Corrivalis* is Burman's reading³⁵⁴, replaced by Lehnert 1905, 275 with *compotantium*, whereas Håkanson 1982, 300 puts *†corporarium†*, but adds *corrivalium* *q fortiter recte*. *Corrivalis* does not occur in any Latin text included in BTL or CLCT. *Coniugalis*, *maritalis* and *corporalis* on the other hand are quite common in Silver Latin. The collocation *bona corporalia* as such does not occur in classical Latin (though later, it is used not infrequently by Fathers of the Church), but *bona corporis* is common, referring to external goods, such as honour and riches. Here it is an *ambiguum*, because the son is suspected of incest.

373, 25 superbus atque arrogans: *synonymia*. The collocation is rather familiar from Cicero (*Clu* 112, *Sul* 25, *Inv* 1, 54, *de Orat* 2, 165) and also occurs Sen. *Dial* 11, 1, 3, *De Mi* 252, 23, Apul. *Met* 5, 10 and 9, 39. In the *DM*, it is also found in 5, 4 (88, 14) *quam arrogans me pirata, quam superbus excepti*!

373, 25-26 in nullum – publicos actus: *distributio* of *vitae genus* into *privatos* and *publicos actus* (see Lausberg 671 3b 'mit Voranstellung des Kollektivbegriffs') in an *asyndeton*.

On the basis of this sentence and 19, 3 (374, 4-5) *inde rarus - ora vitaret*, further 19, 9 (*Si tamen - et timebat*, 381, 4-14) we must conclude with Gunderson 2003, 219-20 (on *DM* 19, 9) that the father, who never directly utters the accusation of incest, only reproaches his son.

³⁵³ Also in 19, 7 (379, 5).

³⁵⁴ Burman 1720, 305.

that he *omitted*, rather than *did*, certain things. Formally, this goes against the rhetorical precepts concerning clarity in the *narratio*³⁵⁵, but in fact these passages work for the benefit of the father in two ways. In the first place, because a person's daily pursuits as *attributa personis* very much determined the moral impression he made on his fellow-Romans³⁵⁶; secondly, because they can be seen as a form of *emphasis*: it is suggested that the son evidently spent all his time at home with his mother.

373, 26-27 florentem ... aetatem: flower(ing) is a rather hackneyed metaphor, *ornandi causa*, for youth. *Aetas florens* is found Lucr. 5, 1074; Cic. *Sen.* 20; Liv. 30, 12, 17; *Eleg. Maec.* 113. Notable variations are *aetate florens* (e.g. in Cic. *Fam.* 2, 13, 2; Becker 1904, 57 adds Verg. *Ecl.* 7, 4; Tac. *Hist.* 2, 81); *flos aetatis* (frequent in Livy, Cicero, Curtius Rufus and Apuleius). The *DM*, in addition, offer *florem Italiae* (*DM* 3, 16 [56, 13]; see Becker 1904, 18) and *primo iuventae flore* (*DM* 9, 9 [183, 22]).

373, 27 – 374, 1 di immortales – rumor ingemuit: *exclamatio-cum-apostrophe*, for which see comm. above at 19, 2 *Infelix senectus, misera patientia* (373, 18). Quintilian (*Inst.* 4, 2, 106) approves of apostrophe in the *narratio*, since it makes for brevity and cogency. Note the alliteration in *quantus qualisque*. Englund 1934, 7 rightly regards *rumor ... ingemuit* as a personification. This section of the *narratio* (373, 25 – 374, 10 *di immortales – pater occidere*) makes it clear that the father means to suggest that the rumour preceded his own suspicions, whereas the mother's advocate would have the judges believe that it was the father who put the rumour about (see e.g. 18, 4 [356, 20-23]; 18, 8 [360, 24 – 361, 8]).

Circa is quoted in Tosato 1912, 56 to show that in the *DM circa* is not just used in its metaphorical sense, which became preponderant in later Latin. Note how it is enhanced by the hyperbaton *quantus qualisque ... rumor*.

374, 1-2 omnium maledictis succlamatus, omnium denotatione damnatus: *isocolon, asyndeton, disiunctio*, with anaphora of *omnium*; *homoeoptoton* of *succlamatus* and *damnatus*. Quintilian would have disapproved of the collision of s in *maledictis succlamatus* (*Inst.* 9, 4, 37: *Ceterum consonantes quoque, earumque praecipue quae sunt asperiores, in commissura verborum rixantur (...) quarum tristior etiam si binae colliduntur stridor est, ut 'ars studiorum'*.)

374, 1 succlamatus: see comm. at 18, 9 *publica subclamatus invidia* (361, 12).

374, 2 denotatione: *denotatio* (OLD: 'censure, disparagement') is a neologism, derived from the verb *denotare* ('to mark; [Suet.] to brand or scoff'). Apart from this instance, it occurs in the works of the Fathers of the Church from Tertullian onwards (*Ad Nat.* 1, 10; *Cult. Fem.* 2, 13; *Adv. Marc.* 5, 20; *De Corona* 9; subst. *denotatus* in *Pall.* 4).

374, 2-3 donec ... agnosceret: gradually, the *rumor* is given more authority by proclaiming it to be universally accepted. Compare *DeMi* 269, 4 *dicat iste quam multa volet adversus famam, dum tamen constet nihil aliud esse istam quam consensum civitatis*.

There is no obvious reason for the use of subjunctive *agnosceret*. Classical prose authors tend to avoid the use of *donec* altogether; when they do, it usually occurs with a verb in the

³⁵⁵ Cic. *Inv.* 1, 29; *Rhet. Her.* 1, 15; Quint. *Inst.* 4, 2, 36-39.

³⁵⁶ See Cic. *Inv.* 1, 36 (and compare 2, 177); *Rhet. Her.* 3, 13-15 (on *genus deliberativum*); Quint. *Inst.* 5, 10, 27; *Vict.* 25 (RLM 219-20).

indicative mood. When it is used with a verb in the subjunctive, there is a connotation of purpose, analogous with *dum*. However: 'schon bei Tacitus, mehr noch im Spätlatein tritt der Konjunktiv ohne ersichtlichen Grund ein' (LHS 628-29; cf. KS 374 Anm. 2). In the *DM*, *donec* occurs twice with the indicative mood, and in eight instances with the subjunctive, six of which are "ohne ersichtlichen Grund": 2, 9 (28, 5); 2, 21 (39, 11); 10, 16 (216, 15); 11, 7 (226, 23); 15, 3 (304, 6) as well as 19, 3 (374, 2).

374, 2-3 consensum ... publici doloris: note how this unanimity of public grievance too is indeed *circa* its object by means of *hyperbaton*. *Publicus dolor* also in *DM* 12, 12 (244, 8).

374, 4 rarus in publico: note the contrast with *DM* 18, 3 (*gaudebat etiam, quod laudandus occursibus, quod omni frequentia coetuque conspicuus populo iam ipse fateretur, quod plus amaretur a matre*, 356, 13-15); *rarus* is used as an *adiectivum adverbiale* (KS 236).

374, 4 tamquam patris – ora vitaret: innuendo in *isocolon* with *anaphora* of *tamquam* and significant alliteration (Becker 1904, 60) of *occursus* and *ora*. It seems rather odd that the son should take care to avoid meeting his father *in public*, as if he would not run a greater risk to meet him at home, but then, if rumour really was rife, a meeting in public would have been all the more embarrassing. *Ora* instead of *vultus* is a common *metonymia* (see OLD s.v. *os* 6-10); for *ora civitatis* compare Sen. *Cl.* 1, 21, 4 *in ore civitatis*.

374, 5-6 in quantam – iuvenis inciderit: another *isocolon* with *anaphora* of *in quantam* and *disiunctio*. Note the alliteration in the succession of harsh guttural plosives, beginning with *concupere* (374, 5). The expression *in culpam incidere* is rare and late, occurring further [Marius Victorinus] *De physicis* 9; Ambr. *de paradiso* 13, 65.

374, 6-8 dictus est – pater occidere: *commutatio*, *asyndeton*. Both parts of the *asyndeton* are of course meant to set the stage for the murder, the first part making it seem self-defence was one of the father's incentives; the second emphasizing the son's turpitude. Compare also Calp. *Decl.* 9 *talīs es, adolescens, ut excaecare volueris patrem, aut te excaecare velit pater*.¹⁵⁷ The statement finds a contrastive echo in 18, 3 *et qui unicum aspiceret animo, quo quandoque possit occidere* (356, 10-11).

374, 8 quid facerem – infelicissimus senex: *communicatio*, meant to stress once more the inevitability of the father's actions, while at the same time soliciting for pity for his plight.

374, 9-10 iamiam – nemo parcebat: *synonymia* with *anaphora* of *iam*. Winterbottom (1983b, 76) appositely refers to this phrase as an example of the declamatory style, which helped students of rhetoric to acquire and apply their *hexis* and vocabulary. The word order of both cola is chiasitic, though not antithetical. Sussman 1994, 230 sees a resemblance with Calp. *Decl.* 49 *inveniet illum postremo vel fama*.

374, 9 iamiam: for this *copulatum* see comm. at 18, 12 *iamiam malo – inprovisamque mortem* (366, 4-5). Especially notable is, it seems, the use of the imperfect

¹⁵⁷ Thus Sussman's text. Against mss. and earlier editions, Håkanson 1978, 9 has *talīs es, adolescens ut excaecare volueris patrem, ut et excaecari velit mater*, but Sussman (1994, 121-22) rightly follows the reading proposed by Jones 1985, 89-90. The present *commutatio* supports his reading.

evitabat, for *iamiam(que)*, which usually means ‘any moment now’³⁵⁸ never occurs with the imperfect, unless combined with a future participle (e.g. Cic. *Att* 12, 5c, 6, *Ov. Fast* 3, 806). There is just one dubious case in another *DM* 14, 3 has *donec quantulumcumque substantiam in huius sinus credulus iam iamque securus amator egererem* (290, 10-11) – though *iam iamque* seems attached to *securus* rather than to *egererem*.

374, 9 fama: personified (Englund 1934, 7)

374, 9 non ... nec: the double negative reinforces the negative meaning, it is epexegetic rather than pleonastic (LHS 802-3, KS 827, Anm. 8)

374, 10 interrogare non audebam: the father suggests that he dreaded to hear what the son would have to say. Indirectly he prepares the jury for his claim that the *quaestio* was not a proper *interrogatio*, see e.g. 19, 12 *torquebam nec interrogabam* (384, 21-22)

374, 10-11 interrogare non audebam, dissimulare non poteram: asyndetic isocolon with *homoioteleuton* of *interrogare-dissimulare* and *audebam-poteram*, *interrogare* and *dissimulare* are in antithesis. The sentence may be regarded as the *propositio minor* of an argument of *force majeure* constructed as follows:

If I am confronted with the rumour that my son is conducting an incestuous relationship, I must either dissemble the rumour, or interrogate my son, (or kill him).

I cannot dissemble the rumour, I dare not interrogate him.

(Therefore I must kill him.)

This conclusion is suppressed yet implied in the next sentence (374, 11-13 *fallitur quisquis – non possunt*), so that the two make up an enthymeme.

374, 11-12 fallitur quisquis – ardor explicuit: The father contradicts this statement several times, most clearly in 19, 10 *non enim praecipiti raptus impulsu exsilii repente subito* (381, 20-21).

374, 11 fallitur quisquis ... : frequently introduces an *anticipatio* in the *DM* and is uniquely characteristic of this collection. Apart from these instances, we find the phrase 2, 9 (27, 24), 4, 9 (70, 7), 7, 5 (141, 21), 11, 7 (226, 19), 11, 8 (227, 22 and 228, 11), 17, 2 (333, 19), 18, 2 (355, 6), 19, 13 (385, 16).

374, 12 impetus ac ... ardor: for metaphorical *ardor* as a frame of mind see comm. at 19, 1 *ardor* (372, 12). The collocation with synonymous *impetus* also occurs Cic. *Fin.* 2, 19, 60, *ad Brut.* 2, 5, 1, Liv. 3, 18, 9, 26, 18, 10, 30, 35, 5, Sen. *Contr.* 1, 8, 5.

374, 12 explicuit: Shackleton Bailey 1984, 136 remarks ‘What does *explicuit* mean? We expect a word meaning “burst forth” *exsiluit*’. His proposal seems unnecessary, for *explicare*, especially in its sense of ‘to carry out completely, finish off, accomplish’ (OLD 9a) occurs very frequently in the *DM* (see the abundance of samples in TLL s.v. *explico* 1730, 8 – 1733, 14, the present absolute use is found 1730, 17-19). It is synonymous with *fecisse*, thus contrasting *consilio* (374, 11) with *impetus* and *ardor*. In 19, 14 (386, 23) we find *explicare* in an identical sense, also with an incorporeal subject *non explicant tormenta quaestionem, quae occidunt*.

³⁵⁸ Rather than Sussman’s ‘even now’ (1987: 230).

374, 13 praeparari filio tormenta non possunt: a (quasi-) generic *sententia* with the function of *epiphonema* concludes the section and introduces the torture scene

374, 14-16 Est in – et pater: *congeries*, in which the gradual lengthening of the cola helps to prepare a climax

374, 13 Est: When *est* introduces a sentence in the *DM*, we can usually expect either a moral reflection (e.g. 18, 6 *est tamen hoc iniquissimum de loquacitate populi* [359, 16]) or a *descriptio*, here, more specifically, what is termed in *Schem dian* 11 τοπογραφία *loci descriptio*. These *locorum descriptiones* frequently occur in poetry, for which see Lausberg 819 'Häufig ist (sei der Ort nun fingiert oder wirklich) die Einleitung durch die Formel (auch variiert) Formel *est locus*' with a choice of samples from Vergil and Ovid. We find another in *DM* 17, 4 *Erat in domo nostra locus, in quem secedebam semper reus, in quem revertabar absolutus, querelis meis lacrimisque iam conscius* (335, 3-5)

374, 14 remota, seposita: Note the *homoeoteleuton*. Deratani 1927, 295 regards this *copulatum*, too, as symptomatic of vernacular Latin and of an affinity of the *DM* with Apuleius' works. In fact, it already occurs Sen. *Ben.* 4, 20, 1, see further Gel. 4, 9, 8 = Macr. 3, 3, 8. The frequent use of synonyms in the *narratio* is somewhat contrary to one of the rules for *brevitas*: *si semel unum quidque dicitur* (Cic. *Inv.* 1, 28, *Rhet. Her.* 1, 14, cf. Quint. *Inst.* 4, 2, 43).

374, 14-15 profunda tenebris: a slight variation on the perhaps somewhat trite collocation *profundae tenebrae*, which occurs e.g. Sil. 12, 659-60, Stat. *Theb.* 11, 73-74 and 580-81.

374, 15-16 omnibus apta – et pater: these last two cola are virtually synonymous, though the latter is somewhat more explicit. They both contain a form of *emphasis*, the first expressed in *omnibus*, the second more explicitly in *et pater*: the father suggests that mother and son used this hidden room for their trysts. The *emphasis* is sustained by the subsequent description of the son's furtive behaviour. Although the father refers to his act as a crime, this does not necessarily mean that he feels guilty about it, for nowhere does he express any regrets. Rather, the enormity of his acts paradoxically underlines their necessity and inevitability, compare the father's vivid description of the torture scene in 19, 5-6 (377, 4-13).

374, 16 facere facinus: a weak *paronomasia*, which also occurs *DM* 2, 16 (34, 15) and 4, 2 (62, 9).

374, 16 fateor: Becker 1904, 23 regards the parenthetical use of *fateor* as a Vergilian influence and cites A. 2, 134 and 12, 813. It occurs rather frequently in the *DM*: 4, 7 (67, 17), 5, 5 (89, 11), 5, 18 (103, 16), 5, 20 (106, 10), 9, 15 (189, 4), 17, 3 (334, 16), 19, 15 (387, 26).

374, 16-17 variae cogitationes ... circumagunt: a personification. The *cogitationes* must of course be interpreted as worries about his wife and son.

374, 17-18 quantum intellegere licuit: this rather puzzling parenthesis has bearing on *inprovisus* and, like *puto* (374, 20) helps to strengthen the insinuation that the son was caught in the act, while at the same time suggesting a certain ingenuousness in the father's behaviour and circumspection in his utterances.

374, 18-20 et ille – quaererem causam: note how the fragmented sentence structure reflects the father's horror and hesitation

374, 19 tamquam deprehensus obstipuit: another insinuation Compare a plea of innocence in *DM* 17, 5 *ad subitum interventum patris non tamquam deprehensus obstipui* (336, 6-7)

374, 20 trepidus ... ne: this collocation is very rare, but also occurs *Flor Epit* 1, 13, 14 (*trepidi, ne quis subesset dolus*), and there are two examples of a similar construction with *timidus* *Ter Hec* 734-35 *timida sum () ne nomen mihi quaesti obsiet* and *Cic Phil* 10, 17 *timidi, ne illorum simulatio, horum obsit ignavia*

374, 20 – 375, 1 inrumpo festinanter – pariter invado: *evidentia*, underlined by a transition to the present tense

Håkanson's punctuation makes the sentence grammatically obscure It would be better to read, with Lehnert 1905, 339 a colon after *adgressus*, so that *ignes ex proximo raptos, verbera quae casus obtulerat* belong to *quaecumque usus* This interpretation is sustained by the occurrence of two compounds of *ferre* (*trastulerat, obtulerat*) and it explains the accusatives *ignes* and *verbera* Then read a semicolon after *obtulerat*, so that there is a clear partition of the numerous modifiers *festinanter – obtulerat* with *inrumpo, non per partes – pariter* with *invado*

The present description is difficult to reconcile with e.g. 19, 9-10 *quanta tamen mihi fuit et in quaestione moderatio? non enim praecipiti raptus impulsu exsilii repente, subito, nec captus dolore caeco inpatientiae meae velox vulnus influxi* (381, 20-22)

374, 20-24 festinanter – adgressus: a frenzied συναθροισμός

374, 20-21 festinanter, avide: synonymia

374, 21 sine liberto, sine servulo: a freedman or slave could have served as a witness and/or an assistant during the torturing For *servulo* instead of *servo*, see comm. at 18, 7 *servulis* (360, 21), note the alliteration of s, continued in *sicut*

374, 21-22 deprehenderat ... fatum: cf. *Sen Dial* 10, 2, 1 *marcentis oscitantisque fata deprendunt*, where *fata* obviously means a deadly fate

374, 22-25 manibus – casus obtulerat: this claim that the torture took place on the spur of the moment is in flagrant contradiction with 19, 12, where the father clearly has a well-equipped torture chamber at his disposal *ideo enim eculeos movebam artifex senex, ten<d>ebam fidiculas ratione saevitiae* (385, 6-7)

374, 23 dolor: personified *Dolor* is very frequently personified in the *DM*, though not in 18 In *DM* 19 it also occurs 19, 8 (380, 6), 19, 13 (386, 6), 19, 15 (387, 18), 19, 16 (388, 13) For personifications of various *affectus* in the *DM*, see Englund 1934, 5

374, 23-24 ultra vires senectutis: the expression *ultra vires* also in *Quint Inst* 11, 3, 51 (*Vox autem ultra vires urgenda non est*) and *Juv* 3, 180 (*Hic ultra vires habitus nitor*), the present instance was probably inspired by *Verg A* 6, 114 *vires ultra sortemque senectae*

374, 24 ignes ... verbera: for this collocation see comm. at 18, 4 *verberibus, ignibus, omni crudelitatis arte* (357, 3-4) The presence of these instruments jars with the

allegedly spontaneous character of the torture scene, thus going against the rhetorical rules for probability.³⁵⁹

374, 25 – 375, 1 non diviso – invado: an antithesis which contains two sets of synonyms and *anaphora* of *non* and *sed*. Note the alliteration of d, p and s.

374, 25 non diviso dolore: *dolorem dividere* is ambiguous: the first association upon hearing the phrase would not be apportioning pain, but sharing it, as in Sen. *Dial.* 11, 12, 2: *Est autem hoc ipsum solacii loco, inter multos dolorem suum dividere.*

374, 25 – 375, 1 dolore ... suspenso: also in *DM* 7, 10 (147, 12): *de pereuntibus magis saevitia fruitur dolore suspenso.*

375, 1-2 pars secreti - ipse torquerem: 'a necessary element of the secret' rather than 'of the seclusion of the place' (Sussman 1987, 231). The *epiphonema* is self-evident: if the father had not tortured his son on his own, it would not be a secret. It diverts from the question *why* the interrogation had to be secret and introduces an element of planning inconsistent with the spontaneous character of the torture as described above.

For the use of *pars* in the *DM* to define an essential characteristic, see Becker 1904, 50 n.1 with exx.; see also OLD *pars* 5e for instances in other authors. OLD only furnishes samples with infinitive or *acc. c. inf.*, not with *ut*, the use of which is of course vulgar.³⁶⁰

375, 2-4 dii immortales – invocare matrem: *exclamatio-cum-apostrophe* with *anaphora* of *quae*. The father is launching a *color*: he claims that his son *wanted* to die.

375, 2-3 contumacia ... patientia: *contumacia* usually has a negative connotation (see OLD s.v. *contumacia* 1; Sussman 1987, 231 translates 'stubbornness') and the *DM* form no exception; but here and in 19, 13 *miraris hanc in filio contumaciam, in iuvene patientiam?* (385, 12-13), the father seems to express reluctant admiration.³⁶¹ See also *DM* 2, 5 *maxima ... innocentiae contumacia* (24, 14-15). Though not in TLL, in Forc. we find two instances of *contumacia in bonam partem*: *DM* 2, 5 and Cic. *Tusc.* 1, 29 *Socrates ... adhibuitque liberam contumaciam a magnitudine animi ductam, non a superbia* – the deviant use obviously requires explanation. For the significance of (*im*)*patiens* and (*im*)*patientia* in *DM* 18 and 19, see comm. at 19, 1 *hanc patientiam ... meam* (372, 12).

375, 4 non invocare matrem: note that in 19, 15 the father says that he made it impossible for his son to speak (387, 13-18).

375, 4-5 non repugnavit – imploravit auxilium: tricolon in the form of an *asyndetic congeries*, with all three *membra* emphatically introduced by a negation.

375, 5-6 mersis tantum deiectisque luminibus: Becker 1904, 57 sees a reference to Verg. A. 11, 480: *oculos deiecta decoros* and 6, 862: *deiecto lumina vultu*. This may be so, but the expression *deicere oculos* is very frequent in Latin literature. It already occurs in Cicero (*Verr.* 4, 33; 5, 181; *Phil.* 1, 1) and can subsequently be found in Sen. *Contr.* 2, 7; *Dial.* 6, 18, 4 and 12, 13, 7; Curt. 6, 2, 6; V. Fl. 2, 410; Quint. *Inst.* 1, 11, 9; Tac. *Ann.* 1, 34, 1; *Hist.* 3, 31, 3. The only unmistakable imitation of Vergil must be Ov. *Am.* 2, 4, 11 and 3, 6, 67: *oculos ... deiecta modestos*. The expression *deicere lumina* is of course exclusively

³⁵⁹ Cic. *Inv.* 1, 29, *Rhet. Her.* 1, 16, Quint. *Inst.* 4, 2, 52-56.

³⁶⁰ *Ut* also in *DM* 14, 8 (296, 20); an infinitive is found in 8, 10 (160, 19).

³⁶¹ *Contumacia* and *patientia* are more naturally contrasted, e.g. in Col. 6, 2 *contumaciam deponit et ad patientiam laboris ... perducitur*.

poetic, occurring also Prop 1, 1, 3, the use of *mergere* in this context is much more rare, occurring only Stat *Theb* 5, 502-03 It is mentioned by Burman 1720, 366, who also quotes Sen *Her O* 1347-48 *ora quid flectis retro / voltumque mergis*³⁶², and what should be Stat *Theb* 6, 510-11 *mersum caput* and Sil 10, 78-79 *mersa nare*

375, 6-7 tamquam numquam flagella sustinuisset: this enigmatic clause is elucidated by Håkanson in his app crit *numquam* is to be read as *non*, compare *DM* 5, 23 *non ego lassitudinem tuam posco numquam otium meum* (110, 1)³⁶³ The father implies that because of his profound sense of guilt, the young man does not resist his father's merciless attack, it seems as if he feels no pain, except when he looks into his father's eyes

375, 7 tamquam meis torqueretur oculis: Tosato 1912, 45 interprets *meis oculis* as a dative 'come se fosse posto alla tortura perché io lo vedessi' In view of the preceding, the ablative case seems more likely the son is pained more by his sense of guilt when he looks into his father's eyes, than by lashes and blows This clause forms an explanation of the previous one, which is underlined by the anaphora of *tamquam*

375, 7 ictus: Becker regards *ictus* with *ignibus* (375, 8) as a form of alliteration analogous to 18,4 *inhibe ictus subtrahe paulisper ignes* (367, 20-21)³⁶⁴ but this seems rather far-fetched in view of the lack of symmetry, and the distance, between the forms

375, 8 verberibus, ignibus: for this collocation see comm at 18, 4 *verberibus ignibus, omni crudelitatis arte* (357, 3-4)

375, 8 laudatos vultus: the young man's good looks are considered an important factor in the alleged incestuous affair this is why the son is characterized as *speciosus* in the *argumentum* In *DM* 19 not much is made of this possible argument, it is touched upon earlier in the *narratio* in 19, 2 (373, 22-25 esp *aetatem in qua corporalibus bonis iuventus insolenter exultat*) and recurs briefly in 19, 9, where the son is described in passing as the young man *qui inter nos formosum malebat agere quam filium* (380, 26 – 381, 1) In *DM* 18 on the other hand the son's good looks are a source of pride for the mother (*laudandus occursibus*, 18,3 [356,13-14]), a large part of the *argumentatio* is used to invalidate them as an argument for the father's case (18, 9-10 [361, 9 – 363, 25])

Tosato 1912, 26 points out that in the *DM* individual body parts are nearly always in the plural number

375, 8-9 velut illis irasceretur: the father intimates that the son blames his good looks as an incentive for incest

375, 9 opposuit: *vultus opposuit* is in antithesis with *opposuit manus* (375, 4-5) One could call this use of *opposuit* a kind of *distinctio* or ἀντίστασις, for in the first instance it denotes a way to ward off an attack, and in the second a way to welcome it

375, 9-10 reddo testimonium novissimum pudori: *testimonium reddere* with a dative means 'to give evidence in favour of' (and hence very often 'to praise')³⁶⁵

³⁶² Burman has *cuputque [sic] mergens*

³⁶³ The use of *numquam* instead of *non* seems rare but is remarked upon by Forc 2 with a sample taken from Plaut *Asin* 3 3 40

³⁶⁴ See comm *ad loc*

³⁶⁵ In the latter sense e.g. Sen *Contr* 10 *praef* 14 *Suas* 6 22 6 24 *Vell* 2 120 1 *Val* *Max* 1 8 6 4 1 8 5 4 5 5 9 2 Sen *Ben* 3 4 1 7 11 2 *Dial* 11 3 1 Similarly in *DM* 5 4 we find *quantum pietati meae testimonium reddiderit ipsa crudelitas* (88 21 22)

Sussman's translation 'I deliver this final proof of his shame' (1987, 231) sells short the father's subtlety: he claims to have witnessed contrition, which presupposes guilt. For senses of *novissimus* in *DM* 18 and 19, see comm. at 18, 11 *novissimum* (364, 24).

375, 10 cum iam mori vellet, occisus est: *epiphonema*, *noema* and the briefest possible reference to the *status* of *relatio criminis*. See also Calp. Decl. 45: *interemi iam mori volentem*.

375, 11-13 Laudo – ausa est: this *color* is in opposition with *DM* 18, 13 *Non mehercules inprobe mihi proclamaturus hoc loco videor hominem, qui torquetur in matrem, debere coram matre torqueri. cur excluditur infelix a sua causa, a sua quaestione? adhibe speciosi cruciatibus hanc nimis amantem, huius gemitus excipe, huius suspiria oculosque custodi; si quod facinus admissum est, torquebis quidem filium, sed fatebitur mater* (367, 12-18), but meant to impute a guilty conscience to the mother. The statement is further developed in 19, 11 (383, 16-24). Note how – in contravention of the rhetoricians' rules for probability³⁶⁶ – this is the only part of the *narratio* that gives even the slightest attention to the mother's character, but mainly in terms of negation.

375, 11-12 ipsa semper – non longe: again the father insinuates that the incest took place in that very secret room (compare 374, 17 – 20, where the father describes how he unexpectedly meets his son near the same room).

375, 11-12 semper plurimum: a pleonasm that does not seem to occur anywhere else, but fits the characteristics of vulgar/African Latin ascribed to the *DM* in e.g. Deratani 1927.

375, 13 intervenire noluit, interpellare non ausa est: the isocolon, a *disiunctio*, attributes guilty fear to the mother.

375, 13-14 manibus meis gratulor: Englund 1934, 14 cites this phrase as an example of personification, where *ut non actiones, ita alia quae hominum sunt propria, tribuuntur*. Compare *DeMi* 335, 15 where a father says to his son, who may be his second wife's lover: *irascor manibus meis quod adulterum tantum vulneraverim*.

375, 14-15 quod non – inrupit: the father is thinking of the traditional *consilium domesticum*, for which see Introduction pp. 51-52. The mother's advocate objects to the fact that no witnesses were present during the torture scene in *DM* 18, 12-13 (366, 7 – 367, 2). His main objections are that those who spread the rumour should now bear witness, and that the son's innocence cannot be proved without them, so that the rumours will only be fuelled once more. At 366, 16 we read: *advoca propinquos, adhibe amicos* (see comm. *ad loc.*).

375, 15 ausus fuisset: *fuisset* instead of *esset* is of course vulgar, but hardly remarkably so, for the past participle with (plu)perfect of *esse* occurs regularly from Caesar and Cicero onwards (KS 166-67, LHS 322).

375, 16 pro filio: for *pro* in the sense of *de* (Greek περί) see LHS 271; Svennung 1922, 38-41; TLL s.v. *pro* 1436, 24-30. All their specimens occur in christian Latin and

³⁶⁶ Cic. Inv. 1, 29 *probabilis erit narratio . . . si personarum dignitates servabuntur*, cf. Rhet. Her. 1, 16, Quint. Inst. 4, 2, 52 *si personas convenientes us quae facta credi volumus constituerimus*.

have a human complement We find yet another in *DM* 19, 5 *respondere pro filio* (377, 1-2) ³⁶⁷

375, 16-18 sepelivi tamen – fecit invidiam: Obviously, the funeral is over and passed off quietly In 18, 17 we read *ego vero incesta sum, si possum moderari gemitus, conprimere lacrimas Coite in funus, omnes liberi, omnes parentes, custodite planctus meos, observate suspiria Si quid feci, si quid admisi, fatebor Ecce supra lectulum effusa feralem laceros artus et perustum complexa corpus exclamo teneo unicum meum, velut nolit invidia, meum misera formosum* (370, 14-20)

375, 16 sepelivi tamen: *tamen* makes for *emphasis* the father has buried his son in spite of the latter's alleged crimes The Roman *paterfamilias* was legally and morally obliged to provide a funeral for those in his *potestas*, unless their testaments decreed otherwise ³⁶⁸ Not to grant burial was a severe punishment, for it entailed that the deceased would find no peace As such, funerals were a source of great anxiety throughout antiquity, and this anxiety recurs time and again in ancient literature ³⁶⁹ It is also reflected in a number of declamatory laws, which demand the refusal of burial as a punishment for certain crimes *Qui causas <voluntariae> mortis in senatu non reddiderit, insepultus abiciatur* (*DeMi* 335, 337 [*approbaverit*], *Calp Decl* 20, 38, 53, *DM* 4)

Qui in calamitate parentes deseruerit, insepultus abiciatur (*DM* 6)

Parricidae insepulti abiciantur (*DeMi* 299)

Tyranni corpus extra fines abiciatur (*DeMi* 274)

Roman law did not cover any prohibitions of burial, although the bodies of criminals who had been executed had to be reclaimed from the magistrates, and those of *hostes publici* were exposed on the *scalae Gemoniae* to the Capitol, after which they were thrown into the Tiber And obviously, parricides missed their funerals when they were put into the *culleus* Some ancient Greek laws on the other hand denied burial after temple robbery, high treason and maybe, in some cases, murder The declamatory laws mentioned above therefore most probably originate in Greek law ³⁷⁰

375, 17 ossa collegi: obviously, the son was cremated After a Roman cremation, the remains of the body (ashes and bones) were collected in an urn, which was usually buried According to Toynbee 1971, 40, cremation prevailed in Rome from 400 BCE onward, whereas sarcophagi came into fashion during Hadrian's reign By the end of the second century CE more bodies were cremated than buried in Rome, the provinces followed suit some fifty years later The fact that in the *DM* only cremation and not simple inhumation of bodies occurs ³⁷¹ could support the view that they were written in the 2nd century CE

375, 17 non iniecit uxor lectulo manum: for the originally juridical term *manum* *iniecere* see comm at *DM* 18, 14 *inicio properanti quaestioni manum* (367, 20) Tosato

³⁶⁷ And probably 15 2 *nemo questus est pro filio pater* (303, 8 9)

³⁶⁸ *DS funus* IV, 3 Toynbee 1971 54

³⁶⁹ See Zinsmaier 1993 33-38, Toynbee 1971 34, 43

³⁷⁰ See Zinsmaier 1993, 22 25 See further Introduction n 95

³⁷¹ See e.g. *DM* 4, 22 (84, 2), 5, 17 (103, 2), 6, 8 (118, 13), 18, 17 (370, 18) Even in *DM* 10 in which a son arises from his grave, and 12, which deals with cannibalism, dead bodies are cremated See e.g. 10, 5 (204, 5) and 12, 27 (262 12)

1912, 48 singles out *iniecit lectulo* as characteristic of later Latin, in which the use of the dative is preferred to repetition of the preposition, but she is mistaken, for the expression *manum inicere* is always construed with the dative. For the use of the diminutive *lectulus* see comm. at 18, 17 *lectulum* (370, 17).

375, 18 *planctibus elisique uberibus*: the traditional way of mourning for Greek and Roman women. See Toynbee 1971, 45, 47.

375, 18 *mihi fecit invidiam*: it is psychologically convincing that the father, who uses innuendo as his principal weapon, should interpret his wife's mourning as a means to put him in a bad light.

Von Morawski 1881, 10-11 rightly lists *invidiam facere alicui* as one of the 'eigenthümliche Ausdrücke und Redensarten' of the *DM*, which he explains from the authors' partiality to periphrastic phrases. However, the expression does not occur exclusively in the *DM*. It can be found sporadically in authors from the Augustan age onward, such as Ov. *Met.* 4, 5, 48, Liv. 38, 43, 2, V. Max. 5, 7, 2; Petr. 107, 10, Juv. 15, 123, Suet. *Cal.* 56, 1, all of whom we know, or at least strongly suspect, to have frequented the rhetors' schools. In those schools, the expression was most popular, as can be seen in the various collections of declamations. Sen. *Contr.* six times³⁷²; *De Mi.* nine times³⁷³; *DM* nineteen times³⁷⁴. The only instance of *invidiam facere* in Quint. *Inst.* is 9, 2, 85, where it is used in connection with a *controversia*. It is quite plausible, then, that the expression originates in the rhetors' schools, possibly as a technical term for rousing indignation.

375, 19-20 *unde – nihil interrogavit*: the section ends in an *epiphonema per subiectionem*.

375, 19 *prorupit, exiluit*: a doublet of synonymous metaphors. Mosshamer 1939, 41 mentions *prorupit* as one of the *imagines, quae ex sermone militum ac gladiatorum haustae sunt*, it recurs 19, 6 (*in opprobria, sermocinatio of matronalis indignatio* speaking to a husband 377, 21) and 19, 9 (*in facinus*, said of the son: 381, 5) and is rather a conventional metaphor (TLL s.v. 2163, 22 ff.). Metaphorical *ex(s)ilio*, left unmentioned by Mosshamer, is much less common. TLL s.v. 1865, 16-30 mentions *DM* 19, 4, Don. Ter. *Andr.* 145 (*in gemitus*), Amm. 21, 5, 8 (*in privatorum damna*), which are the only pagan works in which it occurs.

375, 21-24 *Possum iam – patientia*: the conclusion of the *narratio* neatly corresponds with the beginning of that of *DM* 18 in 18, 3 *fas est, fas est innocentissimae matri velut in templis, velut apud ipsos proclamare superos: 'amavi filium meum!'* (355, 15-17).

375, 21-22 *Possum ... possum*: non-contiguous *geminatio*.

375, 21 *coram liberis ac parentibus*: the mother's advocate in 355, 15-17 makes her appeal only to the gods, but he has used this phrase already in 18, 1 (353, 15-16). Here,

³⁷² 1, 1, 18, 7, 3, 4, 10, 1, 9 (*in diviso*), 10, 1, 11, 10, 4, 15, 10, 6, 1.

³⁷³ 260, 10, 260, 26, 279, 16, 283, 2, 294, 8, 315, 21, 318, 4, 337, 1 and 2 (both in *sermo*).

³⁷⁴ 1, 16 (17, 22), 5, 11 (95, 4), 5, 12 (97, 1), 5, 21 (107, 10), 8, 14 (165, 8), 10, 9 (208, 15), 12, 28 (263, 6), 15, 2 (303, 11), 15, 7 (308, 18), 16, 6 (325, 5), 16, 11 (330, 7), 17, 4 (335, 11), 17, 7 (339, 4), 19, 4 (375, 18), 19, 9 (380, 18), 19, 10 (382, 5), 19, 14 (387, 8).

as in 18, 1 it is used to make the audience identify with both son and parent; it is resumed in *audientibus diis hominibusque* to form a *disiunctio*.

375, 22-23 clamare: et ego amavi filium meum: *et* indicates that a *comparatio* will follow between the mother's clinging, insalubrious affection and the father's tough, healthy love. Ritter 1967², 69 rightly observes a connection with 18, 3 *fas est ... proclamare: 'amavi filium meum!'* (355, 15-17).

375, 23-24 non osculis, non infirmitate, non lacrimis, sed viribus, dolore, patientia: note the emphatic anaphora of *non*. The double asyndetic συναθροισμός forms an antithesis, which occasions Gunderson 2003, 218 to remark: 'Each of these harsh terms replaces love as kindness with love as punishment.' His conclusion is too simple. The kisses, weakness and tears, which stand for the mother's feminine love, are rejected and replaced with strength, grief and forbearance, i.e. masculine love. This is not punishment, but the kind of love which would bring a father to save his son's life at the risk of his own (375, 24 – 376, 2). In this case, it eventually happens to culminate in the horrendous punishment as an ultimate act of fatherly love. There is a certain parallel with 18, 4: *Ponite nunc ante oculos, iudices, duorum parentum confessionem. Mater exclamat: 'filium amavi!'* pater dicit: '*occidi*' (357, 8-10). Note also the scoff in *DM* 8, 7 *unde velocissimus transitus est in rigorem, liberos vultis amare patientia* (157, 22-23).

For similar views on the difference between fatherly and motherly love see e.g. Sen. *Dial.* 1, 2, 5-6: *Non vides quanto aliter patres, aliter matres indulgeant? illi excitari iubent liberos ad studia obeunda mature, feriatis quoque diebus non patiuntur esse otiosos, et sudorem illis et interdum lacrimas excutiant; at matres fovere in sinu, continere in umbra volunt, numquam contristari, numquam flere, numquam laborare.* 6. *Patrium deus habet aduersus bonos uiros animum et illos fortiter amat et 'operibus' inquit 'doloribus damnis exagitantur, ut verum colligant robur.'*

For the significance of (im)patiens and (im)patientia in *DM* 18 and 19, see comm. at 19, 1 *hanc patientiam ... meam* (372, 12).

375, 24-25: unicum – morte servassem: willingness to give one's life or surrender one's person for others is an important *topos* in the *DM*. It is usually displayed by sons. In *DM* 2, the son has risked his life to save his parents from a fire, losing his eyesight in the process; in *DM* 4, the son asks permission to kill himself, because it has been predicted that he will kill his father. In *DM* 6, 9 and 16, the sons are prepared to take the place of a father held hostage by pirates (6)³⁷⁵ or that of friends taken prisoners by pirates and gladiators (9) and a tyrant (16). In the other collections, the *topos* occurs less frequently. A woman by previous agreement throws herself off a cliff upon the news of her husband's death in Sen. *Contr.* 2, 2; in *Contr.* 9, 1 Cimon offers to go to prison to take the place of his dead father Miltiades, who can then be buried.³⁷⁶ Only in *Calp. Decl.* 26 is there a self-effacing father, who wants to be punished instead of his son. In most cases, then, it is the son who sacrifices himself; the father in *DM* 19 therefore turns the *topos* upside down.

³⁷⁵ This theme is referred to in *DeMi.* 257, 11.

³⁷⁶ This theme is referred to in *DeMi.* 302, 5.

375, 25 vicaria morte: also in Sen. *Contr.* 2, 5, 8; *DM* 9, 22 (197, 7); Hyg. *Fab.* 51, 3 and 243, 4 (both concerning Alcestis). Compare also Sen *Contr.* 2, 2, 1 (*anima*); *DeMi.* 302, 5 (*corpore*); *DM* 16, 3 and 7 (322, 11 and 326, 11: *corpus*). In cases where the sacrifice does not necessarily end in death, we often find the expression *vicariae manus*.¹⁷⁷

375, 25 – 376, 2 si subitum – parte membrorum: in the light of the inverted *topos* of the previous clause, this could be a subtle reference to *DM* 2.¹⁷⁸

375, 25 – 376, 1 subitum cinxisset incendium: the *hyperbaton* illustrates the encirclement. Becker 1904, 57 sees an allusion to Verg. *A.* 1, 673 (*cingere flamma / reginam meditor*); he also mentions *A.* 9, 160 = 10, 119 (*moenia cingere flammis*) and 12, 810-11 (*flammis cincta sub ipsa / starem acie*). One could add Sen. *Tro.* 560-62 (*non acri latus / utrumque flamma cincta maternam fidem / umquam exuissem*).

376, 2 eripui malignitati, abstuli famae: the murder has thus become an act of heroism and, paradoxically, been put on a par with the saving of a life. Englund 1934, 14 cites this phrase as an example of personification, where *ut non actiones, ita alia quae hominum sunt propria, tribuuntur*. Obviously, one could also argue that *malignitas* and *fama* are abstracta for the gossiping *civitas*, considering the isocolon as a doublet of metonyms.

376, 2-3 habeo quod imputem tibi, natura, pietas: A short apostrophe.

With Lehnert 1905, 340, Håkanson prefers to read *natura* instead of *naturae*, which is found in Burman 1720, 367 and derived from mss. Mßγ. Håkanson 1974, 27-28 with reference to *DM* 2, 2 *rerum natura[e], pietas* (22, 13-14) cites a convincing number of parallels: 8, 22 *sed ignoscat natura, pietas* (173, 12-13); 17, 12 *quid ais, rerum natura, pietas?* (343, 18). To these examples one could add 19, 16 *explicui[t] te, sollicitudo, pietas* (388, 25-26).

Because of *tibi, natura, pietas* should be regarded as a hendiadys. It fits in with the father's attempts to pass off the murder as the ultimate act of fatherly love. Englund 1934, 18-19 regards *natura, pietas* as a simple asyndeton and a *dura satis personificatio*. It is, I think, slightly less *dura* when taken as a hendiadys.

376, 3-4 rem difficillimam – potius occidi: the *narratio* is concluded with an enthymeme (*sententia cum ratione*) which is also an *epiphonema quasi extrema insultatio*. Once more, the father presents the murder of his son as a difficult achievement.

¹⁷⁷ *DeMi.* 257, 11; *DM* 6 *arg.* (110, 16); 6, 5 (115, 19); 6, 21 (133, 17); 9, 8 (182, 6); 9, 20 (194, 20); 9, 23 (198, 15); 16, 6 (326, 2) Sussman 1994, 175 (comm. at Calp. *Decl.* 26) gives samples of the frequent non-legal use of *vicarius* in Roman declamation.

¹⁷⁸ See *DM* 2 *arg.*: *patrem extulit*.

Propositio (376, 5-10)

376, 5 *Malae tractationis accusat*: After the *narratio* has ended with an *epiphonema*, there follows a *nuda propositio*, which is part of the *argumentatio*. Instead of a *partitio*, we then find a discussion of the suitability of the *actio malae tractationis*. I will treat it along with the *propositio*¹⁷⁹

For *accusare per nudum genitivum* see TLL s.v. *accuso* 351, 32-64, it occurs especially frequently in Sen. *Contr.* and the *DeMi*.

376, 5-10: the discussion of the law takes the form of an *apostrophe* consisting of three *interrogationes*, concluded with a double *sententia*. As in *DM* 18, 5, there is no mention of the silence which ostensibly provoked the charge of *mala tractatio*. The father's approach is quite aggressive: he attacks the mother's choice of *actio* and does not shun harsh terms to refer to his own acts (*parricidium*, 6, *occidit*, 7, *parricidae*, 8).

376, 5-7 *adeone – filium suum*: again, the father tries to twist things around and to pass himself off as the actual victim of the murder. He uses his first *interrogatio* to rouse pity, stating that he has been punished enough. In doing so, he borrows a *locus* from the *status deprecativus*, which falls under the *constitutio iuridicialis assumptiva*, or more specifically under its species *concessio* or *συγγνώμη*. *Concessio* occurs when the defendant admits that he has done something wrong and tries to excuse it.¹⁸⁰ It is subdivided in two: *status purgatio* occurs where the defendant denies responsibility for his acts. He usually adduces *imprudencia*, *necessitas* or *casus*,¹⁸¹ Fortunatianus adds *oblivio*.¹⁸² The *status deprecativus*, on the other hand, is the weakest possible form of defence, because no trouble is taken to deny either the defendant's act or his responsibility. The only way to make up for these is to adduce redeeming factors from the defendant's personal circumstances, such as breeding, a blameless past and promising future life and, which is relevant here, his unhappiness resulting from the case at hand. *Rhetores* caution that it is hardly ever possible to use such a defence, if it is used in a case, it should not be its *main status*.¹⁸³ Accordingly, the main *status* of *DM* 19, 5 is *relatio criminis* / ἀντέγκλημα, the *locus deprecationis* is almost mentioned in passing.

Note how the subject of the sentence is changed halfway from [*ego*] to *pater*, which gives it a more sententious and dramatic character.

376, 5 *adeone ... parum*: an awkward collocation, probably colloquial and maybe prompted by Stat. *Silv.* 3, 2, 67 *usque adeone parum lentas transire paludes* and Theb. 4, 673 *usque adeone parum cineri data mater iniquo*. It does not occur anywhere else, except

¹⁷⁹ The same procedure is followed in *DM* 18, 5 (357, 20) to which I refer for a fuller commentary with references.

¹⁸⁰ See e.g. Cic. *Inv.* 1, 15 (*Concessio est cum reus non id quod factum est defendit sed ut ignoscatur postulat*) and 2, 94-103. *Rhet. Her.* 1, 24 and 2, 23-24, Quint. *Inst.* 7, 4, 14 (*excusatio*), Fort. *Ars* 1, 16 (*venia* RLM 93-94). *Iul. Vict. Ars* 3, 8 (RLM 380-81), *Isid.* 5, 8 (RLM 509), Lausberg 186.

¹⁸¹ Cic. *Inv.* 1, 15 and 2, 94, *Rhet. Her.* 1, 24 and 2, 23, Quint. *Inst.* 7, 4, 14-15, *Isid.* 5, 8 (RLM 509), Lausberg 187-191.

¹⁸² *Ars* 1, 16 (RLM 93-94).

¹⁸³ Cic. *Im.* 1, 15 and 2, 104-109. *Rhet. Her.* 1, 24 and 2, 25-26. Quint. *Inst.* 7, 4, 17-20. Fort. *Ars* 1, 16 (*deprecativa venia* RLM 94). *Isid.* 5, 8 (RLM 509).

DM 13, 14 *adeo parum est plurimum possidere, ut* (281, 3-4) For the particle *adeone* see comm at 18, 13 *adeone* (367, 4)

Note the alliteration of *parum* with *poenarum post parricidium* in 376, 6 Zinsmaier 1993, 126 remarks 'Alliterationen auf das explosive 'p' scheint man unter den Deklamatoren als besonders effektiv geschätzt zu haben' He adduces, among others, examples from DM 18, 17 (*praecipiti pietate properassem* 371, 6-7) and 19, 11 (*pati pudorem parricida* 384, 2)

376, 6 parricidium, ut: All mss have *periculum et, parricidium, ut* was already suggested by Schultingh (see Burman 1720, 367) and rightly adopted by Burman, Lehnert and Håkanson *Periculum* would fit in none of its meanings, whether danger (which would be incurred by the son rather than the father) or trial (which yet had to come to pass), and although *periculum* can sometimes mean death (TLL s v *periculum* 1460, 43-72), it does not mean murder *Ut* explains subjunctive *labores*

376, 6 lucrificiat: Burman (1720, 367) cites Schultingh's explanation *id est impunitum auferat quod occidit* In fact, the compound¹⁸⁴ occurs quite often in the sense of 'to have (a punishment or sim) remitted, to escape the consequences of (misdeeds, etc)' OLD *lucrum* 2b) See TLL s v *lucrum* 1725, 16-26,¹⁸⁵ notable examples are *B Hisp* 36, 1, *Plin Nat* 7, 129, V *Max* 4, 1, 10b, *DeMi* 296, 5 Both OLD and TLL wrongly add DM 11, 8 *lucri facit mortis atrocitatem, quisquis laudatus occiditur* (228, 16-17), where the point is not that this person escapes death, but that his death is sweetened by praise In DM 4, 9 we do find *lucrari* in the sense referred to *ne supplicia properato lucrarentur obitu* (70, 12-13)

376, 7-8 non pudet – irascereis parricidae: This second *interrogatio* repeats the sense of the first and prepares the way for the third, which voices the father's criticism of the law

376, 8 si<c>: All mss, followed by Burman and Lehnert, have *si*, Håkanson's emendation to *si<c>* is uncalled for, even if *si<c>* prepares a better way for the father's criticism of the use of the *actio malae tractationis* This seems to be one of the few instances where Håkanson cannot resist the temptation to correct the purport of the text rather than its tradition¹⁸⁶ *Pudet* without a complement and followed by *si* is rare, but does occur e g *Sen Ben* 2, 10, 3

376, 8-9 quid tibi – acceperis adfectus: in the third *interrogatio*, finally, the father voices his disapproval of the use of the *actio malae tractationis* His objections tally with those in DM 8, 6, 10, 9, and 18, 5, but of course he keeps silent about the declamatory convention that women had no other recourse

376, 8-9 quam propter alios minores acceperis adfectus: The mss differ here BVδ have *propter avos*, ME have *propter nos*, π has *protervos*, βAD have *propter vos*, adopted and reordered by Burman (1720, 367) as *quam vos propter minores acceperis adfectus* However, Dessauer (1898, 92) points out that the archetype was written in majuscules, which caused confusion of *li* and *n*, *li* and *u* Adding that 'Der Zusammenhang

¹⁸⁴ Correctly formed cf *cal(e)facio* and *patefacio*

¹⁸⁵ Compare TLL s v *lucror* 1717 23 64 (*quod cum lucro evitatur vel omittitur*)

¹⁸⁶ For other instances of unnecessary emendations see e g Stramaglia 2002 125 (n 101) and 152 (n 185)

rechtfertigt das betonte *vos* nicht,' he suggests *propter alios minores* (1898, 75), adopted by Lehnert (1905, 340) Håkanson 1982, *app crit* accepts Dessauer's emendation *dubitans*, adding '*suspiceris hos*', but there is no obvious antecedent for *hos* Watt 1991, 58-59 proposes *aliquos*, which seems too vague not to jar with the following specific *querelas non gemitus* and is anyway paleographically improbable

As for the subject of *accepistis*, this could be either the citizens, represented by the jurymen, who accepted the law³⁸⁷ or women in general, represented by the mother, who were 'given' this law

376, 9 *adfectus*: the effect is used metonymously for its cause (crimes) For this kind of metonymy, see *Rhet Her* 4, 43, *Quint Inst* 8, 6, 27, *Isid* 1, 37, 10, *Beda De Trop* (RLM 613) Cause representing effect is far more common than the other way around, it is the only form mentioned by the first two authors

376, 9-10 *querelas habet – conplorat uxorem*: together with the previous *interrogatio*, these two *sententiae* form a *subiectio* Both are *sententiae ex contrariis* in which *lex* is personified

376, 9-10 *querelas ... non gemitus*: specifies the *adfectus* in 376, 9 In most *DM*, both terms are equally useful to denote serious grief, see e g 14, 2 *altius gemitus, altius querela repetenda est* (289, 18) *Querela* is however also used in a technical-juridical sense, referring to 'Klage im Kognitionsverfahren, Beschwerde, Beschuldigung, Anklage',³⁸⁸ see e g *DM* 5, 10 (94, 18), 8, 14 (165, 13), 17, 6 (337, 4) In the discussions of the law concerning *mala tractatio* both senses are relevant, but the emotional value of *querela* is deliberately played down See *DM* 8, 6 (*uxorias querelas, matrimoniorum delicias*, 156, 8), 10, 9 (*uxorias querelas et delicata matronae desideria*, 208, 4-5)

376, 10 *matre seposita solam conplorat uxorem*: The *sententia* is incompatible with *DM* 8, 6 (*ego illam datam miseris tantum matribus puto*, 156, 9-10) and inconsistent with *DM* 18, 5 (*quid tamen facere vultis miserum dolorem, si non habet aliam sexus hic legem, si intra iuris huius angustias omnis nuptiarum querela constricta est?* 357, 24-26) For the partition of a person in his or her various roles see comm at 19, 11 *post exitum – in patrem* (383, 8)

³⁸⁷ For semi technical *legem accipere* ('to accept a law') see e g *Liv* 2, 57, 4, 3, 15, 1 (see comm ad loc by Weisenborn & Müller, Berlin 1962 [1874]) 34 2 6

³⁸⁸ Heumann-Seckel s v *querella*

Potestas

Argumentatio: confirmatio 19, 5-6 (376, 11 – 377, 16)

Contrary to that of *DM* 18, the *argumentatio* of *DM* 19 has a chaotic structure and elusive contents. It is probably intended this way, for *DM* 19 is, and has to remain, an inscrutable *controversia figurata*. Ritter's arrangement of the *argumentatio* (376, 11 – 380, 9 *confirmatio*, 380, 10 – 387, 12 *refutatio*) is over-simplified and far too rigid. In reality, elements of *confirmatio* and *refutatio* alternate quickly in a complicated pattern. The first section, concerned with *confirmatio*, is contained in a single paragraph in Håkanson's edition, but can be divided into three parts, all of which are addressed to the mother.

376, 11-13 *Rursus ad – aut dici* the transition from *propositio* to *argumentatio* is effected by pointing out the consequences of commencing an *actio malae tractationis* while the father's actions had been aimed to put an end to all rumours, the mother has ruined his scheme by directing attention to the family drama once more.

376, 13-25 *iam vero – quam vindicare* the mother has no claim to the *patria potestas*, let alone the *vitae necisque potestas*. If a father chooses to exercise this right, this is done as an act of love.

376, 25 – 377, 17 *desine igitur – occisus est* the mother must stop asking questions, the killing was deliberate and well-considered. The horror of the murder – and therefore the father's valour – is underlined in an *excessus* in the form of a *sub oculos subiectio*.

376, 11 ad populum vocas: cf. Cic. *Fin.* 5, 85 *Si enim ad populum me vocas, eum qui ita sit affectus, beatum esse numquam probabis*.

376, 11 miserum pudorem: for this expression, here personified, see comm. at *DM* 18, 2 *miserum pudorem* (355, 8).

376, 11-12 materiam novi rumoris accendis: the mother's advocate, conversely, argues in 18, 12-13 (366, 7 – 367, 2) that the secret torture will provoke more rumours. See esp. 366, 23 *iterum dantur malignis alimenta sermonibus*.

The present metaphor, like *DM* 18, 6 *accendit fama* (359, 17, see comm. ad loc.) is unique. We find *accendere materiam* in a literal sense in *Aetna* 456-57 and *Plin. Nat.* 37, 167.

376, 12 perdidit ... rationem secreti mei: the father means 'I have been defrauded of my scheme for a secret interrogation' rather than 'I have lost my grounds for keeping this secret' (Sussman 1987, 232). For the expression *rationem perdere*, compare *DM* 15, 1 *ne sit ullus iustior dolor quam benefici sui perdidisse rationem* (302, 1-2) and *Calp. Decl.* 13 *confinjunt nocendi voluntatem, postquam sanandi rationem perdiderunt*. The father presents the secret torture as a deliberately arranged (and benevolent) action: compare 19, 3 *pars secreti fuit, ut ipse torquerem* (in flagrant contradiction with what precedes, 375, 1-2), 19, 11 *ne parricidi me velis agitare secretum* (383, 5), *totum secreti illius ordinem* (383, 12-13). The *ratio* is explained in the next sentence (*sic omnia – aut dici* [376, 13]). It is refuted in *DM* 18, 13 *at tu, nefande, crudelis, tollis quaestionis alteram partem efficis, ne possit amplius innocens esse, qui tortus est* (366, 20-22).

376, 13 sic ... ne: *ne* instead of *ut non* since the clause expresses an intended, not a factual consequence, see LHS 641-42 and KS 2, 249, which states however that *ut ne*, being more solemn and emphatic, is preferred to simple *ne*. In the *DM* we only find *sic ne*, see 2, 6 (25, 13-14), 7, 9 (146, 5-6), 17, 5 (346, 22)

376, 13-17 iam vero – necisque commissum: the father refers to his *vitae necisque potestas*, for which see the first chapter of the Introduction

376, 14 quid inpuidentius, quid indignius: the father's indignation is underlined by anaphoric *quid* and the alliteration and *homoeoptoton* of the two adjectives

376, 14-15 de liberis ... licere tantundem: '*de fällt auf*' (Ritter 1967², 68), *licere* is usually connected with *in*. See OLD *licet* 3b and compare two similar phrases found in Sen *Ep* 47 '*Servi sunt* ' *Immo conservi, si cogitaveris tantundem in utrosque licere fortunae* (47, 1), *Quotiens in mentem venerit, quantum tibi in servum tuum liceat, veniat in mentem tantum in te domino tuo licere* (47, 11). Alternative *de* is rare, but not confined to any particular period. See TLL s.v. *liceo* 1362, 29-32 with Cic *Inv* 1, 102, Verg *A* 6, 502, Sen *Dial* 2, 10, 3, Plin *Pan* 36, 3, Tert *nat* 1, 7, 1, *mart* 4, 9, Paneg 4, 12, 3. See also *DM* 11, 6 *si de criminibus nostris tantundem mendacius licet* (225, 2-3)

376, 15-16 et aequum – esse contendunt: rephrases the preceding sentence. Note how neither sentence (nor following *nesciant*) contains a subject: the father evidently wants to present his complaint as a familiar one about women in general. Compare 19, 6 *indignatio vestra* (377, 18). The mother's advocate in *DM* 18 lays no claim to equal rights for mothers and fathers, but we find vehement criticism of the inequality in *DM* 8, 6-7 *Ecquid, iudices, vel ex hoc totus animus mariti, tota tristissimae coniugis calamitas perspicui potest, quod se negat matri communium liberorum debere rationem? placet ergo, mortales, ut de hominibus, in quos plus ex harum sanguine, ex harum transit anima, non habeant partem nisi tantum doloris? () si mehercules fas est aestimare, utri plus parenti debeatur ex liberis, non improbe totam potestatem sibi vindicabit adfectus, qui decem mensibus ante vestram incipit diligere notitiam, et, cum vos patres gaudium primum faciat oculorum, ante sunt conscientia matres facinus est ideo tantum illis minus licere, quia minus facere sufficiunt* (157, 5-19), *mali tantum patris interest, ut matri minus liceat* (158, 7-8). The father in *DM* 6, 14-15 on the other hand waives his paternal rights because he would rather consider the fairness and priority of either parent's claim: *poteram quidem fortiter dicere 'pater iussi hoc nomen omni lege maius est, tribunos deducimus, candidatos ferimus, ius nobis vitae necisque concessum est si non fecerit quod iubeo, non deferam illum ad sepulturam' necesse habuit parere () sint sane iura paria, sedeatur medius inter duos filius iudex, non conparabo personas, quamvis apud omnes gentes plus iuris habeat pater sit sane natura communis () fuerint quidem ista facienda, sed ego ius meum reprimo* (126, 7-18)

376, 16-17 arbitrium vitae necisque: the technical term is *vitae necisque potestas, arbitrium* we find Sen *Contr* 2, 3, 11 and, in a non-technical sense, Sen *Ep* 4, 8, 8, Tac *Hist* 4, 62, 1, cf Sen *Cl* 1, 1, 2, *Dial* 11, 16, 2

376, 17-19 non est – quia liceret: a doublet of synonymous gnomic *sententiae* that seem trivial and platitudinous: from the cases listed in the introduction (pp. 49-50) it is obvious that the random killing of sons did not usually go unpunished. But in fact, the

sententiae contain a heavy *emphasis*: the father implies that the son was guilty of a capital crime. An opposite point of view is found in *DM* 8, 7: *quam multa ideo tantum de filiis facitis, quia licet! et frequentius potestatis vestrae iactatione tamquam aliquo gravitatis genere delinquitis* (157, 23 – 158, 2). Note how 8, 7 uses the indicative for the embittered establishment of a fact, while here the subjunctive expresses a certain willfulness on the part of the perpetrator. Compare further Calp. *Decl.* 45 where a father kills his son to save him from a fate worse than death: *feci quod licebat: occidi filium. sed ingens pater praemium retuli: occisus est ante quam moreretur.*

376, 18 tantum ideo ... quia: the same emphatic construction in another gnomic *sententia* in *DM* 16, 2: *minus debetur homini, qui aliquem ideo tantum amat, quia necesse est.*

376, 19-20 viscera unci lacerare suffeci; ignosce. si non potes, mihi crede: nemo...: Burman 1720, 367 reads *Viscera unci lacerare suffeci. Ignosce, si non potes mihi credere: nemo...*; Lehnert 1905, 340 nearly follows suit: *viscera unci lacerare suffeci. ignosce, si non potes mihi credere. nemo...* Their punctuation makes little sense, since there is nothing to believe: the father refuses to divulge anything. Moreover it makes the father too apologetic. Håkanson's reading, linking *potes* to *ignosce*, clears up the whole passage and underlines the father's defiant stance. His *crede* for *credere* is derived from V, one of the two best mss.³⁸⁹

376, 19 viscera unci lacerare suffeci: for *lacerare viscera*, a trite expression, see comm. at 18, 15 *viscera de tuis concepta vitalibus ... lacerasti* (368, 26 – 369, 3); compare further 18, 14 *unicum sine teste lacerasti* (368, 12). For *sufficere* as a synonym of *posse*, see comm. at 19, 2 *sufficit interrogare* (373, 15).

376, 20-21 nemo filium – iuvenis invisus: another doublet of coreferential gnomic *sententiae*.

376, 20 non erit tanti: *non est tanti* (*gen. pretii*) is an expression we find in both Senecas: *Suas.* 6, 8; 7, 5; *Cl.* 1, 9, 5; *Nat.* 5, 18, 7; 6, 3, 4; further Plin. *Ep.* 3, 9, 27. For the gnomic *futurum erit*, see comm. at 18, 8 *incestum diligens suspectum non erit, negligens deprehendetur* (360, 22-23).

376, 20-21 iuvenis invisus: cf. 19, 8 *iuvenem cunctis pignoribus invisum* (380, 11).

376, 21-23 illud est – posse misereri: an observation quite in line with the *locus communis* on tough paternal love in 19, 4 (375, 22 – 376, 2).

376, 21 usque ad parricidium terribile: cf. Liv. 28, 20 6 *usque ad infantium caedem ira crudelis pervenit*; Tac. *Ann.* 14, 1, 3 *credente nullo usque ad caedem eius duratura filii odia*. Paradoxically, here it is love rather than anger or hatred that leads to murder.

376, 22 quod amant: Sussman 1987, 232 translates the instances of *quod* that introduce the three cola of the following *congeries* as 'since'; his translation is viable, but if *quod* is taken as a relative pronoun, it produces a forceful paradox quite in line with the *epiphonema* that concludes the section (*maioris adfectus – quam vindicare*, 376, 24-25).

³⁸⁹ See Håkanson 1982, IV-VI.

376, 22 quod succurrunt: cf 19, 10 *putas iuvenem vivere potuisse, cui iam non poterat nisi morte succurri?* (382, 8-9)

376, 22 sibi videntur: seems to weaken the father's statement But *sibi videri* is also used to refer to what is regarded as a fact in *DM* 8, 3 (154, 1) and 18, 1 (353, 10)

376, 23 misereri: in ironic contrast with *DM* 4, 21 *dicam 'miseremini', dicam 'succurrite'?* sic rogari contra mortem solet (83, 10-11)

376, 23-25 non est – quam vindicare: cf 19, 2 *ne vos orbitatis miseratione confundat sola mater, neve maximae calamitatis ibi tantum putetis resedissem sensum, unde vos lacrimae gemitusque conveniunt mei magis debetis in uxoris conparatione misereri, qui filium et perdidit et occidit ego sum infelicior ex parentibus duobus, qui quicquid, iudices, ista conplorat, et pator et feci* (373, 8-14)

376, 23-24 aestimatione malorum meorum: cf 9, 6 *est quidem felicibus difficilis miseriarum vera aestimatio* (180, 18), 9, 17 *sed sane superbius aestimet miserias longa felicitas* (191, 13-14), compare further 6, 17 *haec tua calamitas erat, aestimemus meam* (128, 18)

376, 24 mollior sexus: a personification, like Tac *Ann* 3, 33, 3 *imbecillum sexum*, *DeMi* 368, 3 *imbecillior sexus*, *DM* 8, 7 *sexus infirmior* (158, 10), 18, 5 *infirmus huius sexus* (358, 7-8) The collocation of *mollis* and *sexus* is otherwise unknown, but must be a sneer at the mother's weak love for her son, cf the comparison in 19, 4 *et ego amavi filium meum, non osculis, non infirmitate, non lacrimis, sed viribus, dolore, patientia* (375, 22-24)

376, 24-25 maioris adfectus est filium occidere quam vindicare: an *epiphonema* in the form of a gnomic *sententia* (*per conparationem, ex inopinato* Quint *Inst* 8, 5, 5 and 8, 5, 15), though put with great aplomb, it is hardly self-evident

376, 24 maioris adfectus: the *genitivus qualitatis* is unique, likewise *DM* 8, 2 *maioris pietatis* (152, 24)

376, 25 vindicare: deliberately ambiguous The father may refer to the mother's *actio* (OLD *vindicare* 4b 'free from blame, absolve') or to his own fatherly love (OLD *vindicare* 5c 'punish')

376, 25 – 377, 2 desine igitur – 'occidi': cf 19, 12 *desine, mulier, interrogare, filium, quem occidit pater, nec absolvere, nec accusare iam debet* (384, 6-7) Both pronouncements are enthymematic and function through *emphasis* previously, it has been explained that no father will ever kill his son other than in dire necessity, as a last resort This son has been killed, therefore, the killing must have been justified by terrible guilt on the son's part

376, 25 – 377, 1 fatigare interrogationibus: also in Liv 41, 7, 5, Tac *Hist* 4, 41, 3

376, 1-2 respondere pro filio: for *pro* in the sense of *de* (Greek περί) see comm at 19, 4 *pro filio* (375, 16) Here *pro* may also have been used to suggest that the father speaks in his son's interest

376, 2 qui dicit: 'occidi': note the impersonal construction here and in the next sentence, intended to objectify the father's actions For his lapidary statement, see comm at

DM 18, 15 'occidi' (369, 5) Compare especially 19, 13 *Quod sufficit igitur, interrogantibus respondeo, mulier occidi* (385, 15-16)

377, 2-3 et licet – hoc fatetur: nearly synonymous with the previous sentence, but phrased antonymously (*omnia respondere – nihil negat*)

377, 2 et licet: *et* seems superfluous. It would be better for it to be followed by a comma, so that it connects the two main verbs (*videtur – negat*) of the synonymous sentences. For similar constructions see DM 4, 20 (82, 6-9), 7, 6 (143, 7-9)

377, 2-3 comprimantur exclamationes, ora claudantur: The father refers of course to his self-imposed silence in this chiasmic synonymia. *Ora* is a common poetic plural (see Becker 1904, 31)

377, 3 nihil negat, qui hoc fatetur: an antithetic *epiphonema* with heavy emphasis. *nihil negat* is rightly translated by Sussman 1987, 232 as 'says it all', for it implies the son's guilt once more

377, 4-13 atquin summorum – suis causis: this part of the text is problematic. Burman 1720, 367-68 read *atqui summorum facinorum ipsa immanitas innocentia est filium pater non demens, non insanus occidi hominem extra sensus adfectusque positum, quisquis nunc miseratur, occidit* [6] *vides senem, sanguine suo fluentem, laceratis exustisque illis sanctoribus carioribusque visceribus, super exanimis unci corpus cruentis manibus iacentem?* *horreo cadaver, et velut corpora, quae caelestis exanimavit ignis, adire propius timeo*. *ad quaedam facinora sufficit claudere oculos, vultus avertere, tacere, mirari et incredibilis calamitates relinquere suis causis*. Lehnert 1905, 341 followed Schultingh, who remarked (in Burman 1720, 368) *sunt autem omnia accipienda tamquam eo dicta ut ostendatur ita recens factum esse, ut adhuc fieri videatur, et quam ipsi patri sit illius cogitatio dira et molesta* and proposed to transpose a sentence *atquin summorum facinorum ipsa immanitas innocentia est filium pater non demens, non insanus occidi hominem extra sensus adfectusque positum quisquis nunc miseretur, occidit* [6] *vides senem sanguine suo fluentem laceratis exustisque illis sanctoribus carioribusque visceribus, super exanimis unci corpus cruentis manibus iacentem?* *ad quaedam facinora sufficit claudere oculos, vultus avertere, tacere, mirari et incredibilis calamitates relinquere suis causis* *horreo cadaver, et velut corpora, quae caelestis exanimavit ignis, adire propius timeo*

Håkanson 1974, 148-49 has made a number of important emendations which render the text considerably less obscure. He retains Burman's arrangement of the text since that by Schultingh does not provide sufficient coherence, but makes a number of textual changes that do

Earlier editions regard *hominem extra sensus adfectusque positum* as the object, and *quisquis nunc miseretur* as the subject of *occidit*, which makes little sense, especially in view of awkward *nunc*. This is changed to *non* on the basis of ζ, *occidit* becomes *occidi*, so that a non-contiguous *geminatio* has been created, interrupted by the insertion of a parenthesis *hominem extra sensus adfectusque positum* (*accusativus exclamationis*), *quisquis* (indefinite relative pronoun) *non miseretur*. Håkanson lists a number of analogous accusatives. DM 19, 2 *felicem ignoracione conscientiam matris, quae sufficit interrogare* (373, 14-15), 19, 12 *miseram parricidi innocentiam quod hoc me non potestas*

interrogat (384, 8-11) and – most importantly – 7, 6 *o te extra omnes humanorum pectorum adfectus, inimice, sepositum* (142, 14-15). We can further add 10, 16 *o sceleratum hominem, quisquis luget et timet, ne hoc perdat* (216, 2-4). Watt 1982, 33 objects: ‘I cannot understand such an accusative being followed by *quisquis non miseretur*. It is surely much easier to take *hominem* as the object of *miseretur*, and to read *positum quisquam non miseretur? occidi: vides...*’ His proposals cut no ice. The *accusativus exclamationis* is followed by a relative clause and has a significant parallel in *DM* 10, 16, as we have seen; but *quisquam* would postulate a subjunctive (*misereatur* or *misereretur*) and besides, *misereri* always has its object complement in the genitive case in the *DM*. This also makes Sussman’s translation (1987, 232) problematic: ‘But would not anyone pity a man transported beyond the capacity for judgment and past his feelings of love?’ Rather read: ‘Whoever feels no pity is a man transported beyond the capacity of judgment and past his feelings for love.’

The deletion of *o* in *horreo* and *timeo* is drastic, but vital, since the mother is being addressed the whole time: ‘Warum sollte sich der Vater selbst vor der Leiche fürchten? Hier handelt es sich ja darum, die Mutter von weiteren Fragen abzuschrecken.’ (Håkanson 1974, 149). But Watt 1982, 33 goes too far: ‘palaeographically preferable would be *horreto* and *timeto* (the latter produces as good a clausula as does *time*).’ The *DM* make no use of the *imperativus futuri*, except in the familiar forms *memento* (3, 10 [51, 18]; 17, 7 [338, 23]; 18, 14 [367, 22]); *mementote* (3, 9 [50, 15]); *estote* (see comm. at 18, 3 *estote* [355, 15]). The form *timeto* is rare³⁹⁰; *horreto* is not even found in BTL or in CLCT.

377, 4 atquin summorum – innocentia est: a (pseudo-) gnomic *sententia ex inopinato* based on a blatant paradox, enhanced by *homoeoteleuton* of *summorum facinorum* and alliteration of *i*. This *sententia* can be regarded as the essence of the father’s defence: time and again he expatiates upon the horror of the torture scene to underline his main argument, which is that both torture and murder were so terrible for him as a father to commit that he would never have done it if it had not been inevitable; but he did do it, so it was inevitable; and it can only have been inevitable if the son was guilty of incest.

377, 4 summorum facinorum: a variation upon the more common expression *summum scelus*, which can refer to all sorts of serious crimes and which we find Pl. *St.* 72; Sall. *Cat.* 12, 5; *Rep.* 1, 4, 1; *B. Afr.* 45, 2; Cic. *Rab. Perd.* 26; *Sul.* 18; *Quinct.* 44; *Sen. Ben.* 4, 37, 4; Tac. *Ann.* 12, 67, 2; 16, 8, 3 (cf. 14, 7, 5); Flor. *Epit.* 2, 8, 14; 4, 2, 55; Claud. 5, 500. *Summum facinus* on the other hand always refers to murder; see also Cic. *Cael.* 51; Plin. *Ep.* 3, 7, 12; *DM* 4, 4 (64, 9).

377, 4 ipsa immanitas innocentia est: cf. 19, 12 *miseram parricidii innocentiam* (384, 8-9).

377, 5 non demens, non insanus: The father stresses that the killing was deliberate, which is somewhat inconsistent with his account in the *narratio* (19, 3 [374, 20 – 375, 1]), but does cohere with 18, 15 *viscera de tuis concepta vitalibus, sanguinem, qui de tua fluxit anima, non insania, non furore sed, quantum vis videri, consilio, gravitate*

³⁹⁰ Ov. *Am.* 1, 8, 85; *Ars* 2, 63; *Met.* 15, 333; Germ. *Arat.* 403; 476; Mart. 3, 2, 12; 6, 49, 7; Plin. *Nat.* 18, 335 (3rd person); *Epistularum Frontonis: De feris Alsensibus: Epistulae Frontonis* 3, 10, *disticha vel dicta Catonis. collectio distichorum vulgaris* 4, 26

lacerasti (368, 25 – 369, 3, see comm ad loc) Compare also the father's taunt to his wife in 19, 12 *tu vero crede nihil aliud fuisse quam furorem, insanisse me puta* () *hoc solum non insanientis habui, quod tacebam* (384, 14-17)

Here note the *synonymia*, enhanced by anaphoric *non*, also the emphatic placing of *filium pater* in initial position

377, 5-6 *hominem extra sensus adfectusque positum*: cf DM 7, 6 *o te extra omnes humanorum pectorum adfectus, inimice, sepositum* (142, 14-15), the idiom may have been inspired by Seneca, who – unlike our author – does not use *sensus* unqualified *extra sensum officii* (Ben 6, 9, 2), *non tantum extra sensum est paupertatis, sed extra metum* (Ep 119, 10)

377, 7 *occidi[t]*: forms a non-contiguous *geminatio* with *occidi* 377, 5

377, 7-11 *vides senem – propius time[o]*: *sub oculos subiectionis* of the murder scene, as in 19, 3-4 (374, 20 – 375, 9) and 19, 15 (387, 13 – 388, 11), but now focused on the moment just after the son's death

377, 7 *senem sanguine suo fluentem*: note the strident alliteration of *s* The son's blood is streaming from his father's body, but it is also the father's blood, because he begot his son (there is no need, then, to add [with Sussman 1987, 232] 'as it were') Cf 18, 15 *viscera de tuis concepta vitalibus, sanguinem, qui de tua fluxit anima* *lacerasti* (368, 26 – 369, 3) See also *DeMi* 326, 1 where a father, after his son has sacrificed himself to ward off a plague from the city, talks of *sanguine meo servata civitas*, in Calp *Decl* 24 – *Indemnatus carnificem recusans* – the son says about his father *satis sibi faciat meo sanguine, immo et ipse suo*

377, 7-8 *laceratis exustisque illis sanctoribus carioribusque visceribus*: a double *homoeoptoton* The son's *viscera* are of course *sanctora* and *cariora* than the father's own, see the previous note with its reference to 18, 15 For the lugubrious collocation of *lacerare* and *exurere*, see also Firm Mat *Math* 8, 15, 3 *publicis tormentis lacerati, aut exusti ignibus*, further comm at DM 18,12 *perusta vitalia* (365, 18) and above 19, 5 *viscera unici lacerare suffeci* (376, 19) The collocation of *sanctus* and *carus* is also found Lucr 1, 730, Liv 35, 31, 15, 40, 8, 18, Plin *Ep* 3, 10, 3, Apul *Met* 4, 24

377, 8-9 *super exanimis unici corpus cruentis manibus iacentem*: Sussman 1987, 232 translates 'hovering with gory hands over the lifeless corpse of his only son', but a literal interpretation, the father having collapsed, exhausted, on top of his son's body, is perfectly possible and fittingly dramatic In other *DM*, we meet mothers lying on top of their dead sons' bodies 6, 7 *cum tota supra corpus incubuit, amplexam putavi* (118, 2-3), 18, 17 *supra lectulum effusa feralem laceros artus et perustum complexa corpus* (370, 17-18)

377, 9-11 *horre[o] cadaver – propius time[o]*: the father tries to inspire the mother with a religious fear of her dead son's body by means of two coreferential clauses in chiasmic order For the collocation of *horrere* and *timere* in an atmosphere of unnaturalness, compare 18, 10 *timeat oscula pater horreatque contactum* ' (363, 6-7)

377, 10 *corpora, quae caelestis exanimavit ignis*: whatever was struck by lightning, sent by Iuppiter, ranked as *funestum* for the Romans *Loci publici* were buried and marked as *fulgur conditum*, sacral law forbade to pick up or bury human bodies struck

by lightning.³⁹¹ *Caelestis ignis* as a name for lightning is predictably common: see Lucr. 2, 384; Liv. 39, 22, 3; Mela 1, 58; Sen. Nat. 6, 1, 6; Stat. Theb. 11, 483; Tac. Ann. 12, 64, 1; Hist. 5, 7, 2; Plin. Nat. 2, 82.

377, 10-12 ad quaedam – suis causis: the *congeries* refers to the father's own acts and suggests, of course, that the mother would regret learning more than she already has. Compare 19, 12 *non habent incredibilia vocem; quaedam maiora sunt, quam ut illa capiat modus sermonis humani* (384, 13-14). The period has been constructed carefully with two longer cola in chiasmus followed by two very short ones climaxing in a long and dramatic fifth.

377, 11-12 incredibilis calamitates relinquere suis causis: *incredibilis calamitas* we also find Cic. Tusc. 1, 86; Att. 3, 8, 4. By *relinquere suis causis* the father means that their causes have made them inevitable.

377, 12-13 miserere – quid interroges: For *miserere* / *miseremini* in the sense of 'please, for pity's sake' see comm. at 18, 4 *miseremini* (356, 15-16). Here, *miserere* is followed by a synonymous isocolon with anaphora of *ne quid*.

377, 14-16 dicturum me – occisus est: *interrogatio per subiectionem* of a type frequently occurring in the *DM*: see comm. at 18, 8 *dicturum me putas, non credet? nesciet esse rumorem* (361, 6-7). The current *interrogatio* can also count as a *praeteritio*, for of course the father wants to be spared himself.

377, 15 parce saeculo, parce marito, parce patri: an emotional tricolon with anaphora of *parce*. *Saeculo*, translated by Sussman 1987, 232 as 'this age in which we live', is metonymous for the people living in that age (see Forc. s.v. *saeculum metonymice pro hominibus, qui aliquo saeculo vivunt et pro moribus saeculi*; cf. OLD *saeculum* 3; Englund 1934, 17) as in *DM* 3, 11 *adversis auribus saeculi* (52, 15-16); 4, 12 *iratum ... saeculo numen* (74, 7-8); 6, 22 *omnia saecula loquentur* (133, 22-23); 8, 21 *inputare saeculo* (172, 20); 9, 8 *tacete, priora saecula* (181, 21-22); 9, 22 *quantum nulla umquam cognovere saecula* (188, 17); 12, 28 *invidiam saeculo facimus* (263, 6-7)³⁹²; 15, 4 *quodnam saeculo nefas nuntiaret hic gemitus* (305, 7); 17, 6 *quid ... nuntiet saeculo pater* (337, 5); 19, 14 *maledixit saeculo* (387, 8). Compare further Sen. Contr. 3, 2 *non absolverunt reum, sed saeculo pepercerunt*;³⁹³ 9, 6, 19 *favete saeculo, iudices, cum ingentia scelera ferat, ne etiam immatura tulerit*. For *tempora* as a similar metonymy see comm. at 18, 6 *miseremini temporum* (358, 22).

³⁹¹ See Festus, p. 82 *fulguritum, id quod est fulmine ictum, qui locus statim fieri putabatur religiosus, quod eum deus sibi dicasse videretur*, p. 190 *occisum a necato distingui quidam, quod alterum a caedendo atque ictu fieri dicunt, alterum sine ictu itaque in Numae Pompili regis legibus scriptum esse si hominem fulminibus occisit, ne supra genua tollito Et alibi homo si fulmine occisus est, ei iusta nulla fieri oportet*. See further RE X 1, 1130, Latte 1976³, 49. For a declamation on the theme see DeMi 274 *Quo quis loco fulmine ictus fuerit, eodem sepeliatur Tyranni corpus extra fines abiciatur Tyrannus in foro fulminatus est Quaeritur an eodem loco sepeliatur*. In 274, 11 we read *Neque hoc propter personam neque in honorem alicuius scripsisse potest legum lator videri, sed in reverentiam deorum fas non est visum movere ictum illum quomodo viderant flammae, ita concernendum corpus universum putaverunt Existimans locum illum corpori datum? Fulmini datus est*

³⁹² See Stramaglia 2002 n. 333

³⁹³ The case of a supposed parricide, acquitted because of an equal division of votes within the jury. Winterbottom n. 5 *ad loc.* explains 'spared it the spectacle of a condemned parricide and the trouble of so unpleasantly punishing him'

The father refers to himself in his capacities of husband and father to accentuate his grave responsibility as well as his victimhood. For this device, and its occurrence in *DM* 18 and 19, see comm. at 18, 8 *da bonum patrem, bonum maritum* (361, 5-6).

377, 15-16 tu vero – occisus est: the father implies that to be silent, like himself, is the only way to protect the son. His course of action is exposed as a ruse in e.g. 18, 1 *nec uxori potest videri parcere, de qua scire voluit, an esset incesta, nec filio, quem, tamquam sciret, occidit* (354, 2-4), 18, 2 *parcere nunc illum cuiquam tacendo creditis? loqui se cum maxime putat* (355, 3-4).

Tu vero here introduces an earnest entreaty, while usually it occurs in sarcastic orders, see 5, 12 (97, 5), 6, 23 (135, 13), 11, 9 (228, 22), 19, 12 (384, 14).

Silentium

Argumentatio: refutatio 19, 6-8 (377, 17 – 380, 8)

The second part of the father's *argumentatio* consists of a *refutatio* concerning the official charge, i.e. that of *mala tractatio* on account of his silence. It is ordered into a number of different arguments:

377, 17 – 378, 8 *Novum – fecissemus omnes*: the mother's complaint is absurd: women usually complain because of what their husbands say rather than keep silent about. Speech is more harmful than silence.

378, 9 – 379, 5 *Finge me – poterit loquentem*: an argument *a fortiori*: without going into his reasons for remaining silent, the father stresses that he doesn't betray a secret and extols the ancient virtue of silence.

379, 5-17 *nec adeo – ut taceremus*: everyone has secrets that they keep even from the people with whom they have the most intimate relationships.

379, 18 – 380, 8 *Vides – occidi*: I have always been known for my persistent taciturnity; I maintained it during the torture scene and after, and am not about to abandon it now.

377, 17 Novum ... crimen audite: Burman 1720, 368 sees an imitation of Cicero's ironic treatment of Tubero's accusation in *Pro Ligario*: *Novum crimen, C. Caesar, et ante hanc diem non auditum propinquus meus ad te Q. Tubero detulit, Q. Ligarium in Africa fuisse* (Lig. 1) and refers to Quint. *Inst.* 4, 1, 39 *Quid enim agebat aliud ironia illa quam ut Caesar minus se in rem tamquam non novam intenderet?*³⁹⁴ A similar ironical dismissal of the mother's accusation is found in 19, 2 *novo quin immo fabulosoque secum inpatientiae genere dissentit: queritur de populo, quod loquatur, de patre, quod taceat* (372, 22 – 373, 3); compare further *DM* 7, 6 *novum, iudices, inauditumque rebus humanis aperitur exemplum: nemo umquam ideo torqueri non debuit, quia mentiretur* (143, 16-18); 9, 5 *Audite, audite, iudices, novam captivi querelam: iam miser apud piratas non eram* (179, 22-23).³⁹⁵ But more often *novus* emphasizes that the speaker has gone through experiences of as yet unparalleled horror; see 4, 21 (83, 12); 8, 8 (158, 26 – 159, 1); 8, 20 (172, 7-8); 12, 4 (235, 15); 12, 9 (241, 8-9); 14, 7 (295, 12); see also comm. at 18, 9 *novitas* (362, 5). A striking parallel for the present use of *novus* is brought to bear by a taciturn son in *DeMi* 378, 2: *hanc vero novam legem, silentium crimen esse. Cum abdicetur procacitatis petulantia, sub hoc patre tacere non licet.*

377, 17 iudices: the address of the jury is short and conspiratory, creating an understanding between the father and other men of the world. Presently there will follow an apostrophe to woman in general (377, 18) before another apostrophe to the mother, in which her behaviour is contrasted with that of 'normal' women, concludes the argument (378, 3).

³⁹⁴ The same example serves Aquila 7 εἰρωνεία/*simulatio* (RLM 24).

³⁹⁵ Also *DeMi* 327, 3: *Novum et inauditum antea crimen: noverca nimum dicitur amare privignos.*

377, 17 in marito: for the use of *in* with ablative where an accusative would be expected (this instance also remarked upon by Tosato 1912, 64), see comm at 18, 12 *in illa potius vilitate desaeuiat* (365, 12)

377, 18 queritur: also in Burman 1720, 368; yet Lehnert 1905, 341 opts for *quaeritur* Håkanson 1974, 149 states that ‘in den Hss herrscht eine völlige Verwirrung, was *e-ae* betrifft’ and gives an excellent justification for his choice by adducing 19, 6 *quam non possis queri de silentio meo* (378, 7) and 19, 7 *quisquis de tacente queritur* (379, 4)

377, 18 solebat indignatio – facere rumorem: in an apostrophe to the mother (377, 18 – 378, 10) the father presents his conception of customary womanly behaviour as a *locus communis*; in fact, though complaint about termagant wives and mistresses are commonplace, there is little evidence of them complaining about their men, apart from a relevant passage in *DM* 18, 5 *omnis in feminas venit maritorum praedicatione reverentia, omnes sermones originem de vestris pectoribus accipiunt tristior vultus, querela, fastidium fatum est coniugii de pudore pronuntiat, mittit in ora populi, mittit in fabulas* (358, 9-13)

377, 18-20 solebat indignatio – dicere videbatur: a double metonymia, stressed by chiasmus both *indignatio vestra* and *matronalis indignatio* stand for indignant *matronae*. *Vestra* and *matronalis* are alternatives for the *genitivus inversus* (see comm at 18, 9 *novitas* [362, 5]; LHS 152) Various authors have commented upon the twin occurrence of *indignatio*, which is undoubtedly awkward Schultingh and Obrecht (in Burman 1720, 368) assume that the second *indignatio* is actually a misreading of *m* (*mihi*) *dignatio*, Håkanson 1982, app crit merely notes *fort vox e praecedentibus falso repetito* suggests no alternatives, Russell 1985, 45 remarks that ‘to understand *indignatio* with *matronalis* is difficult’ (but why?) and proposes *impotentia*, Watt 1991, 59 would prefer *impatientia* because of its frequent occurrence in these declamations None of the proposals is impossible (though *dignatio* occurs nowhere else in the *DM*), but it is fine to follow Håkanson and preserve *indignatio*, for our author is never that bothered about *variatio*, see e.g. above *exanimis* 377, 9 with *exanimavit* 377, 10 or, in 19, 10, *pertinere* 382, 16 and 382, 18 with *pertinet* 382, 20, see further comm at 18, 12 *nec* (365, 7)

377, 19-20 matronalis indignatio dicere videbatur: it might be argued that *videbatur* (unless it merely occurs to chiasmically balance *solebat*) causes *matronalis indignatio* to be a personification.

377, 20 – 378, 3 non parcis – facere rumorem: a short *sermocinatio* consisting of a tetracolon whose cola are organized by means of anaphora (*non nulla. facile facile*) and which culminates in a covert warning to let sleeping dogs lie

377, 20 parcis ... verbis: *parcere verbis* is a common idiom, see TLL s.v. *parco* 332, 11-18 and cf. 331, 81 – 332, 11 In the *DM* it further occurs 3, 6 *parcendum verbis est* (47, 21-22), cf. also 5, 13 *parce maledictis, parce conviciis* (98, 2)

377, 21 nostri tuus sermo reverentiam: note the artful *hyperbaton* and compare 18, 5 *omnis in feminas venit maritorum praedicatione reverentia, omnes sermones originem de vestris pectoribus accipiunt* (358, 9-11)

377, 21 prorumpis in opprobria: for metaphorical *prorumpere* see comm at 18, 16 in *prorumpenti exclamazione* (369, 23) and 19, 4 *prorupit, exiluit* (375, 19)

378, 1 quodlibet obicis, exclamas: Sussman 1987, 232 translates: 'you carelessly charge and shout out whatever you please' but this would require *quidlibet*. *Quodlibet* only occurs independently in Cels. 5, 27 and 6, 8;³⁹⁶ Larg. 179. Better to assume that *quodlibet* is used in a relative sense: 'you shout out whatever you object to'.

378, 1-2 libertati vocis: this expression also Cic. *Sest.* 14; Publ. *Sent.* I, 62.

378, 2-3 potest populus ... facere rumorem: cf. 18, 5 *omnes sermones originem de vestris pectoribus accipiunt* (358, 10-11). For *rumorem facere* de see comm. at 18, 17 *faceret alium parricida de mea morte rumorem* (371, 5).

378, 4-5 solam in nostris moribus innocentiam, voce<m> repressam [taciturnitas]: Burman 1720, 368 and Lehnert 1905, 341-42 have: *solam in nostris moribus innocentiam voce reprehensam tuetur taciturnitas*, which is hardly intelligible. Schulting's suggestions do not really improve matters: *sola in (vel de, vel ex) nostris moribus in voce (sc. populi) reprehensam tuetur (vel tuebitur) taciturnitas*. Håkanson emends the text in two stages. In 1974, 149-50 he begins by deleting *tuetur*, which is actually an addition originating in *ς*, and is quite right to argue that 'Wer die Stil der Deklamationen kennt, kann nicht glauben, dass nicht *rem, quae nulli unquam crimini fuit, solam in nostris moribus innocentiam* zusammengehören; die doppelte, asyndetische Bezeichnung der Schweigsamkeit ist rhetorisch ausgezeichnet. Zudem wird *solam – innocentiam* im folgenden mit den Worten *vide cur – occidimus* erklärt.' He feels uncomfortable with remaining *voce reprehensam taciturnitas*, which interrupt the train of thought but, as *voce reprehensa[m] taciturnitas*, could be explained as an 'Ausruf der Entrüstung' or, more probably, an interpolation. Lundström objects, arguing that the three words are indispensable for understanding the text.³⁹⁷ In 1982, Håkanson rightly decides to follow Watt's reading (1982, 34), which solves the problem: Watt bases his reading on the *β* mss., which have *repressam taciturnitatem*; he regards *taciturnitatem* as a gloss and adds that 'perhaps *vocem repressam* can stand as a second phrase in apposition.'³⁹⁸ Sussman 1987, 233 follows their reading.

378, 4 solam in nostris moribus innocentiam: silence, the father contends, is the only form of innocence because unlike speech and action, it cannot cause any harm. In *DM* 18 his own silence is denounced as a form of insinuation (i.e. actually a form of speech)³⁹⁹; this reproach is seemingly countered in 19, 13-14 (386, 9-20).

378, 4-5 voce<m> repressam: the obvious choice for *repressam* rather than *reprehensam* can be substantiated with Verg. *A.* 2, 378 *opstipuit retroque pedem cum voce repressit*; Apul. *Met.* 3, 4 *accusator a[c]cerrimum immanem vocem repressit*; V. Fl. 6, 78 *voxque repressa gelu*.

378, 5-7 vide – torquemus, occidimus: contrary to silence, actions and words can do a great deal of harm. The actions mentioned by the father are those which he inflicted on his son; his reference to words may therefore be a veiled threat. Note the chiasmic

³⁹⁶ And with adjectives and past participles in 2, 17, 3, 20, 4, 26, 4, 27, 5, 27 (three times); 5, 28

³⁹⁷ Lundström 1975, 72-73 His contribution is based on the mistaken assumption that the *sermocinatio* (377, 20 – 378, 3) is to be attributed to the father

³⁹⁸ See also comm. at *vocem repressam* below

³⁹⁹ See e.g. 18, 2 *parcere nunc illum cuiquam tacendo creditis? loqui se cum maxime putat, et, si bene artes et profundae mentis consilia perspicio, respondere sibi videtur plus quam mater interrogat* (355, 3-6)

construction of *manus, verba – infamamus, torquemus, occidimus*, underscored by anaphoric *cur* and *illis... his*. Since *verba* and *infamamus* go together, as do *manus* and *torquemus, occidimus*, we might expect *his ... illis* instead of the other way around.⁴⁰⁰ The present construction is not so common, but certainly not unusual (LHS 182). *Manus* and *verba* are personified (Englund 1934, 7); for the frequent personifications of *manus* in the *DM* see Englund 1934, 10. With *peccare* we find personified *manus* in Mart. 11, 54, 5; 14, 1-2.

378, 7-8 vis scire – fecissemus omnes: the argument concludes with an *epiphonema* in the form of a *subiectio*. It is also a *noema*, since the father doesn't answer his *interrogatio* straightforwardly, but implies that the mother will be sorry for raking up the entire drama. For the sentiment expressed cf. the very beginning of *DM* 19, 1: *Debebatur quidem tristissimae orbitatis misero pudori, ut iam taceremus omnes* (372, 1-2). What the father in fact means is that the mother is the only one who is not silent: cf. 19, 12 *quod hoc me non potestas, non magistratus, non propinquus aliquis, non amicus, non ille semper loquax populus ac malignus interrogat! quiescitis, tacetis* (384, 9-11). For this type of *subiectio*, presenting an argument in a nutshell, see comm. at *DM* 18, 7 *vis breviter probem* (359, 21-22).

378, 8 vis scire: a typically declamatory way to introduce a short, often paradoxical or unexpected argument *per subiectionem*. We also find it Sen. *Contr.* 2, 3, 3; 6, 1; 6, 2; 7, 1, 15; 7, 3, 4; 7, 5, 1;⁴⁰¹ Quint. *Inst.* 8, 5, 31 (quoting a declamation to illustrate his disapproval of arguments made from *sententiae*); *DeMi* 273, 4; 278, 7; 9; 306, 15; 307, 13; 331, 11; 335, 11; 340, 3; 349, 4; in the *DM* – always as an *epiphonema* – 5, 12 (108, 7-9); 7, 4 (140, 22-23); 8, 5 (156, 3-4); 10, 5 (204, 15-16); 12, 24 (258, 20-22); 16, 7 (326, 17-20); 16, 11 (just before the text breaks off, 330, 17-19); 19, 9 (381, 2-3).

378, 7 quam non: the clumsy construction *vis scire quam non* is also found Sen. *Ben.* 3, 31, 3; *Dial.* 1, 3, 9; 7, 22, 5; 10, 11, 1; *Ep.* 88, 4; *DeMi* 278, 7; 307, 13.

378, 8 fueras: for the rhetorical pluperfect see comm. at *DM* 18, 6 *fecerat ... credidisset* (359, 9).

378, 8-9 Finge me – tantum respondere: compare 18, 5 *Omittamus paulisper, iudices, orbitatis tristissimae dolorem, et in parricidio malae tractationis reddamus aliunde causas* (358, 3-5). Both figures, in appearance *praeteritiones*, actually introduce an *argumentatio comparativa ex minore* for which see comm. at 18, 5 *omittamus paulisper* (358, 3). Compare further 11, 8 *seposita igitur paulisper lege mei doloris hoc tantum ab adfectibus vestris omnium mortalium nomine peto, ne cui nocenti poenae praestetur arbitrium* (227, 14-17); 14, 5 *seposita paulisper, iudices, noxiae potionis invidia, nonne vobis videtur implere sceleris fidem, quod abstulit fidem condicio personae?* (292, 7-9); 15, 9 *finge te nullum huius adfectus sentire cruciatum; sed amare te, pauper, saltem non pudet?* (311, 8-9); 16, 7 *Finge me <se>positis paulisper meritis, quibus obligatus sum, hoc tantum dicere: 'amicus alligatus est.'* (326, 8-9).

⁴⁰⁰ Thus Tosato 1912, 31

⁴⁰¹ And it obviously appealed to his son, who uses it *Ben.* 3, 22, 2, 3, 31, 3; 4, 21, 1, 5, 6, 7, *Dial.* 1, 3, 9; 7, 22, 5; 10, 11, 1, *Ep.* 32, 4, 48, 7, 67, 1; 74, 34, 88, 4, 90, 26; 93, 4, 94, 58, 95, 8

378, 10 non prodo secretum: this would be a valid argument if the son had taken his father into his confidence. As it is, the father refers to the results of an interrogation under torture and suggests that there is something to be kept secret, thereby insinuating that his son and wife are guilty. Yet Håkanson was wise to structure the text the way he did. The previous argument is a self-contained unit and even if the present locus *does* not quite fit its argument, that does not mean that the two are not intended to go together.

378, 10-19 ex omnibus – ratione sanxerunt: the father buttresses his refusal to speak with an *excessus* on the virtue of silence, which is clearly a *locus communis*. The *excessus* does not completely fit the argument *non prodo secretum*; the philosophical wisdom he praises originates not in secrecy, but in (intellectual) modesty (see comm. below at *silentii virtus* [378, 12]).

378, 11 seriis gravibusque: this doublet of synonyms is rather common. We also find it Cic. *Off.* 1, 103, Sen. *Contr.* 5, 6, *Nat.* 3 *praef.* 3, Tac. *Ann.* 3, 50, 3, *Fro. Aur.* 4, 10, *Hist. Aug. Aurel.* 4, 10, *Claud.* 5, 2, 12, 5, *Tac.* 6, 2. In the *DM* it refers as a rule to human behaviour: 5, 19 (105, 2), 14, 3 (290, 7), 14, 8 (296, 16), 15, 3 (304, 21).

378, 11 complectuntur: conjectured by Schultingh and Badius against impossible *complectuntur* in the mss., which were followed by Burman 1720, 369 and Lehnert 1905, 342, it fits better than Gronovius' *conspiciuntur*.

378, 12 silentii ... virtutem: the Romans were not quite unanimous in their appraisal of silence. One of the *disticha Catonis* says *nam nulli tacuisse nocet, nocet esse locutum* (1, 12, 2) and in [Sen.] *de mor.* we read *auribus frequentius quam lingua utere* (104), *qui nescit tacere, nescit et loqui* (132), compare further Cic. *De Orat.* 2, 301 *homines enim imperiti facilius quod stulte dixeris reprehendere quam quod sapienter tacueris laudare possunt* and the following disquisition in Seneca *Nihil tamen aequè proderit quam quiescere et minimum cum aliis loqui, plurimum secum. Est quaedam dulcedo sermonis quae inreperit et eblanditur et non aliter quam ebrietas aut amor secreta producit. Nemo quod audierit tacebit, nemo quantum audierit loquetur, qui rem non tacuerit non tacebit auctorem. Habet unusquisque aliquem cui tantum credat quantum ipsi creditum est, ut garrulitatem suam custodiat et contentus sit unus auribus, populum faciet, sic quod modo secretum erat rumor est* (*Ep.* 105, 6). See further Gel. 1, 15 and Plut. *de garrulitate* (*moralia* 502b – 515a) for collections of sayings from authors who inveigh against empty and/or dangerous garrulity. But there are some discords: *taciturnitas stulto homini pro sapientia est* (Pub. *Sent.* T 2), *exigua est virtus praestare silentia rebus / at contra gravis est culpa tacenda loqui* (Ov. *Ar.* 2, 603-04), compare further Sen. *Ben.* 2, 3, 1 and the eulogy of speech to the detriment of silence in Cic. *Inv.* 1, 3.

378, 13-14 adeoque – ferre possimus: a gnomic *sententia e contrariis*, ostensibly meant to explain the virtue of silence, but in also a covert criticism of the mother's demand for openness.

378, 13 promptissimo sermone: *promptus sermo* we also find Iuv. *Sat.* 3, 73-74 and Tac. *Dial.* 2, 1, cf Tac. *Hist.* 2, 86 and Suet. *Tib.* 71, 1.

378, 13-14 constantiam tacendi: *constantia* with a genitive of the *gerundium* is not uncommon, but usually occurs in a context of strife or punishment, see B. *Alex.* 26, 1 (*oppugnandi*), Vell. 2, 85, 4 (*pugnandi*), Veg. *Mil.* 1, 2, 3 (*pugnandi*), Schol. *Hor. Carm.* 3,

5, 31 (*pugnandi*), Schol Tib Claud Don Verg 5 p 494 ln 20 (*resistendi*), Iust 12, 11, 9 (*exigendi supplicii*)

378, 14 neque: for *neque* (*nec*) instead of *ne* *quidem* see Becker 1904, 21, KS 2, 44 and LHS 448-50

378, 14-19 crimen hoc – ratione sanxerunt: in a lofty period the father extols silence as a philosophical virtue Its structure is kept going by the regular occurrence of *quod* as a relative pronoun referring to *hoc* (378, 15 and 16) and introducing a direct object clause depending on *miratur* (378, 18) Sussman 1987, 233 interprets the last two instances of *quod* as introducing subordinate clauses of reason, which is why his translation misses the point the father wants to make It reads 'In my case my wife terms this a crime which in those time-honored educators of our minds and manners was the highest attribute of wisdom, because the sober, bygone generation marveled that some men accomplished more through forbearance during their entire lives than they did because by conscious calculation they established and settled the succession of the seasons, the courses of the constellations, and the other mysteries of nature ' But the author rather seems to want to convey 'In my case my wife terms this a crime which in those time-honored educators of our minds and manners was the highest attribute of wisdom, about which the sober, bygone generation marveled more that some men accomplished it through forbearance during their entire lives than that they (= *quosdam*) established and settled, by conscious calculation, the succession of the seasons, the courses of the constellations, and the other mysteries of nature '

morum mentiumque: the same alliterative collocation in *DM* 5, 1 *mores liberorum mentesque* (86, 3), 5, 19 *moribus mentique maledicat* (105, 5), cf 8, 12 *diversa mens, contrarii mores et vitae genera rixantia* (163, 5-6) See Becker 1904, 59, Stramaglia 1999, n 66

378, 16 prima sapientia: more commonly we find *summa sapientia* (Cic *Rab Perd* 26, *Tul* 8, *Off* 2, 83, *Tusc* 1, 62, *Fam* 1, 7, 3, 10, 5, 3, *Sen Ep* 71, 7, *Plin Nat* 7, 139), but *prima sapientia* is also found *Hor Ep* 1, 1, 41 *virtus est vitium fugere et sapientia prima / stultitia caruisse*, *Iuv* 13, 187-89 *plurima felix / paulatim vitia atque errores exiit omnes / prima docens rectum sapientia*

378, 16 quosdam: Ritter 1967², 140 is probably right in assuming this to be a reference to (the followers of) Pythagoras *Tum qui exploratus ab eo idoneusque fuerat, recipi in disciplinam statim iubebat et tempus certum tacere non omnes idem, sed alios aliud tempus pro aestimato captu sollertiae* 4 *Is autem, qui tacebat, quae dicebantur ab aliis, audiebat, neque percontari, si parum intellexerat, neque commentari, quae audierat, fas erat, sed non minus quisquam tacuit quam biennium hi prorsus appellabantur intra tempus tacendi audiendique ἀκουστικοί* 5 *Ast ubi res didicerant rerum omnium difficillimas, tacere audireque, atque esse iam coeperant silentio eruditi, cui erat nomen ἐχέμυθία, tum verba facere et quaerere quaeque audissent scribere et, quae ipsi opinarentur, expromere potestas erat* (Gel 1, 9, 3-5), *nihil prius discipulos suos docuit quam tacere, primaque apud eum meditatio sapienti futuro linguam omnem coercere verba<que>, quae 'volantia' poetae appellant, ea verba detractis pinnis intra murum candentium dentium premere* 24 *Prorsus, inquam hoc erat primum sapientiae rudimentum meditari condiscere, loquitari dediscere* (Apul *Fl* 15, 23-24) *Sen Ep* 52, 10 is the first to

mention specifically a five-year period of silence *apud Pythagoram discipulis quinque annis tacendum erat*, see further Philostr VA 1, 14-16, Iamb VP 72, but also Zhmud 85-91, who is skeptical about pythagorean silence⁴⁰²

378, 16-17 totius vitae ... patientia[m]: *totius vitae* is a genitive of quality defining *patientia* Patientia is Gronovius' suggestion (Burman 1720, 369) against all mss, which have *patientiam* as the accusative object (with *quosdam* as the accusative subject) of *pertulisse* Schultingh (ibid) wants to preserve *patientiam*, referring to 2, 19 *sic quidam contra verbera, experimenta telorum mortuum pertulere patientiam* (37, 7-9) *Patientia* must be preferred, however, because it is not forbearance, but silence which they accomplished For its occurrence in *DM* 18 and 19, with varying significance, see comm at 19, 1 *hanc patientiam meam* (372, 12)

378, 17 illa seria miratur antiquitas: instead of *seria*, all mss read *misera*, which does not make sense in the present context Gronovius suggested *severa* and Schultingh *seria* (Burman 1720, 369), adopted by both Lehnert 1905, 342 and Håkanson Watt 1991, 59 proposes to leave it out altogether, arguing reasonably that 'it may well be that *misera* has originated in an erroneous anticipation of the first four letters of *miratur*' His remark however that 'neither *seria* nor *severa* is a very appropriate epithet for *antiquitas* in this context' is puzzling, for both adjectives are eminently fitting in a context within which old-fashioned virtue is praised Perhaps *severa* must be preferred, because unlike *serius*, *severus* often occurs with *antiquus*, see e.g. Vell 2, 125, 4, Sen *Dial* 12, 16, 3, Tac *Ann* 16, 5, 1, *Hist* 1, 14, 2, 1, 18, 3, *De Mi* 321, 21 (*severa antiquitas*), Plin *Nat* (table of contents), Schol in Hor *Carm* 2, 15, 1, *Ars* 202, Iust 7, 5, 3

378, 18-19 temporum vices, siderum cursus et profunda naturae: may be a general reference to presocratic natural philosophy but more probably, in view of the accent laid on stars and chronology, to ancient Chaldaean/Babylonian wisdom, such as we also find in *DM* 4, 14 *paulatim deinde hoc, quod stupemus, animus ausus diligenter adtendere in arcana naturae sacrum misit ingenium, et ex adsidiis observationibus notisque redeuntibus latentium ratione collecta pervenit ad causas miraris fatum hominis posse praedicti? defectiones siderum laboresque narrantur, nuntiantur origo tempestatum, lassitudo ventorum, quod sidus immodicos solis ardores, quod severas minetur hiemes, quid significant sparsi longius crines, quid ardentius solito iubar, quid excussa flamma sideribus* (76, 6-14)

378, 18 temporum vices: Sussman 1987, 233 refers to Sen *Med* 759 *Temporum flexi vices*, in fact the collocation is very common We also find it Col 6, 3, Sen *Dial* 6, 22, 8, *Ep* 108, 19, Tac *Ann* 3, 55, 5, Plin *Nat* 2, 13, 9, 71, *Pan* 12, 5, Firm *Mat Math* 5, 1, 9, but the most relevant passages are Curt 4, 10, 5 *At illi (Aegypti vates) qui satis scirent temporum orbis implere destinates vices*, 5, 1, 22 *soliti chaldaei siderum motus et statas vices temporum ostendere*, cf also 8, 9, 13, Apul *Mund* 22 *euntibus sole atque luna ceteraque luce siderea per easdem vias custoditis temporum vicibus*, cf also *Mund* 29, Pl 1, 10, *DM* 4, 13 *ut saeculorum infinita series per adsiduas temporum vices sua lege festinet* (75, 9-10)

⁴⁰² Erasmus *Adag* 3272 is an idiom *taciturnior pythagoreis* it is derived from Suid Σ 469 σιωπηλότερος ἔσομαι καὶ τῶν Πυθαγόρα τελεσθέντων

378, 18 *siderum cursus*: *cursus* is the common term for the orbits of planets and stars, see e.g. Hyg. *Astr.* 2, 42, Sen. *Nat.* 2, 11, 2, 3, 29, 1, 7, 3, 2, Man. 1, 342-43, 454, 683, 2, 14, 72, 3, 338-39, *DM* 5, 10 (94, 12), 9, 16 (190, 10), 10, 7 (206, 13-14) ⁴⁰³

378, 18-19 *profunda naturae*: the common expression rather seems to be *arcana naturae*, which occurs Sen. *Dial.* 6, 25, 1, *Ep.* 102, 28, *DM* 4, 14 *animus ausus diligenter adtendere in arcana naturae sacrum misit ingenium*, Cens. 11, 10. The use of substantiated *profunda* in this sense is very rare. OLD s.v. *profundum* 5 'the innermost secrets or mysteries' only has *DM* 19, 7, there are no entries in Forc., TLL s.v. *profundus* 1753, 34-48 only has Christian authors.

378, 19 *velut conscia ratione sanxerunt*: by investigating and charting the universe the sages have, as it were, confirmed and validated the natural phenomena that govern it.

378, 19 – 379, 3 *quae – fortuita laxaverint*: an *exclamatio* of indignant incomprehension, introduced by the emotional *interiectio per fidem*, which causes hyperbaton of *quae in potentia*.

379, 1 *effringere rigens ... pectus*: probably derived from Sen. *Phoen.* 159-60 *effringe pectus corque tot scelerum capax / evelle*, see further *DM* 8, 15 *si permiseris alterius aperire vitalia, pectus effringere* (166, 21-22), the expression becomes a metaphor here and in 10, 17 where it is said about the soul *quotiens humani pectoris carcerem effregerit petere sedes in<ter> astra* (216, 13-15) ⁴⁰⁴. *Rigens pectus* (note the internal rhyme *effringere rigens*) we also find Ov. *Her.* 15, 207-08 *precibus pectusne agreste movetur / A' riget, et Zephyri verba caduca ferunt*!

379, 1 *sacra dissimulatione*: since *dissimulatio* in the sense of 'the concealment of one's real purpose, feelings, etc., dissimulation' (OLD s.v. *dissimulatio* 1) usually has a negative ⁴⁰⁵ or at best neutral ⁴⁰⁶ connotation, *sacra dissimulatione* may be termed an *oxymoron*. Compare V. Max. 5, 7, ext. 1 *Seleuci regis filius Antiochus nouercae Stratonices infinito amore correptus, memor quam improbis facibus arderet, impium pectoris uulnus pia dissimulatione contegebat*.

379, 2 *evolvere animum*: the metaphor is synonymous with 379, 1 *effringere pectus*.

379, 2 *supra sua secreta compositum*: note the alliteration of *s*, for the use of *supra*, rightly explained by Tosato 1912, 59 from its local sense, compare 18, 16 *quod supra silentium trahis alta suspiria* (369, 22-23), 19, 7 *plerosque videas fortiter supra sua secreta morientis* (379, 9-10), further 12, 7 *tu supra frumentum publicum stertis* (238, 14). *Animum componere* can mean either to calm or to form one's mind, in the latter sense, it occurs especially often in the younger Seneca. *Ben.* 5, 14, 5, *Dial.* 2, 18, 2, 3, 13, 6, 3, 39, 1, *Ep.* 61, 3, 89, 9.

379, 2-3 *non laetitia, non dolor, non necessitas, non fortuita*: two pairs of antithetical concepts, all accompanied by emphatic *non*, which are derived from stoic moral

⁴⁰³ For the complicated passage in 8. 13 (163-18. 22) and its textual problems see Stramaglia 1999 n. 70.

⁴⁰⁴ For *effringere* combined with other body parts see TLL s.v. *effringo* 203. 43-52.

⁴⁰⁵ See e.g. Cic. *Verr.* 2. 71. 5. 1. 5. 138. Vell. 2. 97. 1. Tac. *Ann.* 2. 57. 3. Ag. 6. 2.

⁴⁰⁶ See e.g. *Rhet. Her.* 1. 11. 1. iv. 9. 45. 5. Tac. *Ann.* 13. 49. 3.

philosophy. These are four main internal and external factors that – if allowed to influence a person's actions and state of mind – compromise his tranquillity of mind and thereby his *libertas*. They recur time and again in the younger Seneca's works: see e.g. *Ep.* 51, 8-9: *Non est emolliendus animus: si voluptati cessero, cedendum est dolori, cedendum est labori, cedendum est paupertati; idem sibi in me iuris esse volet et ambitio et ira; inter tot affectus distrahar, immo discerpar.* [9] *Libertas proposita est; ad hoc praemium laboratur. Quae sit libertas quaeris? Nulli rei servire, nulli necessitati, nullis casibus, fortunam in aequum deducere.*⁴⁰⁷ The father wants to indicate that none of them affects him in order to underline his imperturbability, which is put to the fore in somewhat more detail in 19, 8 (379, 18 – 380, 8). But though his claim is well-balanced in form, it is quite irrelevant, for neither *laetitia* nor *fortuita* play any part in the family drama.

379, 3 laxaverint: causes *laetitia*, *dolor*, *necessitas* and *fortuita* to be personified. *Laxare animum* is a common idiomatic expression, which usually means 'to release the mind from strain' (see OLD s.v. *laxo* 7); thus Cic. *Brut.* 322; *De Orat.* 3, 230; Liv. 32, 5, 1; Curt. 3, 6, 11; 6, 2, 1; Sen. *Dial.* 2, 20, 3; 9, 17, 4; *Ep.* 108, 2; *Nat.* 1 *praef.* 6; Stat. *Silv.* 1, 4, 75; Plin. *Ep.* 7, 24, 5; Suet. *Aug.* 83, 1; Gel. *praef.* 1; 14, 5, 1; Fro. *ad Anton. de eloqu.* 2, 17; Apu. *Met.* 6, 12; Iul. Val. 3, 17. The current metaphor draws its strength from a more literal interpretation of *laxare*.

379, 4-5 quisquis – poterit loquentem: the argument is concluded with a chiasmatically phrased gnomic *sententia e contrariis*; it insinuates that when the father will speak, he will say that the son is guilty, for only that statement will be even less bearable than his silence. A similar sentiment, expressed less forcefully, is found Pl. *Rud.* 1116 *quia enim neque loquens es neque tacens umquam bonus*.

379, 5-17 nec adeo – ut taceremus: the father asserts that it is only natural for people to withhold secrets from their nearest and dearest in a fresh *locus communis*. Its main function is that it is riddled with innuendo against mother and son.

379, 5 coniugali societate: a pompous way of saying 'marriage'. For marriage as a *societas*, see Cic. *Off.* 1, 17, 54 *nam cum sit hoc natura commune animantium, ut habeant libidinem procreandi, prima societas in ipso coniugio est, proxima in liberis, deinde una domus, communia omnia*. For adjectives in *-alis* see comm. at 19, 2 *corporalibus bonis* (373, 24).

379, 5 cuncta miscentur: Sussman 1987, 233 rightly translates 'is all information exchanged', but there may be a hidden meaning to the father's assertion, for *cuncta miscere* is a standard idiom for 'to cause chaos or destruction'. As such – and nowhere in any other sense⁴⁰⁸ – we find it Sen. *Phoen.* 342; Luc. 9, 792-93; Tac. *Ann.* 4, 51, 2; *Hist.* 1, 53, 2; 2,

⁴⁰⁷ Compare *Dial.* 7, 4, 2-4 *Idem itaque erit, si dixerō 'summum bonum est animus fortuita despicens, virtute laetus' aut 'invicta vis animi, perita rerum, placida in actu cum humanitate multa et conversantium cura' Licet et ita finire, ut beatum dicamus hominem eum cui nullum bonum malumque sit nisi bonus malusque animus, honesti cultorem, virtute contentum, quem nec extollant fortuita nec frangant, qui nullum maius bonum eo quod sibi ipse dare potest noverit, cui vera voluptas erit voluptatum contemptio (...)* Quo die infra voluptatem fuerit, et infra dolorem erit, vides autem quam malam et noxiosam servitutem serviturus sit quem voluptates doloresque, incertissima dominia inpotentissimaeque, alternis possidebunt: ergo exeundum ad libertatem est.

⁴⁰⁸ I do not regard Firm. *Mat. Math.* 2, 18, 3 (*Scienda sunt haec autem omnia, ut, cum ad apotelesmata venerimus, cuncta miscentes et temperantes sententias nostras fideli veritatis ratione firmemus* 'Il faut savoir toutes ces choses pour que, quand nous en arriverons aux consultations, réunissant et modulant tout cela, nous assurons nos

23, 5; 3, 73, 2; 4, 49, 3; 5, 22, 2; Apul. *Met.* 7, 7; Amm. 14, 2, 1; 18, 8, 14; 29, 1, 24; 31, 2, 1; 31, 16, 1; cf. OLD s.v. *misceo* 11.

379, 6 sibi adversus hanc concordiam ... relinquat: again the wording is ambiguous. Taken literally, the expression seems harmless and the concept of *concordia* even has a positive connotation. But *relinquere adversus* in all other cases occurs within warlike situations. Thus see Liv. 27, 30, 8 *praesidio relicto adversus Attalum*; Tac. *Hist.* 3, 6, 2 *relictum Altini praesidium adversus classis Ravennatis <conatus>*; Iust. 26, 2, 1 *parva manu adversus ceteros relicta*; 32, 3, 4 *relicto magno belli apparatu adversus Romanos*. Compare further the emotional preface to Quint. *Inst.* 6, where Quintilian complains about Fortune that she *nihil enim sibi adversus mihi reliquit* (= refrained from, 6, *praef.* 15).⁴⁰⁹

379, 7-9 est aliquis – scire carissimos: is coreferential with and supplementary to the previous sentence.

379, 7 a suo sanguine secretus affectus: note the alliteration of s. *Sanguis* is used metonymously for *consanguinei* (see OLD s.v. *sanguis* 10), but not in a strict sense, since the wife is clearly implied as well.⁴¹⁰ Sussman's translation 'some secret feeling' (1987, 233) does not do justice to the text. The feeling in question, which is explicited as a *genus reverentiae*, is experienced apart from, and unknown to, one's nearest and dearest, because it concerns matters which would hurt or harm them if they were to be involved.

379, 7-8 genus ... reverentiae: not 'a type of shyness' (Sussman 1987, 233), but rather restraint or deference (see above). The father's silence protects not only his wife's reputation, but also her sensitive nature. Becker 1904, 52 n. 1 sees a *schema* in the present use of *genus* with genitive and draws attention to a number of parallels: *DM* 5, 9 *genus ultionis est pascere nec misereri* (93, 21-22); 7, 4 *genus servitutis est coacta libertas* (140, 21); 11, 2 *qui genus libertatis putabat odisse maiores* (221, 10); 14, 2 *hoc solum insanabile genus mortis*⁴¹¹ *est, ut odisse cogaris* (289, 15); 16, 2 *genus ostentationis adamaveram, ut mirarentur homines fidem etiam in orbitate* (320, 7-8); 17, 7 *non potest ... efficere pertinacia querendi genus probationis* (339, 2-3).

379, 8 ut: is explicative, with 'Unterdrückung der demonstrativen Hervorhebung', which is rare according to LHS 645; but compare *DM* 16, 2 (320, 7-8) cited above.

379, 8 tacenda: more austere than simple *secreta*, this substantivized *gerundivum* also occurs Ov. *Ars* 2, 604; Hor. *Ep.* 1, 7, 72; Sen. *Ep.* 83, 12; Pers. *Sat.* 4, 5; Iuv. 3, 50; Apul. *Met* 11, 27.

379, 9-10 quaedam non – secreta morientis: 'some things you won't be able to extract with whips and a torture racks; you will see many people dying bravely over their secrets.' Like the two previous sentences, these two form an independent unit and belong together, referring both to the same state of affairs. It would be better therefore to put a full

jugements en étant fidèles à la vérité') as an exception, because *miscere* occurs with *temperare* in a familiar and frequent collocation.

⁴⁰⁹ De Vico 1962², 32 regards *adversus* as synonymous with *erga*, with reference to Ter. *An.* 42 *id gratum fuisse adversus te*, Cic. *N D* 1, 116 *est enim pietas iustitia adversus deos*.

⁴¹⁰ For an enumeration of Roman blood relationships (agnatic and cognatic) see Gai. *Inst.* 1, 156

⁴¹¹ *Mortis* in mss., Burman 1720, 296, Lehnert 1905, 266 opts for Obrecht's <a>moris, Håkanson follows suit.

stop after *carissimos*.⁴¹² The two subjunctives do not depend on *ut*; they are best explained as potential.

On the face of things, the father makes this double statement to underline his own firm resolve to remain quiet; but underneath, there is a clear reference to the fate of his son, who was tortured with whips on the rack, and died a valiant death⁴¹³ in the process. *Supra sua secreta* suggests, then, that the son had a terrible secret to hide.

379, 9 verberibus, eculeis eruere: *verbera* and *eculeus* are instruments the father used to torture his son (see e.g. 18, 4 [357, 3]; 18, 11 [364, 15]; 19, 3 [374, 24]; 19, 12 [385, 6]).

379, 10 fortiter supra sua secreta morientis: for *supra sua secreta* see comm. at 379, 2 *supra sua secreta compositum*; *supra* may have a causal nuance here as may be the case in 18, 17 *damnato supra callidissimum silentium patrem* (371, 3-4). *Fortiter mori* occurs unexpectedly rarely⁴¹⁴, except in the younger Seneca as a Stoic achievement⁴¹⁵.

379, 10-14 agetum – non fatereris: by means of an enthymeme in its capacity of rhetorical syllogism, the father concludes that the mother, too, must have a secret. By using the words *conscientia* and *fatereris* he suggests that she is in fact concealing a crime.

379, 10 agetum, si videtur: *agedum* underlines the urgency of a command or exhortation in animated speech (LHS 339); it is not unusual for singular *age(dum)* to occur with a verb in the plural (KS 200-201). With *si videtur* we find it Liv. 44, 38, 4 *recognoscat agetum mecum si videtur*; DM 12, 13 *agedum, si videtur, extra portas prospicite squalida arva* (245, 10-11). The phrase introduces a long apostrophe to the mother (379, 10 – 380, 8).

379, 11-12 utrumque sexum, omnem condicionem, omnem ... aetatem: *congeries*. We find a similar categorization in Hist. Aug. Aurel. 18, 5: *omnis aetas, omnis sexus, omnis conditio ac dignitas*; in Quint. Inst. 4, 1, 13 (cf. Iul. Vict. 15, RLM 422) *sexus aetas condicio* are three key factors which determine the treatment of the character of the litigant in the *prooemium*. Cf. further DM 11, 10 *parvulos meos occidit quicquid fuit tota civitate telorum, omnis sexus, omnis aetas, omnis infirmitas* (229, 21-22); 12, 15 *ubi continuis funeribus omnis sexus atque aetas semel sternitur* (247, 14-15).

379, 12-13 nullum sine – causis tacendi: a near-isocolon, enhanced by *repetitio* of *nullus* (in contrast with *utrumque, omnem, omnem*) and *sine*. For an overview of the development of the noun *conscientia* and its various uses in DM 18 and 19 see comm. at 18, 7 *haec ... conscientia* (360, 17).

379, 13-14 si te – non fatereris: the father obviously alludes to the mother's alleged incestuous affair. Note the emphatic *polyptoton* of *te ... tu*.

⁴¹² Or a colon, like Burman 1720, 369. Lehnert 1905, 342 also puts a comma.

⁴¹³ See e.g. 19, 4 *di immortales, quae contumacia, quae fuit illa patientia, cum domi torqueretur a patre, non invocare matrem! non repugnavit iuvenis, non opposuit manus, nullum imploravit auxilium* (375, 2-5); 19, 13 *miraris hanc in filio contumaciam, in iuvene patientiam?* (385, 12-13); 19, 15 *quotiens admotis ignibus ad aliquam corporis partem totum pectus inposuit! quotiens hiatu oris avide flammam adversus exeuntia verba collegit!* (387, 19-21).

⁴¹⁴ Liv. 45, 5, 40; Sen. Suas. 6, 18; 7, 4; Vell. 1, 9, 3; Fron. Str. 4, 5, 21, *Eptoma rerum gestarum Alexandri Magni* 44; Amm. 19, 2, 13.

⁴¹⁵ Dial. 9, 16, 2; 11, 11, 2; Ep. 77, 6, 15; 78, 2, 82, 10; 17.

379, 15-16 *gravius ... in sene, verecundius in marito, sanctius in patre*: a balanced tricolon, enhanced by *synonymia* and *homoeoteleuton* of the adverbs, and the three authoritative roles the father assigns himself. For this *schema* see comm. at 18, 8 *da bonum patrem, bonum maritum* (361, 5-6); see also above above 19, 6 *parce saeculo, parce marito, parce patri* (377, 15).

379, 16-17 *pudeat nos – ut taceremus*: the argument concludes with an *epiphonema* which, despite deliberately misleading *nos*, is of course directed solely at the wife: the father makes much of his own taciturnity in both this argument and the next, and *infirmitas* is clearly associated with the mother on two other occasions.⁴¹⁶ The son's courageous death, touched upon in 379, 9-10, is implicitly connected with an admission of guilt (or else, why would he have wanted to die? There would have been no reason for silence).

379, 17 *mori voluit, ut taceremus*: cf. 19, 1 *non quia occidi filium, taceo, sed occisus est, ut tacerem* (372, 8-9); 19, 4 *cum iam mori vellet, occisus est* (375, 10).

379, 18 – 380, 8 *Vides – occidi*: having exalted taciturnity as the highest virtue (378, 9 – 379, 3) and demonstrated the immovability of those who guard a secret (379, 5-17), the father now applies these concepts to himself to point out that he will not yield to his wife's questioning, and to boost his ἥθος in the process.

379, 18-20 *Vides – quam loqui*: in a *subiectio*, the father suggests that the mother, safe in the knowledge that he will not betray her guilty secret, interrogates the father merely to punish him for his actions.

379, 18 *Vides*: Schultingh – in Burman 1720, 369 – suggests *vide* or *videsne* (which only appears in B) for better coherence; Reitzenstein 1909, 62 too reads *vide*. But in his app. crit. Håkanson offers a satisfactory parallel: 19, 8 *vides, quantam hinc malignitatibus potuerim praestare materiam* (382, 1-2). In fact, there are many more in Ritter's group II: 5, 4 (84, 21-23); 5, 13 (98, 5-6); 8, 5 (155, 22-23); 8, 15 (166, 15-17); 11, 9 (228, 20-21). *Vides* is used in every case to introduce a fierce response or reproach.

379, 19 *diceris*: Sussman 1987, 233 translates 'they say'; this would presuppose another rumour and thus add a *color* to the theme, which the father would have made much of rather than merely mentioning it in passing. Rather read *diceris* as a future tense: the father tries to warn the mother off from further questioning by threatening that people will realize that her questions are as figured as his silence.

379, 20 *potius ... malle*: a pleonasm that occurs rarely, but in all periods: Pl. *St.* 80; Ter. *Ad.* 222; Cic. *Bal.* 19; *Cael.* 19; Plin. *Nat.* 36, 156; *Ep.* 10, 2, 3; *DM* 2, 6 (26, 5); Fro. *Aurel.* 1, 3, 9; *ad Anton. de eloqu.* 2, 13; Porph. in *Hor. Sermon.* 1, 1, 54.

379, 20-22 *quis enim – ferre patientia*: a double *interrogatio instandi gratia*, whose virtual synonymy is underlined by anaphora of *quis* and antonymous *non novit – ignorat*.

379, 21 *taciturnitatis meae rigorem*: the noun *rigor* is more powerful than a corresponding adjective, so we get another *genitivus inversus*, for which see comm. at 18, 9

⁴¹⁶ 19, 4 *et ego amavi filium meum, non osculis, non infirmitate, non lacrimis, sed virtus, dolore, patientia* (375, 22-24). 19, 8 *tuae fortassis infirmitati conveniat negare, me tantum fortior adseruo unci decet* (380, 15-17)

novitas (362, 5); KS 241; LHS 152. For the use of *rigor*, cf. above 19, 7 *rigens sacra dissimulatione pectus* (379, 1).

379, 22 qua ... patientia: note the hyperbaton; for the use of *patientia* in *DM* 18 and 19, see comm. at 19, 1 *hanc ... patientiam meam* (372, 12).

379, 22 – 380, 1 ne occisurus – ipse periturus: Sussman's translation (1987, 233) of *occisurus* 'on the verge of killing' may be misleading; the father means 'when I (had made up my mind that I) was going to kill him' rather than 'when I was on the point of killing him'. From the context it is clear that the father is describing his own character and behaviour in general (esp. *quandoque*); and otherwise, this doublet of coreferential clauses, both introduced with an emphatic negation, would be inconsistent with 19, 12 *si qua ad aures tuas ab illa quamvis remota domus perte perlata vox est, meus gemitus fuit, meorum viscerum dolor* (384, 22 – 385, 1). This is the first hint that killing his son was what the father meant to do all along. He is more explicit in 19, 9 *filium ... torsisse me putatis? ego vero occidi tarde, diu* (381, 15-17) and 19, 10 *non est igitur, mulier, quod mihi facias duplicatae questionis invidiam, id est, quod torsi et occidi. sola est huius necessitatis ratio de morte* (382, 5-7).

379, 22-23 suspiria gemitusque: for this collocation see comm. at 18, 13 *huius gemitus – oculosque custodi* (367, 16-17).

379, 23 nihil feci, unde: Tosato 1912, 72 is right in her analysis of *unde* as consecutive; see LHS 644 and 646; cf. also e.g. *DM* 18, 4 *ideo tibi relinquis, unde sis quietae patientiae* (357, 16-17).

379, 23-24 erupturum ... per orbitatem patris animum: a rather laborious expression. *Erumpo* is a conventional metaphor where violent emotions are concerned; in the *DM* alone we find 3, 9 *in accusatorem dolor meus erumpat* (49, 19-20); 4, 17 *in facinus necesse est otiosus ardor erumpat* (79, 24 – 80, 1); 10, 9 *quis dolor quisve maeror, quae tanta impatientia eruperit* (208, 17-18); 19, 1 *quicquid erumpere posset in proclamationem, parricidio peractum est* (372, 14-15); see further TLL s.v. *erumpo* 840, 1-13. *Orbitas* is a euphemism for *parricidium* which presents the father as a victim of his own actions; the combination with instrumental *per* is quite rare, occurring once more in Claud. 8, 72 *per varium gemini scelus erupere tyranni*.⁴¹⁷

379, 24 praescio timore: cf. *DM* 4, 3 *miserum senem tristes sollicitudines et praescii metus ad mathematicum et responsa miserunt* (63, 6-8). The mother's advocate on the other hand states in 18, 3 about the father that he was a cold and rigid man *qui unicum aspiceret animo, quo quandoque posset occidere* (356, 10-11), and in 19, 9 he does admit that *oderat me filius et timebat* (381, 14).

380, 1-4 hanc nunc – mater odisset: a *subiectio* (*putas* is a giveaway; cf. comm. at 18, 8 *dicturum me putas, non credet? nesciet esse rumorem* [361, 6-7]) in which the father aggrandizes his silence by pointing out that he kept it up towards everyone, even his wife.

380, 1 hanc ... constantiam: note the hyperbaton. *Constantiam* is Shackleton Bailey's apt conjecture (1976b, 217) for *conscientiam*, found in all mss. and copied by

⁴¹⁷ In Sil 10, 503-04 *vicinus parte sinistra / per subitum erumpit clamor* and 12, 553-54 *erumpunt sub casside fusae / per tacitum lacrimae* I regard both *per subitum* and *per tacitum* as adverbial adjuncts of manner.

Burman 1720, 370 and Lehnert 1905, 343 Håkanson 1982 concurs, adducing instances of *constantia* in 378, 13 and 379, 17, which both occur in connection with silence

380, 2-3 quod nihil – proclamare conventu: *proclamo* is used in a non-technical sense ('raise an outcry', OLD s v *proclamo* 1) and the doublet of modifiers, with anaphoric *nihil*, *homoeoteleuton* of *publico* and *ullo* and *hyperbaton* of *ullo conventu* refer to the father's informal and formal public life respectively

380, 3-4 ego vero – mater odisset: the father turns to his domestic life – with heavy irony, considering his suspicions But he may also refer to a long period of time during which the relationship with his son gradually worsened (cf 19, 2 *ut vero – duxit aetatem* [373, 23-27], 19, 9 *Si tamen – et timebat* [381, 4-14])

380, 3 non sum questus ... nec tibi: for the emphatic double negative (with *nec* replacing *ne quidem*) see comm at 18, 5 *non nec* (357, 18)

380, 3-4 nec captavi, ut: *nec* resumes *non* For *captare ut*, see comm at 18, 16 *captat ut* (370, 9)

380, 4 ut illum mecum et mater odisset: note the abundance of *m* (*mugiens littera*, Quint *Inst* 12, 10, 31) After stressing time and again that the murder was an act of love, after expatiating on his tough love in 19, 5 (*et ego – potius occidi* [375, 22 – 376, 4]), the father now lets slip that he actually hated his son This happens again in 19, 13 *filium, cui contra severitatem meam ignoscebas, quem mecum odisse non poteras* (385, 23-25) Here, Francius (in Burman 1720, 370) suggests *odisses*, Håkanson 1982 comments *fort recte*, but there is no need when we compare 19,11 *timuisti, credo, ne occidisse filium diceretur et mater* (383, 22-24)

380, 5 extorquere: for the metaphorical use of *extorqueo*, see comm at 18, 14 *nihil extorsit saevitia misero* (368, 9-10), where it is used for the father's interrogation of his son Here, as in 19, 14 (387, 1), it refers to the mother's interrogation of the father

380, 5-6 non ipsae calamitates, non dolor, non meditatio orbitatis expressit: the three *membra* are personified and, referring to the father's grief, virtually synonymous, which can also be deduced from singular *expressit* Compare *DM* 19, 16 *exprimere mihi vocem nullus poterit dolor () vincere me tormenta docuisti* (388, 13-15), for this metaphorical use of *exprimere*, synonymous with *extorquere* above, see TLL s v *exprimo* 1786, 15-84, esp 32-56 In the *DM* it further occurs 9, 3 (177, 21-22), 19, 16 *exprimere vocem* (388, 13)

380, 6-7 uras licet: after the torture of the son and the mother's offer to confirm her version of events under torture in 18, 1 (354, 7-11) the father too envisages the possibility that his secret will be wrung from him by force Cf also 19, 16 (388, 12-15)

380, 7 durabo, perferam: a doublet of synonyms (listed in Becker 1904, 80), cf *DM* 11, 2 *cuius ego monstri artes pertuli, in cuius feritatis conluctatione duravi?* (221, 13-15)

380, 7-8 passus sum – occidi: the second part of the *argumentatio* is concluded with an *epiphonema* in which the father stresses once more that killing his son was the hardest thing he ever had to do, thereby playing the judges for pity and empathy This is a point made regularly see e g 19, 2 *mei magis debetis in uxoris comparatione misereri, qui filium et perdidit et occidi ego sum infelicior ex parentibus duobus, qui quicquid, iudices,*

ista conplorat, et patior et feci (373, 11-14); 19, 4 *rem difficillimam feci, quod non me potius occidi* (376, 3-4). Compare further *DeMi* 288, 1: *illud proprium plus deberi huic tyrannicidae, qui senex duos et filios occiderit*.

Tormenta

Argumentatio: refutatio 19, 8-10 (380, 9 – 382, 16)

The next part of the *argumentatio* is a *refutatio* in response to the mother's arguments against the torture of her son. Those, in *DM* 18, 10-14 (363, 21 – 368, 10), were carefully structured, moving from the father's attitude to rumours to the means of investigation at his disposal, finally to arrive at the way he conducted the interrogation. Here, on the contrary, relatively little attention is paid to the torture scene itself. The mother's accusation '*Torsit*

filium meum' (380, 9) rather occasions the father to expatiate upon his son's *ante acta* *vita* and reputation, thereby turning this part of his defence into an accusation rife with innuendo. Its structure runs in agreement with Håkanson's arrangement of the text.

380, 9-21 '*Torsit*' – *probes innocentem*: torturing his son was the only means for the father to combat the rumour.

380, 21 – 381, 3 *Du mala – tortus occidit*: the son was so wicked that he deserved both torture and death.

381, 4-14 *Si tamen – et timebat*: in an ἐπιδιήγησις the father explains that it was inevitable that his son would come to no good and describes how their relationship changed for the worse.

381, 15 – 382, 4 *Filium igitur – iuvenis deprehensi*: The torture did not serve an interrogation, but a methodical punishment.

382, 5-16 *Non est – potius occideret*: The issue at stake is not the torture, but the killing in which it resulted, a killing that meant a rescue from infamy and an act of mercy.

380, 9-21 '*Torsit*' – *probes innocentem*: Contrary to most of *DM* 19, in this part, the father seems to assume that the son was at least capable of being innocent. Yet it is not inconsistent with the rest of the declamation, rather, it serves as an argument *a fortiori*: the rumour alone is enough to torture him – let alone his wicked behaviour.

380, 9 '*Torsit*,' inquit, '*filium meum*': one of the mother's main complaints underlying the *actio malae tractationis* is countered by means of an *anthypophora*, for which see comm. at 18, 6 '*Rumor*,' inquit, '*fuit*' (359, 3 with n. 78). For the lack of correspondence between *DM* 18 and 19 in their treatment of the torture, see above.

380, 9 *iudices*: the father turns to the judges very briefly from 380, 14 onwards; this part of the argumentation consists in its entirety of an apostrophe to the mother.

380, 10 *infamem; quid refert, an innocentem, si aliud omnibus liquet*: by inserting a semi-colon Håkanson prevents that *infamem* and *innocentem* are regarded as counterparts in an alternative question, thus beautifully clearing up an answer that is truly brief, indeed verging on the obscure. For the father's reasoning, compare *DeMi* 335, 11 (a father, whose son is suspected of misconduct with his stepmother, gives reasons for taking his own life, although he professes to believe in his son's innocence, he is pessimistic about the young man's reputation) *Accedit huc quod fortuna nostra dedit malis suspicionem. Nihil est hoc loco filii quod me suspicari putes: non habebam causam parcendi homo*.

periturus; ego te vere innocentem puto. Ac si hoc non credis, curavi, sanavi; alioqui te et hodie occidissem. Constat tibi innocentia; sed numquam potest constare tibi fama.

380, 11-12 cunctis pignoribus invisum, omnibus adfectibus gravem: the synonymous isocolon obviously does not include the mother. For *pignus* (usu. plur.) in the sense of 'loved one', see OLD s.v. *pignus* 4 (applied to children as the guarantee of the reality of a marriage; sim. of persons standing in other relationships); Forc. s.v. *pignus: sunt filii, et nepotes, quia conjugalioris amoris, et fidei vinculum; item parentes, fratres, uxor, cognati; dicitur etiam in universum de omnibus, quae singularem considerationem aut religionem habent, ut patria, senatus, matrona, aliaque talia, quibus animus devincitur*; TLL s.v. *pignus* 2125, 38 – 2126, 9. Sussman 1994, 166 and 242 emphasizes that *pignus* is a strong term. *Affectus* in the same sense is rarer; see OLD s.v. *affectus* 7 'feeling(s) of attachment or affection, devotion, love; an object of affection or love, a dear one'; Forc. s.v. *affectus: item pro iis, quos omni affectione prosequimur, h.e. liberis, et propinquis*; TLL s.v. *affectus* 1191, 73 – 1192, 9. Similar collocations in *DM* 5, 11 *praelatus est tibi nescio quis affectus, possident caritatis tuae locum pignora de minoribus sumpta nominibus* (95, 17-19); 15, 6 *odium accepi contra coniugem, contra liberos meos, ut a sacris avocarer adfectibus, ut pignora sancta despicerem* (308, 12-14). *Invisus* and *gravis* are contrasted in Sen. *Suas.* 6, 9 *si cui ex triumviris non es invisus, gravis es*; but usually occur as synonyms, as in Sen. *Ben.* 3, 19, 4 *cum fere invisus inperia sint et omnis necessitas gravis*; *Tro.* 909-10 *dirum et invisum et grave est / servitia ferre?* Stat. *Silv.* 5, 5, 2-3 *Castaliae vocalibus undis / invisus Phoeboque gravis*. The expression *gravem facere* we also find *DM* 5, 22 *quid me remittis ad turbam? quid facis rursus omnibus gravem?* (108, 24 – 109, 1) and 19, 11 *ne calamitatibus nostris gravem facias innocentiam tuam* (383, 5-6).

380, 12 maligni ... sermones: a personification; cf. comm. at 18, 6 *nec umquam – deprehensa narrantur* (359, 11-13).

380, 12-14 quid agimus – credentis est: *sermocinatio* in the form of a soliloquy (διαλογισμός).

380, 12-13 quid agimus, anime: *anime* figures as a term of endearment in Roman comedy;⁴¹⁸ in later literature, usually poetry, it appears as an address of the self, usually hortatory; as such, it occurs exceptionally often in the younger Seneca's tragedies⁴¹⁹, and in *DM* 7, 6 (142, 22) and 7, 13 (150, 11). In 14, 2 (289, 16) and 17, 17 (349, 6) it reveals self-pity whereas here, it expresses desperation. The indicative *agimus* instead of a deliberative subjunctive need not surprise if we consult LHS 308: 'besonders häufig ist der Ind. Praes. in konsultativ-deliberativen Fragen des Dialogs, zunächst in der ersten Person.' This phenomenon has been tentatively explained by assuming that the indicative signifies that a genuine question is being asked, while the subjunctive can express a form of protest against a given situation. For *quid agimus* in a soliloquy, see Krapinger 2005 n. 58, with refs. to Lausberg 824, 3.

⁴¹⁸ See e.g. Pl. *As.* 664; *Bac.* 81; *Mil.* 1330; *Ter. An.* 684; *Eu.* 95.

⁴¹⁹ *Ag.* 108; 192; 228; 868; 915; *Med.* 41; 895; 937; 976; 988; *Oed.* 933; 952; 1024; *Phaed.* 112; 591; 599; 719; *Phoen.* 45; *Thy.* 192; 270; 283; 324; 423; *Tro.* 613; 662.

380, 13 quemadmodum effugimus, evadimus: the doublet of synonyms, also found *DM* 2, 20 (38, 19) and 11, 9 (228, 23), is meant to explain the inevitability of the father's actions.

380, 13-14 in tanta infamia nihil facere credentis est: the answer to the *interrogationes* takes the form of a pseudo-generic *epiphonema*, the categorical statement of which masks its untenability: one could argue more plausibly that to torture is to believe. Compare the objection made in *DM* 18, 8: *da bonum patrem, bonum maritum; dicturum me putas, non credet? nesciet esse rumorem* (361, 5-7); see also 18, 11: *Quid, quod non credis tantum, nefande, sed quaeris? ita tu non times monstri huius agitare secretum? 'populus loquitur incestum,' sed tu nega. 'civitas infamat;' tanto magis osculare unicum et coniugem, tene pariter, duos circa tuum stringe complexum. pro inaudita feritas! ita patri non sufficit non credere incestum, quod non potest probare?* (364, 1-6). (Non) est + genitive is an easy way to produce (pseudo-)gnomic *sententiae*: compare 18, 14 *non est eiusdem fateri, cur torseris, et tacere, cur occideris* (368, 23-24).

380, 14-17 vis me – unci decet: the father turns to his wife once more in an apostrophe that runs until 19, 10 (382, 16). He begins with a *subiectio* in which an *interrogatio*, by means of a tricolon, suggests a way of dealing with the rumour, which is subsequently rejected in a *comparatio*. The tricolon is worked up to a climax: *singulos, populo* and *rumore* are increasingly abstract and therefore more difficult to contend with.

380, 15 reclamare populo: cf. Sen. *Ep.* 94, 55 *aliquis custos ... abigatque rumores et reclamet populis laudantibus*.

380, 15 cum rumore rixari: the last member of the tricolon, placed chiasmatically in relation to the first two, is figurative, with *rumor* as a metonym for those who gossip.⁴²⁰

380, 15-16 tuae fortassis infirmitati conveniat negare: cf. the mother's advocate's appeal to the father in 18, 11: *'populus loquitur incestum,' sed tu nega* (364, 2-3). *Tuae infirmitati* is a metonym for the mother and refers probably not just to her sex, but also to her infirm morals. The possessive pronoun functions analogous to a *genitivus inversus*, for which see comm. at 18, 9 *novitas* (362, 5); for archaic *fortassis* see comm. at 18, 14 *fortassis* (368, 18).

380, 16 adsertio unci: *assertio* is originally a juridical technical term, denoting 'die gerichtliche Behauptung, Beanspruchung der Freiheit eines Menschen durch einen besonderen Freiheitsvertreter, *adsertor*' (Heumann-Seckl) or *vindicatio in libertatem vel servitutem* (TLL s.v. *assertio* 868, 75 – 869, 15); Forc.; OLD *assertio* 1. The current figurative use – *affirmatio, confirmatio, declaratio, defensio* – dates from the 2nd or 3rd century CE with pseudo-Quintilian, Tertullian and Minucius Felix supplying the earliest instances (TLL s.v. 869, 16 – 870, 33). The metaphor is sustained in *eripiendus* (380, 17).

380, 17 decet: after the urgency of the *διαλογισμός* (380, 12-13) one would expect a term denoting necessity; *decet*, standing for moral obligation, is probably meant to emphasize the father's authority and moral superiority.

380, 17-18 ut civitas stupeat, ut erubescat: the father's reaction had to be so drastic as to confound the gossips and make them feel ashamed about their rumour-

⁴²⁰ England 1934, 15 regards the figure as a personification because human action is attributed to the rumour, but in view of the further contents of the tricolon a metonymia seems more apposite.

mongering, it is hard to see, however, how torture ending in murder would not have been interpreted as a punishment for misconduct so serious that *it* would stupefy and shame the city (cf 18, 15 *si nihil factum est, quod debeat erubescere temporum pudor* [369, 11-12])

380, 18-19 torquere me filium putas? invidiam facio populo: another *subiectio* in which the audience's expectations are surpassed the reputation of the son is saved, that of the people is ruined For the idiom *invidiam facere*, see comm at 19, 4 *mihi fecit invidiam* (375, 18)

380, 19-20 illis verberibus lacerare famam, illis ignibus increpare rumorem: a perfect isocolon of synonymous metaphors with anaphora of *illis* and fourfold *homoeoteleuton* Gunderson 2003, 221 mistakenly regards the father's representation of the scene as a 'psychotic proposition' rather than a clever *color*

For the collocation of *verbera* and *ignes*, see comm at 18, 4 *verberibus, ignibus, omni crudelitatis arte* (357, 3-4)

380, 19-20 lacerare famam: this idiom occurs on two other occasions, where it denotes in both cases 'to ruin the reputation of' Liv 38, 54, 8 *populum Romanum ne morte quidem P Scipionis exsatiari, nisi et ipsius fama sepulti laceretur*, Tac Hist 4, 79, 4 *quae modica, sed crebra damna famam victoriae nuper partae lacerabant*

380, 20-21 quaestio – probes innocentem: in an *epiphonema* in the form of a (pseudo-) gnomic *sententia* the father concludes by returning to his point of departure *breviter ratio reddatur* (380, 9-10) His statement would have made sense if witnesses had been present during the torture For a similar reasoning, see *DeMi* 328, 7 where a father, having tortured to death the valet of a son who was suspected of murdering his brother, remarks *neque enim servi torquendi ratio erat si fecisse filium existimarem*

380, 22 Dii mala prohibeant: introduces an *exclamatio* The expression *di (mala) prohibeant* seems to originate with Terence We find it *An* 568 *si eveniat, quod di prohibeant, discessio*, *Hau* 1038 *Di istaec prohibeant!*, *Hec* 207 *Di mala prohibeant!*, cf *Ad* 275 *Di prohibeant* further occurs Cic *S Rosc* 151, *Fam* 10, 33, 4, Curt 9, 3, 4, Tac *Ann* 16, 35, 1, *Hist* 4, 74, 3, *Hist Aug Alex* 9, 5 (*mala*), *Maximin* 28, 7 Ritter 1967², 62 comes up with *DM* 4,2 *di non sinant, ut inter me responsumque decernat exitus* (83, 7-8), 8, 11 *di non sinant, ut ex liberis vilior incipiat esse periturus* (162, 7), 18, 10 *di deaeque male perdant tam inpuentes sollicitudines, tam nefarios metus* (363, 7-8), which though similar appeals to the gods differ in that they can be taken at face value

380, 22-23 ut noveris – filium pater: *ut* occurs regularly with *prohibeo*, but must be *explicativum* here in view of *mala* The father's wish is hardly heartfelt, since the next two paragraphs are spent on an account of his *dolor* Besides, whether the torture was occasioned by misconduct on the son's part or merely by the rumour, the mother must have been at least a witness to both, and to the father's *dolor*, for a long time already But compare 19, 2 *felicem ignorance conscientiam matris quae sufficit interrogare!* (373, 14-15)

380, 23-24 nihil est infelicius – non sufficit: another pseudo-gnomic *sententia*, which is easily produced with *nihil est* and comparative The device is often used in Ritters group II, where we find it 2, 15 (*nihil est difficilius quam differre gaudium, quod scias te non mereri*, 33, 23-24), 2, 21 (*nihil est innocentius caeco, qui nec in scelere deprehensus*

est, nec in dissimulatione, 39, 5-7) 10, 8 (*nihil est infelicius matre, quae perdidit aliquid in filio, postquam extulit*, 206, 20-21), 11, 10 (*nihil est crudelius morte hominum, quos populus occidit*, 229, 22, *nihil est crudelius calamitate quam gaudia reducunt*, 230, 12), 17, 15 (*nihil est delicatius exitu, quem non supplicia non metus, sed collecta de calamitatibus commendat infirmitas*, 346, 17-19), while 6, 18 (*nihil est desiderio suorum gravius*, 129, 7) and 11, 7 (*nihil est facilius quam in quemlibet adfectum movere populum*, 226, 24-25) can count as genuinely gnomic

380, 23-24 cui de unico – non sufficit: note the alliteration of *s*. For the use of *de*, cf 4, 8 *ei tantum mors negari, de quo non sufficit hoc poenae genus* (70, 2-4), 18, 16 *de muliere sufficere sibi putat, ut incesta credatur* (370, 6-7) The idea that prevailed in the previous section, torture as a means to shame the people, has disappeared completely the torture is now gradually brought to bear as a punishment and an accompaniment of the interrogation

380, 24 – 381, 2 iuvenem – ignibusque consumpsi: the father's reasons for torturing his son to death are expressed succinctly in a tricolon marked by introductory *polyptoton*, they are their blighted relationship, the rumour and the alleged incest

380, 25 perdiderant nomina nostra respectum: Sussman 1987, 234 translates 'our family name had lost its respect', which seems too weak. The father rather refers to the sacred titles of mother and father, which play an important part in *DM* 18 as well, see 18, 3 *actum est de sacrorum nominum fide, si, ut videatur innocens mater, aetas tantum filii facit* (356, 5-6), 18, 14 *consumpta est paterni nominis religio* (368, 19-20) *Respectus* without an accompanying objective genitive seems to occur only rarely (OLD, Forc s v *respectus*), we find another instance in 12, 4 *sine respectu salus publica addicitur* (235, 8-9)

380, 26 excusare rumori: quite inconsistent with the previous section, where the father refuses to defend his son *contentione verborum* (380, 14-18) Englund 1934, 14 regards *rumori* as a personification, but it may as well be another metonymy

380, 26 – 381, 1 inter nos – quam filium: an allusion to the alleged incest, cf 19, 2 *duravitque domus tota prosperitas quamdiu civitas de nobis hoc solum poterat loqui filium nos habere formosum ut vero in eam adolevit aetatem, in qua corporalibus bonis iuventus insolenter exultat* (373, 21-25) *Inter nos* can be taken quite literally in the father's view, the son came between himself and his wife

381, 1 agere ... filium: cf Sen *Contr* 2, 1, 5 *non possum agere in domo divitis filium*, Tac *Hist* 4, 2, 1 *Domitianus stupris et adulteris filium principis agebat*, *DM* 10, 4 *iuvenis meus noctibus totis agebat filium* (213, 12-13)

381, 1-2 verberibus ignibusque consumpsi: cf 18, 4 *verberibus ignibus omni crudelitatis arte consumpsit* (357, 3-4), 18, 15 *filium consumpsisti per flagella per laminas* (368, 25-26), see comm *ad loc* for the collocation of *verbera* and *ignes*, and for *consumo* = 'to kill'

381, 2-3 vis scire – tortus occidi: an *epiphonema* in the form of a *subiectio* concludes this section of the argument. For this type of argument in a nutshell, see comm at 18, 7 *vis breviter probem* (359, 21-22), 19, 6 *vis scire* (378, 8) The *epiphonema* is also a *noema* it is deliberately ambiguous. The father may be suggesting that the torture accompanied an interrogation, which led to a confession, a representation of affairs that

clashes with several other parts of his speech. See e.g. 19, 2 *nec contenta confessione mariti nihil se dissimulare, nihil scire reatus auctoritate testantis* (373, 3-4), 19, 12 *torquebam nec interrogabam* (384, 21-22). Alternatively, the father means that the son's *ante acta vita*, which he describes in the *narratio* (19, 2-3 [373, 19-374, 11]) and the following ἐπιδιήγησις (381, 4-14), was so corrupt that the torture could not but end in death.

381, 2 *quanta tormentorum ratio*: cf. *DM* 2, 14 *nescis, senex, quanta tibi opus sit ratione tabularum* (33, 12-13).

381, 4-14 *Si tamen – et timebat*: the father presents the son's failure to live up to his father's expectations as the preliminary stage of a criminal career. He had already briefly made this point in the *narratio* – see 19, 2 *in nullum vitae genus non in privatos, non in publicos actus florentem duxit aetatem* (373, 25-27). He now elaborates upon it in a short ἐπιδιήγησις or *narratio repetita*, for which see Quint *Inst* 4, 2, 128 *Est quaedam etiam repetita narratio, quae epidiegesis dicitur, sane res declamatoria magis quam forensis, ideo autem reperta ut, quia narratio brevis esse debet, fusius et ornatus res posset exponi, quod fit vel invidiae gratia vel miserationis. Id et raro faciendum iudico neque sic umquam ut totus ordo repetatur, licet enim per partes idem consequi. Ceterum qui uti epidiegesi volet, narrationis loco rem stringat, et, contentus indicare quid facti sit, quo sit modo factum plenius se loco suo expositurum esse promittat*. See further Fortun 2, 19, Lausberg 313. The ἐπιδιήγησις picks up on two parts of the *narratio*. 381, 5-9 corresponds with 19, 2 *in nullum vitae genus, non in privatos, non in publicos actus florentem duxit aetatem* (373, 25-27), 381, 10-14 with 19, 3 *tamquam patris occursum vitaret* (374, 4). To prove his son's inherent and growing wickedness, the father uses the *attributa personis*, for which see e.g. Cic *Inv* 1, 34-36, *Rhet Her* 3, 13-15, Quint *Inst* 5, 10, 23-28. Of special relevance is Cic *Inv* 1, 35 *In victu considerare oportet, apud quem et quo more et cuius arbitratu sit educatus, quos habuerit artium liberalium magistros, quos vivendi praeceptores, quibus amicis utatur, quo in negotio, quaestu, artificio sit occupatus, quo modo rem familiarem administret, qua consuetudine domestica sit*. On the present use of this *locus*, Gunderson 2003, 220 comments: 'The explanation is no explanation. The transgressions are all failures to act, not actions. The son is allegedly destined to commit a crime because he has never done anything – he doesn't travel, he is unmarried, etc.' He is right, but it should be noted that the non-explanation is in fact a clever insinuation (see comm. at *non peregrinationibus – volebat uxorem* [381, 7-9]).

381, 4 *vis scire*: somewhat awkward in view of 381, 2 *vis scire*.

381, 4 *breviter audi*: cf. 19, 8 *breviter ratio reddatur* (380, 9-10). All mss. have *leviter*, accepted by Burman 1720, 371 and Lehnert 1905, 344. Burman defends *leviter* by referring to Ov *Her* 3, 80 *et leviter dicas 'haec quoque nostra fuit'*. Håkanson 1974, 151 concurs with his explanation (*non voce magna et sublata – sed quasi suppressa*) but prefers *breviter* because 'von da zu *leviter audire* ist ein grosser Schritt'. *Leviter audire* would not be impossible in itself – we also find it Catul 84, 8, Tac *Ann* 2, 82, 4, Firm *Mat Math* 8, 3, 1. Yet Håkanson is right to prefer *breviter*, because it is quite unlikely that the father would wish to express this part of his argument in a subdued way.

381, 5-6 *in grande quandoque facinus prorupturum*: note the *hyperbaton*, for the omission of the accusative (*eum*, or *filium*) in the *acc. c. inf.* see comm. at 18, 12 *in nunc*

et dic scisse rumorem (365, 10) For metaphorical *prorumpo* see comm at 18, 16 in *prorumpenti exclamazione* (of sound, 369, 23) and at 19, 4 *prorupit, exiit* (375, 19) Compare also V Max 8, 5, 6 *eumque, qui venerari principes nesciret, in quodlibet facinus procursum crediderunt*, Amm 26, 2, 4 *et confidentia militis erumpentis interdum ad pernicio facinora timebatur*, and esp DM 4, 17 in *facinus necesse est otiosus ardor erumpat* (79, 22 – 80, 1)

381, 6-7 quod otio – perdebat aetatem: note the synonymia of *otio* – *desidem, vitam* – *aetatem*, enhanced by anaphoric *quod*

381, 6 otio vitam ... perdebat: though *otium* could have the positive connotations of peace, of well-earned rest from social activities, of literary production or philosophical pursuits, it was also regarded as potentially dangerous, because it could weaken the moral fibres and give room to mischief⁴²¹ Thus Catul 51, 13-16 *otium, Catulle tibi molestum est / otio exsultas nimiumque gestis / otium et reges prius et beatas / perdidit urbes*, 68, 103-04 *ne Paris abducta gavisus libera moecha / otia pacato degeret in thalamo*, Ov Rem 139 *otia si tollas, perire Cupidinis arcus*, DM 3, 12 *vacat enim vitus nostris et ad omne votum fluente fortuna lascivit otium* (53, 16-17) For the expression *vitam perdere* (in the sense of ‘waste one’s life’) see TLL s v *perdo* 1267, 48-65

381, 6-7 desidem domi perdebat aetatem: note the insistent alliteration of d For the expression itself, cf Lucr 4, 1135-36 *cum conscius ipse animus se forte remordet / desidiose agere aetatem lustrisque perire*, Liv 3, 68, 8 *sedemus desides domi mulierum ritu*

381, 7-9 non peregrinationibus – volebat uxorem: the *congeries* in the form of a *hexacolon* (if such a thing exists), with added effect through sixfold anaphora of *non*, ends in a climax which betrays that it is in fact a clever stroke of *emphasis* the father actually states that the young man always wanted to stay with his mother, as for the climax, *non ducere volebat uxorem*, ‘[s]o far as an incest charge goes, we can translate this into a tactless “because he already had one”’ (Gunderson 2003, 221)

The enumeration of activities is familiar from many other works Becker 1904, 53 n 1 – with reference to DM 15, 7 *possum navigare, colere terras, sufficio militiae* (309, 4-5) – calls them the *veterum solita ἐπιτηδεύματα quae saepissime coniuncta leguntur* He adduces a number of instances Hor S 1, 1, 4 ff, Prop 2, 1, 43-44, Auson Praef 4, 1-3, DeMi 249, 10 *neque enim qui non vicit negaveris pugnasse, neque eum qui fructus non percepit negaveris possedisse, aut eum qui naufragium fecit negaveris navigasse*, 249, 20 *Quomodo enim peregrinabimur? Quomodo ad colendos discedemus agros? Quae nobis securitas dabitur susipientibus legationes publicas, euntibus in militiam, cum frequenter bella sint?* When these enumerations occur in Roman declamation, however, they usually refer to what a father can order or at least expect his son to do Thus Sen Contr 2, 1, 4 *navigabo militabo, dummodo ubicumque fuero tuus sim*, 2, 6, 1 *Naviga, milita, peregrinare, quaere adulescens, senex utere*, 2, 6, 2 *navigabo si navigaris, militabo si militaris*, 10, 2, 13 *Si navigare imperasses, per hibernos fluctus egissem ratem, si peregrinari, nihil fuisset iubente te durum*, DeMi 371, 2 *Iam excedis legem tuam pater filio debes imperare, forti non potes Potes peregrinationem, potes militiam, sed non sententiam*

⁴²¹ Laidlaw 1968 42 52 gives a good survey of the various Roman attitudes to *otium*

iudici, non decretum magistratui, non praemium forti; similarly 378, 1 *Dico igitur certa esse quae imperent patres, navigationem, militiam, quaedam excipi, senatoris, magistratus, iudicis sententiam*; *DM* 8, 7 (the mother speaks to the father) *vos estis, qui crescentes adhuc in peregrinationes, qui iam adultos in castra magnorum parentum vanitate dimittitis*; cf. also 8, 13 (163, 25 – 164, 1). An exception we find in 6, 17 (husband to wife): *non enim navigatis, non legationem obitis, non frequenti peregrinatione variatis aspectus, non militaris vos, non forensis ratio deducit* (128, 11-14).

381, 8 temptare maria: the expression is not unusual. It is also found *Ov. Hal.* 84 (and cf. *Her.* 6, 161); *Sen. Ep.* 4, 10; 81, 2; *Nat.* 5, 18, 16; [*Sen.*] *Epigr.* 431, 9; *Plin. Nat.* 5, 95; *Veg. Mil.* 4, 39, 8; *Amm.* 22, 8, 48.

381, 8 rura colere: Becker 1904, 57 (53) sees an allusion to Verg. *Ecl.* 3, 61 *ille colit terras*. He may be right, although *rura colere* and *terras colere* are such commonplace expressions that it is difficult to determine who inspired our author to use them.

381, 9 non ducere volebat uxorem: the insinuation stands out all the better in the light of the other *congeries* cite above, because none of these mentions marriage.

381, 9-12 praeterea traxerat – exarserat: a doublet of coreferential sentences, whose mutual connection is underlined by the double metaphor of *traxerat* and *exarserat*. The downward spiral in the relationship between father and son is depicted with subtle psychological insight: the son's frustration about not being able to live up to his father's expectations, fed by frequent reprimands, turns into hatred.

381, 10 traxerat: for this metaphorical use of *traho* compare *DM* 5, 3 *traxerat ex firmitate mentis magnam protinus et in membra constantiam* (87, 5-6); 9, 10 *si ... vel ex aetate mores vel ex fortuna traxissem* (184, 19-20).

381, 11-12 in execrationem mei conscientia ... exarserat: *conscientia* is used metonymously for its possessor, as in *DM* 1, 3 (4, 5); 1, 8 (9, 1); 1, 9 (9, 23); 7, 1 (137, 18).⁴²² Metaphorical *exardesco* is very common; in the *DM*, we also find it 3, 17 *quanta quondam populi Romani exarserit seditio* (57, 8-9); see also TLL s.v. *exardesco* 1180, 1 – 1181, 84 (with *in/ad* 1180, 79 – 1181, 25); compare further comm. at *DM* 19, 1 *ardor* (372, 12).

381, 12-13 timebat occursus – fugiebat: this somewhat irregular tricolon contains a *congeries* in which both verbs and nouns run to a climax: the verbs denote an increasing distance, the nouns an increasing intimacy. Note how the last *membrum* is in a chiasmic position to the first two; Becker 1904, 60 points out the abab-pattern of *occursus-conloquia, oscula convictusque*.

The contents go back to the *narratio*: see 19, 3 *inde rarus in publico, et tamquam patris occursus, tamquam civitatis ora vitaret* (374, 3-4). In 18, 3 it is the father who is represented as unapproachable: *rarus hic namque ad oscula, difficilis amplexibus* (356, 9-10).

⁴²² With Sussman 1897, 234 I read *conscientia* as a nominative, in spite of TLL s.v. *emendo* 458, 80, which supplies *filius meus* as a subject. For the significance of *conscientia* in *DM* 18 and 19 see comm. at 18, 7 *haec conscientia* (360, 18).

381, 13 oscula ... fugiebat: this expression occurs only once more, and in a doleful context Luc 3, 744-45 *veniam misero concede parenti / Arge, quod amplexus, extrema quod oscula fugi*

381, 13-14 breviter perditissimae – et timebat: as usual the section of the argument is concluded with an *epiphonema*

381, 13 breviter: harks back to 381, 4 *breviter*

381, 13-14 perditissimae mentis definienda mensura est: for *mensura* denoting the scale of non-corporeal entities, see TLL s v *mensura* 766, 71 – 767, 18 In the *DM*, it usually refers to disaster 5, 9 *accidentum* (93, 9), 8, 1 *tristissimae calamitatis* (152, 3-4), 8, 3 *calamitatum* (153, 13), 14, 2 *calamitatis* (289, 6), 14, 12 *tormentorum* (300, 19-20) An instance very similar to the *epiphonema* in hand we find 5, 17 *breviter saevissimi languoris definienda mensura est non potest ex illo sanari nec quem redemerit pater* (102, 17-19)

381, 14 oderat me filius et timebat: what the father here presents as his ultimate explanation for the fatal torture hardly amounts to a crime which merits such an extreme punishment Yet it seems that he projects his own feelings of fear and hatred on his son, and that the murder was not so much caused by the mother's relationship with the son as by his own

381, 15-18 Filium igitur – exitus fuit: the next section of the argument begins with this double *subiectio* in which the torture is explained as a punishment rather than a means to facilitate an interrogation The first *subiectio* briefly addresses the judges, in the second, the father returns to the long apostrophe to his wife, which is continued until 382, 16⁴²³

381, 15 totius civitatis existimatione damnatum: harks back to the *narratio* see 19, 3 *omnium maledictis succlamatus, omnium denotatone damnatus est, donec et ipse consensum circa se publici doloris agnosceret* (374, 1-3) A similar phrase in Cic *Flac* 35 *Asclepiades, fortuna egens vita turpis existimatione damnatus*

381, 15-16 torsisse me – tarde, diu: the father uses the *subiectio* to exceed the jury's expectations, for this device, see comm at 18, 4 *Questurum nunc – accuso rumorem* (356, 20-21) For the first time he indicates that the torture scene did not consist of two elements – an interrogation and a subsequent death penalty – but was in fact a long drawn-out killing This idea recurs in 19, 12 *Accipe, mulier, brevem veramque rationem, cur in quaestione iuvenis occisus est torquebam nec interrogabam* (384, 20-22) and 19, 14 *non explicant tormenta quaestionem, quae occidunt* (386, 23)

381, 17 tarde, diu: Becker 1904, 79 includes this couple of adverbs in his list of paired synonyms, Deratani 1927, 295 adds that they are characteristic of African *abundantia* It could be objected that they are not quite synonymous, emphasizing in turn the pace of the father's actions and the total amount of time they took up

⁴²³ Håkanson *app. crit.* suggests *propter sequi vocas fort. puta[tu]s legendum*, but there is no need to make any changes because we find a number of similar sections where first the jury then the mother is addressed without any explicit transition See e.g. 19 6 (377 16 ff.), 19 13 (386 9 ff.) 19 14 (386 24 ff.)

381, 17-18 quaestionem illud – exitus fuit: for this second *subiectio* compare Calp *Decl* 13 *ultio quidem illa, non quaestio tyrannus venenum <non> quaesivit, se vindicavit!*

381, 18 poena, supplicium et malorum meorum exitus: a *congeries* which focuses first on the son but ends with the father's perspective For *exitus* in the sense of 'a way out (of a difficulty or sim.)' see OLD *exitus* 2b, TLL s v *exitus* 1533, 63-75 The mother's advocate characterizes stubborn silence as an *exitus* for the father in *DM* 18, 2 *aliud exitum non habet, quam ut respondere nolle videatur, quisquis filium occidit et probare non potest, propter quod debuerit occidi* (356, 8-11) For other occurrences in the *DM* see esp 11, 8 *occidi non est poena sed exitus* (228, 13) and 17, 19 *qui finis, quis exitus incredibilium malorum?* (351, 25)

381, 18-19 nulla ratio est: for this expression compare Lucr 1, 110 *nunc ratio nulla est restandi, nulla facultas*, *DM* 7, 6 *nulla est ratio quaestionum relicta mortalibus, si adiuvant contra veritatem* (143, 4-5), 8, 17 *nulla ratio est vulnerum, sanguinis, supremorum* (168, 18-19) Forc s v *ratio* singles out *ratio non est non est rationis consentaneum, imprudentis est, stulti est*, followed by infinitive, with Cic *Verr* 1, 24, *Caec* 15, Col 3,5 The father suggests that the son has on his conscience something so terrible that it cannot be confessed, which is why it is fine to employ torture as a punishment, but useless to interrogate him Sussman's translation 1987, 235 'there is a perfectly good reason to interrogate' etc is puzzling

381, 19 non est fas nisi: for *fas* without ethical or religious connotations, see comm at 18, 5 *fas est, fieri solet* (358, 19) Similar constructions Sen *Contr* 7, 7, 11 *victum ab eo competitore a quo vinci fas non erat nisi hominem turpissimum*, Quint *Inst* 4, 1, 50 *declamatoribus qui fas non putant nisi a contrario incipere*

381, 20 – 382, 1 quanta tamen – tempus indulsi: an explanation in detail of *tarde, diu* (381, 17), which is incompatible with the *narratio* see 19, 3 *fallitur, quisquis me putat quicquam fecisse consilio impetus ac temporis ipsius nescio quis ardor explicuit () inrumpo festinanter, avide, sine liberto, sine servulo, sicut me deprehenderat temporis illius fatum, manibus, ictibus et quaecumque ex obvio dolor in telorum transtulerat usus, ultra vires senectutis adgressus, ignes ex proximo raptos, verbera, quae casus obtulerat, non diviso dolore, non per partes nec per intervalla suspenso, sed semel, sed pariter invado* (374, 11 – 375, 1)

381, 20 et in quaestione: *et* evokes the consistently restrained attitude with which the father allegedly treated his son (compare 19, 4 *amavi filium meum [] viribus, dolore, patientia* [375, 23-24]), Sussman's 'even' (1987, 235) had better be replaced by 'too' *Quaestio* is a strange choice of words in view of the above, where it was denied that the *quaestio* was a genuine *quaestio* (381, 17-18)

381, 21 praecipiti raptus impulsu: the frequent occurrence of *p* gives the somewhat pleonastic phrase⁴²⁴ a sense of urgency For the significance of *praeceps* in the *DM*, see comm at 18, 11 *quod praeceps, quod abruptum* (364, 16)

⁴²⁴ Becker 1904 88 89 sees a *genitivus inhaerentiae* at the basis of this kind of pleonasm the genitive having been replaced by a synonymous adjective Apart from *praeceps impulsus* he mentions among other instances *praeceps*

381, 21 repente, subito: rightly included in Becker's list of synonyms (1904, 79) and characterized by Deratani 1927, 294 as akin to African Latin; but the expression already occurs Pl. *Mil.* 177, and then again in *DM* 2, 4 (23, 27); in isocolon we find it Lucr. 4, 992; Cic. *Sul.* 69; V. Max. 6, 9, 7 (*ext.*); Claud. *Carm. Min.* 11, 2.

381, 22 captus dolore caeco inpatientiae meae: note the alliteration of c, later on resumed in alliteration of v in *velox vulnus*, forming an aa bb pattern.

In view of the possessive pronoun, *inpatientia* should be considered a metonymy rather than a personification (*pace* Englund 1934, 13); for the significance of (*in*)*patientia* in *DM* 18-19 see comm. at 19, 1 *hanc ... patientiam meam* (372, 12). *Caecus* 'applied to passions, fears, etc. that blind one's judgement' (OLD 2b) is common; see TLL *caecus* 44, 29-69 (*translate, de rebus*). In the *DM* we find 3, 7 *caecus amentia corruptur* (48, 22) and – not unchallenged⁴²⁵ – 6, 15 *caecus adfectus* (126, 19). *Caecus dolor* is not found anywhere else in this sense.⁴²⁶

381, 22 velox vulnus inflixi: *infixi* is Gronovius' proposal for *indixi*, which is found in nearly all mss. Burman 1720, 371 and Lehnert 1905, 344 both prefer *indixi*, for which there are no convincing parallels, whereas *vulnus infligere* is found Cic. *Pis.* 32; Sen. *Dial.* 3, 28, 2; Firm. Mat. *Math.* 3, 4, 19; 3, 5, 19; 4, 9, 5; 4, 19, 35; 6, 9, 7; 6, 24, 1; 6, 30, 11. Mss. β (i.e. P and S) have *induxi*, for which there are no parallels.

381, 23 non potest – ante torquetur: a pseudo-gnomic *sententia*, which is in fact rather meaningless; the thought recurs in 19, 12 *quisquis in tormentis occiditur, ideo tortus est, ut occideretur* (385, 3-4). The mother's advocate articulates his own interpretation of the father's *ratio* in 18, 14: *unicum sine teste lacerasti, unicum occidisti soli tibi. deinde vis videri celare facinus, et in parricidio quaeris aliunde tristitiam* (368, 12-14).

382, 1 dedi moras, spatium, tempus indulsi: chastic, abundant synonymia: while we often see two of the three nouns occur together⁴²⁷, the combination of all three is unique. The statement is completely at odds with 19, 3 *non diviso dolore, non per partes nec per intervalla suspenso, sed semel, sed pariter invado* (374, 25 – 375, 1).

382, 2-4 vides – iuvenis deprehensi: the father now gives a different explanation for the methodical torture: from a long drawn-out capital punishment, it has become a measure to protect his son's (and wife's) reputation. At the same time, his statement can be regarded as a veiled threat: he could have caused a rumour if he had wanted to. The topic is resumed in 19, 13-14 (*'In meam' – mihi crederetur*, 386, 9-20).

382, 2 malignitatibus potuerim praestare materiam: note the abba pattern of alliteration. For the metonymous use of *malignitas*, see comm. at 18, 8 *malignitas* (361, 4); compare further Claud. *Carm.* 22, 16-17 *ut non infensus alendis / materiem praestes odiis*.

382, 3 gladio ... vulneribus: a *hendiadys*, enhanced by anaphora of *si*.

velocitas (*DM* 14, 5 [292, 20-21]); *praeceps trepidatio* (17, 4 [335, 16]), and, further on in 19, 10 *inconsulta amentia* (382, 22 – 383, 1)

⁴²⁵ *Inter duos parentes caecus adfectus est.* Håkanson 1976, 128 proposes to read *aecus* because metaphorical *caecus* usually has a negative connotation, which would not be suitable here

⁴²⁶ In Plin. *Nat.* 29, 38 and 55 *caecus dolor* refers to a pain of uncertain origin.

⁴²⁷ E.g. Sen. *Tro* 764 *tempus moramque dabimus*, Ag. 129 *da tempus ac spatium tibi*, Stat. *Theb* 10, 704 *da spatium tenuemque moram*.

382, 3 exitum fecerat: the switch to the indicative mood is occasioned by the rhetorical pluperfect, for which see comm at 18, 6 *fecerat credidisset* (359, 9) Von Morawski 1881, 10-11 regards the periphrastic expression *exitum facere* as characteristic of vulgar Latin. It means generally 'to end up', thus Sen *Contr* 8, 1, *Ep* 115, 1, *DM* 8, 3 (153, 14) and more specifically 'to die', as here, further *DM* 4, 22 (83, 22), 5, 20 (106, 6), Suet *Ner* 46, 3), see TLL s.v. *exitus* 1536, 22-26

382, 4 iuvenis deprehensi: this is precisely what the father suggests in the *narratio*. See 19, 3 *et ille quidem ad conspectum meum tamquam deprehensus obstupuit refugitque trepidus* (374, 18-20)

382, 5 facias duplicatae questionis invidiam: for the expression *invidiam facere*, see comm at 19, 4 *mihi fecit invidiam*, again, the father regards the mother's grief and her desire to see justice done as a means to put him in a bad light. In the mss *quaestionis* and *questionis* are represented in equal measure, Burman 1720, 371 and Lehnert 1905, 345 opt for *quaestionis*, Håkanson 1974, 151 for *questionis*, with good reason, because 'wenn *quaestionis* richtig wäre, müsste es *questionis* sc. *filii* heißen, und folglich *duplicatam* gelesen werden. Das Richtige ist aber wahrscheinlich *questionis* "die *invidia* einer doppelten Anklage"'. *Questio* (OLD 'the action of complaining') is a rare word, occurring only Cic *Brut* [Antonius] *habebat enim flebile quiddam in questionibus*, *Orat* 135 *ut est aliqua exclamatio vel admirationis vel questionis*, Quint *Inst* 9, 1, 39 = Cic *Orat* 135. As 'complaint' it fits the present context, 'Anklage' may be too technical, unless *questio* like *querela* can include this sense.

382, 6 id est: *idem est*, which occurs in M and is considered *haud male* by Håkanson (1974, 151, 1982 app. crit.) fits better with the style of this declamation, but since all other mss. have *id est* (explicating the *genitivus explicativus duplicatae questionis*) this must be preferred.

382, 6-7 sola est huius necessitatis ratio de morte: Sussman 1987, 235 translates 'His death alone is a strong argument to prove the torture was necessary', but the father is answering for his son's death, which the torture was merely a means to achieve. This becomes clear from the previous section (*torsisse me putatis? ego vero occidi tarde, diu*, 381, 16-17) and from what follows (my son died, yes, but) 'to torture a son who will survive – now that is really murder' (translation Sussman 1987, 235). *Sola* is probably a nominative case going with *ratio* 'Only a justification of his death is necessary'. For metonymous *necessitas*, see comm at 18, 13 *necessitas ista* (367, 15).

382, 7 ratio de morte: Ritter 1967², 68 remarks that '*De fällt auf*', it does indeed, but the free use of *de* in the *DM* is well-known, and this also goes for *ratio de*, for which see 5, 14 *de calamitate rationem* (99, 1), 7, 9 *de sola ultione <rationem>* (146, 3), 8, 20 *de filii morte rationem* (171, 25-26).

382, 7-8 illud est – torquere victurum: a *sententia ex inopinato*, pseudo-gnomic by its phrasing, it forms an enthymeme with the following *interrogatio*.

382, 8-9 putas iuvenem – morte succurri: cf. 19, 5 *illud est in patribus usque ad parricidium terribile, quod amant, quod succurrunt, quod sibi videntur aliter non posse misereri* (376, 21-23). Here, the father means that the son's reputation was ruined, had he lived, he would have had to explain himself time and again. The statement is a continuation

of 19, 8-9 (380, 9-21, culminating in *quaestio de infami filio unam rationem habet, ut probes innocentem*), but only now is it made clear that the torture had to end in the son's death. A refutation occurs in 18, 14: *Mirabar et ego, iudices, si tam nefanda quaestio alium exitum potuisset habere quam mortem ... facinus quaestionis operis scelere maiore* (368, 5-8).

382, 9 morte succurri: for this expression see also V. Fl. 7, 313-14 *noctis eram Ditemque ciens, succurrere tandem / morte velint* and esp. Suet. *Ner.* 36, 2 *tamquam aliter illi non possent nisi morte succurrere dedecorato flagitiis omnibus*.

382, 9-10 magnos sermones: a personification. This reading of ζ was rightly adopted by all three editors; it is explained in Dessauer 1898, 92 (frequent confusion of *li* and *n*, *li* and *u*) and substantiated by *malignitatibus* above (382, 2) and personified *maligni sermones* in 18, 13 (366, 23); 19, 8 (380, 12).

382, 10 adserere coeperam: the father began to vindicate his son by torturing him: see 19, 9 *torquere me filium putas? invidiam facio populo: videor mihi illis verberibus lacerare famam, illis ignibus increpare rumorem* (380, 18-20).⁴²⁸ *Assero contra* is found nowhere else.

382, 10 non reddidi rursus infamiae: the father makes his defence of his son consummate by killing him in order that he will never again be confronted with rumours and questions. Pleonastic *reddidi rursus* (note the alliteration of *r*) drew the attention of von Morawski 1881, 3, who points out that Apul. *Met.* abounds with pleonastic *rursus*, and of Hammer 1893, 55. Both have a list of apposite similar instances from the *DM*. *Reddere rursus* occurs regularly in all periods: Hor. *S.* 1, 3, 75; Cic. *Tim.* 47; Var. *R.* 2, 2, 1; Vitruv. 9, 8, 14; Plin. *Nat.* 2, 225; 37, 4; Ep. 5, 19, 6; *DM* 4, 16 (78, 15); Suet. *Aug.* 94, 7; Ter. *Maur.* 1356; Firm. *Mat. Math.* 5, praef. 3; 7, 22, 2; Liv. *Per.* 128.

382, 10-11 neque in – patris emisi: is coreferential with *non reddidi rursus infamiae* and further explained as *ille vero non fuit post tormenta laturus vitae pudorem, ut interrogaretur a singulis, ut negaret* (382, 13-14).

382, 11 oculos et ora: for this and similar collocations see comm. at 18, 9 *non complectitur mater ora, non vultus* (362, 3-4 n. 32).

382, 11 de secreto ... emisi: both von Morawski 1881, 6 and Tosato 1912, 50 comment on the unclassical use of *de* instead of *ex*; but in fact this already occurs Cic. *Verr.* 5, 22; *Cael.* 66.

382, 12-14 providentia[m] mea[m] tibi quoque, mater, ne in hunc interrogetur, eripui: this sentence is problematic. Sussman 1987, 235 translates: 'In taking provisions for your benefit, yes you, his mother, I rescued him from being put to formal questioning'. It is more likely, however, that *ne in hunc interrogaretur* is the direct object, and that *tibi* is the indirect object of *eripui*, for *eripio* has taken the sense of 'to spare' or 'to prevent'. The present use of *eripio* is – except for the lack of *se* – somewhat comparable to KS 2, 227: '... gibt es noch andere [Verben], welche negativen Sinn haben und, indem sie prägnante Bedeutung annehmen, eine erstrebte Wirkung ausdrücken können' with Caes. *Gal.* 1, 4, 2 *per eos, ne causam diceret, se eripuit*; Cic. *Sest.* 18 *ab iis se ereptum, ne de*

⁴²⁸ Becker 1904, 57 seems to mistake *sermones* for the direct object of *adserere* and comes up with Verg. *A.* 6, 160 *multa inter sese vario sermone serebant*, Pl. *Mil.* 700 *mihi quae huius similis sermones sera[n]t*.

ambitu causam diceret, praedicabat. Further, *interrogare X in Y* means ‘to interrogate (witness) X (to collect evidence) against (accused) Y’: see Plin. *Ep.* 1, 5, 6 *solebant testes in reos, non in damnatos interrogari.* Gronovius’ proposal to turn *interrogetur* into *interrogaretur* (*fort. recte, Håkanson app. crit.*) must be accepted: *eripui* refers to the killing, which in the father’s view put paid to any further (formal) questioning. The complicated sentence should then be interpreted as follows: ‘With my characteristic prudence, mother, I prevented also for your sake that any questions should be asked to incriminate him.’ – implying, of course, that the mother was spared an interrogation. As for Reitzenstein’s proposal (1909, 62 n. 2) to retain *providentiam meam* as an *accusativus exclamationis*, I do not see why this should be untenable, especially since the accusative occurs in all mss.

Another matter is the order of the text, which would be improved if this sentence and the next were to change places. Since both concern the impossibility for the son to continue a life of shame, 382, 13-14 *ille vero – ut negaret* would link up perfectly with 382, 9-11 *quem contra – patris emisi*. The father would then add somewhat parenthetically that his actions were in his wife’s interest, too (382, 11-12), but conclude that her personal feelings play a secondary part to the innocence of the entire household (*verum – potius occideret*, 382, 14-16).

382, 13-14 *ille vero – ut negaret*: the torture has already been accounted for as a means to save reputations (380, 9-21) and as a punishment (381, 17-18), now it is a way to put the son out of his misery

382, 13 *fuit ... laturus*: the *coniugatio periphrastica* can indicate a ‘Bestimmung, Beschaffenheit, Notwendigkeit’ (KS 160) and usually does in the *DM*. Compare 4, 19 *mors mihi praestare potest, ne parricidium faciam, mors, ut videar nec fuisse facturus* (81, 19-21), 5, 21 *filium, qui relictus mea fuit moriturus invidia, non occidi, sed perdidici* (107, 3-4), 8, 21 *non fuit, non fuit solo languore periturus* (173, 6-7).

382, 13-14 *pudorem vitae*: Sussman 1987, 235 translates ‘the shame of surviving it’, which has a nice parallel in *DM* 12, 14 *pudet vitae, lucem ac sidera intueri non audeo* (247, 1-2). This shame seems, however, attached to his survival rather than caused by it, it is made explicit in the two following *ut*-clauses. For similar sentiments, see Sen. *Suas.* 7, 1 *tamen non taedet tantum me vitae meae sed pudet*; Claud. *Carm.* 15, 451 *nonne mori satius, vitae quam ferre pudorem*?⁴²⁹

382, 14 *ut interrogaretur a singulis, ut negaret*: note the anaphora of *ut* and compare 19, 8 *vis me circumire singulos, reclamare populo, cum rumore rixari*? (380, 14-15).

382, 15 *adfectibus tuis renuntiandum est*: Sussman 1987, 235 translates ‘you ought to be reminded while your head is clouded with strong emotions’, but the father surely means ‘your own personal feelings ought to be discounted’, seeing that these *adfectus* are contrasted with the *innocentia* of the entire household. For *renuntio* in this sense (‘to withdraw [from], forsake, give up, renounce’) see OLD *renuntio* 8, Forc. *renuntio*).

⁴²⁹ And cf. Stat. *Theb.* 1, 15, 154 *55 perit ius fasque bonumque / et vitae mortisque pudor*, Amm. 26, 3, 5 *cum vitae pudere deberet et culpa*.

382, 15-16 ad totius – potius occideret: as usual, the argument is concluded with an *epiphonema*, which suggests the son's guilt, for the hypothetical suicide the father mentions would have been inspired by a guilty conscience. The reverse argument we find in *DM* 17, 9: *innocentis fili ultio est mori* (340, 20)

382, 16 pertinere ... ne: *pertinere* with a subject clause introduced by *ne* (or *ut*) is rare; OLD *pertineo* 2b 'to tend (to some result, usu. desired), be conducive to' only notes *acc. c. inf.* Yet there are some other occurrences, for which see TLL *pertineo* 1807, 59-62 (*ut*) and 63-67 (*ne*).

Quid dixit

Argumentatio: refutatio 19, 10-14 (382, 17 – 387, 12)

This last part of the *argumentatio* again concerns the father's silence. But whereas previously the father proceeded from (the virtue of) silence in general, he now goes into his reasons for being silent about what his son said, or didn't say, during the interrogation. The argument easily takes up the bulk of the *argumentatio*, but it is confused, self-contradictory, extremely figured and maybe textually unsound. Going by Håkanson's arrangement of the text, it can be said to contain the following sections:

382, 17 – 383, 3 *Sentit – quid dixerit*: the mother's charge is absurd in two respects: it is out of proportion to what happened to her son, and she is bound to know if anything has been said.

383, 4-15 *Fidem communis – solus occidere*: to drag up what happened in the secret room would mean to sully the son's memory, whereas the father is now reconciled with him and respects him.

383, 16-24 *Perseveras – et mater*: if the mother wants to know so badly, she ought to have joined father and son during the interrogation.

383, 25 – 384, 7 *Instas tamen – iam deber*: the father is still dazed by the torture scene; but whatever he says will anyway not be credible.

384, 8-19 '*Quid*' – *quid dixerit*: no one has asked the father this before; he invites the mother to imagine all kinds of outcomes.

384, 20 – 385, 14 *Accipe – quam confiteri*: the torture being a slow execution, it took place without an interrogation; the son did not speak.

385, 15-20 *Quod sufficit – non possem*: the son was guilty of something ineffably worse than the usual youthful misdemeanours.

385, 21-25 *Miratur aliquis – fuisses abdicatum*: it would have been useless to abdicate the son, for the mother would have followed him.

386, 1-8 *Finge iuvenem – ut nescias*: even if the son had said anything, the father would not have been able to hear it, because the torture took up all his attention.

386, 9-20 '*In meam*' – *mihi crederetur*: the father's silence is not a ploy to incriminate the mother: if that was what the father intended, he could simply have given free rein to the very rumour he took such drastic measures to combat.

386, 21-23 *Fateor igitur – quae occidunt*: the father knows nothing for certain.

386, 24 – 387, 12 '*Quid*' – *quod putas*: It doesn't matter what the father says: the mother will deny it anyway. He may as well lie, but she knows the truth.

382, 17-19 *Sentit – an dixerit*: compare 19, 5 *quid tibi cum lege, quam propter alios minores accepistis adfectus? querelas habet ista, non gemitus, et matre seposita solam conplorat uxorem* (376, 8-10). Here, the argument is reversed: the father evidently assumes that the mother has adapted her complaint to fit the *actio malae tractationis*. He therefore seems to acknowledge implicitly that the mother had no other option, as it is argued in 18, 5

quid tamen facere vultis miserum dolorem, si non habet aliam sexus hic legem, si intra iuris huius angustias omnis nuptiarum constricta est? (357, 24-26, see comm *ad loc*)

382, 17 ius querelae suae: *ius* here has the sense of 'justice (of an action or plea)' (OLD 7b, where this instance is cited with Cic *Mil* 15, Liv 1, 26, 12, 36, 32, 3), see further Heumann-Seckel *ius* 1e ('rechtliche Lage, Beschaffenheit'), cf TLL *ius* 697, 55 – 698, 7 (esp 697, 77-78) For *querela* as a technical juridical term see comm at 19, 5 *querelas non gemitus* (376, 9-10)

382, 18-19 itaque quaerit – an dixerit: Sussman's translation (1987, 235) is needlessly laborious. Instead of his 'Thus she asks what he said to me (about which she knows nothing), or whether he spoke at all', we can simply put 'Thus she asks what was said to me by him about whom she doesn't know whether he spoke at all'. See Ritter 1967², 68 who shares this interpretation, as is evident from his remark that '*de fällt auf ille de quo nescit an dixerit*'. *Nescire de* is unclassical, but not unique: it occurs e.g Pl *Am* 736, Bac 324, Mer 382, Ter *Eu* 722, Cic *Fam* 4, 8a, 2, Apul *Soc* 21, Met 8, 12. Compare also DM 18, 1 *uxori de qua scire voluit* (354, 3) *An dixerit* too – instead of e.g *locutus sit* – may be considered somewhat unelegant, but it is consciously repeated forming a sort of epiphora with preceding *dixerit*.

382, 19-20 Quid ais, mater inpatiens?: for *Quid ais* as a formula to introduce false assumptions attributed to a speaker's opponents, see comm at 18, 9 *Quid ais – ex forma* (361, 14-16), for the significance of (*im*)*patiens* and (*im*)*patientiam* in DM 18-19 see comm at 19, 1 *hanc patientiam meam* (372, 12)

382, 20-22 ita in – non obicis: an ironical apostrophe: the father ridicules the mother's complaint by pretending to assume – first – that where her son's tragic death is concerned, she only cares about his last words, secondly, that when he reveals them to her, she will not mind anymore about the murderous torture. His mockery is lent force by the anaphora of *ita* (cf OLD *ita* 12 'in surprised or incredulous, often indignant or ironical questions. Indeed? really? is that a fact? often w. some inferential force')

382, 20 in morte: *in* has an almost adversative significance, for which see DM 18, 5 *et in parricidio malae tractationis reddamus aliunde causas* (358 4-5 with comm *ad loc*)

382, 21-22 si respondero, remittis parricidium, tormenta non obicis: Sussman 187, 235 translates 'if I reply, will you forgive me for killing your son, but won't you object to his torture?' but there is no opposition between the two asyndetic, chiasmic main clauses: the father merely assumes sarcastically that as soon as he has replied, the mother will mind neither about the murder, nor about the torture. The use of the present instead of a simple future tense in the main clause is not uncommon in colloquial Latin according to KS 119-20, LHS remarks on the more general use of *praesens pro futuro* that 'durch das 'durch das Praes die Unmittelbarkeit der Ausführung bezw Nichtausführung einer Handlung kraftig unterstrichen [wird]' ⁴³⁰

382, 22 – 383, 1 o inconsultam muliebre[m] semper amentiam: the *exclamatio* expresses impatience with womanly inconsistency exemplified both in what preceded (382

⁴³ Tosato's statement (1912: 66) that the *praesens pro futuro* in this case gives the sentence a general tenor and therefore the value of a *sententia* is neither here nor there.

19-22) and what follows (383, 1-3) For pleonastic *inconsultam* . *amentiam* see comm at 19, 10 *praecipiti raptus impulsu* (381, 21 with n 424), there is a slight echo in Suet *Cl* 15, 1 *inconsultus ac praeceps* . *amentique similis*. *Muliebris* is often used in a pejorative sense (OLD *muliebris* 2); thus in the *DM* we further find 1, 2 *suspicionem muliebri* (3, 22), 2, 8 *tam muliebre facinus* (27, 15-16); 3, 11 *muliebrem patientiam* (52, 22), 10, 9 *muliebri vanitate* (208, 8).⁴³¹ As for the format of the *exclamatio*, compare 8, 3 *O tristior indigniorque semper mensura calamitatum* (153, 13), 17, 20 *o mors semper imperata miseris, negata cupientibus* (352, 5-6)

383, 1-3 quid iuvenis – quid dixerit: a double, antithetical *epiphonema* once more sums up the mother's inconsistency Note the largely parallel structure of both *sententiae*, which comes out in the *repetitio* of *quid dixerit* (383, 1 and 3) and anaphora of *tamquam* with antithetical *ignoret* (383, 2) and *sciat* (383, 3). Both *sententiae* suggest that the son said something during the interrogation and that the mother must know about it, and therefore imply that she was guilty

383, 1-2 tamquam ignoret: suggests that she *does* know

383, 2 nihil me comperisse non credit: not 'she doesn't suppose I discovered anything' (Sussman 1987, 235), but 'she does not believe that I *didn't* learn anything' cf 19, 2 *ne contenta confessione mariti nihil se dissimulare, nihil scire* (373, 3-4)

383, 3 quid dixerit: not 'what he would have said' (Sussman 1987, 235), but 'what he said', for if *dixerit* were a potential subjunctive, it ought to have been a past potential *diceret*. However if the subjunctive were to be meaningful, one would – in view of *nihil me comperisse non credit* – expect a counterfactual one *dixisset* Better to assume that it simply depends on the interrogative pronoun *quid*. Of course this leaves us with an inconsistent statement, but this is hardly the only occasion where the father suddenly assumes – for argument's sake – that the son has spoken: compare e.g. 19, 12 *finge me respondere nihil dixit, nihil locutus est non credis? atquin multo minus creditura quid dixerit* (384, 17-19)

383, 4-15 Fidem communis – solus occidere: A short, amplificatory *digressio* which would not have been out of place in the *peroratio*, cf 19, 16 *iam miser mori possum. explicui[t] te, sollicitudo, pietas* (388, 25-26) The father pleads with the mother to leave off questioning for the sake of their son's memory Though Quintilian warns against overstrong emotion in the *argumentatio* (*adfectus plerumque haec pars mitiores habet, Inst.* 5, 13, 2) the father's pathos is not without effect after an emotional appeal to the mother he reveals how the murder has had a cathartic effect on him, thus affording some respite before he continues his attack on the mother

383, 4-5 Fidem communis sanguinis, fidem communium malorum: an emotional double *exclamatio*, enhanced by anaphora of *fides* and *communis* For *exclamationes* containing *fides*, see comm at 18, 2 *fidem vestram* (354, 21 – 355, 1), 18, 11 *fidem hominum deorumque* (365, 1) Highly emotional appeals to the *fides* of inanimate subjects we also find in *DM* 7, 3 *fidem tormentorum' quousque percussoris filii mei conscius ero?* (139, 25-26), 14, 1 *fidem iustitiae, fidem severitatis humanae' – ne meretrici*

⁴³¹ But 10, 6 despite suggestions to the contrary in OLD 2a is favourable *quid tam muliebre quid tam maternum fieri potest?* (205, 9 10)

prosit, vel quod praevaricatione videor explicatus! (288, 8-10). *Communis sanguis* refers to the son; the *mala* are not quite *communia*, for each thinks the other has caused them.

383, 5 *ne parricidii – agitare secretum*: for the expression *agitare secretum*, see comm. at 18, 11 *ita tu – agitare secretum* (364, 2). A periphrastic imperative by means of *ne veli(ti)s* instead of *noli(te)* is extremely rare; the only other cases are Pers. 5. 170 *ne trepidare velis atque artos rodere casses*; *DM* 4, 22 *miserere, filium pietate pereuntem ne velis exitum facere parricidae* (83, 21-22).⁴³²

383, 5-6 *ne calamitatibus – innocentiam tuam*: this request is coreferential with the preceding one (note the anaphora of *ne*); if taken at face value, it fits with the negative run-down of the son's *ante acta vita* in 19, 9 (381, 4-14) and leaves open the possibility that the mother is innocent; in her innocence she then exacerbates the family's anguish by forcing the father to drag up a miserable past with a terrible conclusion. But the exhortation can also be read as a threat: 'do not taint your reputation of innocence (which I have saved by providing everlasting silence) with our misery'⁴³³; and thirdly, as heavy irony. In all cases, *innocentiam tuam* is metonymical for the mother; for the expression *gravem facere*, see comm. at 19, 8 *cunctis pignoribus invisum, omnibus adfectibus gravem* (380, 11-12).

383, 6 *viderit*: see comm. at 19, 2 *orbitatis istud – quod dicam* (373, 5-7).

383, 7 *iuvenis ille*; *ego*: a sharp contrast: the father has dissociated himself from his living son.

383, 7 *suprema revereri*: the father can respect his son now that he has been rendered harmless. Note the frequency of *revereri* and *reverentia* in this section of the *argumentatio*: *reverentia* also occurs 383, 9 and 13; compare the admiration the father expresses in 19, 8 *pudeat nos, mulier, infirmitatis: vicit nos modo iuvenis ille constantia; mori voluit, ut taceremus* (379, 16-17) and 19, 16 *vincere me tormenta docuisti* (388, 14-15). *Suprema* means 'remains', not 'funeral' (Sussman 1987, 235) – for this rare sense see comm. at 18, 17 *supremis tuis* (370, 25-26). For the sentiment expressed compare *DM* 5, 14 *parcamus, quaeso, memoriae, revearemur suprema cineris* (99, 17-18).

383, 8 *post exitum – in patrem*: the *sententia ex inopinato* is a clear expression of the father's powerlessness in the presence of his son: in fact, he can only be a father of a dead son. Schultingh was evidently fascinated by the author's compartmentalization of persons in different roles. In Burman 1720, 372 he adduces *DM* 12, 2 *ab homine descivimus* (233, 4-5); Stat. *Theb.* 12, 165-66 *bello⁴³⁴ cogendus et armis / in mores hominemque Creon*;⁴³⁵ for *DM* 1, 2 *secretum non filius accipit a patre, sed caecitas* (3, 10; Burman 1720, 5) he adds a wealth of examples, the most relevant of which are Ov. *Met.* 12, 29-30 *pietatem publica causa / rexque patrem vicit*; *DeMi* 387, 1 *Duas leges habui, viri fortis et patris. Viri fortis legem transtuli in patrem, patris in virum fortem*; Calp. *Decl.* 18 *parentum*

⁴³² But *ne* may have been occasioned by *miserere* *Noli* + *inf* occurs in *DM* 6, 15 (126, 25) and 9, 16, both belonging to Ritter's group I.

⁴³³ For this interpretation, there is a slight parallel in *DeMi* 377, 4: *Sed forsitan non solum puram sed etiam speciosam innocentiam gravet [in parricidium] causa*

⁴³⁴ Schultingh has *vi*.

⁴³⁵ And Ter. *Eu.* 35 *illum se convertisse in hominem*; but he must have been mistaken, for we only find an inappropriate *deum sese in hominem convertisse* in 588

illa deliberatio fuit, haec iam cunctatio parricidarum est; DM 19, 5 matre seposita solam conplorat uxorem (376, 10).

383, 8-10 maior defunctis – videatur occiso: a doublet of near-gnomic, antonymous *sententiae*

383, 8-9 maior ... praestanda reverentia: *sc. quam vivis*, note the *hyperbaton* The expression *reverentiam praestare* seems typical of the 2nd century We also find it Quint. *Inst* 11, 3, 132; Plin. *Ep* 3, 8, 1, 8, 5, 1; 10, 26, 1, *Ep. Front (epp. Marci Caesaris ad F)* 4, 2, 5; *DM* 5, 8 (92, 25-26), 16, 7 (326, 18-19)

383, 10 affectibus patris: *patris* is read by ζ, adopted by Burman 1720, 372 and Håkanson, mss. have *matris*, followed by Lehnert 1905, 346 *Matris* is not impossible, the father could be warning the mother that her persistent questioning will lead to answers that will sully the son's memory. But seeing that the father is holding forth about his own emotions, *patris* seems better

383, 10 insultare ... occiso: note how even here, the father takes no trouble to gloss over the way his son died.

383, 10-12 in gratiam – severa conposuit: the synonymy of the two paradoxical *epiphonemata* is enhanced by the double personification of *orbitas* and *mors*. They continue the thought conceived in the previous doublet of paradoxes (383, 7-8).

383, 10-11 in gratiam ... reduxit: *in gratiam reducere* is a common idiom esp in rhetorical prose; we find it Ter. *An.* 948, Cic *Prov.* 25, *Clu.* 101; *Rab. Post* 19; Liv 10, 5, 13, Sen. *Contr.* 1, 1, 3; 1, 1, 7; 2, 1, 31, *Dial.* 1, 1, 5; 3, 23, 8, V. Max 7, 2, 6; Quint *Inst* 5, 11, 19

383, 12 quin immo: for this tautology see comm. at 19, 2 *novo quin immo fabulosoque* (372, 22 – 373, 1).

383, 12-13 totum secreti illius ordinem: for *ordo* in the sense of 'the steps or stages (in an action or process), course', see comm. at 18, 3 *ordinem* (355, 12) The father now does resort to a euphemism after all, compare 19, 1 where the murderous torture is referred to as *totum miserae necessitatis ordinem* (372, 10-11)

383, 13 subit tacita miseratio: another explanation for the father's silence. For the expression compare *DM* 6, 11 *nobis .. adversus exanimis genuit .. miserationem, quae cogitationi nostrae subit* (122, 10-12).

383, 13-15 quantam ego – solus occidere: the section ends the way it began. with an *exclamatio* The relative clauses seem to imply that rather than his son, the father himself deserves reverence for having been able to perform such a terrible task all by himself.

383, 13-14 quantam ... debeam reverentiam: note the *hyperbaton* *Reverentiam debere* seems to originate in the 2nd c CE; we find it Quint. *Inst* 6, 1, 50, 11, 1, 62, 66, 12, 5, 1, Iuv 14, 47, Marc. Fronto *Ep* 4, 2, 5, Iul. Val 3, 24, Auson *Epic in patrem praef*, 1, Hist Aug. *Did* 2, 3. The subjunctive can be explained from a conditional aspect expressed in the double relative clause (KS 174)

383, 14-15 quem potui torquere solus, quem potui solus occidere: note the emphatic anaphora of *quem potui*, followed by chiasmic *torquere solus – solus occidere*

383, 16-24 Perseveras – et mater: the father addresses his wife once more the apostrophe runs until 19, 12 (384, 7) He resumes a statement made in 19, 4 (*narratio*)

Laudo, iudices, patientiam matris cum et ipsa semper plurimum esset domi, et ab illo secreto fortasse non longe, intervenire noluit, interpellare non ausa est (375, 11-13) But the mother's advocate objects to the father that she was not admitted see 18,13 *Non mehercules inprobe mihi proclamaturus hoc loco videor hominem, qui torquetur in matrem, debere coram matre torqueri cur excluditur infelix a sua causa, a sua quaestione?* adhibe speciosi cruciatibus hanc nimis amantem, huius gemitus excipe, huius suspiria oculosque custodi, si quod facinus admissum est, torquebis quidem filium, sed fatebitur mater (367,12-18) – another possible piece of evidence, incidentally, that 19 was written before 18

383, 16 Perseveras, cogis, instas: an *interrogatio* consisting of a *congeries* of synonyms, *perseverare* and *instare* are found together Liv 5, 5, 7, Sen *Ep* 71, 35, *DeMi* 338, 27, cf Curt 4, 16, 30, V Max 3, 8, 3

383, 16 invicem te ... interrogo: *ambiguum* the father questions his wife either after having interrogated his son, or after she has interrogated him

383, 17-18 quid interrogarem, quid ille loqueretur: *distributio* with anaphora of *quid*

383, 18 non inruperis in quaestionem: but see 19, 4, where after expressing his surprise that the mother did not show up at the interrogation, the father continues *sed et manibus meis gratulor, quod non propinquus aliquis, non amicus inrupit, occidissem, quisquis me tunc ausus fuisset interrogare pro filio* (375, 13-16) Compare also 18, 14 *Inrumpere me cum maxime puta in illud tuum, parricida, secretum, inicio properanti quaestioni manum inhibe ictus, subtrahe paulisper ignes quicquid est, quod eruisti profer in medium* (367, 19-22)

383, 18-19 nullis ministris, nullis custodibus vallaverat: Ritter points out a resemblance with *DM* 2, 16 *an una quiescentium fores vallaverit cura servorum* (34, 8-9), note, here, the anaphora of *nullis* As for the bare ablative, 'Im *abl instr* stehen in der Regel nur sachliche Begriffe, wird eine Person als mittelperson bezeichnet, so wird *per c* acc gebraucht Doch werden auch Personen bisweilen als bloße Sachen als bloße Werkzeuge aufgefaßt und durch den Ablativ ohne *ab* bezeichnet' KS 380, with Cic *Mur* 49 *vallatum iudicibus ac sicaris* as one of many apt examples⁴³⁶ LHS 115 apparently prefers to regard the ablative as a *sociativus*

383, 19-21 quanto melius – plura dixisset: tricolon with anaphora of *quanto*, the last, surprising colon is deliberately shorter and lacks the adverb in *-ius* If we take these words of the father's literally, he seems to base them on his general complaints about the son's *ante acta vita* as described in 19, 2 (373, 23-27) and 19, 9 (381, 4-14) But in fact, the father is mocking the mother and insinuating that in her presence, the young man would certainly have confessed to the incestuous affair

383, 19-20 quanto melius ... ipsum adisses: it would have been better to approach the son at once than the father afterwards

383, 20 quanto fortius interrogasses una: the mother is a coward, the father implies, for asking him afterwards instead of confronting her son at the time Sussman 1987, 236 considers *una* a nominative case, translating 'how much more forcefully you

⁴³⁶ Even though it prints *vallatus iudicibus*

alone would have interrogated him' – but this seems too absurd in the present context, besides, nominative *una* is always attributed to a noun in the *DM*. It seems better to take *una* as an ablative, sc *mecum*.

383, 21 quanto tibi plura dixisset: the presence of the mother would have made the young man confess more easily, but see also 18, 14 *si quod facinus admissum est, torquebis quidem filium, sed fatebitur mater* (367, 17-18)

383, 21-24 quis te – et mater: *interrogatio per suggestionem* the father ironically supplies the mother's answer

383, 21 quis te, mulier, affectus abegit: Sussman 1987, 236 translates 'Who, my good woman, drove away your affectionate intervention', but it is better to take *quis affectus* as a *hyperbaton* and *te* as the direct object of *abegit*. *Quis* occurs both substantively and adjectively. See Menge 553, KS 655-6 sees a distinction between *quis* and *qui*, *quis* being used to merely refer to a subject, whereas *qui* also asks about its nature, LHS 554

383, 21-22 abegit, tenuit, exclusit: another *congeries* of synonyms. There is a slight parallel in *DM* 17, 17 *me vero tunc pariter omnes tenuistis*⁴³⁷ *affectus, indignatio, pietas, reverentia, dolor*

383, 22-24 agnosco verecundiam – et mater: with heavy irony the father makes a deliberately preposterous suggestion in order to make the judges understand that in reality, he is on to his wife. He implies that she is not afraid of being exposed as an accomplice to the murder, but as one to incest.

383, 22 verecundiam: not so much 'reluctance' (Sussman 1987, 236) as 'diffidence' – the term is especially ironic because it only has positive connotations, see OLD *verecundia* but esp. Forc. who gives αἰδώς αἰσχύνη *pudor modestia ingenuitas probitas* as synonyms.

383, 23 credo: parenthetical *credo* indicates irony cf 9, 11 *saevus enim, credo et impius et () ingratus beneficia patris non aestumo* (185, 18-20)

383, 25 Instas tamen – ora diducis: the double *interrogatio* resumes *Perseveras, cogis, instas?* (383, 16)

383, 25 ora diducis: for the term *os / ora diducere* in the *DM*, see comm. at 18, 13 *diduxit os* (367, 9), *ora* is a common poetic plural (Becker 1904, 31)

383, 25 – 384, 1 puta me – tormenta redierunt: *puta* in the *DM* commonly introduces a more or less explicit *argumentatio a minore ad maius*. Usually accompanied by a *praeteritio*, it depicts hypothetical mitigating circumstances under which the complainant would still be in the right. Thus in *DM* 8, 6 (156, 20 – 157, 4), 10, 11 (210, 3-4), 12, 16 (248, 13-17 and 249, 10-16), 13, 8 (273, 8-15). But here it introduces one of several possible scenarios the father presents as smoke screens to conceal what really happened in the secret torture room. Similar manoeuvres are found in 19, 12 (384, 12-19), 19, 13 (386, 1-8) and 19, 14 (386, 24 – 387, 12). The present one is in line with, or at least not inconsistent with, 19, 1 *ardor ille, qui me modo iniegit in filium ipsa sui immanitate*

⁴³⁷ If the comma after *tenuistis* is removed the nouns following are vocatives

consumptus est quicquid erumpere posset in proclamationem, parricidio peractum est, in orbitate conticuit (372, 12-15)⁴³⁸

383, 26 ex maximi facinoris colluctatione veniens: for the father's willingness to describe the murder as a *facinus* to underline its inevitability, see comm at 19, 3 *omnibus apta – et pater* (374, 15-16) and 19, 5 *atquin summorum – innocentia est* (377, 4) In the *DM* *maximum facinus* is a term reserved for parricide Thus also in *DM* 4, 18 (81, 1), compare further 4, 4 *summum facinus* (64, 9), 4, 5 *ultimum facinus* (66, 9-10)

Colluctatione is found only in M² but seems the best reading Other mss offer *coniunctione* (BMπ) and *conmutatione* (SA), neither of which make sense, D has *coniunctatione*, which is nowhere attested In Burman 1720, 372 we find Gronovius' suggestions *percunctatione* or *percontatione*, which is tempting in view of 18, 14 *facinus quaestionis* (368, 7-8), but epigraphically dodgy, Schulting's *convictione* is improbable in classical times, *convictio* signified 'The action of living with a person, social intercourse, (meton) a companion, associate' (OLD) and only occurs Cic *Q fr* 1, 1, 12, fil *Fam* 16, 21, 4 The significance of *actus convincendi, demonstratio certa* (Forc) occurs for the first time in Char gramm p 453 (576 K *convictio* – ἐλέγχος) and caught on from Augustine onwards (see e g **Ep** 15, 3, *Trinitat* 13, 1) We are left, then, with *colluctatione*, already preferred by Dessauer 1898, 93 and Lehnert 1905, 347, it is a rare word but occurs relatively frequently in the *DM* 2, 20 (38, 7), 5, 15 (101, 2), 11, 2 (221, 12 and 14), 17, 8 (339, 21) and also in other writers with whose linguistic usage the *DM* are connected Col 6, 2, Sen *Dial* 2, 19, 1, *Nat* 3, 18, 1, Quint *Inst* 11, 3, 56, Apul *Met* 2, 17 and 9, 5⁴³⁹

383 27-28 totus ... sum in parricidio meo: for this use of *totus*, compare e g Pl *Cist* 535 *tota sum misera in metu*, Ter *Ad* 589 *in amore totus*, Ov *Fast* 6, 251 *in prece totus eram* Note how the father again enlarges upon the horror of the murder and his own part in it

383, 28 – 384, 1 omnia ... tormenta: the spectacular *hyperbaton*, by encompassing *in animum meum*, suggests that they are torments for the father, too

383, 28 laceratus, occisus: also in 18, 14 *unicum sine teste lacerasti unicum occidisti soli tibi* (368, 12-13) and 19, 16 *quantum volet, laceret, vel occidat, vincere me tormenta docuisti* (apostrophe to the son, 388, 14-15) Cf further 8, 4 *si licuisset alterum occidere, lacerare, perspicere* (154, 20-21)

384, 1-2 est ... difficile, ut: for this collocation, characteristic of later Latin, see comm at *DM* 18, 4 *facillimum ut* (356, 23)

384, 2 pati pudorem parricida: the threefold alliteration of p caught the attention of Becker (1904, 62) and Zinsmaier (1993, 126)

384, 2-4 verumtamen stupore<m>, amentia<m>; et in silentium orbitate defeci: Burman 1720, 373 read *verumtamen stupore, amentia, et silentio in orbitate defeci*, Lehnert 1905, 347 has *verumtamen stupore, amentia et in silentio orbitate defeci* Håkanson 1974, 151 rightly proposed to read '*et (= etiam) in silentium orbitate defeci*' with reference to 18, 2 *in quam modestiam desperationemque defecit*' (354 20) In 1982 he hesitantly accepts Shackleton Bailey's proposal (1976b, 79) to read *stupore<m>*

⁴³⁸ For parenthetical *puta* as a means to avoid hypotaxis see Krapinger 2005 n 179

⁴³⁹ Later we find Don Ter *Ph praef* 3 3 Amm 15 3 4 28 5 3

amentia<*m*> (sc. *pati videri potest*) but also suggests as an alternative – ‘*displicet enim sequens et*’ – to read *stupore amentiae[t] in silentium orbitate defeci*. This seems however too complex a pile of nouns even for pseudo-Quintilian. Håkanson’s semi-colon provides an adequate structure: to balance *pudorem*, the accusatives *stupore*<*m*> (note the assonance), *amentia*<*m*> are necessary as the objects of an elliptical sentence; *et* (as a simple conjunction, not in the sense of *etiam*) in *silentium orbitate defeci* is both the consequence of *amentia* and *stupor* and a transition to what follows.

384, 4-5 ablata est – potest credi: the statement is ambiguous: does the father mean his own confidence or other people’s? If the first, he probably means that he still has to contend with a jumble of impressions and emotions; compare 19, 1 *miratur hanc aliquis patientiam meam? ardor ille, qui me modo iniegit in filium ipsa sui immanitate consumptus est. quicquid erumpere posset in proclamationem, parricidio peractum est, in orbitate conticuit* (372, 12-15). But maybe he is trying to suggest that what he learnt from his son is so terrible that it cannot be put into words and will not be believed; see below *non habent incredibilia vocem; quaedam maiora sunt, quam ut illa capiat modus sermonis humani* (384, 13-14); cf. also 19, 15 *consiste aedum, mulier, loco meo, et in habitum paterni furoris accincta admove eculeos, flagella, laminas; praedico, testor, aliter non possum loqui, aliter mihi non potest credi* (388, 8-11).

He may mean, on the other hand, that he has lost credibility in the eyes of others: because he is not (yet) capable of expressing what happened; because he is a parricide (cf. 18, 14 *memento te fecisse pro filio, propter quod tibi non debeat credi* [367, 22 – 368, 1]); or because of his arrangement of the interrogation: by not admitting any witnesses to the scene, he has made it impossible for his statements to be verified (cf. 18, 12-13 [366, 7 – 367, 2]). On a meta-level, finally, the father has lost credibility because his entire speech is deliberately equivocal (cf. Gunderson 2003, 203).

384, 4-5 omnium verborum fides, omnis sermonis auctoritas: two synonymous *membra* with *enallage* of *omnium* (and *omnis*). *Verborum fides* we also find Verg. A. 9, 279-80 *seu pacem seu bellum geram, tibi maxima rerum / verborumque fides*; *sermonis auctoritas* occurs in DM 18, 7 *publici sermonis auctoritas* (359, 23; see comm. *ad loc.*).

384, 5-6 nec habet – potest credi: the previous sentence is antonymously rephrased in a gnomic *sententia*, an *epiphonema*, which has a clear parallel in *DeMi* 328, 9: *dura est condicio interrogationis huius, cum id quaeritur quod*⁴⁴⁰ *si respondeas non creditur*.

384, 6-7 filium – iam debet: this pseudo-gnomic *epiphonema*, with which the section is concluded, has no meaningful connection with what precedes and which already ends in an *epiphonema* (*nec habet causam loquendi, cui non potest credi*). On the face of things, the father seems to mean that the young man’s memory should be left alone; but the explicit mention of the killing by the father makes clear that he means the son to be considered guilty. He repeats in fact an insinuation made in 19, 5: *desine igitur me, mulier, fatigare interrogationibus tuis. ita tibi non videtur omnia respondere pro filio, qui dicit ‘occidi’?* (376, 25 – 377, 2).

⁴⁴⁰ Shackleton Bailey 2006 has unnecessarily replaced *quod* with *cui*.

384, 7 nec absolvere, nec accusare iam: note the parallelism through anaphora of *nec* and alliteration of *a, iam* should be translated as ‘anymore’ rather than ‘at this point’ (Sussman 1987, 236).

384, 8 ‘Quid ... dixit cum occideres?’: the first of two identical *anthypophorae* (see comm at 18, 6 ‘*Rumor, inquit, fuit*’ [359, 3]) which – contrary to those in *DM* 18 – do not serve to structure the argumentation, but merely draw the attention of the judges, in both cases, they introduce a series of possible scenarios for the torture scene (cf 19, 14 [386, 24 – 387, 12])

384, 8 cum occideres: one would sooner expect a reference to the interrogation than to the killing, the fact that there is none indicates that the father rather has a final confession in mind.

384, 8-9 miseram parricidii innocentiam: an *exclamatio*. The *oxymoron parricidii innocentiam* can be explained from 19, 5 *atque summorum facinorum ipsa inmanitas innocentia est* (377, 4). *Miseram innocentiam* may be termed an *oxymoron* as well, compare 18, 1 *infelicissimi pudoris* (354, 5) and *miseram pietatem* (354, 11) *Parricidii* is metonymous for *parricidae*, whose *innocentia* is *miseram* because only the mother refuses to acknowledge it – unlike all the others mentioned in 384, 9-11

384, 9-11 quod hoc – malignus interrogat: double *emphasis* the father does not really mean that he is unhappy because they do not ask, but rather because his wife *does* ask, he further suggests that they do not ask because they already know. The clause consists of a single verb with a *congeries* of five subjects connected by anaphoric *non*. Note the reverse claim in 18, 15 *interrogari nunc te, marite, credis a matre sola? causas mortis illius reposcit sollicitudo generis humani* (369, 6-7)

384, 9 non potestas, non magistratus: as in *Cic Agr* 2, 24 a pair of abstract nouns used metonymously. For the metonymous use of *potestas* – originally a much broader term than *magistratus*⁴⁴¹ – see OLD *potestas* 4a, TLL s v 318, 30 – 319, 46. It also occurs *DM* 5, 16 *potestatum iustitia* (101, 15) and 19, 13 *non enim potestatis alicuius more consideram* (386, 2).

384, 10 non propinquus aliquis, non amicus: another (unspecific) reference to the *consilium domesticum*

384, 10-11 non ille semper loquax populus ac malignus: cf 18, 12 *advoca illos malignos, illos loquaces* (366, 9-10). *Loquax populus* is also found *Sen Contr* 10, 1, 1 *nostis populi loquacis suspiciones*

384, 11 quiescitis, tacetis: the father suggests that the others behave like himself. The couple of synonyms also occurs *Cic Sest* 14, *Sul* 44, *Q fr* 1, 1, 21, *Liv* 5, 51, 2

384, 11-12 me infelicem, numquid scitis omnes?: *exclamatio* (Lehnert’s exclamation mark [1905, 347] is more effective than Håkanson’s comma) and *interrogatio*, *numquid* is used suggestively, for which see comm at 18, 7 *rogo, numquid amavit* (360, 16) – again, the father implies that his son is guilty

384, 12-18 puta me – locutus est: at a great pace, three possible scenarios are proposed. 1 the father suggests that what he heard is so terrible that it cannot be put into words, 2 the father was deluded at the time, 3 the young man said nothing. The

⁴⁴¹ *Magistratus* must be metonymous here to form a parallel with *potestas*

hypotheses are introduced with *puta* (384, 12), *crede* (384, 15) and *finge* (384, 17), for this device and the use of *puta*, see comm at 19, 11 *puta me – tormenta redierunt* (383, 25 – 384, 1)

384, 13-14 non habent – sermonis humani: a doublet of synonymous, gnomic *sententiae* producing emphatic *reticentia*. Note that this hypothetical answer is quite indirect, first, it is not clear what these *incredibilia* and *quaedam* should amount to, secondly, the father does not say that they actually took place

384, 13 non habent incredibilia vocem: *vocem habere* usually means ‘to be able to speak’ (see comm at 18, 14 *non habes vocem, verba non invenis* [368, 11-12]), the present metaphorical sense is unique for *DM* 19. A similar thought is found in *DeMī* 377, 1 *quaedam crimina ipsa magnitudine fidem non impetrant*

384, 14 quam ut illa capiat modus sermonis humani: if we look at the common use of this expression (*Liv* 4, 58, 4 *superari humanarum virium modum*, 26, 19, 9 *admirationis humanae excesserant modum*, *Curt* 8, 14, 13 *humanae magnitudinis prope modum excesserat*, *V Max* 9, 12, 8 (*ext*) *usitatum humanae vitae modum supergressum*, *Quint Inst* 10, 1, 50 *humani ingenui modum excedit*, 11, 3, 109 *super modum ac paene naturam vocis humanae*) we see that emphasis lies on excess. Here on the other hand the accent lies significantly on the inadequacy of human speech. Compare further *Curt* 6, 1, 17 *maiores res erant quam quas praefecti modus caperet*, *Sen Thy* 254-55 *SATELLES Quid novi rabidus struis? / ATREUS nil quod doloris capiat assueti modus*

384, 14-16 tu vero – nemo dicebat: this proposal by the father, ostensibly to take the blame and spare his wife, is ironical. Note how the two clauses in the first sentence are loosely chastic, but strictly parallel in the second

384, 15 furorem, insanisse: the present irony must not be confused with the *furor* that the father does attribute to himself in 19, 15 (*stabam senex furus monstrosae feritatis accinctus*, 387, 14 15, *habitu paterni furoris*, 388, 9), and which concerns the actual ferocious execution of his son, the father has already indicated that the murder was not committed in an impulse, but deliberately and methodically (see e.g. 19, 5 *non demens non insanus occidi* [377, 5], 19, 10 *non potest non ratione occidi filius, cum ante torquetur* [381, 23]). For the father’s state of mind see also comm at 18, 15 *non insania, non furore, sed consilio, gravitate* (369, 1-2)

384, 14 videbam quae – nemo dicebat: can refer both to the father’s suspicions and to the ‘interrogation’

384, 15 quod tacebam: one would rather expect *taceo*, but the father may be referring to his response to the rumour

384, 18 nihil dixit, nihil locutus est: emphatic anaphora and *synonymia*. This is, of course, the statement the father repeats most often in the course of his plea, now it is deliberately invalidated by the following *subiectio*

384, 18-19 non credis – quid dixerit: the *subiectio* is intentionally vague, it leaves open the possibility that the mother was innocent, unless it is meant ironically, but it implies the son’s guilt in any case

Creditura quid dixerit is, as Håkanson app crit notes, very short for *creditura es si narravero quid dixerit, quid dixerit* is not 'what he might have said' (Sussman 1987, 236), but 'what he said' see comm at 19, 10 *quid dixerit* (383, 3)

384, 20 Accipe ... brevem veramque rationem: the expression *rationem accipere*, as a counterpart of *rationem reddere*, is found in all periods see Pl *Mil* 773, Caes *Civ* 3, 86, 2, Curt 3, 7, 10, Col 11, 2, Mart 12, *praef*, Suet *Cl* 43, 1, *DM* 6, 13 (124, 14-15), 8, 20 (171, 25-26), Don Ter *Eun praef* 2, 1, Firm Mat *Math* 6, 32, 2, Amm 26, 6, 8 Here, as on the many other occasions where the father offers a *ratio* for the murderous torture – 19, 8 (380, 9-11), 19, 9 (380, 20-21, 381, 2-3, 381, 18-19), 19, 10 (381, 23, 382, 6-7) – it is striking and terse, and anything but a proper explanation

384, 21 occisus est: the passive voice gives a suggestion of objectivity to the father's motive, compare the *rationes* above, in all of which a similar effect is achieved with the passive voice or generic phrasing

384, 21-22 torquebam nec interrogabam: this version of events was already alluded to in 19, 9 *quaestionem illud vocas? poena, supplicium et malorum meorum exitus fuit nulla ratio est interrogandi hominem, cui non est fas nisi negare* (381, 15), in the last part of the *argumentatio* it becomes gradually clear what the father means by it See further below *nihil aliud quaestio illa captavit quam silentium, quod praestare vita non poterat* (385, 2-3), 19, 14 *non explicant tormenta quaestionem, quae occidunt* (386, 23) and 19, 15 *clamabam 'furiose, demens, tace!'* (387, 17)

384, 22-23 si qua ad aures tuas ... perlata vox est: note the bold *hyperbaton*, for the expression compare Sen *Contr* 9 *praef* 5 *inter fremitum consonantis turbae vox ad aures iudicis perferenda*, Ep 94, 53 *nulla ad aures nostras vox inipune perfertur*

384, 22 quamvis remota: not quite consistent with 19, 4 *ab illo secreto fortasse non longe* (375, 12)

384, 23 – 385, 1 meus gemitus fuit, meorum viscerum dolor: could be inconsistent with 19, 8 *ne occisurus quidem suspiria gemitusque praemisi* (379, 22-23) The parallel occurrence of *gemitus* and *dolor* is familiar from Cic *Verr* 5, 118, *Vat* 19, *Liv* 24, 5, 11, *Luc* 8, 634, *Gel* 12, 5, 6 Here the two form a type of *hendiadys*, for its sense compare *DM* 8, 16 *prorumpat in gemitus conscius dolor* (167, 23)

384, 23 viscerum: *viscera* occurs frequently in the *DM*, usually denoting physical organs, in the sense of 'heart' (Sussman 1987, 237) as the seat of thought and emotion (OLD *viscus* 4) it only occurs here and in 8, 7 (158, 16), 10, 16 (215, 6), 15, 10 (313, 19)

385, 1-2 quaeris – audire deberem: the *subiectio* probably suggests not so much that the young man had nothing that his father wanted to know as that he only had things his father did not want to know Note the strong parallelism in the direct object, effected by anaphora of *quod* and a double *homoeoteleuton*

385, 2-3 nihil aliud – non poterat: a paradoxical *epiphonema* (an interrogation aimed at suppressing rather than acquiring answers) repeats more explicitly the statement made in the previous sentence, it goes back to the father's battle against the rumour as described in 19, 8-9 (380, 9-21) and later 19, 14 *unicum occidi, ne quid aliud loquerentur homines* (386, 15-16), but see also 19, 1 *non quia occidi filium taceo, sed occisus est, ut tacerem* (372, 8-9)

385, 2-3 quaestio ... captavit: a personification

385, 3 silentium ... praestare vita non poterat: *vita* is personified, as in *DM* 9, 13 (187, 18-19), 17, 14 (346, 4) and esp 5, 5 *Utinam, iudices, iuvenis illius vita praestaret, ut videretur non periculi miseratione sed caritate praelatus*⁴⁴² (89, 16-17) For *silentium praestare*, see comm at 19, 1 *silentium praestare* (372, 8)

385, 3-9 quisquis in – membra laxaret: although there is no evidence in the textual tradition that warrants it, the text would be greatly improved if the following two sentences were to change places. Instead of

quisquis in tormentis occiditur, ideo tortus est, ut occideretur an tu quaestionem illam fuisse credis, qualis vernilibus corporibus adhibetur? ideo enim eculeos movebam artifex senex, ten<d>ebam fidiculas ratione saevitiae, ut leviter sedibus suis remota compago per singulos artus membra laxaret

we would get

an tu quaestionem illam fuisse credis, qualis vernilibus corporibus adhibetur? quisquis in tormentis occiditur, ideo tortus est, ut occideretur ideo enim eculeos movebam artifex senex, ten<d>ebam fidiculas ratione saevitiae, ut leviter sedibus suis remota compago per singulos artus membra laxaret

In the proposed order, the *epiphonema* *quisquis in tormentis occiditur, ideo tortus est, ut occideretur* – being no longer tagged onto another *epiphonema* (*nihil aliud quaestio illa captavit quam silentium, quod praestare vita non poterat*) – instead of falling flat, forcefully explains how the torture of the son differed from ordinary juridical torture. The two sentences thus reiterate 19, 9 *Filium torsisse me putatis? ego vero occidi tarde, diu quaestionem illud vocas? poena, supplicium et malorum meorum exitus fuit* (381, 15-17). In the next sentence, *ideo enim* rather obscures the father's reasoning in the text's traditional order, because it does not immediately make clear with what purpose the father 'kept the rack in motion' etc., but the two adverbs are clarifying when they follow *ut occideretur*.

385, 3-4 quisquis in – ut occideretur: an *epiphonema* in the form of a (pseudo-)gnomic *sententia*. It resumes 19, 9 *vis scire, quanta tormentorum ratio fuerit? debuit etiam tortus occidi* (381, 2-3) and 19, 10 *Non est quod mihi facias duplictae questionis invidiam, id est, quod torsi et occidi sola est huius necessitatis ratio de morte* (382, 5-7). The mother's advocate draws the same conclusion, but from a different perspective 18, 4 *torsit filium, ut probaretur incestum, occidit, ut crederetur* (357, 6-7), 18, 14 *facinus quaestionis operis scelere maiore exire tibi videris per orbitatem* (368, 7-9), 18, 15 *filium propter rumorem torseris, propter tormenta occideris* (369, 16-17).

385, 5-6 an tu – corporibus adhibetur: that is, the kind of interrogation under torture applied to slaves and aimed at drawing forth truthful confessions and testimonies.

385, 5-6 vernilibus corporibus adhibetur: for this idiomatic expression, typical of the *DM*, see comm at 18, 11 *verniliū corporum patientia* (364, 14). For the use of the dative, which is preferred to *ad* or *in* when the verb is used figuratively, see KS 329, *quaestio* as the direct object of *adhibere* finds a parallel in *Cic Div 1, 54 is quaestione adhibita confessus est*.

⁴⁴² *Vita* in 14 5 (293 6) and 15 4 (306 1) is *not* personified but metonymous for a living person

385, 6 *eculeos movebam*: one would expect *admovebam*; for the use of *move* see comm. at 18, 11 *eculeos moves* (364, 15). For the instrument itself (and its plural number) see comm. at 18, 1 *eculeos* (354, 11).

385, 6-7 *artifex senex*: Burman 1720, 373 mentions Schulting's proposals to read *carnifex senex* or even *sine carnifice senex*; Lehnert 1905 mentions *carnifex* in his app. crit., as does Håkanson, adding *sed non opus est*. He is right: the father deliberately uses words that emphasize the horror of the scene (thus also *ratione saevitiae*, *leviter*) to imbue the jury with the awful necessity of what he has done. The association of skill and cruelty is moreover familiar from other *DM*: 5, 4 *saevus et humani doloris artifex* (88, 18-19); 10, 9 *O mage saeve, crudelis, o in lacrimas artifex nostras* (207, 22-23); 16, 10 *crudelis artifex* (330, 4); 18, 4 *omni crudelitatis arte* (357, 4); 18, 11 *tota crudelitatis arte* (364, 12).

385, 7 *ten<d>ebam fidiculas*: *ten<d>ebam* is Gronovius' proposal (Burman 1720, 373) for a unanimous *tenebam* in the mss.; it was adopted by both Lehnert 1905, 347 and Håkanson with good reason, because this is how the operation of *fidiculae* (originally 'a small lyre', OLD 1) is explained in Fasano 1997, 164: 'Les *fidiculae* (...) étaient des courroies ou des lanières avec lesquelles on attachait l'accusé au cheval de bois. Parfois on serrait avec force, de telle manière à désarticuler ses membres. Plus qu'un moyen de torture, les *fidiculae* apparaissaient comme des accessoires indispensables de l'*equuleus*.' See further RE VI, 2 2286-87 'unsicher ist ob dadurch die Glieder des Opfers gepreßt und zusammengeschnürt oder gezerrt und gestreckt werden sollen'⁴⁴³; The conclusion in DS (on the basis of *DM* 19, 12) that *fidiculae* and *eculeus* supplied two different punishments is clearly unwarranted. *Fidiculae* and *eculeus* are also combined in V. Max. 3, 3, 5 (*ext.*)⁴⁴⁴; Sen. *Dial.* 3, 3, 6; 3, 19, 1.

385, 7 *ratione saevitiae*: rightly translated by Sussman 1987, 237 as 'with calculated cruelty'. *Ratione* is often used as an adverb denoting 'methodically, systematically' (cf. OLD *ratio* 13e); it is here followed by a *genitivus inversus* taking the place of the adjective *saeva*. Compare *DM* 7, 10 *ratio saevitiae est, cum aliquis coram eo occidatur, propter quem occiditur* (148, 1-2).⁴⁴⁵

385, 7 *leviter*: 'smoothly' rather than 'little by little' (Sussman 1987, 237).

385, 8 *compago*: 'framework, structure (of the human body)' (OLD *compago* 2b); it further occurs three times in *DM* 8 to refer either to man (8, 11 [161, 18]; 8, 12 [162, 25]) or to the universe (8, 13 [163, 19]). The older form *compages* is not found in the *DM*; for a comparison between the two see TLL s.v. *compages* 1997, 49-78.

385, 8-9 *per singulos artus membra laxaret*: cf. Sen. *Dial.* 6, 20, 3 *video fidiculas, video verbera, et membris singulis articulis singula + docuerunt*⁴⁴⁶ + *machinamenta*. The expression seems to be a pun: *laxare* in connection with parts of the

⁴⁴³ Probably both were possible. The first is the case in Suet. *Tib.* 62, 2 *Excogitaverat autem inter genera cruciatus etiam, ut larga meri portione per fallaciam oneratos, repente veretris deligatis, fidicularum simul urinaeque tormento distenderet*, the second is likely because of the frequent association with the *eculeus*.

⁴⁴⁴ *Rupit enim verbera, fidiculas lavavit, solvit eculeum, lamminas exstinxit*, mentioned in Sussman 1987, 257 n. 4.

⁴⁴⁵ I cannot agree with Becker 1904, 52 n. 1 who sees in this instance of *ratione* a schema similar to that of *paris* or *genus* followed by a genitive, for which see comm. at 19, 7 *genus reverentiae* (379, 7-8).

⁴⁴⁶ Favet 1928 suggests *dicaverunt* and mentions Niemeyer's *admovent*, which seems to fit best, Waltz 1961 conjectures *texuerunt*.

body usually means to ease them – see e.g. Verg. A. 5, 836 *placida laxabant membra quiete*, 5, 857 *vix primos inopina quies laxaverat artus*, DM 2, 19 *clusisse lumina, laxasse membra* (37, 10-11), 8, 17 *si viscerum nimius ardor stricta circa se membra duravit, adhibe remedia laxantia* (168, 8-9). Here, as in DM 7, 13 (*cum membra fiduculae, flagella laxaverint*, 150, 14-15) it denotes, on the contrary, their tearing apart.

385, 9 consumptus est spiritus silentio sui: compare Amm. 28, 4, 26 *spiritu pridie consumpto defuncta*, 31, 13, 12 *spirituque mox consumpto decessit*, here, note the alliteration of s. For *silentio sui* instead of *suo* see comm. at 19, 1 *sui immanitate* (372, 13), in the present case one might argue that *sui* approximates an objective genitive because *silentium* amounts to ‘the silencing of’. *Spiritus* is translated by Sussman 1987, 237 as ‘life spirit’, it probably simply means ‘breath’, in either sense it corresponds with following *animum*.

385, 9 verbera ignesque: for this collocation see comm. at 18, 4 *verberibus, ignibus, omni crudelitatis arte* (357, 3-4).

385, 10 animum pariter vocemque cluserunt: because of preceding *spiritus* and following *suspiria*, which corresponds with *animum* in the way that *gemitus* corresponds with *vocem*, Reitzenstein 1909, 61 n. 11 is convinced that *animum* denotes ‘breath’ and ought therefore to be emended to *animam*. The emendation is unnecessary, however, for even if it means ‘breath’, there is a parallel to be found in 18, 16 *fovit animum* (367, 9-10, see comm. *ad loc.*), but on the other hand, it may simply denote ‘consciousness, life, sense’ (OLD 4b, Forc. *interdum ponitur pro anima, hoc est pro vita*, ψυχή). For *claudere* in the present sense, see OLD 5b ‘to stop (breath, utterances)’, notable lethal instances are Ov. *Met.* 7, 604 *animam laqueo claudunt*, Sil. 17, 439-40 *hasta volans imo sub gutture sedit / et vitae vocisque vias simul incita clausit*, compare further Verg. A. 10, 347-48 *pariterque loquentis / vocem animamque rapit traiecit gutture*.

385, 10-11 premere gemitus, tenere suspiria: a synonymous isocolon, the father suggests that his son was swallowing a confession. For the collocation of *gemitus* and *suspiria*, see comm. at 18, 13 *huius gemitus – oculosque custodi* (367, 16-17), *premere gemitus* is usually associated with grief: see Verg. A. 10, 464-65 *magnumque sub imo / corde premit gemitum lacrimasque effundit inanis*, Sen. *Contr.* 3, 5 *premo interim gemitus meos et introrsus erumpentes lacrimas ago*.

385, 11-12 et sic – qui sciret: not ‘and so he said nothing, as if he were being tortured by someone who knew what he did’, but ‘and he said nothing, as if he were being tortured by someone who knew’, i.e. already knew of his terrible guilt, which would make a confession both too terrible to hear and superfluous, and the torture a fitting punishment.

385, 12-14 miraris hanc – quam confiteri: the concluding *epiphonema* is effected by a *subiectio* consisting of an *interrogatio* addressed to the mother, followed by an answer in the form of a pseudo-gnomic *sententia*. There is an echo of 19, 8 *pudeat nos, mulier, infirmitatis vicit nos modo iuvenis ille constantia, mori voluit, ut taceremus* (379, 16-17).

385, 12-13 in filio contumaciam, in iuvene patientiam: a perfect, synonymous isocolon with anaphora of *in* and *homoeoptoton/homoeoteleuton* of *contumaciam* and *patientiam*. *Filio* and *iuvene* in a type of ‘*distributio*’ refer to the son’s various roles within

the family For *contumacia in bonam partem*, see comm at 19, 4 *contumacia patientia* (375, 2-3), where these virtues are also attributed to the son *du immortales, quae contumacia, quae fuit illa patientia, cum domi torqueretur a patre*, for the significance of *(im)patientia* in *DM* 18 and 19, see comm at 19, 1 *hanc patientiam meam* (372, 12)

385, 14 responderi: the use of the passive changes the *sententia* from a specific utterance about this particular son into a generic sentence meant to point out the inevitability of the son's silence and death The passive infinitive produces a *homoeoteleuton* with *confiteri*, but jars grammatically with the following subject clause in which a specific subject has to be supplemented

385, 14 mori malit quam confiteri: again the implication of guilt compare 19, 4 *reddo testimonium novissimum pudori cum iam mori vellet, occisus est* (375, 9-10)

385, 15 Quod sufficit igitur, interrogantibus respondeo: Håkanson's comma, about which he doubts whether to have it follow *igitur* or *interrogantibus*, may as well be left out, in either case the statement debilitates the father's claim in 19, 12 that *hoc me non potestas, non magistratus, non propinquus aliquis, non amicus non ille semper loquax populus ac malignus interrogat* (384, 9-11)

385, 16 occidi: compare 19, 5 *ita tibi non videtur omnia respondere pro filio, qui dicit 'occidi'?* (377, 1-2) For this oft-repeated, lapidary statement of the father's, occurring in *DM* 18 as well as 19, see comm at 18, 15 '*occidi*' (369, 5)

385, 16 fallitur, quisquis...: usually introduces an *anticipatio* in the *DM*, for which see comm at 19, 3 *fallitur quisquis* (374, 11) Here it also serves to present the son's misconduct in a climax

385, 16-17 illa communia: a form of *ambiguitas* The father refers not just to common complaints about sons, but also, in a kind of meta-declamation, to well-worn declamatory problems Such explicit insiders' references are rather rare, other instances are *DeMi* 258, 1 *non iam imputo illa vulgaria, lucem et ius libertatis et usum vitae*, 279, 3 *Vultis igitur, iudices, dicam illa omnibus fere abdicationum iudicis vulgata pro liberis*?, 377, 2 and especially *DM* 1, 13 *transeo enim illum vulgarem et omnibus notum de conparatione personarum locum* (13, 14-15) Here, the disclaimer promotes *DM* 19 (and 18) as exceptional *controversiae* that defy the norm

385, 17 proclamo: for *proclamo* in the sense of *pronuntiare, declarare, appellare* see TLL *proclamo* 1533, 74 – 1534, 16, the use of an object complement (for an elided *eum*) seems exceptional In what follows, the father again defines his son's criminal behaviour in negative terms, i.e. by summing up what he did *not* do (cf 19, 9 [381, 713])

385, 17-18 non luxuriosum, non amore meretricis infamem: these two complaints about sons are familiar from a number of other declamations, which generally show a greater resemblance to comedy The *luxuriosus* we find *Sen Contr* 2, 6, *Calp Decl* 9, *DeMi* 245, 290, 316, 367, cf 298, *DM* 5 The prostitute's lover occurs *Sen Contr* 2, 4, *DeMi* 344, 385, cf *DM* 14 and 15 The son unites both vices in *Calp Decl* 30, *DeMi* 356, cf 298 His punishment is usually *abdicio* By alluding to these predominantly more playful declamations in what could be considered a type of meta-declamation, the disclaimer puts his theme in a harsh light indeed And his negative statements turn yet another declamatory convention upside down For in a large number of declamations, often

concerned with *abdicatio*, sons try to prove their virtuousness by vigorously pointing out that they are not guilty of any of the usual youthful vices Sen *Contr* 1, 1, 1 *Quid mihi obicis?* Puto *luxuriam*, 1, 8, 2 *'Numquid luxuriam obicis?'*, 2, 1, 6 *non insanissimum dispendiorum malum, non erubescendos amores neque luxuriantem habitum neque potatus obicis filio*, 2, 1, 14 *Quid mihi obicit? meretricis amo? aes alienum feci?*, 2, 1, 15 *Numquid dies noctesque impendo turpibus conviviis? plurimum vivo in lupanari?*, 7, 1, 26 *cum diceret causas se abdicationis non invenire luxuriae se occasionem non habuisse, parricidium sibi non obici*, 10, 2, 2 *Dicam abdicanti 'non luxuriabor, non amabo'*, DeMi 279, 3 *Vultis igitur, iudices, dicam illa omnibus fere abdicationum iudiciis vulgata pro liberis 'non ego luxuriatus sum, non ego meretricem amavi, non paterna bona vitius consumpsi'*, 330, 1 *Itaque ne illa quidem dicere quae initio defensionis sollemnia ceteri habent possum 'Ecquid peccavi? Numquid luxuriatus sum? Numquid bona paterna consumpsi? Numquid meretricem amavi?'*, 371, 4 *Luxuriae deditus bella fugio? An adversus patrem impius?*, DM 1, 6 *aliis tradidit in parentum sanguinem luxuria ferrum luxuria videntium crimen, aliis meretriculae amor inmodica poscentis amor, cui renuntiant oculi* (7, 11-13), 2, 10 *habeant sane, iudices, hanc nefariae cupiditatis festinationem, quos vitiorum ardor, quos cotidie luxuria praecipitat* (29, 8-10), 8, 6 *occisum filium obicio, puta luxuriosum, perditum, nocentem* (156, 20 – 157, 1), 9, 2 *non ego aes alienum luxuria contraxi, nec profusus in vitia fortuna nostra male usus sum* (177, 1-2), 9, 10 *non redempta meretrix, non egestum conviviis faenus, non lenonum parasitorumque cara adulatio in crimen venit* (184, 27 – 185, 2), 17, 13 *ego quid facio, cui non luxuria, non est mutanda petulantia* (344, 18) The argument occurs so frequently that it may rightly be considered a *locus communis*. Here – in a kind of insiders' joke – it is turned into an argument aimed to prove guilt and corruption rather than innocence and goodness.

385, 17-18 amore meretricis infamem: for the turn of phrase compare V Max 3, 5, 3 *perdito etiam amore vulgatissimae meretricis infamis fuit* (about the son of P. Clodius Pulcher)

385, 18-19 nihil ille – liberi solent: *emphasis* the father wants to suggest that what the son did was much worse. The common misbehaviour mentioned is more or less covered by the first two clauses.

385, 18 nihil: rightly translated by Sussman 1987, 237 as 'in no way', for *nihil* is not an internal accusative, but an *accusativus respectus*.

385, 19 monstrum ... inenarrabile: in 18, 11 the mother's advocate, too, refers to the alleged incest as a *monstrum*, but ironically *ita tu non times monstri huius agitare secretum?* (364, 1-2).

385, 19-20 quod nollem deprehendere, quod ferre non possem: note the tight structure of this isocolon, with *anaphora* of *quod* and chiasmus of two pairs of verbs in *homoeoteleuton*. As for the father's fear of what his son was up to, compare 19, 3 *interrogare non audebam* (374, 19) 19, 13 *occidere, ut nescias* (386, 8) and 19, 15 *'furiose, demens, tace!'* (387, 170) are clearly anticipated here.

385, 21 Miratur aliquis: introduces an *anticipatio* in the form of a *subiectio* consisting of two coreferential *interrogationes* answered in an *apostrophe*. Compare 19, 1

miratur hanc aliquis patientiam meam' ardor ille, qui me modo inpegit in filium, ipsa sui immanitate consumptus est (372, 12-14)

385, 21 quod non abdicaverim: for *quod* after *verba affectuum*, see comm at 18, 3 *gaudebat quod* (356, 13) The subjunctive is best explained as *obliquus* (KS 2, 199-200) Note that no such suggestion is made in *DM* 18 – on the contrary, the mother would have assented to a death sentence if the son had been found guilty See 18, 12 *incestum qui non credit, torquere non debet, qui credit, statim debet occidere* (366, 5-6), 18, 14 *si hoc ille meruit, parum in quaestione, parum ultionis in morte est* (368, 21-22)

385, 21-22 notissima ultione patrum: another meta-declamatory reference the majority of *controversiae* between fathers and sons concerns *abdicatio* (see Introduction p 56, Vesley 2003, 171)

385, 22 fuerim ... expulisse contentus: the first instances of *contentus* with inf are Ov *Met* 1, 461 and 2, 638, it becomes frequent in postclassical prose (KS 685, LHS 350) For the use of the perfect infinitive, see comm at 18, 4 *non ames adamasse* (356, 18-19)

385, 22-23 tuus – permisit adfectus: the apostrophe to the mother is continued with a keen reproach that is enhanced stylistically by anaphora of *tuus*, *homoeoptoton* of *nefarius*, *inconsultus* and *adfectus*, and a double *hyperbaton*

385, 23 nefarius ... adfectus: the use of *nefarius*, the grave import of which (OLD *nefarius* 1 'offending against moral law, wicked') is enhanced by its position in *hyperbaton*, makes this one of the father's least equivocal remarks

Compare Apul *Met* 10, 4 where a woman's passion for her stepson is defined as *nefarius amor*, and Gai *Inst* 1, 59 *Inter eas enim personas quae parentum liberorumve locum inter se optinent, nuptiae contrahi non possunt, nec inter eas conubium est velut inter patrem et filiam vel inter matrem et filium vel inter avum et neptem, et si tales personae inter se coierint, nefarias et incestas nuptias contraxisse dicuntur*

385, 23 inconsultus ... adfectus: *inconsultus* neutralizes the designation *nefarius* because it suggests simple foolishness on the mother's part, as in 19, 10 *o inconsultam muliebrem semper amentiam* (382, 22 – 383, 1) The mother's advocate by contrast preaches uninhibited affection in 18, 10 *malo nudos adfectus inconsultamque pietatem* (363, 10-11, see comm *ad loc*)

385, 23-25 filium – fuisses abdicatum: explains *tuus – permisit adfectus* (385, 22-23), in the two relative clauses (introduced with *polyptoton*) the mother's love is blamed as weak sooner than perverted On the surface, there is no sign that the father considers her an accessory

385, 24-25 quem mecum odisse non poteris: the father's hatred of his son increasingly prevails he denies it in 19, 5 *nemo filium suum occidit odio* (376, 20), then reveals it almost in passing in 19, 8 *nec captavi ut illum mecum et mater odisset* (380, 3-4), now it turns out that he *did* expect the mother to hate her son as well

385, 25 secuta fuisses: the besotted mother would have followed her son of her own free will For *fuisses* instead of *esses*, see comm at 19, 4 *ausus fuisset* (375, 15)

386, 1 Finge: introduces another hypothetical scenario, but one we have seen before 19, 11 *puta me hoc solum dicere ex maximi facinoris colluctatione veniens, quid*

audierim, nondum scio (383, 25-26), cf 19, 2 *confessione mariti nihil se dissimulare, nihil scire* (373, 3-4) and below 19, 14 *ego tamen scire me nego* (386, 19) and *nihil ad certum indubitatumque perduxī* (386, 21) The torture is now not regarded as a way to silence the son, who may even have spoken, but simply as an impediment to hearing anything at all

386, 2-3 non enim – iudicem pater: in two synonymous sentences, the second one slightly more concrete than the first, the father implies that he did not preside over a *iudicium domesticum* He is reproached with the consequent exclusion of witnesses in 18, 12 (366, 15-20)

386, 2 potestatis: for this metonymous use of *potestas*, see comm at 19, 12 *non potestas, non magistratus* (384, 9)

386, 2 consederam: a *terminus technicus*, for which see OLD *consido* 1b '(of judges, etc), to sit to try a case, hold a court', TLL *consido* 33, 41 – 434, 21, cf *DM* 9, 10 *de hac re consedisit, hoc concitavit istam iudicii scaenam* (184, 12-13)

386, 2-3 torquentibus aliis: the *alii* would have been slaves or a *tortor* The father's refusal to entrust the unpleasant job to them is also an outrage according to the mother's advocate, see 18, 13 (367, 3-11)

386, 3 agebam iudicem pater: most mss have *patrem*, they are followed by Burman 1720, 374 and Lehnert 1905, 348 Burman includes in his app crit various suggestions by Gronovius *pater, an iudicum, vel iudicis partem?* *Iudicum partem* would be illogical and *iudicis partem* too radical an intervention in the text, but simply to read *pater*, which is found in π^{447} , seems the best option There are several other occasions on which the father explicitly refers to himself in a role that does not immediately suit his fatherhood 19, 1 *occidi filium pater* (372, 4), 19, 5 *filium pater non demens, non insanus occidi* (377, 5), cf 19, 12 *eculeos movebam artifex senex* (385, 6-7), 19, 15 *stabam senex furus monstrosae feritatis accinctus* (387, 14-15)

386, 3-4 et passus sum pariter et feci: the father both suffered and caused his son's torments and death Cf 19, 1 *cuncta, quae vel passus sum paulo ante vel feci* (372, 5-6), 19, 2 *ego qui quicquid, iudices, ista conplorat, et patior et feci* (373, 12-14)

386, 4-5 aures praestare – aestimare singultus: a near-synonymous tricolon, of which the two last form a strict isocolon with their parallel structures and *homoeoptoton* of *gemitus-singultus*

386, 4 aures praestare: the expression is quite rare, but cf Mart 11, 24, 2 *aurem dum tibi praesto garrienti*

386, 5 excipere gemitus: cf *DM* 18, 13 *adhibe speciosi cruciatibus hanc nimis amantem, huius gemitus excipe* (367, 15), see also Tac Ann 6, 24, 1 (about Drusus) *adstisise tot per annos, qui vultum, gemitus, occultum etiam murmur exciperent*

386, 5 aestimare singultus: *aestimare*, occurring synonymously with *excipere*, has the rare, weakened sense of 'to perceive', which is also found in *DM* 1, 11 *ille ergo non aestimat, cum manum cruentam parieti adplicat, vestigium a se parricidi sui reliqui?* (11, 24 – 12, 2) TLL s v *aestimo* 1107, 75-76, 79 gives a few similar couples of synonyms Sen Contr 7, 1, 1 *tanta tempestate confusus neque aestimare quicquam neque dispicere potui*, Col 4, 27 *aestimare ac dispicere, quibus locis in annum debeat materias summittere*

⁴⁴⁷ Belonging to the superior family α and described in e g Dessauer 1898 11 14 Håkanson 1982 VII

386, 5 *avocavit*: the singular verb can be explained both from its initial position and from the close connection between the four subjects (KS 45-46, LHS 433)

386, 5-6 *contentio, dolor, orbitas, parricidium*: an asyndetic *congeries* of four personifications. They are placed chiastically, *contentio* and *parricidium* falling under *fecit*, *dolor* and *orbitas* under *passus sum* (386, 4). A similar enumeration, referring to the father's state of mind after the murder, we find in 18, 2 *in orbitate, in parricidio, <in> reatus quoque dolore conticuit* (354, 18-19)

386, 6-7 *festinatione praecipiti*: this pleonasm, regarded by Becker 1904, 88-89 as a variation on the *genitivus inhaerentiae*, is also found Liv 30, 14, 1, Vell 1, 16, 1, Petr 80, 6, Apul *Met* 5, 21. In the *DM*, compare also 2, 19 *trepidae festinationis* (37, 25-26), 14, 5 *praecipiti velocitate* (292, 21-22), 17, 4 *praecipiti per suprema trepidatione festinant* (335, 16-17), 19, 9 *praecipiti raptus impulsu* (381, 21). For the significance of *praeceps* in the *DM*, see comm. at 18, 11 *quod praeceps, quod abruptum* (364, 16)

386, 7-8 *idem patris – ut nescias*: a double *sententia e contrariis* serves as a pseudo-gnomic *sententia* and an *epiphonema* to conclude the argument. It has very little to do with the present argument, nor does it stand to reason in itself, for how would one torture and get to know something, then kill and wipe away this knowledge? It would actually make more sense if *non* were added to the *sententia* ('There is *not* the same powerful emotion involved'), for the father has already repeatedly stated that the torture was meant to silence his son rather than make him talk.

386, 9 'In meam,' inquit, 'infamiam taces': the last of this text's *anthypophorae* (for which figure see comm. at 18, 6 '*Rumor,* inquit, 'fuit' [359, 3]) pursues the imputations made in *DM* 18 that the father uses his silence as a means of insinuation against mother and son, for which see e.g. 18, 1 (354, 2-4), 18, 2 (355, 3-11), 18, 16 (369, 21-25)

386, 9-11 *ita nunc – loquantur homines*: the father answers the mother's accusation with a counterattack: she should have taken care of her reputation while her son was still alive. Of course his allegation is a form of *emphasis*, because he suggests that the mother's relationship with her son ruined her reputation. The two sentences are coreferential, *post unici mortem* corresponding with *nunc primum, pertinere* with *laboras, quid loquantur homines* with *fama*.

386, 9-10 *laboras ... de fama*: Von Morawski 1881, 8 points out that *de* indicates here 'die wirkende Ursache eines Zustandes, Ereignisses, oder einer Thatigkeit', this sense of *de* is not characteristic of vulgar or later Latin, however, for we already find it countless times in Cicero's works,⁴⁴⁸ the present expression is found Att 13, 20, 4 *de fama nihil sane laboro*.

386, 10 *misera*: 'wretched' rather than 'contemptible' (Sussman 1987, 238) the father suggests that the mother does not even realize the damage she has done.

386, 10 *post unici mortem*: another gibe: the father suggests that it took the death of her son to make the mother realize that she was seriously damaging her own reputation. The mother's advocate in *DM* 18 conversely criticizes the father for taking the rumour far

⁴⁴⁸ In the speeches alone *Dom* 145 *Verr* 2 96 *Phil* 8, 27 12 19 13 30 14 18 *Vat* 7 *Caec* 3 *Clu* 198 *Deiot* 39 *S Rosc* 128

too seriously; instead of dismissing it, he was convinced by it and acted upon his conviction. See e.g. 18, 7 (359, 21-22); 18, 11 (364, 1-2).

386, 11-12 scilicet filius – male audires: scilicet – for which see comm. at 18, 4 *scilicet* (357, 15) – indicates that the father is speaking in ironical exaggeration; but in 18, 13 this is denounced if not as the aim, then at least as the consequence of the secret interrogation: *at tu, nefande, crudelis, tollis quaestionis alteram partem: efficis, ne possit amplius innocens esse, qui tortus est. quid agunt contra populum tormenta secreta? praedico, testor, iterum dantur malignis alimenta sermonibus* (366, 20-23). Anaphoric *ut* introduces two references to the mother's supposed shame, one from her own point of view and one from that of outsiders.

386, 12-13 adeone – commisisse rumori: the father argues that if it were his intention to ruin his wife's reputation, there would have been no need to kill his son: it would have sufficed not to counteract the rumour, but let it do its work. This would however have been disastrous for his own good name and in real life even punishable under the *Lex Iulia de adulteriis coercendis*, under which a husband who did not divorce his adulterous wife was considered a *leno* and liable to the penalties imposed for adultery.⁴⁴⁹ Of course in *DM* 18 it is argued repeatedly that the rumour actually originated with the father: see e.g. 18, 4 (20-23); 18, 8 (361, 3-8).

386, 12 adeone ... non: see comm. at 18, 13 *adeone* (367, 4).

386, 13 erat satis: by using an indicative instead of a counterfactual subjunctive, the father stresses that this was a very real possibility. Cf. KS 171; LHS 327-28.

386, 13 commisisse rumori: for the perfect infinitive, see comm. at 18, 4 *non ames ... adamasse* (356, 18-19) supplemented with KS 134, which explains the perfect infinitive with expressions such as *satis est* from its proper temporal sense: it is sufficient to have done something. *Rumori* can be considered a personification, unless it is taken as a metonymy for rumourmongers.

386, 13-16 ego vero – loquerentur homines: in two near-synonymous sentences the father repeats his assertion – for which see e.g. 19, 4 (375, 24 – 376, 2); 19, 10 (382, 2-3); 19, 12 (385, 2-3) – that the murder was committed to put an end to the rumour.

386, 13-14 me famae tuae ... opposui: an *ambiguum*. Sussman 1987, 238 translates 'I protected your reputation' and this may be what the father purports to say, but possibly he intends to get across the opposite. *Se opponere* with a dative always means 'to pit oneself against'⁴⁵⁰; if this happens in someone's interest, the preposition *pro* occurs⁴⁵¹. Note in this context also Iuv. 9, 86 *iam pater es, dedimus quod famae opponere possis*.

386, 14-15 inter matrem filiumque medius: murder was evidently the only way to drive the couple apart; compare 18, 3 where the father is made responsible for the

⁴⁴⁹ See Corbett 1930, 142-43 with Dig. 48, 5, 30 pr., who assumes that the law concentrates on those who surprise their wives in the act. Differently Meyer-Zwiffelhofer 1993, 125 ('überführt').

⁴⁵⁰ Cic. *Balb.* 26; *Caes. Civ.* 3, 20, 2; *Verg. A.* 7, 301; 11, 115; 12, 874; *Liv.* 3, 62, 8; *Vell.* 2, 30, 6; *Cels.* 6, 6; 7, 7; even *Sen. Suas.* 2, 7 *nil erit, quod virtuti nostrae se opponat*: 'there will be nothing to pit itself against our virtue' (tr. Winterbottom); *Dial.* 7, 2, 3; 12, 9, 8; *Clem.* 1, 3, 3; *Ep.* 9, 10; 85, 37; *V. Max.* 3, 2, 18; *V. Fl.* 7, 420; *Fron. Str.* 2, 1, 12; *Amm.* 15, 8, 3

⁴⁵¹ Cic. *Har.* 60 *civem qui se pro patriae salute opponat invidiae frustra posthac requiretus*; *Quint. Inst.* 6, 5, 10 *ut pro Ligario se opposuerit*

closeness between mother and son (356, 6-12) Compare further a very different context in Sen *Phoen* 457, when Jocasta wants to prevent fratricide over her dead body *media se opponit parens*

386, 15 parricidium feci, unicum occidi: the isocolon runs to a modest climax which emphasizes the magnitude of the sacrifice made by the father for his wife's reputation

386, 15-16 ne quid aliud loquerentur homines: not 'so that people would talk of nothing else' (Sussman 1987, 238) but 'to prevent people from saying anything else', i.e. from spreading another rumour. The mother in *DM* 18, 17 on the other hand postpones her suicide until her husband has been punished *timui, ne faceret alium parricida de mea morte rumorem* (371, 6-7)

386, 16 si hoc capto, quod putas: if the murder and subsequent silence are means to vilify instead of protect his wife and son. *Hoc capto* resumes *hoc captanti* (386, 12)

386, 16-18: quousque – premere vocem: a double, coreferential, antonymous *interrogatio* is intended to expose the advocate's argument as untenable, but it is forestalled by the mother's advocate when he challenges the father in 18, 16 *non fallit nos, nefande, quid captes hoc, quod supra silentium trahis alta suspiria, quod in prorumpenti videris exclamazione deficere, mendacio paratur auctoritas, et in fidem erupturae vocis adfertur, ut fateri videaris invitus* (369, 21-25). The pretence both of silence kept up with difficulty and of a reluctant confession would be equally convincing.

386, 16-17 quousque taceo, in quod tempus differo: one would have expected either a future tense or at least a present subjunctive. The present indicative seems colloquial, see LHS 308 (Ind Praes. in konsulativ-deliberativen Fragen des Dialogs), further see comm. at 18, 15 *quousque* (369, 10)

386, 17-18 illam quam me putas premere vocem: there is no need for Håkanson's commas. *Vocem premere* in a non-technical sense is a predominantly poetic idiom, occurring Verg. *A* 9, 324, Ov. *Met* 9, 692, 764, 14, 779, *Phaed* 1, 11, 12, Sil. 2, 280, Cic. *Red Sen* 13. Compare also 19, 6 *voce<m> repressam* (378, 4-5)

386, 18 ecce reatus iudicium pronunti<ati>o: the mss. without exception have *pronuntio*, they are followed by Burman 1720, 374 and Lehnert 1905, 349. Håkanson opts for Obrecht's conjecture *pronuntiatio*, recorded in Burman, but this – though it yields a neat triad – makes little sense in the present context. It would awkwardly explicate *vocem* and sit uneasily with following *ego tamen scire me nego*. Even Burman's own suggestion *pronuntias*, recorded in neither later edition, would be preferable. 'Look here, you pronounce your view of the accused (i.e. of me), but I insist that I know nothing.' But in fact the sentence is fine as it is. We will have to assume a rare metonymous use of *reatus*, not recorded in either OLD or Forc. It signifies the person of the accused. For this use, we find two parallels in the *DM* 2, 24 *nefas est, ut reatus iste sentiat debilitatis adversa* (41, 18-19), 19, 2 *nec contenta confessione mariti nihil se dissimulare, nihil scire reatus auctoritate testantis mavult de silentio meo facere secretum* (373, 3-5). If *reatus* is taken as a nominative case, we get a bold paradox: 'as the accused, I give my judgement and still I insist that I know nothing.' This paradox is in fact comparable to that in 19, 2 (*reatus*

auctoritate testantis) Here, it takes up *tempus* the father will plead ignorance at whatever moment his suppressed voice will finally break out

For the application of *ecce* in the *DM*, see comm at 18, 17 *ecce* (370, 17)

386, 19-20 egregiam rationem – mihi crederetur: as usual, the section is concluded with an *epiphonema*, in it the father asserts that his silence and his professed ignorance have damaged his credibility to such an extent that they would be counterproductive as means of insinuation

386, 19 egregiam rationem malignitatis: Sussman's translation (1987, 238) of this *exclamatio* misses the point. Rather than 'Here's a splendid method to arouse her malice', we should read a heavily ironical 'Here's a splendid method to apply my malice' it would be absurd to ascribe the father's silence and professed ignorance to malice, because they evidently work against him. For *ratio malignitatis*, compare Becker 1904, 52 n 1, also *DM* 7, 10 *ratio saevitiae* (148, 1), 15, 12 *ratio paenitentiae* (315, 9), 16, 1 *ratio clementiae* (319, 17)

386, 20 locuturus ... feci, ne mihi crederetur: having asserted that he knows nothing, the father will not be believed when he trundles out a report of what is supposed to have been said during the interrogation. His credibility is also – deliberately – called into question in 19, 11 *ablata est mihi omnium verborum fides, omnis sermonis auctoritas, nec habet causam loquendi, cui non potest credi* (384, 4-6), below *ita non times, ne coactus loqui multa fingam, multa componam* (387, 5-6)

386, 21-23 Fateor igitur – quae occidunt: this small section of argument seems somewhat out of place. Though it does take up 386, 19 *ego tamen scire me nego*, it does not quite form a suitable transition to the last, highly figured section, in fact, it would do better as a conclusion to either 382, 17 – 383, 3 or 386, 1-6

386, 21 Fateor: at this point of the speech, such an acknowledgement can no longer be termed a *concessio* or even a *confessio* the father has already made abundantly clear that his son deserved death anyway (see e.g. 19, 9 [381, 4-14]), and that it was his avowed purpose to prevent his son from speaking out (see e.g. 19, 12 [385, 2-10])

386, 21 certum indubitatumque: a doublet of synonyms also occurring *DM* 1, 11 *indicium certum, indubitatum, sine errore* (12, 6-7)

386, 22 quin immo: for this tautology see comm at 19, 2 *novo quin immo fabulosoque* (372, 22 – 373, 1)

386, 22 propter quod: Sussman 1987, 238 translates 'the reason why', and it would certainly be logical in any other context that tortures be continued until a confession has been procured, but here, it is an *ambiguum*, signifying 'for the sake of which' the professed aim of the interrogation was to silence the son

386, 23 non explicant tormenta quaestionem, quae occidunt: the pseudo-gnomic *sententia* is a mere observation, not an explanation, Sussman's translation 'do not settle a question' (1987, 238) had better be replaced with 'do not accomplish an inquiry', compare *DM* 2, 5 *non torsit ministeria caeci, et de scelere non explicuit ordinem quaestionis* (24, 20-22). For *explicare* in this sense, see comm at 19, 3 *explicuit* (374, 12), see further 18, 16 *explicui[t] te, sollicitudo, pietas* (388, 25-26)

386, 24 – 387, 12 ‘Quid,’ – quod putas: this last section of the *argumentatio* is by far the most figured and confusing part of the entire speech. By using *anthypophorae*, repeating the mother’s question ‘*quid dixit*’ (or similar) eight times and answering it differently every time, the father offers once more a whole range of possible outcomes of his murderous interrogation. Most answers are highly suggestive, none is definite. Because of its chaotic and hectic character, the section constitutes a fitting transition to a deeply pathetic *peroratio*.

A similar game is played by the obstinately silent father in *DeMi* 328, 11 *Nihil respondeo quoniam nihil certi scio. Non respondeo quoniam non credo aliquid dicenti. Non respondeo quoniam adhuc quaero. non respondeo quoniam hoc inquisitioni meae non expedit. non respondeo quoniam <non> illum ut interrogarem torsti.*

386, 24 ‘Quid ... dixit?’: the first *anthypophora* suggests guilt at least on the son’s part.

386, 24 *felicem te, misera, si nescis*: the *exclamatio* is ambiguous. It implies that the son was guilty but, since it does not say what he was guilty of, it leaves unclear whether the mother is implicated. For a similar *exclamatio* cf. 19, 2 *felicem ignoratone conscientiam matris, quae sufficit interrogare!* (373, 14-15). Burman’s (1720, 374) and Lehnert’s (1905, 349) lumbering and ungrammatical *felicem te, misera, si nescis quid dixit* is stylistically as well as grammatically approved by Håkanson’s solution (1974, 152) for the punctuation.

386, 24-25 ‘quid dixit?’: the second *anthypophora* is answered with a double *interrogatio* in which the son’s guilt is again presupposed.

386, 25 *contenta conscientia tua*: a more neutral reading, ‘your own conscience’, must be preferred over Sussman’s ‘your own private guilty conscience’ (1987, 239), for again the father’s statement is doubly insinuating: he may mean either ‘your good conscience’ (as opposed to your son’s bad conscience) or ‘your wicked conscience’ (and congratulate yourself that I am not prepared to divulge anything). In both cases the son’s guilt is taken for granted, that of his mother at least suggested. For the slightly idiomatic expression cf. Sen. *Ep.* 8, 1 ‘*tu me vitare turbam iubes, secedere et conscientia esse contentum?*’, Porph. in Hor. *Carm.* 3, 29, 54-55 *contentus sola probitate et bona conscientia*. For the development of the term *conscientia* and its significance in the *DM*, see comm. at 18, 7 *haec conscientia* (360, 18).

386, 25-26 *sufficit, quod*: impersonal *sufficit* followed by a *quod*-clause before the *DM* is found only Sen. *Ep.* 90, 18, Stat. *Ach.* 1, 35-36, Quint. *Inst.* 5, 13, 16, Plin. *Ep.* 4, 12, 5, *DeMi* 291, 7. From the time of the *DM*, where it also occurs 4, 11 (72, 6-7), 4, 18 (80, 17-18), 7, 4 (141, 11), 8, 17 (168, 2), it becomes quite common.

386, 26 *non habuit – quod fateretur*: even this claim, conspicuous by anaphoric *quod* linking antithetical *negaret* and *fateretur*, does not necessarily imply that the son was innocent: see 19, 12 *quaeris, cur nihil dixerit? quia non habuit, quod scire vellem, quod audire deberem* (385, 1-2).

386, 26 – 387, 1 *poscis verba quaestionis, cogis, extorques*: the third *anthypophora* suggests that the mother will get herself into an awkward position if she insists that the father answer. The *congeries* of verbs reminds of 19, 11 *perseveras, cogis,*

instas? (383, 16); cf. also Cic. *Scaur.* 18 *poposcit, imperavit, eripuit, coegit. Poscere verba* we also find Prop. 4, 1, 74; Ov. *Fast.* 4, 868.

387, 1-2 tu facis – quod dixero: the father suggests that the mother's persistent pestering will force him to come up with a terrible truth, be it only about the son or about the allegedly amorous couple. This is what the mother's advocate tries to obviate in 18, 16: *hoc, quod supra silentium trahis alta suspiria, quod in prorumpenti videris exclamazione deficere, mendacio paratur auctoritas, et in fidem erupturae vocis adfertur, ut fateri videaris invitus. dic tamen!* (369, 22-25).

387, 2 'quid dixit?': in this fourth *anthypophora* two points are made: whatever the father says, the mother will deny it; if forced to speak, the father could lie. The first point is quite inconsistent with the third *anthypophora*; the inconsistency would be slightly less conspicuous if the two were transposed.

387, 2-5 parasse se – negabis: the tricolon is given a balanced structure by the *homoeoteleuton* of three perfect infinitives (note the precisely parallel grammatical structure of the last two cola) and epistrophe of *negas*. *Et quicquid dixero, negabis* follows as a climax. The three cola could be considered meta-declamatory: they feature three prototypically declamatory offences. Note however that they are a great deal more serious than *illa communia* in 19, 13 (385, 16-17).

387, 2-3 parasse se parentibus venenum: *parentibus* tactfully and ironically replaces *patri*; it would be hard to imagine this son preparing poison for his mother, whereas his hatred of his father has been hinted at several times: 19, 3 *dictus est occidere posse patrem* (374, 6-7); 19, 9 *oderat me filius et timebat* (381, 14). There are in fact no extant Roman declamations in which sons are accused of killing, or trying to kill, their mothers. They are (supposedly) after their father's lives in Sen. *Contr.* 7, 1; 7, 3; 7, 5; cf. also 7, 2 and 7, 4; *DeMi* 281; 299; 314; 377; and cf. 373; Calp. *Decl.* 4; *DM* 1; 2; 17; and cf. 4. Poison is used in *Contr.* 7, 3; *DeMi* 299; 377; *DM* 2 and 17; cf. also *Contr.* 2, 1, 29; *DeMi* 260, 19; 281, 3.

387, 3 proditionis agitasse sermones: a serious offence, but one of which sons are accused only in *DeMi* 378 and Calp. *Decl.* 7; fathers on the other hand are suspected of treason in Sen. *Contr.* 7, 7; *DeMi* 287; 366; 371; 375; Calp. *Decl.* 32; cf. *DM* 11, while men whose age is not explicitly assumed, but who can be assumed to be quite grown up⁴⁵², occur as possible traitors in Sen. *Contr.* 10, 6; *DeMi* 266; 294; 303; 307; 333; 334; 337; 348.

The expression *agitare sermones* ('to bring something up') also occurs Gel. 2, 26, 2; Apul. *Met.* 1, 2.

387, 3-4 tyrannidis inisse consilium: of the 28 *controversiae* in which (prospective) tyrants play a major role, 12 involve young men. Two unspecified young men (*DeMi* 352 and Calp. *Decl.* 6) and five sons (Sen. *Contr.* 1, 7; *DeMi* 288 (two); Calp. *Decl.* 1; 11) strive for tyranny; but we also meet young men (*DeMi* 345; 382) or as the case may be sons (*DeMi* 282; 374; Calp. *Decl.* 22) who are tyrannicides; *DeMi* finally is a case of ἀντικατηγορία or *mutua accusatio* (for this subcategory of the *status coniecturalis* see e.g. Quint. *Inst.* 3, 10, 4; Fortun. 1, 12; Lausberg 153; 197) where father and son accuse one

⁴⁵² In most cases they are *divites*. Additionally in *DeMi* 272 a woman is accused of treason.

another of *adfectata tyrannis*. The choice of words is odd⁴⁵³; the normal (declamatory) term is *tyrannidem affectare*, which we find Quint. *Inst.* 7, 2, 11; 53; 54; 9, 2, 81; *DeMi* 254 (six times); 261 (twice); 267 (five times); 322 (eight times); Calp. *Decl.* 6 (twice); Vict. 4, 1; 4, 2 (three times); 6, 2; Vict. in *Cic. Inv.* 2, 13; Sulp. Vict. 25 (three times); 26; 35 (four times); Iust. 25, 5, 11; Hist. Aug. *Hadr.* 4, 3; *Pius* 7, 3; 7, 4; *Avid.* 1, 5; 2, 5; 5, 1; *Geta* 6, 8; *Diad.* 8, 5; *Alex.* 48, 1.

387, 5 o bonae conscientiae incauta simplicitas: the *exclamatio-cum-apostrophe*, for which see comm. at 19, 2 *infelix senectus, misera patientia* (373, 18), is meant ironically. It builds a transition to the second part of this section of the argument (387, 5-7), in which the father implies that the mother knows very well what was said. *Simplicitas* occurs time and again in *DM* 18 as a characteristic of the type of innocent, spontaneous affection between relatives which the mother's advocate wants to propagate and which he attributes to mother and son; see 18, 4 (356, 25; 357, 1); 18, 7 (360, 17); 18, 10 (363, 9); 18, 15 (369, 10); 18, 16 (370, 12); cf. comm. at 18, 15 *rupta est – generosque simplicitas* (369, 9-10). The pleonasm *incauta simplicitas* also occurs Veg. *Mil.* 3, 3, 11; sometimes the two words occur in a tautology, for which see Sen. *Dial.* 4, 2, 16; Plin. *Ep.* 1, 15, 4; 4, 9, 6. For the development of the term *conscientia* and its significance in the *DM*, see comm. at 18, 7 *haec ... conscientia* (360, 18).

387, 5-6 ita non – multa componam: the *interrogatio* represents both the strength and the weakness of the father's position: he can say whatever he wants, for there were no witnesses. He uses this possibility as a possible threat; compare Sen. *Contr.* 4, 6 where the father assures his wife, who asks him which of his sons is hers, that *si coegeris, mentiar*. For a similar argument, in which the speaker however faces up to this lack of credibility, see *DeMi* 328, 9: *dura est condicio interrogationis, cum id quaeritur cui si respondeas non creditur ... das enim mihi figendi libertatem; propter hoc ipsum necesse est perdam fidem, quod mihi dicere licet quidquid voluero*. It may be considered ironical that what the father suggests here applies all the more to his own interrogation of his son; for *loci communes* concerning the reliability of statements obtained under duress, see comm. at 18, 11 *Omnium quidem – dolore respondet* (364, 19-22).

387, 6 multa fingam, multa componam: anaphora of *multa*; *homoeoteleuton* of the verbs. The combination of *fingere* and *componere* (in the sense of 'to invent') is hardly original; we find it Liv. 40, 12, 6; V. Max. 7, 4, 2; Quint. *Inst.* 8, *pr.* 23; Tac. *Ag.* 40, 2; Hist. 3, 78, 2; further *DM* 7, 3 *si conpono, si fingo, urar, lacerer, et non probem* (139, 29-30); 11, 6 *quemquamne mortalium in re, quam finxerit, quam conposuerit, <non> invenire aliquid, quod potest probationem vocare ...?* (225, 4-6).

387, 6-7 si potes – quid dixerit: an indisputable truth, but at the same time a form of insinuation: '*quid dixerit*' suggests a confession, so that the possibility of silence or a denial of guilt is deliberately ignored. Compare 19, 2 *ipsius animus potest scire, quid filius meus dixerit, quae me putat habere, quod dicam* (373, 6-7); 19, 10 *quid iuvenis in tormentis*

⁴⁵³ It seems to belong to attempted tyrannicide rather than tyranny: see Sen. *Contr.* 9, 4, 22 *misce se tyrannicidi consilium*, V. Max. 3, 3, 3 *ext. philosophus, cum a Nearchō tyranno, de cuius nece consilium inerat, torqueretur*; cf. also Plin. *Nat.* 34, 72.

dixerit, tamquam ignoret, interrogat, nihil me comperisse non credit, tamquam sciat, quid dixerit (383, 1-3)

387, 7-9 'quid dixit?' – est matri: the fifth and sixth *anthypophorae* belong together they are in perfect antithesis and because of their incompatibility serve, not to give a genuine answer, but to demonstrate the father's utter unwillingness to speak out. The section consists of a triplet of isocola which form an antithesis, *synonymia* and *distributio* respectively

387, 8 maledixit saeculo: for the metonymous use of *saeculum*, see comm. at 19, 6 *parce saeculo, parce marito, parce patri* (377, 15), note esp. 12, 28 *invidiam saeculo facimus* (263, 6-7)⁴⁵⁴

387, 8-9 fecit temporibus invidiam: for the expression *invidiam facere*, see comm. at 19, 4 *invidiam facere* (375, 18). For the metonymous use of *tempora*, see comm. at 18, 6 *miseremini temporum* (358, 22)

387, 9 detestatus est patrem, conviciatus est matri: note the parallel structure of both phrases, enhanced by *homoeoteleuton* of *detestatus* and *conviciatus*. The suggestion that the son would have reviled his mother collides with any hints about their supposed affair, but in associating the parents with one another, it refers back to the *narratio* (19, 2 *fumus quondam felicissimi parentes* [373, 19-20]) and anticipates their proposed reconciliation in 19, 16 (388, 17-24)

387, 10-12 'quid dixit?' – quod putas: the seventh and last *anthypophora* once more suggests that the son made a scandalous confession

387, 10 plus quam interrogabam: suggests that the son had crimes on his conscience that exceeded the father's dim expectations, a similar expression in 18, 2 *parcere nunc illum cuiquam tacendo creditis? respondere sibi videtur plus quam mater interrogat* (355, 3-6)

387, 10-11 vicisti ... obstinationem meam: the father seems to prepare for a climax in the form of a disclosure

387, 11-12 audi breve – quod putas: but instead the *argumentatio* ends in a deliberate anticlimax: the ball has been put back into the mother's court, which leaves the audience right where it has begun

387, 11 breve succinctumque: a doublet of synonyms, also occurring *Cet Fav 1 prol*, *Don Ter Ad 600*, *Claud Don Aen 2*, 148-49. Metaphorical *succinctus* seems quite rare; there are no entries in *Forc*, *OLD* 1c *succinctus* '(of a book) compact, (of a statement, etc.) concise, succinct' apart from *DM* 19, 14 which only gives *Mart 2*, 1, 3 *libelli*, *CIL* 2, 6278, 29 *sententia*, *BTL* yields no further samples

387, 11-12 responsum, quid dixerit: an awkward type of *brevitas*, also found *Vitr 7 praef 9 quorum responsum, quid senserint scribentes, non potest coram indicari*

387, 12 quod quaeris, quod putas: note the anaphora of *quod*, not 'what you are asking' (Sussman 1987, 238) but rather 'what you are after', for it has become clear by now that the mother simply asked 'quid dixit?' Though the mother could as well be thinking that her son was innocent, the isocolon manages to suggest once more guilty knowledge on her part, compare comm. above at 387, 6-7 *si potes – quid dixerit*

⁴⁵⁴ See Stramaglia 2002 n. 333

Peroratio 19, 15-16 (387, 13 – 389, 3)

In the *peroratio* of *DM* 19, a subtle rhetorical game is played. The first standard element, the *enumeratio*, is lacking; instead, the *epilogus* begins with a large *amplificatio* (*indignatio*, *exaggeratio*), which is commonly used to evoke indignation, but now in its very horror emphasizes the father's misery. In a rhetorical *tour de force*, the very *loci* used to rouse anger are inverted to bring about the opposite emotion: pity. The second part, from 388, 12 onward, is a *commiseratio* proper and more traditional: it contains apostrophes to mother and son and concludes with an appeal for pity; its style is overall highly pathetic. As for the content of the *peroratio*, this agrees with the representation of events in *prooemium* and *narratio*; the three *partes orationis* form a complete and harmonious unity. It seems safe to conclude, then, that all suggestions of a confession, and especially the last paragraph of the *argumentatio* (386, 24 – 387, 12), can be relegated to the realm of figured speech; but this does not cancel their powerful insinuations, which will by now have settled in the audience's minds.

Following Håkanson's arrangement of the text, the *peroratio* can be divided into four sections:

387, 13-28 *O si – occidi*: a lurid *descriptio* of the father torturing his son to death while at the same time preventing him from speaking out.

388, 1-11 *Misera temporis – potest credi*: a *descriptio* of the son's death passes into one of the father's present situation and the emotions that accompany it.

388, 12-24 *Quamquam – invicem confitebimur*: after an apostrophe to the son in which the father once more confirms his resolution to remain silent, he invites his wife to go home with him and make mutual confessions – or remain silent – in private together.

388, 25 – 389, 3 *Iamiam miser – ne dicas*: the father declares himself prepared to die; he begs once more to be left alone.

387, 13-28 *O si – occidi*: in a *sub oculos subiectio* for the jury the father expatiates upon the horrors of torturing and killing his son. In doing so, he draws from a number of *loci* normally used to arouse indignation in the *peroratio*: he emphasizes that his acts were deliberate⁴⁵⁵ and cruel⁴⁵⁶; besides, they were unusual and unprecedented and carried out within a sacred relationship⁴⁵⁷. Finally, *decimus locus est per quem omnia quae in negotio gerundo acta sunt quaeque post negotium consecuta sunt, cum unius cuiusque indignatione et criminatione colligimus et rem verbis quam maxime ante oculos eius apud quem dicitur ponimus*⁴⁵⁸; cf. Quint. *Inst.* 6, 1, 15 *Atrocitas crescit ex his: quid factum sit, a quo, in quem, quo animo, quo tempore, quo loco, quo modo*. The father does not go on about the atrocities to provoke indignation against himself, but to inspire understanding, sympathy and pity, implying that a father would never go to such lengths unless he was forced to do so (by the

⁴⁵⁵ Cic. *Inv.* 1, 102 (*sextus locus*); *Rhet. Her.* 2, 49 (*sextus locus*)

⁴⁵⁶ Cic. *Inv.* 1, 102 (*septimus locus*); *Rhet. Her.* 2, 49 (*septimus locus*).

⁴⁵⁷ Cic. *Inv.* 1, 103 (*octavus locus*). . . *quibus ex omnibus acriter excitata indignatio summum in eum qui violavit horum aliquid odium commovere poterit*; *Rhet. Her.* 2, 49 (*octavus locus*)

⁴⁵⁸ Cic. *Inv.* 1, 104; *Rhet. Her.* 2, 49 (*decimus locus*)

enormity of his son's crimes) This strategy also occurs in the *argumentatio*, see e.g. comm at 19, 5 *atquin summorum – innocentia est* (377, 4), 19, 12 *artifex senex* (385, 6-7)

387, 13-14 o si – adhibere praesentiam: an *exclamatio* to the jury For *o si* introducing a wish, see OLD *si* 10, LHS 331

387, 13-14 in illam ... secreti nostri ... praesentiam: note the *hyperbaton* TLL s.v. *praesentia* 856, 10-31 (*pertinet ad res, usu communi*) has reserved a separate entry for the present instance of *praesentia* and that in *DM* 17, 17 *interrogare vos velut in illa secreti nostri praesentia libet* (349, 15-16) *praesentia loci, quem quidam inspectantes adeunt* *Praesentia* in both cases seems to function as an *enallage*, denoting *vos praesentes in illo secreto* Compare also *DM* 5, 19 *ponere vos, iudices, velut in illa necessitatis meae praesentia volo* (104, 19-20) *Nostri* suggests that the torture was a joint activity of father and son, the two of them striving to achieve silence and a reconciliation, cf. 19, 16 *illud iam patris filique secretum* (388, 17-18)

387, 14 novum genus quaestionis: because of its unusual participants, and especially because its aim was silence instead of a confession

387, 14-15 stabam senex furiis monstrosae feritatis accinctus: note the alliteration of *s* and *f* Becker 1904, 57 sees a reference to Verg. *A* 9, 74 *atque omnis facibus pubes accingitur atris*, cf. also the father's exhortation to the mother below *in habitum paterni furoris accincta admove eculeos* (388, 9) This metaphorical use of *accinctus* is rare, we only find it Tac. *Ann.* 12, 44 *studio popularium accinctum*, *Dial.* 5, 7 *eloquentiam qua accinctus*, *Amm.* 17, 5, 8 *viribus totis accinctus* Metonymical *furiae*, denoting frenzied emotion, are quite common (see OLD *furia* 2, TLL s.v. 1615, 65 – 1616, 39)

387, 15 manibus exertis: Becker 1904, 57 labels *exsertus* as a *vox Vergiliana*, referring to *A* 1, 492 (Penthesilea) *aurea subnectens exsertae cingula mammae*, 11, 649 (Camilla) *unum exserta latus pugnae*, 803-04 (Camilla) *hasta sub exsertam donec perlata palillam / haesit*, adopted by Liv. 8, 9, 5 *manu exserta* He may be right, but the expression *manus ex(s)erere* also occurs Ov. *Fast.* 2, 321, Mela 3, 34, V Fl. 2, 207, Stat. *Ach.* 1, 769, Sen. *Ben.* 2, 31, 1, *Nat.* 7, 14, 1, Luc. 2, 96, 2, 543, Front. *Marci Caesaris Ep. ad Fr.* 5, 74, 2

387, 16 hinc ignibus, hinc verberibus armatus: for the combination of *verbera* and *ignes*, see comm. at 18, 4 *verberibus, ignibus, omni crudelitatis arte* (357, 3-4), Becker 1904, 57 discerns echoes of Verg. *A* 6, 288 *Chimaeram flammis armatam*, 4, 472 (Clytemestram) *armatam facibus matrem et serpentibus atris* But see also Ov. *Met.* 2, 848-49 *ille pater rectorque deum, cui destra trisulcis / ignibus armata est*, Liv. 4, 33, 1 *ignibus armata ingens multitudo*, and with *igne/igni* Liv. 2, 17, 2, 4, 33, 6, V Fl. 2, 182, *Sil.* 14, 303, Apul. *Met.* 5, 26

387, 16-17 super ora, super oculos ... adsistens: another anaphora, and alliteration of *ora* and *oculos* *Ora* is a common poetic plural (see Becker 1904, 31) also occurring 18, 3 (355, 12) and below 388, 2 For the father's looming over his son, compare 18, 15 *super vulnera unici, super exustos artus metuendus adsistis* (369, 3-4)

387, 17 furiose, demens, tace: in a type of *sermocinatio*, the father expresses an *inopinatum tace* is the last thing one would expect to hear during an interrogation For the

collocation of synonymous *furiosus* and *demens*, cf [Sal] *Cic* 4, 7, *DeMi* 329, 12, *Hist Aug Trig Tyr* 22, 1, note how the father twice attributes *furor* to himself in the *peroratio* see 387, 15 and 388, 9

387, 18 *velut exustis amputatisque*: punctuation would be much improved if the comma following *amputatisque* were relocated *et ille, velut exustis amputatisque per quae dolor exit in verba, fuit adtonitus, amens* When *velut* accompanies a participle, it usually indicates a subjective (or, as the case may be hypothetical, KS 790-91) or comparative (LHS 385) representation of a state of affairs, this tallies with Sussman's translation (1987, 238) 'as though the parts had been burned and cut off by which pain gives vent to speech', meaning 'as though his mouth or face had been cut off, viz instead of other, more easily torturable body parts' In 387, 20-21 however, we read that the son is in fact biting into the flames, in 19, 4, too, the young man's face is the specific object of the torture *omnis ictus except in faciem, verberibus, ignibus laudatos vultus, velut illis irasceretur, opposuit* (375, 7-9)

In later Latin *velut* can take on the significance of *utpote* and become a causal adverb (LHS 675, OLD s v *velut* 6 'as being'), this seems to be the case here A similar use of *velut* we find *DM* 5, 16 *vincula quae nullo suspensa nisu velut victo homine sederunt* (102, 3-6) For the collocation *exustis amputatisque*, compare 19, 6 *laceratis exustisque* (377, 7)

387, 18 *per quae dolor exit in verba*: an ingenious metaphor containing a personification of *dolor* For personified *dolor* in *DM* 19, see comm at 19, 3 *dolor* (374, 23), further note 18, 11 *nec bene de cuiusquam moribus illam partem hominis interroges, quae non animo, sed dolore respondet* (364, 20-22) Becker 1904, 15 sees a parallel in *DM* 2, 21 *cum clusus animus non exit in visus*⁴⁵⁹ (38, 24) which he considers inspired by Verg *A* 4, 413 *ire iterum in lacrimas*, 12, 528 *nunc totis in vulnera viribus itur* But on p 45 he displays irritation with the present metaphor because it is a paraphrase that obscures a concept which could have been made clear in one or two words He cites a number of similar expressions, the most notable of which are 2, 16 *illa per quae complexus veniunt* (hands, 35, 4⁴⁶⁰), 8, 16 *haec, quibus tegimur* (skin, 167, 16), 8, 17 *praesto sint, per quae pressis clustisque venit in novas vires corpus arescat* (168, 10-11)

387, 19 *adtonitus, amens*: alliterative, asyndetic synonymy, marked out by Deratani 1927, 295 as a sample of African *copia*, and by Becker 1904, 58 as one of asyndetic alliteration, cf also p 12 The doublet already occurs Sen *Contr* 7, 7, 15, Curt 6, 9, 31, further *DM* 17, 6 (337, 5) and 17, 18 (350, 14), cf also Apul *Met* 3, 22 *attonitus in amentiam*

387, 19-21 *quotiens admotis – verba collegit*: changing the question marks found in Burman 1720, 375 and Lehnert 1905, 350 into exclamation marks, Håkanson has made the enunciation more powerful It is comprised of a double *exclamatio* with anaphora of *quotiens* and *homoeoteleuton* of the finite verbs The first *exclamatio* expresses the son's desire for punishment and death, the second his urge to remain silent

⁴⁵⁹ Also mentioned in Ritter 1967² 69 he and Becker read with Burman 1720 57 *conclusus animus* Lehnert (1905 38) follows suit

⁴⁶⁰ Also mentioned in Ritter 1967² 69 obelized by Håkanson 1982 (see app crit)

387, 19 *admotis ignibus*: for *admoveo* as a *terminus technicus* in the context of torture, see comm at 18, 11 *eculeos moves* (364, 15), but *ignem admoveo* is a common expression which occurs in many different contexts

387, 20 *totum pectus inposuit*: note the chiasmic arrangement of *corporis partem* – *totum pectus*, compare an even more florid description (of women who follow their men in death) in Prop 3, 13, 21-22 *ardent victrices et flammae pectora praebent, / imponuntque suis ora perusta viris*

387, 20-21 *quotiens hiatu* – *verba collegit*: compare, by contrast, *DM* 18, 13 where it is said that the father forced open his son's mouth *diduxit os, quod iam suprema clauderant* (367, 9)

387, 21 *exeuntia verba*: a common metaphor, which usually occurs in connection with restrictions or rules imposed on the content of spoken language. Thus Cic *Vat* 4, *Brut* 265, *De Orat* 3, 41, *V. Max* 6, 8, 1, *Sen Ben* 1, 1, 5, *Ep* 114, 11, 22, *DM* 12, 3 *exibunt verba, subsequetur sermo? non alligabitur lingua?* (234, 20-21)⁴⁶¹

387, 21-26 *cum vero* – *fortassis audires*: it takes quite a complex sentence to describe the son's death rattle. After an adverbial phrase (*cum-erumperet*) and an ablative absolute (*pertractis-spiritus*) both denoting time, we get the main clause (*ille – quid*), which is interrupted by a relative clause determining the subject (*quo – anima*) and followed by one determining the object of *exclamatur* (*quod – audires*)

387, 22 *iam*: should – in spite of its position – probably be read with *expulsus* (as does Sussman 1987, 239)

387, 22 *totus calor*: for bodily heat as an important principle of life, see e.g. *Lucr* 3, 124-29 *noscere ut hinc possis non aequas omnia partis / corpora habere neque ex aequo fulcire salutem, / sed magis haec, venti quae sunt calidique vaporis / semina, curare in membris ut vita moretur / est igitur calor ac ventus vitalis in ipso / corpore qui nobis moribundos deserit artus*, Cic *ND* 2, 23 *Sic enim res se habet, ut omnia, quae alantur et quae crescant, contineant in se vim caloris, sine qua neque alii possent nec crescere nam omne quod est calidum et igneum cietur et agitur motu suo, quod autem alitur et crescit motu quodam utitur certo et aequabili, qui quam diu remanet in nobis, tam diu sensus et vita remanet, refrigerato autem et extincto calore occidimus ipsi et extinguimur*

387, 22 *verberibus expulsus*: the young man is evidently beaten to death, *expulsus* is not strictly true, for presently he gathers his final strength to produce a death rattle. A similar inconsistency arises in the father's case *advocatis quas iam consumpseram viribus* (387, 26-27)

387, 22-23 *novissimi doloris*: 'his final suffering' (Sussman 1987, 239) unless *dolor* is a metonymy 'the final blow'

387, 23-24 *pertractis ... suspiriis brevissime collecti spiritus*: not 'his spirit was collected for just a brief instant after he had drawn some gasps' (Sussman 1987, 239) but 'after he had drawn some gasps of breath which he had managed to collect for just a brief instant' the young man is literally breathing his last

Pertractis is somewhat problematic. Occurring in π and ms B, it was adopted by Burman 1720, 375 and Håkanson, while Lehnert 1905, 350 opted for *pertractatis*, the reading of the

⁴⁶¹ An exception is Quint *Inst* 11.3.33 (on pronunciation) *si verba tota exierint*

other mss. which was also preferred by Gronovius. A search of OLD, Forc., TLL and BTL yields no fitting sense of either *pertraho* or *pertracto*, nor any parallel occurrences of either verb. Yet it seems possible to stick with *pertraho*: where *traho* occurs with e.g. *animam* or *spiritum*, it signifies 'to draw breath' (OLD *traho* 7b). *Per* can be regarded as a prefix denoting thoroughness and/or intensity.

The expression *spiritum colligere*, 'to collect one's breath', is familiar from Petr. 29, 2 (and cf. 98, 4); Plin. *Nat.* 19, 78; Quint. *Inst.* 11, 3, 53 *longiorem dicturis perihodon colligendus est spiritus*; DM 5, 19⁴⁶² *spiritu vix in paucissima verba collecto* (105, 20-21); Iust. 6, 8, 11.

387, 24 ille, quo redditur anima, singultus: (Håkanson's commas can be dispensed with) – the death rattle, which sounds when the young man breathes out for the last time. *Singultus* is an apt term for this gurgling, hiccupping noise, which is produced by an excess of respiratory discharge in the throat. It is also found e.g. Sen. *Dial.* 6, 11, 4 *mortem, quae unius singultus opus est*; Stat. *Theb.* 3, 90 *extremis ... animae singultibus*; DM 7, 10 *singultibus abeuntis animae* (147, 23-24); see OLD *singultus* 1b.⁴⁶³

Animam reddere ('to give up the ghost') is a common poetic expression; we find it Prop. 1, 6, 26; Ov. *Pont.* 3, 4, 7; *Fast.* 5, 469; 6, 745; *Met.* 8, 505; Vell. 2, 123, 1; Sen. *Ag.* 987; [Sen.] *Epigr.* 667, 6; *Oct.* 375-76; 629-30; Luc. 6, 823; Stat. *Theb.* 6, 885; Apul. *Met.* 8, 6; [Apul.] *Ascl.* 29.

387, 25 similis exclamatorio nescio quid: the simile is so brief that *singultus* becomes quasi-personified; cf. DM 2, 18 *hominis, qui ferro occiditur, tumultuatur exitus et similis est repugnanti* (36, 10-11); 7, 8 *haec macies et iam torto similis infirmitas* (145, 15-16).

387, 25-26 quod et tu fortassis audires: again the father suggests that the mother was near the secret place; cf. 19, 4 *cum et ipsa semper plurimum esset domi, et ab illo secreto fortasse non longe, intervenire noluit, interpellare non ausa est* (375, 11-13). For archaic *fortassis* see comm. at 18, 14 *fortassis* (368, 18).

387, 26 occupavi: Englund 1934, 9-10, with reference to Verg. *A.* 9, 768-70 and Prop. 4, 4, 84, comments that *occupo* has the sense of *aggredior*; but Sussman's translation 'forestall' (1987, 239; see OLD *occupo* 11) is much more appropriate: the son is already under attack, but now the father heads off his last words or sounds.

387, 26 fateor: for parenthetical *fateor* see comm. at 19, 3 *fateor* (374, 16).

387, 26-27 advocatis, quas iam consumpseram, viribus: Håkanson's commas are confusing, since they suggest that *viribus* may as well belong with *manibus, telis* sqq. As for the inconsistency of summoning powers which had already been used up, cf. comm. at 387, 22 *verberibus expulsus*.

Vires advocare is a metaphor found only in the works of the two Senecas: *Contr.* 1, 7, 16; 7, *praef.* 1; *Ben.* 6, 2, 3; *Ep.* 94, 24; *Med.* 562-63; and in DM 9, 1 *licet enim totas advocemus in odia fortunae vires* (175, 23 – 176, 1); *vires consumere* is used by such

⁴⁶² See Becker 1904, 24 and cf. 13 where DM 2, 11 *se circum venenum deprehensa debilitas collegit in vires* (29, 25 – 30, 1) is cited with specimina of *se colligere* taken from Vergil

⁴⁶³ I thank Bart Hermans for reminding me of Dutch 'snik', which has the same variety of senses as La *singultus*, and occurs e.g. in the expression 'tot zijn laatste snik' ('until he breathed his last')

diverse authors as Caes. *Civ* 3, 93, 1, Liv. 44, 38, 8, Cels. 4, 26, Sen. *Nat* 6, 1, 11, Ag. 698, Quint. *Inst* 12, 2, 13

387, 27 manibus, telis totoque corpore: a *congeries* ending in a climax, for *toto corpore* cf. *DM* 8, 20 *cruentumque secretum toto corpore effringens* (172, 1), Stramaglia 1998, n. 108 discerns a somewhat figurative use 'con tutta la forza di cui il suo poteva disporre'. For other examples of this use of *totus* and its carry-over in modern languages, he refers to Von Morawski 1881, 11 and Zvěřina 1883, 353

387, 28 antequam mentiretur: it seems rather unlikely that the young man in his death throes should be able to summon the energy to lie, but the very suggestion is meant to make it clear that it was absolutely necessary to kill him

387, 28 occidi: compare, by contrast, *DM* 18, 13 where it is said that the father would not let his son die *mori filium contentione non sivit fovit animum, ut longis cruciatibus patientia sufficeret* (367, 8-10)

388, 1 Misera temporis illius recordatio: the *exclamatio*, also an apostrophe unless we assume ellipsis of *est*, builds a transition from the previous *sub oculos subiectio* to the next (*deficientem in – restinxique flammis*, 388, 1-4)

388, 1-2 in manibus meis: suggests an intimate farewell, cf. *DM* 7, 3 *his manibus labentis unici membra sustinui* (139, 23) and *DeMi* 306, 7 *Vivum funus gremio tui quam paene expiravit in manibus meis*. But the father's hands figure prominently in a number of descriptions of the torture scene: see 19, 3 (374, 22), 19, 4 (375, 13), 19, 6 (377, 9), above 387, 15 and 27

387, 2-3 ora pallentia – silentio exeuntem: the fourfold asyndetic *congeries* culminates in a climax

387, 2 ora pallentia: for *ora* as a common poetic plural see comm. above at *super ora, super oculos adsistens* (387, 16-17), cf. further *DM* 10, 3 *super ora pallentis* (202, 11), which is regarded by Becker 1904, 31-32 as a Vergilian influence, he cites *A* 3, 217 *pallida ora* and 4, 499 *pallor simul occupat ora* (to which can be added 1, 354, 8, 197, 10, 822 *ora pallentia*). These and similar expressions are however so common that it is difficult to determine by whom pseudo-Quintilian was influenced. *Ora pallentia* are further found *V Fl* 4, 490-91, 7, 79, Stat. *Theb* 2, 545-46

387, 2-3 frigidus anhelitus, interrupta suspiria: for this sense of *frigidus*, see OLD *frigidus* 7 'not having the degree of heat natural in the organism, (usu.) cold with the chill of death'. For chilly breath heralding death we have Celsus as a witness: *Illaque quoque mortis indicia sunt, ungues, digitique pallidi frigidus spiritus* (2, 6). *Anhelitus* and *suspiria* are also matched in Sen. *Nat* 6, 14, 2, *DM* 2, 18 *agit ante se anhelitus, agit crebra suspiria* (36, 25), 2, 19 *dedisse suspirium modum et anhelitus neglegenter egisse* (37, 11-12), 5, 20 *lassa suspiria per ardentis anhelitus egesta* (105, 18), cf. 5, 14 *ille anhelat, illius sunt lassa suspiria* (99, 23-24)

388, 3 animam magno silentio exeuntem: *magno silentio* occurs as the father's aim, and in sharp contrast with the description of the chaotic torture scene (387, 14-28). *Animam exeuntem* is a personification also found *Ov Met* 11, 788-89, Sen. *Ep* 76, 33, *Dial* 5, 19, 4, 9, 14, 10, Tac. *Ann* 16, 11, 2, *DM* 10, 8 *exire cupientem frustra vocavit animam* (207, 1-2)

388, 3-4 non tamen – restinxique flammis: isocolon with anaphora of *non* and chiasmus of nouns and verbs. The father continues torturing the body because he wants to make sure that the young man is really dead, and probably he is in such a frenzy⁴⁶⁴ that he cannot stop right away

388, 4 tormenta laxavi: *laxare* can be used as a technical term for the slackening of torture instruments cf V Max. 3, 3, 3 *de ext. (eculeo)*, 3, 3, 5 *de ext. (fidiculas)*

388, 4 subtraxi restinxique flammis: for *subtraxi*, cf DM 18, 14 *subtrahe paulisper ignes* (367, 21) Against *restrinxi*, read in all mss, ç propose *restinxi*, which was deservedly adopted by Burman 1720, 375, Lehnert 1905, 350 and Håkanson *restringo* does not occur in connection with fire, whereas countless instances of *restringere ignes* or *flammis* are found, in the DM we find 6, 9 *aqua restringit ignem* (121, 5-6).

388, 5 miserere, mulier, ne quaeras amplius: alliteration of mournful m (*quasi mugiente littera*, Quint Inst 12, 10, 31) For *miserere* / *miseremini* in the sense of 'please, for pity's sake' see comm at 18, 4 *miseremini* (356, 15-16) Here, we find an echo of 19, 6 *miserere, ne quid amplius quaeras* (377, 13-14), cf also 19, 16 *ne quid amplius quaeras* (389, 3)

388, 5 vocem huius adfectus: Englund 1934, 13 is too fanciful when he ranges this instance under the cases where *vi saltem agendi res esse praeditas apparet finxisse scriptorem*, *vox huius adfectus* simply means 'the words that apply to this emotion', thus Sussman's (1987, 239) more explicit 'my description of this emotional state' Compare DM 6, 7 *illa quidem vulgatissima orbitatis vox est, 'fili, cur me reliquisti?'* (117, 23 – 118, 2); 5, 8 '*facilis, mitis, indulgens*' *vocabula sunt ista minoris affectus* (92, 19-20) and esp 19, 14 *illam, quam me putas premere, vocem* (386, 17-18).

388, 6 filium, qui moriebatur, occidi: the *epiphonema* is as lapidary as it ought to be in Burman's (1720, 375) and Lehnert's (1905, 350-51) punctuation, which must therefore be preferred to that of Håkanson *Moriebatur* is ambiguous at first sight it could mean that the son was dying as a result of the torture and was therefore put out of his misery But the father probably means that the son was doomed to die because of the wicked life he was leading see 19, 4 *cum iam mori vellet, occisus est* (375, 10) However suicide must be avoided, for it would be as good as a confession 19, 10 *ad totius domus nostrae pertinere innocentiam credidi, ne se ipse potius occideret* (382, 15-16) Compare Calp Decl 45 (a father kills his good-looking son under the *lex indemnatorum*, because a tyrant has demanded that the young man be surrendered to him) *occisus est, antequam moreretur perit homo, sed pudor vivit*

Roman declamation abounds with word play on *mori* and *occidere* Some other apposite specimens Sen Contr 7, 2, 10 *miraris si eo tempore necesse fuit Popillio occidere quo Ciceroni mori?* 7, 2, 12 *eo magis occide quem mori non vis*, DM 8, 2 *filium occidit fortasse moriturum* (153, 6-7), 17, 1 *filium mori volentem paene occidit, quod intervenerat pater* (332, 2-3), 17, 18 *filium propter te mori volentem deprehendisti, vis occidere?* (350, 4-5) Cf further e.g. Petr 98, 3 *ne morientes vellet occidere*, Sen Phoen 101 *occidere est vetare cupientem mori*

⁴⁶⁴ See e.g. 19 3-4 (374 20 – 375 10), 19 12 (385 3 12)

In *DM* 18, on the other hand, the mother is convinced that her son was doomed to die as a victim of his father's hatred 18, 17 *amabam, marite, periturum* (370, 21-22)

388, 6 non perdidit tamen: the first colon in an anastrophe to personified *fortuna*, consisting of an anaphora of three which all have *unici mortem* as object But this first *perdidit* is also bound up with preceding *occidi*, forming a tongue in cheek reference to other *sententiae* which play upon the difference between *occidere* and *perdere*, mentioned at 19, 2 *et perdidit et occidi* (373, 12)

388, 6-7 non perdidit unici mortem: one would expect *non perdidit unicum*, but the oxymoron *perdere mortem* is not quite uncommon see Sen *Her O* 1205-06 *perdidit mortem, ei mihi / totiens honestam*, Sil 4, 605-06 *namque inhonoratam Fibrenus perdere mortem / et famae nudam impatiens*, *DM* 17, 2 *fecit, ut mihi videar perdidisse mortem* (333, 9-10) What the father means becomes clear from the next sentence (*iam me – sola mater*) the son's death was not wasted, since nobody (except the mother) interrogates him now This tallies with 19, 12 *miseram parricidii innocentiam, quod hoc me non potestas, non magistratus, non propinquus aliquis, non amicus, non ille semper loquax populus ac malignus interrogat!* (384, 9-11) A second reason for this claim of the father's may be that he feels that his son's death has brought about a reconciliation, for which see e.g. 19, 11 *ego iam possum suprema revereri et post exitum unici revertor in patrem in gratiam me cum filio reduxit orbitas* (383, 7-11)

388, 7 fortuna: Englund 1934, 18 gives two other instances of personified *fortuna* in apostrophe *DM* 5, 14 *excogitasti rursus, fortuna, quod supercresceret caritati* (99, 24-100, 1), 11, 5 *deceperas me, fortuna* (224, 22)

388, 7-8 iam me – sola mater: but see the claim made by the mother's advocate in 18, 15 *interrogari nunc te, marite, credis a matre sola? causas mortis illius reposcit sollicitudo generis humani* (369, 6-7)

388, 7-8 non ... nisi sola: Becker 1904, 53 n 1 considers *nisi sola* a pleonasm, which is true, but it is neither uncommon⁴⁶⁵ nor gratuitous

388, 8-11 consiste aedum – potest credi: in an apostrophe to the mother, the father invites her to imitate him, i.e. to take up his instruments of torture and interrogate him it will be the only way for her to get at the truth Compare a similar offer by the mother in 18, 1 *vellet innocentiam suis probare visceribus, vellet in eculos, in ignes hanc miseram praecipitare pietatem* (354, 10-11)

388, 8 consiste aedum ... loco meo: Becker 1904, 57 refers to *DM* 15,7 (308, 18) and 15, 14 (316, 22) *consurge aedum*, in which he discerns a reflection of Vergilius' *surge age* (*A* 3, 169, 8, 59, 10, 241) For *aedum* expressing urgency, see comm. at 19, 7 *aedum, ut videtur* (379, 10) *Consisto* with bare ablative is mainly poetic (TLL s v *consisto* 463, 79 – 464, 6)

388, 9 in habitum paterni furoris accincta: cf. above *stabam senex furus monstrosae feritatis accinctus* (387, 14-15) For *habitus* in the sense of *qualitas animi, mentis, ingenui* see TLL s v *habitus* 2483, 54-84, citing this very instance *Paternus furor* is found only here, but may be an echo of the *paternae furiae* evoked in *V Fl* 6, 293, *Sil* 1,

⁴⁶⁵ We find it as early as e.g. *Cic Att* 6 1 11 *Ov Pont* 2 8 17 *Trist* 5 6 15

443-44, 2, 296 For *accingo* in the sense of 'to gird oneself, get ready for action', see OLD *accingo* 3, cf TLL *accingo* 303, 41-46

388, 9-10 *admove eculeos, flagella, laminas*: for similar *congeries* of instruments of torture, cf Sen *Contr* 2, 5, 6 *exquisita verbera, laminae, eculeus*, V Max 3, 3, 5 *de exrupt enim verbera, fidiculas laxavit, solvit eculeum, laminas exstinxit*, Hier *In Psalm* 118 *qui in martyrio plurima flagella sustinuit eculeo et unguis, plumbo, laminis ardentibus, gladio conprobat*

388, 10 *praedico, testor*: for this doublet of synonyms see comm at DM 18, 13 *praedico, testor* (366, 22-23)

388, 10-11 *aliter non – potest credi*: a tightly structured isocolon with anaphora of *aliter* and *non*, *polyptoton* of *possum* and *potest*, *homoeoteleuton* of the infinitives The father will presently revoke his statement

388, 12-15 *Quamquam – tormenta docuisti*: a *correctio* of the father's previous statement in the form of an apostrophe to his dead son the father will not even speak under torture, for his son has evidently shown him how to remain silent Apostrophes to the dead sons are found in all DM dealing with *mala tractatio* see comm at 18, 17 *Excuso tibi – morte rumore* (370, 25 – 371, 7), cf Stramaglia 2002 n 354

388, 12-13 *fas est – alloqui manes*: a parenthesis For *fas* stripped of its moral and religious connotations, see comm at 18, 5 *fas est, fieri solet* (358, 19)

388, 12-13 *tuos manes*: for the plural, see comm at 18, 17 *manibus tuis* (371, 3)

388, 13 *exprimere ... vocem nullus poterit dolor*: *Dolor* is personified, as is frequently the case in DM 19, see comm at 19, 3 *dolor* (374, 20) For the present, common metaphorical use of *exprimere*, see comm at 19, 8 *non ipsae calamitates, non dolor, non meditatio orbitatis expressit* (380, 5-6) With personified *dolor* it also occurs Quint *Inst* 11, 3, 90 *vox qualis dolori exprimitur* and, in a different sense, Sen *Ben* 2, 5, 2 *illae voces, quas ingenuus dolor exprimit*⁴⁶⁶

388, 14 *quantum volet, lacerat, vel occidat*: it is not necessary to assume with Sussman 1987, 239 that the mother has become subject 'let it (i.e. *dolor*) torment me as much as it wants, even kill me' *Lacerare* and *occidere* (for the collocation of these verbs, see comm at 19, 11 *laceratus, occisus* [383, 28]) is, of course, precisely what the father has done to his son

388, 14-15 *vincere me tormenta docuisti*: the *emphasis*, in the form of a *noema*, cryptically expresses that the father will divulge nothing under torture, but also that he has been taught to do so by his son, who therefore by implication also remained silent The metaphor seems a playful inversion of a slightly more familiar one Tac *Ann* 14, 60, 3 *vi tormentorum victis*, DeMi 269, 13 *homo quem nec tormenta vicerunt*, 338, 31 *prima forsitan tormenta sustineas vincet dolor*

388, 15-24 *si tamen – invicem confitebimur*: an apostrophe to the mother

388, 15 *si tamen fas est*: introduces another twist the father can speak to his wife after all, but in private For *fas* in this neutral sense ('possible') compare 388, 12-13 *fas est – alloqui manes* above and see comm at 18, 5 *fas est, fieri solet* (358, 19)

⁴⁶⁶ In Cicero we find the less bold (*per*) *dolore(m) exprimere* Clu 184 *non percontatione quacsitum sed per dolorem expressum* see also Flac 26 Scaur 41 Sest 120

388, 15 cogitationis memoria: Sussman's 'as I recollect them in my thoughts' (1987, 239) indicates that he reads an *enallage cogitationis memoria* replaces *cogitatione memoriae*. It seems the only solution for this problematic phrase for if taken at face value, it implies that the father depends upon the recollection of his thoughts instead of the actual *verba miserae quaestionis*. This would make his statement figured and out of tune with the rest of the *peroratio*, which consists of highly pathetic, earnest entreaties.

388, 16-17 cur me coram populo magis interrogas: the *interrogatio* resumes the father's objection that the mother did not interrogate him at home cf 19, 4 *unde in hanc inpatientiam prorupit, exiit? domi me nihil interrogavit* (375, 19-20). The mother's advocate however explicitly accounts for the public proceedings for two reasons: the mother has to expose the father's ruse to prove her own innocence (18, 1 *ideo ad vos fugiendum fuit, ut sciretis non illi praestari, quod tacet maritus laudo, iudices, laudo miseram, quod interrogare noluit domi, quod nihil fecit et ipsa secreto hic coram civitate, coram liberis ac parentibus et, licet dissimulare parricida videatur, coram rumore mater inquit, quid tormentis unici quaesierit, quid morte compererit* [353, 13 – 354, 1]), and the father's harsh actions bear witness to a view of love and affection so perverted that it upsets the entire complex of human relations 18, 15 *interrogari nunc te, marite, credis a matre sola? causas mortis illius reposcit sollicitudo generis humani* (369, 6-7).

388, 16 magis: for *magis* instead of *potius*, see LHS 166 (frequent in later Latin), cf KS 2, 461-62. In the *DM* we also find 4, 15 *rogo, ubi magis desinit, qui mentitur* (77, 15-16), 7, 8 *ut non intellegam petere me, quo[d] dives possit evadere, et paene magis pro percussore torqueri* (144, 21-23), a borderline case is 19, 2 *mei magis debetis in uxoris comparatione misereri* (373, 11-12).

388, 17-24 eamus – invicem confitebimur: the father suddenly advocates openness on both sides, the proximity of the son's body and the acuteness of their memories must bring the parents closer to one another. The plea for reconciliation reminds of Quint *Inst* 6, 1, 50 *Sunt et illi leniores epilogi, quibus adversario satisfaciamus, si forte sit eius persona talis ut illi debeatur reverentia, aut cum amice aliquid commonemus et ad concordiam hortamur*.

388, 17-18 eamus – secretum: note the parallel structure of the two prepositional phrases with anaphora of *in*, *polyptoton* of *illam* and *illud*, *homoeoteleuton* of *domum* and *secretum*, besides, Becker 1904, 61-62 hesitantly points out a type of alliteration of *desolatam – secretum*, that of *desolatam* and *domum* seems more germane.

388, 17 desolatam domum: Ritter 1967², 68 incomprehensibly queries the 'Correctheit' of *desolatam*, Becker 1904, 39 rightly observes that *desolo* was introduced by Vergilius (A 11, 367, 870). With *domus* it is further found Stat *Silv* 2, 1, 67 *muta domus desolatque penates*, Theb 1, 653-54 *desolata domorum / tecta*, *DM* 12, 15 *desolatae domus* (247, 15), later Claud *Carm* *mun* 22, 24.

388, 17-18 illud iam patris filiiue secretum: cf 19, 15 *secreti nostri* (387, 13). I am puzzled Russell, who proposed *quondam* (1985, 45), while Watt 1991, 59 preferred *<d>em*, but there is no need to make any changes, nor for Sussman's 'now into that secret chamber of father and son' (1987, 239), 'into what is now that secret chamber of father and son' makes perfect sense. Earlier on, the father has suggested that the *secretum* was used

for rendez-vous of mother and son see 19, 3 *pars remota, seposita in qua audeat facere facinus et pater* (374, 14-16), 19, 4 *cum et ipsa semper plurimum esset domi, et ab illo secreto fortasse non longe* (375, 11-12) But now, since the *secretum* was the scene of the father's ultimate punishment of, and reconciliation with his son, it has become *their* place

388, 18-20 ibi me – anima discurrit: pathos is enhanced by *paronomasia* of anaphoric *ibi* and *ubi* and the disproportionate length of the last colon

388, 19-20 ubi adhuc – anima discurrit: cf *DM* 8, 22 *sive exclusus ac vagus et inter fabulosa supplicia metuendus adhuc laceratione per stupentes horrentesque manes umbra discurris* (173, 25 – 174, 2 with Stramaglia 1999, n 123) The souls of those who had not been properly buried and of those who had met with an untimely and/or violent death were not admitted to the underworld⁴⁶⁷ See Cumont 1959², 130 'the idea was entertained that a spirit brutally separated from the body came to hold it in horror and did not consent to inhabit the tomb until a reconciliation had been disobtained [*sic*] by expiatory ceremonies' Sometimes it was assumed that the soul had to remain near the body until its allotted lifetime had expired (134) See further Warde Fowler 1971, 85 with *Ov Fast* 5, 421-44 for an account of the *Lemuria*, the ceremony for the expulsion of ghosts from the house

388, 19-20 vaga ... anima: see *Plin Nat* 7, 174 *animam relicto corpore errare solitam vagamque e longinquo multa adnuntiare*, cf further *Lucr* 3, 628, *Ov Met* 7, 611-12, *Sen Thy* 1017

388, 20 aliquis: the proposal that 'someone' should hand over the young man's death mask and his clothes somewhat jars with the intimacy the father tries to evoke

388, 20-21 imaginem iuvenis occisi: the *imago* is the mask or sometimes bust, made of wax or later occasionally terracotta that prominent Romans used to make of their deceased It was kept in a special cupboard in the house and carried round on family funerals (Toynbee 1971, 47-48)

388, 21-22 vestes, quibus ipsa iuvenem misera comebat: cf *DM* 18, 10 where it is said of innocently affectionate mothers *videbis oculos numquam a facie vultuque deflectere, comere caput habitumque componere* (363, 15-17) But in 18, 13 the father is reproached for destroying them *ipse vestes scidit, velamenta laceravit* (367, 7)

388, 22-23 eamus ad tumulum, misceamus supra busta lacrimas: that the young man had been cremated is obvious from the *narratio* (see comm at 19, 4 *ossa collegi* [375, 17]), it was not unusual for ashes to be buried in a *tumulus* (Toynbee 1971, 50) Cf *DM* 8, 20 *velut super busta tumulosque clamabat* (172, 1-2), *busta* is a *pluralis poeticus* according to Tosato 1912, 26

The expression *lacrimas miscere* seems to stem from Ovid see *Her* 5, 46 *miscuimus lacrimas maestus uterque suas*, cf *Pont* 9, 20 *cumque meis lacrimis miscuit usque suas* See further *Sen Dial* 12, 19, 1 *cum hac tu lacrimas tuas miscuisti in huius primum respirasti sinu*, *Ag* 664 *lacrimas lacrimis miscere iuvat*, *Stat Theb* 12, 386 *miscent avidae lacrimasque comasque*, *DM* 5, 20 *cum diu collatis uterque singultibus miscuissimus lapsas sine voce lacrimas* (105, 19-20)

⁴⁶⁷ The latter must be the case here see 19, 4 *sepelivi tamen laccra membra funus indulsi ossa collegi* (375, 16-17)

388, 23-24 aut tacebimus pariter aut invicem confitebimur: this penultimate section of the *peroratio* ends in an *epiphonema* which is also a *noema* the father suggests once again that there are crimes to suppress or confess. Note how the isocolon is structured by anaphora of *aut* and chiasmus of the verbs and adverbs.

388, 25 iam iam miser mori possum: note the abundance of *m*, for which see comm. above at 19, 15 *miserere, mulier, ne quaeras amplius* (388, 5). The father has done his sad duty and is now prepared to die. The mother likewise wants to join her son, but only after she has vindicated herself and her son (see 18, 17 [370, 25 – 371, 7]).

For *iam iam*, a case of *geminatio*, see comm. at 18, 12 *iam iam malo – inprovisamque mortem* (366, 4-5).

388, 25-26 explicui[t] te, sollicitudo, pietas: all mss., followed by both Burman 1720, 376 and Lehnert 1905, 351 have *explicuit*, but in that case, as Håkanson 1974, 152 cogently argues, *te* would be the mother, which does not make sense. Better to read *explicui*, and to interpret *sollicitudo* and *pietas* as vocative cases, for which we find a parallel in 19, 4 *habeo quod imputem tibi, natura, pietas* (376, 2-3), see comm. *ad loc.* for further parallels.

For *explicuit*, see comm. at 18, 7 *explicantur per ministeria, per conscios* (360, 2) and cf. 19, 3 *explicuit* (375, 12). For the collocation of personified *sollicitudo* (rather ‘concern’ than Sussman’s ‘source of concern’ [1987, 239]) and *pietas*, which – especially in view of *te* – may be considered a *hendiadys*, compare *DM* 5, 23 *pro tua fama, pro tua sum pietate sollicitus* (110, 10-11), 8, 4 *en cui pietas patris cui credere sollicitudo debuerit* (154, 21-22), 8, 5 *vides, quid profecerint anxia vota pietatis, sollicitae preces* (155, 22-23), cf. *Liv* 34, 3, 8.

388, 26-27 non scribo – non credo: *synonymia*, note the chiasmic word order and the alliteration of *tabulas-testamento* (Becker 1904, 61). The use of the *praeiens pro futuro* is colloquial (KS 117-118, LHS 306-08).

If the father’s statement is taken strictly to the letter, we must suppose that he refers to the inclusion of his wife in his will. If he is talking about his son, this means that the young man was not *in patria potestate* at the time he was killed, for if he was, he would already have been his father’s heir⁴⁶⁸. But if the son was not *in patria potestate*, the father had no right to kill him. It seems better however to assume that the father is saying that he has no son anymore to leave his property to – the more so because the next sentence is a clear reference to the son.

388, 27 et ego moriar in tormentis meis: Sussman’s ‘I will also die in my own kinds of torment’ (1987, 239) is certainly possible, but an adhortative subjunctive would be more forceful. ‘May I die in my own torment’, which could be the torture he has invited his wife to apply to him in 19, 15 (388, 8-11).

388, 27 – 389, 3 illud tantum – ne dicas: in this last sentence, ravaged by *lacunae* and corruption, the father asks both his wife and the city for silence.

389, 1-2 a te, civitas, per liberos † ferre coniuges paterne †: *ferre coniuges paterne* is the reading of B, the best ms., but *ferre* is problematic unless one assumes, with Håkanson app. crit., a lacuna. Burman reads *per liberos, per coniuges, per natos*, which

⁴⁶⁸ Unless the father was not a *paterfamilias* but in that case he had no right to kill his son.

derives from family β ; but *liberos* and *natos* is too much even for pseudo-Quintilian. Dessauer 1898, 96 (followed by Lehnert 1905, 351) suggests *per liberos, per coniuges, per penates*; but all fifteen instances of *penates* in the *DM* have the simple metonymical sense of ‘house’. Reitzenstein 1909, 72 makes a sensible proposal for the wrong reason: because the mother is addressed in her two roles (*uxor* 388, 2 and *mater* 389, 3) he wants to see a parallel: *per liberos, per coniuges, per parentes*⁴⁶⁹. *Parentes* seems the best solution, but for a different reason. The *civitas* has just now been appealed to and it is *they* who are very often in the *DM* reminded of their different (roles in) relationships: see comm. at 18, 1 *hic coram – mater inquiri* (353, 16-18); 18, 17 *coite in funus, omnes liber, omnes parentes* (370, 15-16). Helm 1911, 383 also thinks that the *civitas* is addressed, but evidently sees no good in *parentes*. Yet I think it is the only solution, unless one wants to assume a lacuna with Håkanson.

389, 2 per occisi iuvenis umbram: cf. *DM* 5, 23 *per infelicis illius manes* (109, 19).

389, 3 ne quid amplius quaeras: cf. 19, 6 *ne quid amplius quaeras* (377, 13-14); 19, 15 *ne quaeras amplius vocem huius adfectus* (388, 5).

389, 3 † tu famam ne dicas †: Burman 1720, 376 has *tu infamiam ne dicas* and sensibly remarks that this appeal must be addressed to the *civitas*; Gronovius *ibid.* suggests *tu infamem ne dicas* for the same reason. They are right, for it makes no sense to ask this of the mother; while if the *civitas* is addressed, we get an appeal for silence on all fronts in a complex chiasmus. This is why Dessauer 1898, 96 suggested *tu, fama, ne dicas: fama*, metonymous for the gossiping people, can run parallel with *mater*. His proposal, substantiated with 18, 1 *marito famaеque praestat interrogandi potestatem* (354, 9-10) was adopted by Lehnert 1905, 351 and silently accepted by Reitzenstein 1909, 72. Helm 1911, 384 prefers *tu famam ne dicas* (addressed to the community), but this loses the parallel structure *a te, mater ne...* and *tu, fama, ne...* It is best, then, to stick with Lehnert’s adoption of Dessauer’s proposal; Håkanson’s dismissive, unmotivated *Lehnert male* (app. crit.) is incomprehensible.

⁴⁶⁹ Reitzenstein further wants to reverse *coniuges* and *parentes* to make a more obvious transition to 389, 2 *a te uxorem*.

Glossary

This glossary provides a survey of the main figures of speech and thought and the most important types of *sententia* used in *DM* 18 and 19. It only contains specimens that contribute to the persuasive force of both texts, or are otherwise notable, and is therefore not exhaustive.

Alliteration: a *vitium* in the eyes of the few Roman *rhetoires* who even mention it. *Rhet. Her.* 4, 18 cautions that *compositio* can remain intact *si fugiemus crebras vocalium concursiones* () *et si vitabimus eiusdem litterae nimiam adsiduitatem*. Quintilian only discusses individual sounds within the context of *iunctura* (*Inst.* 9, 4, 32-44), Mart. Cap. *De Rhet.* 33 (RLM 474) finally comes up with terms for the phenomenon, which he regards as a *vitium*. *Homoeophoron* is not defined, but exemplified with Enn. *Ann.* 1, 109 (*O Tute tute Tati tibi tanta tyranne tulisti*) and does not seem to be alliteration in the strictest sense. Four subcategories are distinguished: *mytacismus*, *lambdacismus*, *iotacismus*, *polysigma*, but *vel cuiuslibet litterae assiduitatem in odium repetitam*. Beda (*De Schematibus*, RLM 610) comes up with stricter *parhomoeon*: *cum ab isdem litteris diversa verba ponuntur*. The term *alliteratio* was coined by the humanist Pontanus; it is identified with *annominatio* / *παρονομασία* by Vossius (5, 5, 1). See Lausberg 1246 and 975. Although in antiquity evidently regarded as a *vitium*, alliteration occurs very often in the *DM*. Becker (1904, 58-63 *Excursus* I) has devoted an appendix to the phenomenon, of which he says *non casu fortuitoque factum, sed consilio petatum esse satis pateat* (58). See further Zinsmaier 126 and esp 132, where he rightly observes that ‘die Reihung mehrerer Alliterationen nach dem Schema aa bb (cc) scheint bewußt gesucht worden zu sein’.

Occurrence in *DM* 18 and 19: 18, 1 (354, 8-9, 354, 11), 18, 2 (in *disiunctio*, *anaphora*, *asyndeton* 354, 15-16, in *πάρσιον* 354, 20-21, 355, 10), 18, 3 (355, 12-14), 18, 4 (in *συναθροισμός* 356, 25-26, 356, 26 – 357, 1), 18, 5 (378, 21), 18, 6 (359, 18-19), 18, 7 (360, 18-19), 18, 9 (of the aa bb cc pattern 361, 11-12), 18, 10 (363, 16), 18, 11 (364, 9-10), 18, 12 (in *antithesis* 366, 14-15, in *isocolon*, with *homoeoteleuton* and *homoeoptoton* 366, 16, 366, 17), 18, 13 (in *isocolon*, 367, 7), 18, 14 (367, 20-21, aa bb 368, 1-2, in synonymy and *chiasmus* 368, 11-12, 368, 22), 18, 15 (368, 26 – 369, 1), 18, 17 (in *chiasmus* 370, 19-20, triple 371, 6-7, 371, 7), 19, 1 (372, 14-15, 372, 19 = 354, 15-16, aa bb 372, 21-22), 19, 2 (373, 27), 19, 3 (374, 4, 374, 5-6, 374, 21, of the aa bb cc pattern 374, 25 – 375, 1), 19, 5 (376, 5-6, with *homoeoptoton* 376, 14, 377, 4), 19, 6 (377, 7), 19, 7 (378, 15, 379, 2, 379, 7), 19, 8 (380, 4), 19, 9 (380, 24, 381, 6, ab ab 381, 12-13), 19, 10 (aa bb 381, 22, ab ba 382, 2, *pleonasm* 382, 10), 19, 12 (384, 7), 19, 15 (aa bb 387, 14-15, and *anaphora* 387, 16-17, in *asyndeton* of synonyms 387, 19, 387, 23, 388, 5), 19, 16 (388, 17-18, 388, 25, 388, 26).

Ambiguum: For *ambiguum* see *Rhet. Her.* 4, 67: *cum verbum potest in duas pluresve sententias accipi, sed accipitur tamen in eam partem, quam vult is, qui dixit*. Quintilian in

most cases regards *ambiguitas* / *amphibolia* as a *vitium*, because it causes *obscuritas* (*Inst.* 8, 2, 13. 16; 9, 4, 32), but also as a source of jokes (puns: *Inst.* 6, 3, 47-51)¹. Occurrence in *DM* 18 and 19: 18, 17 (371, 3); 19, 2 (373, 24); 19, 3 (374, 25); 19, 9 (*noema*, *epiphonema* 381, 2-3); 19, 11 (383, 16); 19, 12 (385, 8-9); 19, 13 (385, 16-17); 19, 14 (386, 13-14; 386, 22); 19, 15 (388, 6)

Anticipatio: most concisely defined by Rutilius Lupus 2, 4 as πρόληψις: *hoc est, cum id, quod in adversarii causa aut in iudicis opinione esse aut fore arbitramur contrarium nobis, praeoccupamus dicere et cum ratione dissolvere* (RLM 14); [Iul. Ruf.] *Schem. Dian.* 4 (προκατάληψις / *oppositio* / *obiectio*, RLM 60); *Carm. de Fig.* πρόληψις / *anticipatio* (RLM 68); *Schem. Dian.* 38 (προκατάληψις, RLM 75); Isid. *De Rhet.* 21, 27 (*procatalepsis*, RLM 520); Lausberg 855. In the *DM*, it often occurs in the form of *anthypophora*, that is, a kind of minute *sermocinatio* in which the speaker's opponent is made to voice his objection, which is subsequently refuted. See [Iul. Ruf.] *Schem. Dian.* 4 ἀνθυποφορά (La. *oppositio* or *obiectio*, RLM 60-61); *Carm. de Fig.* ἀνθυποφορά (RLM 64); *Schem. Dian.* 21 ἀνθυποφορά (RLM 73-74); Fort. *Ars* 2, 27 (RLM 117-18). The figure does not occur in Lausberg.

Quintilian (*Inst.* 9, 2, 16-18²) has a broader view of the figure of *prolepsis*. He first gives a general definition: *Mire vero in causis valet praesumptio, quae προλήμψις dicitur, cum id quod obici potest occupamus* (16); subsequently, he discerns five species: *praemunitio* (preparatory defence); *confessio*; *praedictio*; *emendatio*; *praeparatio* (*cum pluribus verbis vel quare facturi quid simus vel quare fecerimus dici solet* [17]). His treatment is adopted by Vossius 5, 11, 6.

Occurrence in *DM* 18-19: 18, 1 (373, 7-14); 18, 2 (*interrogatio per suggestionem* 355, 3-6); 18, 3 (355, 6); 18, 6 (*anthypophora*, 359, 3); 18, 9-10 (*anthypophorae*, 361, 9; 361, 11; 361, 19; 363, 14); 18, 11 (*anthypophorae*, 364, 2-3; 365, 1-2); 18, 16 (369, 20-25); 19, 2 (synonymous 373, 8-11); 19, 3 (374, 11-13); 19, 8 (*anthypophora*, 380, 9); 19, 13 (385, 16-17; and *subiectio* 385, 21-25)

Antithesis: ἀντίθεσις / *contentio* / *contrapositum* see *Rhet. Her* 4, 21 (*contentio: cum ex contrariis rebus oratio conficitur*) and 58 (*per quam contraria referuntur*); Quint. *Inst.* 9, 3, 81-86 *contrapositum* discerns three *modi*: *nam et singula singulis opponuntur ... et bina binis ... et sententiae sententiis* (81) and names a number of subspecies: *distinctio*, antithesis in *homoiototon* (82), ἀντιμεταβολή (85) and puns (86); [Iul. Ruf.] *Schem. Lex.* ἀντίθεσις (RLM 51); Aquil. Rom. 22 (ἀντίθετον / *compositum ex contrariis*, RLM 29-30); *Carm. de Fig.* ἀντίθετον / *oppositum* (RLM 64); Mart. Cap. de *Rhet.* 40 (ἀντίθετον, RLM 480); Isid. *de Rhet.* 21, 5 (*antitheta/contra posita*, RLM 518); Lausberg 787-807. Note the subtype *comparatio*³ or *contentio*, for which see *Rhet. Her.* 4, 58: *per quam contraria referuntur*;

¹ The Rhetores Latini Minores only treat *ambiguitas* / ἀμφιβολία as a *status legalis*, which falls outside the scope of this glossary

² See also *Inst.* 4, 1, 49

³ A figure of thought, not to be confused with the *genus causae*, type of *argumentatio* or part of the *constitutio generalis*

Quint. *Inst.* 8, 4, 9-14; 9, 2, 100-101; Iul. Ruf. 37 σύγκρισις / ἀντίθεσις (RLM 47); Lausberg 404; 799.

Occurrence in *DM* 18-19: 18, 1 (slight, 354, 2-4); 18, 2 (in *subiectio*, 355, 3-6); 18, 3 (comparatio, 355, 12-17; *distinctio*, 356, 18-19); 18, 4 (and paronomasia 356, 18-19; in *evidentia* 357, 9-10); 18, 5 (in double enthymeme, 358, 10-11); 18, 9 (in *isocolon* with synonymia 361, 9-10; false 362, 4; 362, 9-10); 18, 11 (364, 21-22); 18, 15 (with synonymia and *asyndeton* 369, 1-2); 18, 17 (double 370, 26 – 371, 2); 19, 2 (in enthymeme, 373, 2-3; in *comparatio* 373, 11-14); 19, 3 (374, 10-11; with synonymia, 374, 25 – 375, 1); 19, 4 (in *distinctio*, 375, 4-9; made up of a double, *asyndetic συναθοποιός*); 19, 5 (with *emphasis* 377, 3); 19, 7 (double 379, 2-3); 19, 8 (in *comparatio* in *subiectio*, 380, 13-17); 19, 10 (383, 1-3); 19, 14 (and *anaphora* 386, 26;).

Apostrophe: a figure of thought⁴, see Quint. *Inst.* 9, 2, 38-39: *Aversus quoque a iudice sermo, qui dicitur apostrophe, mire movet, sive adversarios invadimus (...) sive ad invocationem aliquam convertimur (...) sive ad invidiosam inplorationem (...) sed illa quoque vocatur aversio quae a proposita quaestione abducit audientem.* Here, obviously, the first applies. About the use of *apostrophe* in the *narratio* Quintilian remarks that although some wish to ban it entirely (4, 2, 103), his own view is more utilitarian⁵ (4, 2, 106): *sermo vero aversus a iudice et brevius indicat interim et coarguit magis.*⁶

For ἀποστροφή / *aversio* see also Aquila Romanus 9, who rightly observes that the content of an *apostrophe* is in reality directed at the jury (*necessaria plerumque figura, ubi quae ad alios dicta volumus, ad alios dicere videmur. Sic plerumque convertimus orationem in reum ab iudice, cum illa tamen, quibus adversarium alloquimur, iudici allegentur.* RLM 25); [Iul. Ruf.] *Schem. Lex.* 26 (ἀποστροφή / *conversio*, RLM 54); Lausberg 762-765.

Occurrence in *DM* 18-19: 18, 3 (to father, containing a second, parenthetical *apostrophe* to the judges 355, 23 – 356, 6); 18, 4-5 (to father, 357, 10-18); 18, 6 (to the father, 359, 21-22); 18, 7 (*exclamatio*, *sententia ex inopinato* 360, 11-12); 18, 8 (to the father, 361, 3-7); 18, 9 (to the father, 362, 9-10); 18, 10 (*interrogatio* addressed to the father's *animus* 362, 18 – 363, 2; to the father 363, 14-21); 18, 11 (to the father, 364, 1-17/18); 18, 12-13 (to the father, 365, 5-367, 2; 367, 12-18); 18, 14 (to the father, 367, 19 – 368, 4); 18, 16 (double in synonymous *epiphonemata* 370, 1-2); 18, 17 (to the son, 370, 25 – 371, 7); 19, 2 (soliloquy, 373, 18); 19, 3 and *exclamatio* 373, 27 – 374, 1); 19, 4 (*exclamatio* to the gods, 375, 2-4; *hendiadys* 376, 3); 19, 5 (to the mother, consisting of three *interrogationes* and a double *sententia* 376, 5-10; in a gnomic *sententia per comparisonem* 376, 24-25); 19, 5-6 (the first argument, to the mother 376, 11 – 377, 16); 19, 6 (to woman in general 377, 18- 378, 3; to the mother 378, 3-8); 19, 7 (to the mother 379, 10 – 380, 8); 19, 8-10 (to the mother 380, 14 – 382, 16; to the mother 382, 19-22); 19, 11-12 (to the mother 383, 16 – 384, 7);

⁴ For *apostrophe* as a figure of speech see Quint. *Inst.* 9, 3, 24-25 (*non sensum mutat verum formam eloquendi*)

⁵ As is the case with his views on *apostrophe* in the *prooemium* (4, 1, 63-70), compare Iulius Victor 15 (RLM 423)

⁶ Compare Fort. *Arv* 2, 19. *apostrophas et prosopopoeias in narratione possumus facere? Possumus, si aut elegantia se varietatis obtulerit aut utilitas actionis exegerit* (RLM 112), but Iulius Victor 16 *minime probabiliter fit apostrophe* (RLM 426)

19, 14 (and *exclamatio*, ironical 387, 5), 19, 15 (to *fortuna* 388, 6-8, to the mother 388, 8-11), 19, 16 (*correctio*, to the son 388, 12-15, to the mother 388, 15-24)

Asyndeton: or *dissolutum* or *dissolutio* see *Rhet Her* 4, 41 *dissolutum est, quod coniunctionibus verborum e medio sublatis, separatis partibus effertur*, Quint *Inst* 9, 3, 50-54, esp 50 [*figura*] *quae quia coniunctionibus caret dissolutum vocatur, apta cum quid instantius dicimus nam et singula inculcantur et quasi plura fiunt Ideoque utimur hac figura non in singulis modo verbis, sed sententis etiam* For ἀσύνδετον see also Aquil Rom 41 (*solutum*, RLM 35), *Schem Lex* 20 (ἀσύνδετον, διάλυτον, *dissolutio, inconexio*, RLM 52-53), Mart Cap *De Rhet* 41 (ἀσύνδετον or *solutum*, RLM 482), Beda, *De Schem* (*dialyton vel asyndeton*, RLM 611), Lausberg 709-711

Occurrence in *DM* 18-19 18, 2 (with alliteration, *anaphora* and *disiunctio*, 354, 15-16, in tetracolon 354, 16-19), 18, 4 (*congeries* 357, 3-4), 18, 5 (in double *sententia cum ratione*, 358, 6-11), 18, 6 (in *congeries*, 358, 19-21), 18, 14 (causing obscurity 368, 18-22), 18, 15 (with synonyms in antithesis 369, 1-2, of synonyms 369, 12-13), 19, 1 (372, 19 = 18, 2 [354, 15-16]), 19, 2 (in *distributio*, 373, 25-26), 19, 3 (in *disiunctio*, 374, 1-2, in *commutatio* 374, 6-8, *isocolon* 374, 10-11), 19, 4 (in *congeries*, 375, 4-5, twice in συναθροισμός 375, 23-24), 19, 10 (chiasmus 382, 21-22), 19, 13 (*congeries* of four personifications 386, 5-6), 19, 15 (in culminating *congeries* 388, 2-3)

Chiasmus: not a separate figure in ancient rhetoric See Vossius 5, 12, 4 διάλληλον or χιαστὸν, the figure is compared with *commutatio* Vossius discerns two species (which may be combined) *cum reciprocatione verborum*, which is a *figura verborum*, and as a *figura sententiarum, quae mutatis etiam verbis permanet* His examples are all antithetical, or at least entail a shift of content However, I will also include notable examples from the *DM* which do not answer the last criterion

Occurrence in *DM* 18-19 18, 2 (in παραδιαστολή, 354, 8-9), 18, 6 (in *interrogatio* 359, 7-8), 18, 9 (in tricolon, to single out the third colon 362, 6-7), 18, 10 (partial, 362, 17-18, 363, 1-2, synonymous 363, 4-5), 18, 11 (364, 8-9), 18, 12 (in enthymeme 366, 5-6, in *isocola* 366, 9-10, with *polyptoton* 366, 11-12), 18, 13 (367, 7-8, in *repetitio* 367, 13-14), 18, 14 (synonymous, 368, 11-12, synonymous, with *anaphora* 368, 12-13), 18, 17 (with alliteration 370, 18-19), 19, 3 (synonymous, 374, 8-9), 19, 6 (377, 11-12, in double metonymia 377, 18-20, with *anaphora* 378, 5-7), 19, 7 (379, 4-5), 19, 9 (381, 12-13), 19, 10 (in *synonymia* 382, 1, *asyndetic* 382, 21-22), 19, 11 (and *anaphora* 383, 14-15), 19, 12 (384, 14-15), 19, 13 (and *homoeoteleuton* 385, 19-20), 19, 15 (in *isocolon* 388, 3-4), 19, 16 (388, 23-24, and *synonymia* 388, 26-27)

Communicatio: *est quasi cum us ipsis apud quos dicas deliberatio*, Quint *Inst* 9, 1, 30,⁷ see also Iul Ruf 10 Ἀνακοίνωσις *communicatio est, cum aut ipsos adversarios consulimus aut cum iudicibus deliberamus* (RLM 41) See further *Schem Dian* 24 (κοινωνία / *communicatio consilii*, RLM 74), Isid 21, 28 (*coenosis*, RLM 520), Lausberg 779
Occurrence in *DM* 18-19 18, 5 (357, 23-25), 19, 3 (374, 8)

⁷ Taken from Cic *De Orat* 3 204

Commutatio: or *antimetabole* see *Rhet Her* 4, 39 *Commutatio est, cum duae sententiae inter se discrepantes ex transiectione ita efferuntur ut a priore posterior contraria priori profiscatur*, Quint *Inst* 9, 3, 85 (*illa figura qua verba declinata repetuntur, quod ἀντιμεταβολή dicitur*), Rut Lup 6 (*ἀντιμεταβολή*, RLM 5-6), *Carm de Fig* ἀντιμεταβολή / *permutatio* (RLM 64), Isid *De Rhet* 11 (*Antimetabole est conversio verborum, quae ordine mutato contrarium efficit sensum*, RLM 519), Lausberg 800-803
Occurrence in *DM* 18-19 19, 3 (374, 6-8)

Concessio⁸: said by Quint *Inst* 9, 2, 51 to occur *cum aliquid etiam inimicum videmur causae fiducia pati*, a subspecies in Rut Lup 1, 19 παρομολογία () *fit, cum aliquot res adversario concedimus, deinde aliquid inferimus, quod aut maius sit quam superiora, aut etiam omnia quae posuimus infirmet* (RLM 11) See also *Carm de Fig* παρομολογία / *suffessio* (RLM 68) and ἐπιτροπή / *concessio* (RLM 66), *Schem Dian* 26 συγχώρησις (RLM 74), Lausberg 856

Occurrence in *DM* 18-19 18, 3 (pseudo-concessio 355, 12-15), 18, 5 (358, 15-19), 18, 7 (pseudo-concessio 359, 23 – 360, 4), 18, 11 (pseudo-concessio, 364, 6-10), 18, 12 (365, 5-10, 365, 11-12, 366, 7-20 within which 366, 15-20), 18, 16 (παρομολογία 369, 25-26)

Congeries: See Quint *Inst* 8, 4, 26-27 *Potest adscribi amplificationi congeries quoque verborum ac sententiarum idem significantium Nam etiam si non per gradus ascendant, tamen velut acervo quodam adlevantur () Simile est hoc figurae quam συναθροισμὸν vocant, sed illic plurium rerum est congeries, hic unius multiplicatio* For συναθροισμός see also Rut Lup 1, 2 (RLM 4), *Carm de Fig* συναθροισμός (RLM 68), differently *Schem Dian* 37 *Hoc schema inter violentissimas figuras accipitur, ubi multas res et multa crimina in unum contrahimus* (RLM 75), Lausberg 406 and 667

Occurrence in *DM* 18-19 18, 4 (συναθροισμός 356, 25-26, asyndetic 357, 3-4), 18, 5 (in *concessio*, 358, 19-22), 18, 6 (asyndetic, in *epiphonema* 359, 19-21), 18, 7 (asyndetic, 360, 18-22), 18, 15 (with evident culmination 369, 15-16, *gradatio* with anaphora and *homoeoteleuton* 369, 16-17), 19, 1 (372, 16), 19, 3 (374, 14-16, συναθροισμός 374, 20-24), 19, 4 (in *asyndetic tricolon* 375, 4-5, a double, antithetical συναθροισμός consisting of two *asyndeta* 375, 23-24), 19, 5 (culminating tricolon with anaphora of *quod* 376, 22-23), 19, 6 (377, 10-12), 19, 7 (with anaphora 379, 11-12), 19, 9 (culminating 'hexacolon' with sixfold anaphora 381, 7-9, double in tricolon 381, 12-13), 19, 11 (*interrogatio* of synonyms 383, 16, synonyms in *interrogatio* 383, 21-22), 19, 12 (with anaphora 384, 9-11), 19, 13 (asyndetic, of four personifications 386, 5-6), 19, 14 (386, 26 – 387, 1), 19, 15 (387, 27, asyndetic, culminating 388, 2-3, asyndetic 388, 9-10)

Correctio: *quae tollit id, quod dictum est, et pro eo id, quod magis idoneum videtur, reponit* (*Rhet Her* 4, 36), Quint *Inst* 9, 3, 89 describes it as a figure of speech that closely

⁸ A figure of thought not to be confused with the *pars* of the *constitutio generalis* (Cic *Inv* 1, 15 and 2 94 ff) or *iuridicialis* (*Rhet Her* 1 24 and 2 23 ff) or *qualitatis* (Quint *Inst* 7 4 14 ff)

approximates to a figure of thought. See also *Carm. de Fig.* ἐπιτίμησις (*cum in quodam me corripio dicto*, RLM 69)⁹; Lausberg 784-86.

Occurrence in *DM* 18-19: 19, 2 (372, 22 – 373, 1); 19, 16 (in apostrophe 388, 12-15)

Descriptio: or *evidentia*¹⁰. *Rhet. Her.* 4, 51 is confined to possible consequences: *Descriptio nominatur, quae rerum consequentium continet perspicuam et dilucidam cum gravitate expositionem. (...) Hoc genere exornationis vel indignatio vel misericordia potest commoveri, cum res consequentes comprehensae universae perspicua breviter exprimuntur oratione*; more general is 4, 68 *demonstratio (est cum res ita verbis exprimitur, ut geri negotium et res ante oculos videatur)*; Quint. *Inst.* 9, 2, 40-44 *subiectio sub oculos: cum res non gesta indicatur sed ut sit gesta ostenditur, nec universa sed per partis* (40) ... *nec solum quae facta sint aut fiant sed etiam quae futura sint aut futura fuerint imaginamur* (41). See also *evidentia* / ἐνάργεια (8, 3, 61-71), where Quintilian discerns three genera: 1) *quo tota rerum imago quodam modo verbis depingitur* (63-65), 2) *ex pluribus* (details, 65-70), 3) *ex accidentibus* (70); in *narratio* 4, 2, 63-65); Aquila 13 διατύπωσις / *descriptio* / *deformatio: ubi rebus subiectis personisque et formas ipsas et habitus describimus et exprimimus* (RLM 26); from this figure he distinguishes 3 λεπτολογία: *non de universo loco, sed de executione singularum rerum*, RLM 23); [Iul. Ruf.] *Schem. Dian.* 15 ἐνάργεια (*figura, qua formam rerum et imaginem ita oratione substituimus, ut lectoris oculis praesentiaeque subiciamus*, RLM 62); *Schem. Dian.* 1 ἐνάργεια (*imaginatio, quae actum incorporeis oculis subicit et fit modis tribus: persona, loci, tempore*, RLM 71); 36 διατύπωσις (RLM 75) and 18 λεπτολογία (*qua in discriptionibus tenuissimus utimur*, RLM 73); Iul. Vict. 22 (RLM 436-37); Mart. Cap. *De Rhet.* 38 διατύπωσις (RLM 478); Isid. *De Rhet.* 21,33 (*enargia*, RLM 521); Lausberg *evidentia* 810-19.

Occurrence in *DM* 18-19: 18, 3 (*sub oculos subiectio*, 357, 9); 18, 4 (357, 8-9); 18, 13 (*sub oculos subiectio* 367, 6-10); 18, 14 (*hypothetical sub oculos subiectio* 367, 19 – 368, 3); 18, 15 (*sub oculos subiectio* 369, 3-5); 18, 17 (*hypothetical sub oculos subiectio* 370, 15-20); 19, 3 (τοπογραφία followed by *sub oculos subiectio*, 374, 14 sqq.; *evidentia* in present tense 374, 20-375,1); 19, 6 (*sub oculos subiectio* 377, 7-11); 19, 15 (*sub oculos subiectio* 387, 13-28 and 388, 1-4)

Digressio: (*egressio, egressus, excessus, excursio, excursus, παρέκβασις*) Cic. *Inv.* 1, 27 defines *digressio* as a genus narrationis, in quo *digressio aliqua extra causam aut criminationis aut similitudinis aut delectationis non alienae ab eo negotio, quo de agitur, aut amplificationis causa interponitur*; in 1, 97 he discusses the *digressio* according to Hermagoras, who wants it between *argumentatio* and *conclusio*, where it should add *aliquid confirmationis aut reprehensionis, non argumentando, sed augendo per quamdam*

⁹ For a number of *Rhetores Latini Minores*, the term *correctio* refers to a different figure. Aquila Romanus 1 προδιόρθωσις, *praecedens correctio. haec figura, ubi aliquid necessarium dictum, sed insuave audientibus aut odiosum nobis dictum sumus, praemunit* (RLM 23); [Iul. Ruf.] *Schem. Lex* 17 ἐπανόρθωσις, *cum supra dictum verbum verbo sequenti corrigitur* (RLM 52); *Schem. Dian.* 2 διορθωσις, *quae latine correctio nominatur, cum dictum aliquid quod arrogans aut iniuriosum esse videatur, praemissa praefatione mollimus* (RLM 71).

¹⁰ Because of their similarity, I treat both figures together. If they differ in any respect, they do so in degree, *evidentia* being more direct and realistic than *descriptio*.

amplificationem Quintilian, who doubts whether *digressio* is a *schema* or a *pars causae* (*Inst* 9, 2, 55) devotes an entire chapter of his *Institutio* (4, 3) to the *digressio*. Although the chapter is significantly placed between the treatments of *narratio* (4, 2) and *propositio* (4, 4), Quintilian opposes the notion that any *narratio* should per se be followed by a *digressio* (1-3), though it can serve as a kind of second *prooemium* to the *argumentatio* in a difficult case (9-11). A *digressio* can also occur with a *quaestio* (4), Quintilian approves *si cohaeret et sequitur non si per vim cuneatur et quae natura iuncta erant distrahit* (4). In 15 he defines *digressio*: *Nam quidquid dicitur praeter illas quinque quas fecimus partes egressio est indignatio, miseratio, invidia, convicium, excusatio, conciliatio, maledictorum refutatio, similia his, quae non sunt in quaestione omnis amplificatio, minutio, omne adfectus genus atque ea quae maxime iucundam et ornatam faciunt orationem, de luxuria, de avaritia, de religione, de officiis, quae cum sunt argumentis subiecta similium rerum, quia cohaerent egredi non videntur*. See further Fort *Ars* 2, 20 (the *digressio* is not a *pars causae* because it can be inserted *ubicumque rei atrocitas postulat*, material is drawn from the *septem circumstantiae* *persona, res, causa, tempus, locus, modus, materia*, RLM 113), 3, 12 (a *digressio* requires a *structura rotunda et gravis*, RLM 128), Vict 1, 19 (= Cic *Inv* 1, 27, RLM 202), 1, 51 (= Cic *Inv* 1,9 7, RLM 255), Iul Vict 17 *De egressione* (paraphrase of Quint *Inst* 4, 3, RLM 427-29), Vossius 5, 6, 2 *De digressionem* (338-42), Lausberg 340-42 and 408 (*locus communis*). Occurrence in *DM* 18 and 19 *DM* 18, 10 (363, 3-13 and 14-25), 19, 7 (378, 10-19), 19, 11 (*amplificatio* 383, 4-15).

Dilemma: a *locus argumentationis a finitione*, also named *complexio*,¹¹ for which see Cic *Inv* 1, 45 *complexio est, in qua utrum concesseris, reprehenditur* (with comm. by Vict in RLM 233 and 253), Quint *Inst* 5, 10, 65-70 *divisio*. Quint names a number of species, e.g. *Fit etiam ex duobus, quorum necesse est <esse> alterum verum, eligendi adversario potestas, efficiturque ut utrum elegerit noceat* (69), *Interim duo ita propununtur ut utrumlibet electum idem efficiat* (70), Iul Vict 12 (refutation of *dilemma*, RLM 414), Lausberg 393. Occurrence in *DM* 18-19 18, 8 (with *paronomasia*, 360, 22-23), 18, 14 (false, 368, 16-17), 18, 15 (369, 11-15).

Distinctio: usually defined as “steigernd-semanticchen Unterscheidung zwischen der normalen (habituellen) Bedeutung der ersten Setzung eines Wortes und der emphatisch-ausschöpfenden Bedeutung der zweiten Setzung des gleichen Wortes” (Lausberg, 660), but there are a few slightly different interpretations of the term. Quint *Inst* 9, 3, 67 falls under Lausberg’s definition *cum verbo idem verbum plus significans subiungitur*, broader is Carm *de Fig* διαφορά/*distinctio si verbum diverse iteres* (RLM 65), more narrowly [Iul Ruf] *Schem Lex* 24 ἀντίστασις /*contentio cum idem verbum repetitur in contrario sensu* (RLM 54). See further Rut Lup 1, 12 (διαφορά, RLM 8), Aquila 28 (πλοκή/*copulatio*, RLM 31).

¹¹ Not to be confused with *complexio* as a figure of speech which is a combination of anaphora and epiphora

Occurrence in *DM* 18-19 18, 10 (363, 15), 18, 17 (370, 14), 19, 4 (in *antithesis*, 375, 4-5 and 9)

Distributio: a figure of speech, the definition of which may be more or less narrow It may occur *cum in plures res aut personas negotia quaedam certa dispertuntur* (*Rhet Her* 4, 47), see also *Rut Lup* μερισμός (*hoc schema singulas res separatim disponendo et suum cuique proprium tribuendo magnam efficere utilitatem et inlustrem consuevit*, RLM 10) 1, 18 [*Iul Ruf*] *Schem Lex* 23 (διαίρεσις / *distributio* / *designatio cum fit rerum distributio*, RLM 53), *Carm de Fig* μερισμός (or *distribuela cum privis propria attribuas*, RLM 66), see also Vossius 5, 8, 3 and Lausberg 671, 675

Occurrence in *DM* 18-19 18, 15 (in *expositio*, 369, 7-10), 19, 2 (not in a narrow sense, 373, 25-26), 19, 11 (with *anaphora* 383, 17-18), 19, 14 (387, 9)

Ellipsis: see *Quint Inst* 9, 3, 58 *cum subtractum verbum aliquod satis ex ceteris intellegitur* Quintilian notes a close resemblance to *synecdoche* (*Inst* 8, 6, 21-22, 9, 3, 58) and remarks that it can also be a *vitium* instead of a figure (*Inst* 1, 5, 40 and 8, 3, 50) See also *Aquila Romanus* 46 and *Mart De Rhet* 41 (ἔλλειψις or *detractio*, RLM 37 and 483), *Carm de Fig* ἔλλειψις (or *defectio*, RLM 70), Lausberg 690-91

Occurrence in *DM* 18-19 18, 12 (365, 16), 19, 2 (373, 3-4, with *repetitio* and *hyperbaton* 373, 15-16)

Emphasis: See the introduction for its connection with the *controversia figurata* For *emphasis* as a figure see *Quint Inst* 8, 3, 83-86 *emphasis* is a form of *ornatus altiore* *praebens intellectum quam quem verba per se ipsa declarant Eius duae sunt species altera quae plus significat quam dicit, altera quae etiam id quod non dicit* (83), See 9, 3, 64-99 for *emphasis* as a *figura sententiarum* (and a discussion of the *controversia figurata*) *cum ex aliquo dicto latens aliquid eruitur* (64) *Emphasis* here has three uses (66) *unus, si dicere palam parum tutum est, alter, si non decet, tertius, qui venustatis modo gratia adhibetur, et ipsa novitate ac varietate magis, quam si relatio sit recta, delectat* See also Lausberg 578 and 905-906

Occurrence in *DM* 18-19 18, 1 (353, 16-18), 18, 2 (in *subiectio* 355, 3-6), 18, 9 (as a figure, 362, 4), 18, 16 (370, 5), 19, 2 (373, 22-23, 373, 25-26), 19, 3 (twice, and near-synonymous 374, 15-16), 19, 5 (375, 16), 19, 5 (a doublet of *gnomic sententiae* 376, 17-19, 377, 1-3, in *antithesis* 377, 3), 19, 9 (381, 7-9), 19, 12 (double 384, 9-11, *emphatic reticentia* 384, 13-14), 19, 13 (386, 9-11), 19, 16 (*noema* 388, 14-15)

Enumeratio: *est per quam res disperse et diffuse dictae unum in locum coguntur et reminiscendi causa unum sub aspectum subiciuntur* (*Cic Inv* 1, 98, see also 1, 99-100), it usually occurs in the *divisio* and/or *peroratio* See also *Rhet Her* 1, 17 and 2, 47, *Quint Inst* 6, 1, 1-8 (*enumeratio* / ἀνακεφαλαίωσις), *Schem Dian* 13 (ἀνακεφαλαίωσις / *recapitulatio*, RLM 73), *Fort Ars* 2, 31 (*anacephalaeosis*, RLM 119-120), *Vict* 1, 52 (*enumeratio animos movet et fidem facit*, RLM 256), *Sulp Vict* 23 (*renovatio* / ἀνακεφαλαίωσις, RLM 324), Lausberg 434 and 671

Exclamatio: this figure of thought is defined quite narrowly in *Rhet. Her.* 4, 2 as *quae conficit significationem doloris aut indignationis alicuius per hominis aut urbis aut loci aut rei cuiuspiam compellationem*; characterized thus, it can hardly be distinguished from the *apostrophe*. Quintilian's definition (*Inst.* 9, 2, 26-27) is broader: *Quae vero sunt augendis adfectibus accomodatae figurae constant maxime simulatione. Namque et irasci nos et gaudere et timere ed admirari et dolere et indignari et optare quaeque sunt similia his fingimus...* (a number of exclamations follow by way of example) *Quod exclamationem quidam vocant et ponunt inter figuras orationis. Haec quotiens vera sunt, non sunt in ea forma de qua nunc loquimur: adsimulata et arte composita procul dubio schemata sunt existimanda.* See further *Carm. de Fig.* (*exclamatio* / ἐπεκφώνησις, RLM 66); Lausberg 809.

Occurrence in *DM* 18-19: 18, 2 (& *hyperbaton*, 354, 21 – 355, 1); 18, 5 (& *noema* and *epiphonema* 357, 18-19); 18, 6 (*noema*, 258, 22-23); 18, 7 (*sententia ex inopinato* 360, 11-12); 18, 11 (364, 5; 364, 12; 365, 1); 18, 13 (*sententia ex inopinato* 367, 10-11; irony 367, 10-11); 18, 16 (369, 20 – 370, 1); 19, 1 (double, with *anaphora* 372, 9-12); 19, 2 (& *hyperbaton* 373, 8; ironical 373, 14-15; & *apostrophe* 373, 18); 19, 3 (& *apostrophe*, 373, 27 – 374,1); 19, 4 (& *apostrophe*, 375, 2-4); 19, 7 (378, 19 – 380, 3); 19, 9 (380, 22-23); 19, 10 (382, 22 – 383, 1); 19, 11 (double, with double *anaphora* 383, 4-5; 383, 13-15); 19, 12 (384, 8-9); 19, 14 (ironical 386, 19; 386, 24; and *apostrophe*, ironical 387, 5); 19, 15 (387, 13-14; double with *anaphora* and *homoeoteleuton* 387, 19-21; 388, 1)

Expolitio: an *expolitio* occurs when a speaker dwells upon a thought which is central or even crucial to his argument. It is defined as follows in *Rhet. Her.* 4, 54: *Expolitio est, cum in eodem loco manemus et aliud atque aliud dicere videmur. Ea dupliciter fit: si aut eandem plane dicemus rem aut de eadem re.* The most effective and also most common type of *expolitio* happens *commutando verba*, a stylistic device defined¹² by Quintilian as *commoratio* (*Inst.* 9, 2, 4).¹³ See further *Schem. Dian.* 7 ἐπιμονή (*latine repetitio crebra sententiae*, RLM 72); Isid. *Rhet.* 21, 43 (*epimone est, quotiens in eodem sensu diutius immoramur*, RLM 521); Lausberg 830-42, esp. 832-41.

Occurrence in *DM* 18-19: 18, 4 (356, 20-24); 18, 7 (360, 4-9); 18, 15 (*distributio*, 369, 7-10).

Hendiadys: This figure does not occur in the rhetorical textbooks of antiquity, nor does Lausberg include it. The first time it occurs is in Porphyrio's commentary on Hor. *Carm.* 2, 15, 18-20; it is not used again until centuries later, by Servius (4th/5th cent.), and subsequently becomes a more common term.¹⁴ The hendiadys is defined aptly and

¹² Defined, but not expatiated upon In *Inst.* 9, 1, 27 he quotes Cic. *de Orat.* 3, 202: *commoratio una in re permultum movet.*

¹³ In *Rhet. Her.* 4, 58 *commoratio* is reserved for the *expolitio* of the central argument of a given plea.

¹⁴ *Histonsches Worterbuch der Rhetorik* s.v. *hendiadys*.

concisely by Fuhrmann 1984, 133 as “die Figur, die einen komplexen Begriff in zwei Teile zerlegt”.

Occurrence in *DM* 18-19: 18, 2 (354, 18); 18, 3 (356, 14); 18, 4 (with anaphora 356, 17-18); 18, 6 (359, 3-4); 19, 4 (in apostrophe, 376, 3); 19, 10 (with anaphora 382, 3); 19, 12 (384, 23 – 385, 1); 19, 16 (personified 388, 25-26).

Homoeoteleuton: or *similiter desinens*. See *Rhet. Her.* 4, 28: *Similiter desinens est, cum, tametsi casus non insunt in verbis, tamen similes exitus sunt*; Quint. *Inst.* 9, 3, 77 (*ut clausula similiter cadat, syllabis isdem in ultimam partem conlatis*); 9, 4, 42 (*vitium, si ... multa iunguntur*). See also Aquil. Rom. 26 (*ὁμοιοτέλευτον* or *simile determinatione*, RLM 30); *Carm. de Fig.* (*ὁμοιοτέλευτον* or *confine*, RLM 67); Mart. Cap. *De Rhet.* 40 (*ὁμοιοτέλευτον* or *simili modo determinatum*, RLM 481). Rut. Lup. 13-14 (RLM 18-19) makes a different distinction, defining the latter as follows: *hoc in duobus verbis eundem habet casum aut eandem novissimam syllabam*, whereas *ὁμοιοπτωτον* minus evidens est quam superius, et minorem affert auribus iucunditatem. Nam neque tam paria duo verba sunt, neque eundem habent casum et sonum vocis, quam Graeci prosodiam appellant. See further *Carm. de Fig.* (*ὁμοιοτέλευτον* / *confine*, RLM 67); Lausberg 725-28.

Homoeoteleuton often occurs combined with *homoeoptoton* or *similiter cadens*. See *Rhet. Her.* 4, 28: *cum in eadem constructione verborum duo aut plura sunt verba, quae similiter isdem casibus efferantur*. They must be used sparingly (*perraro sumenda*, 4, 32) and never in succession (*compositio conservabitur [...] et si non utemur continenter similiter cadentibus verbis*, 4, 18); Quint. *Inst.* 9, 3, 78-80 (*quod in eosdem casus cadit [...] sed neque, quod finem habet similem, utique in eundem venit finem ὁμοιοπτωτον, quia ὁμοιοπτωτον est tantum casu simile etiam si dissimilia sint quae declinentur, nec tantum in fine deprehenditur* [78] ... *nec enim semper paribus syllabis constat* [79]). See further Rut. Lup. 2, 13 (*hoc in duobus verbis eundem habet casum aut eandem novissimam syllabam*, RLM 18-19); Aquila 25 *ὁμοιοπτωτον* / *simile casibus*: *ex eo nomen accepit, quod membra illa, id est κῶλα in eosdem casus cadunt* (RLM 30); *Carm. de Fig.* (*ὁμοιοπτωτον* / *aequeclinum*, RLM 67); Lausberg 729-31.¹⁵

Occurrence *DM* 18 and 19: 18, 1 (& *polyptoton*, 354, 8-9); 18, 6 (& *homoeoptoton*, 359, 11-13); 18, 8 (360, 25 – 361, 1) 18, 9 (& *homoeoptoton*, 361, 15-16; & *homoeoptoton*, double, in tricolon, 362, 6-7); 18, 10 (*paromoeosis*, 363, 17-18); 18, 11 (& *homoeoptoton*, 364, 9-10; & *homoeoptoton* in *synonymia*, 365, 2); 18, 12 (in isocolon with *homoeoprophoron* and *homoeoptoton* 366, 16); 18, 14 (368, 1-3; 368, 6-7; with anaphora 368, 18; with anaphora 368, 24); 18, 15 (with anaphora in *gradatio* 369, 16-17); 18, 16 (& *homoeoptoton* in doublet of synonymous *epiphonemata* 370, 1-2); 18, 17 (in *synonymia* 370, 23; 371, 1-2); 19, 2 (& *homoeoptoton*, 373, 5-6 and 373, 12); 19, 3 (& *homoeoptoton*,

¹⁵ Whereas for most authors *homoeoptoton* differs from *homoeoteleuton* in that *illud* (sc. *homoteleuton*) *quidem et casu et sono simili verba membrorum determinat* hoc vero non solum casuum similitudine, sed cuiuscumque verbi atque enuntiationis contentum est (Aquila 26, RLM 30), Rut. Lup. 13-14 (RLM 18-19) makes a different distinction, defining the latter as follows: *hoc in duobus verbis eundem habet casum aut eandem novissimam syllabam*, whereas *ὁμοιοπτωτον* minus evidens est quam superius, et minorem affert auribus iucunditatem. Nam neque tam paria duo verba sunt, neque eundem habent casum et sonum vocis, quam Graeci prosodiam appellant

374, 1-2; double, 374, 10-11; & *homoeoptoton* of synonyms 374, 14); 19, 5 (& *homoeoptoton* 377, 4); 19, 7 (of synonymous adverbs in tricolon 379, 15-16); 19, 8 (380, 2; 380, 4); 19, 9 (fourfold, with anaphora 380, 19-20); 19, 12 (double 385, 1-2); 19, 13 (and *homoeoptoton* in synonymous isocolon 385, 12-13; 385, 13-14; and chiasmus 385, 19-20); 19, 14 (387, 2-3; and anaphora in synonymia 387, 6; in isocolon 387, 9); 19, 15 (and anaphora 387, 16; and anaphora in double *exclamatio* 387, 19-21; in isocolon 388, 10-11); 19, 16 (388, 17-18).

Hyperbaton: or *transgressio*. See *Rhet. Her.* 4, 44: *transgressio est, quae verborum perturbat ordinem perversione* (transposition of two words, *anastrophe* in Quint. *Inst.* 8, 6, 65) aut *transiectione* (the separation, *decoris gratia*, of words that belong together syntactically, i.e. the *hyperbaton* proper according to Quint. *Inst.* 8, 6, 65). See further Quint. *Inst.* 8, 6, 62-67; *Carm. de Fig.* ὑπερβατό / *transcensus* (RLM 69); Beda *De Trop.* *hyperbaton* (discerning five varieties: *hysterologia*, *anastrophe*, *parenthesis*, *imesis*, *synchysis*); Lausberg 462 3b; 716-18 (with *imesis*); see also *parenthesis*. Occurrence *DM* 18 and 19: 18, 1 (353, 12-13); 18, 2 (354, 18-19; in *exclamatio* 354, 21-355, 1); 18, 3 (355, 16-17; 356, 6-7; 356, 8-9); 18, 4 (356, 26 – 357, 1; 357, 1-2; 357, 3); 18, 5 (358, 9-10); 18, 7 (360, 9; 360, 18); 18, 11 (364, 19); 18, 12 (365, 5; 366, 11-12); 18, 13 (366, 23; 366, 24; of *litotes* 367, 12); 18, 14 (367, 19-20); 18, 17 (370, 19-20; 371, 7); 19, 1 (372, 6-7; 372, 12); 19, 2 (in *exclamatio*, 373, 8; with *repetitio* and ellipsis 373, 15-16; 373, 20); 19, 3 (373, 27 – 374, 1; 374, 2-3); 19, 4 (375, 25 – 376, 1); 19, 7 (with *interiectio* 378, 19 – 379, 1); 19, 8 (379, 21-22; 380, 1; 380, 2-3); 19, 9 (382, 5); 19, 11 (383, 8-9; 383, 21; 383, 28 – 384, 1); 19, 12 (384, 22-23); 19, 13 (double 385, 22-23); 19, 15 (387, 13-14)

Inopinatum: or paradox is treated only summarily by most *rhetoires*. Quint. *Inst.* 6, 3, 84 defines it as a *genus decipiendi opinionem*; it can be the basis for a *sententia ex inopinato* (8, 5, 15) and identified with the figure of *sustentatio* (*Inst.* 9, 2, 22-23) of which the most economical definition is given in Rufin. 34 παράδοξον / ὑπομονή / *sustentatio* / *inopinatum*: *Hoc schema suspendit sensum, deinde subicit aliquid eo, contra expectationem auditoris, sive maius sive minus* (RLM 46); see also Isid. 21, 29. There is no entry in Lausberg.¹⁶

Occurrence in *DM* 18 and 19: 18, 2 (355, 4); 18, 7 (360, 9-10; *exclamatio* 360, 11-12; 360, 17-23); 18, 10 (*exclamatio*, 363, 7-8); 18, 12 (365, 12); 19, 1 (372, 22); 19, 2 (373, 4); 19, 10 (*sententia ex inopinato* 382, 7-8); 19, 11 (*sententia ex inopinato* 383, 8; double *sententia ex inopinato* 383, 10-12); 19, 12 (*epiphonema* 385, 2-3); 19, 14 (*exclamatio* 386, 18); 19, 15 (in *sermocinatio* 387, 17).

Interrogatio: For *interrogatio* as a figure of thought¹⁷ see Quint. *Inst.* 9, 2, 6-16: *figuratum autem, quotiens non sciscitandi gratia adsumitur, sed instandi* (7); *Interrogamus etiam*

¹⁶ Lausberg 64 treats παράδοξον, but as a *genus causae*

¹⁷ The only remark on the *interrogatio* in *Rhet. Her.* is *Interrogatio non omnis gravis est nec concinna, sed haec, quae, cum enumerata sunt ea, quae obsunt causae adversariorum, confirmat superiorem orationem* (4, 22)

quod negari non possit () *aut ubi respondendi difficilis est ratio* (8) *aut invidiae gratia* () *aut miserationis* () *aut instandi et auferendae dissimulationis*(9) *Its use et indignationi convenit* () *et admirationi* (10), *est interim acrius imperandi genus* (11) In 11-16, Quintilian adds the related figures *in respondendo, dissimulatio, interrogandi se ipsum, per suggestionem, comparatione* See also Aquila 11 (ἐρώτημα / *interrogatum eo utimur, ubi exacerbando aliquid interrogamus et augemus eius invidiam*, RLM 25) and cf *Schem Dian* 39 (RLM 75), Lausberg 767-70

Occurrence in *DM* 18-19 18, 2 (double, 354, 19-20, *per suggestionem* 355, 5-6), 18, 3 (356, 3-5), 18, 4 (*subiectio* with νόημα, 356, 20-21, *subiectio* with *epiphonema* 357, 4-7), 18, 4-5 (four *per suggestionem*, 357, 13-18), 18, 5 (double, the first question is 'answered' with the second, a *communicatio*, 357, 20-26), 18, 7 (triple, 360, 12-14), 18, 8 (*interrogandi se ipsum et respondendi sibi vices* 360, 24 – 361, 1), 18, 9 (quadruple, 361, 14-16, expressing a gnomic *sententia* 361, 20), 18, 10 (quadruple, 362, 14 – 363, 2, double, 363, 4-7), 18, 11 (double, 364, 1-2, antithetical 364, 5-6, double, in *subiectio*, isocolon 364, 9-10), 18, 12 (fivefold, in irony 365, 6-10, double, in irony and a type of ἡθοποιία 364, 15 – 365, 1, in *subiectio* 366, 13-14), 18, 13 (triple, 367, 3-6), 18, 14 (double, 368, 1-3), 18, 15 (triple, 368, 26 – 369, 3, double 369, 5-6, 369,10-11, first constituent of a *dilemma* 369, 11-13), 18, 16 (*per suggestionem*, 370, 7-10, *per suggestionem* 370, 10-11), 19, 1 (*subiectio*, 372, 12-14), 19, 2 (*per suggestionem*, 373, 5-7), 19, 3 (*communicatio* 374, 8), 19, 5 (three, answered with a double *sententia*, 376, 5-10), 19, 7 (double with anaphora 379, 20-22), 19, 10 (382, 8-9), 19, 11 (*congeries* of synonyms 383, 16, *congeries* of synonyms, *per suggestionem* 383, 21-24, double 383, 25), 19, 14 (double 386, 16-18, double 386, 25-26, 387, 5-6), 19, 16 (388, 16-17)

Ironia: For irony, see Quint *Inst* 8, 6, 54-56 (*illusio*, a trope, see esp 55 *et laudis autem simulatione detrahare et vituperationis laudare concessum est*) and 9, 2, 44-53 (irony as a figure of thought, which is not confined to single words, it is also known as *dissimulatio*, but Quint prefers the Greek term, which is more comprehensive), see further Aquila 7 (ἐῖρωνεία / *simulatio, frequentissima apud oratores figura, ubi aliud verbis significamus, aliud re sentimus*, RLM 24), [Iul Ruf] *Schem Dian* 9 (RLM 61-62), Mart Cap *Rhet* 38 (RLM 478), Isid *Rhet* 21, 41 (RLM 521) *Rhet Her* treats irony only as a trope (*permutatio ex contrario*, 4, 46) and the same goes, naturally, for Beda, *De Trop* (RLM 615) Iul Ruf (1-7, RLM 38-40) discerns six species of irony χλευασμός / ἐπικερτόμησις (*haec figura risum excitat et severe proposita vafre excutit, eludens personarum aut rerum comparatione*), χαριεντισμός / σκῶμμα (*haec figura fit festiva dictio, cum amoenitate mordax*), ἀστεϊσμός / urbana dictio (*haec figura fit excitatus alius ingenua festivitas*), διασυρμός (*haec figura fit, cum rem aliquam aut personam elevamus*), ἐχουθενισμός (*figura haec fit, cum rem aliquam extenuamus et contemtam facimus*), σαρκασμός (*haec figura quibusdam videtur eadem, quae chleuasmos sed a peritissimis propria significatione descripta est Peculiariter enim foediora ea significamus, non tamen sine dicacitate concinna*)

The first and last species are treated by [Iul Ruf] *Schem Dian* (10-11, RLM 62) as independent figures of thought See further Lausberg 582-85 (trope), 586-88 (litotes) and 902-04 (figure of thought)

Occurrence in *DM* 18 and 19 18, 3 (355, 20, in *interrogatio* 356, 3-5), 18, 4-5 (in *subiectio* 357, 15-18), 18, 6 (in *interrogatio* 359, 5-7), 18, 12 (in fivefold *interrogatio* 365, 6-10, in double *interrogatio* in a type of ἡθοποιία, 364, 15 – 365, 1), 18, 13 (litotes in *hyperbaton*, 367, 12, 367, 15-16), 19, 2 (in *exclamatio* 373, 14-15), 19, 6 (377, 17), 19, 10 (382, 20-22), 19, 11 (383, 6, 383, 19-21), 19, 12 (384, 14-16), 19, 13 (386, 11-12), (*exclamatio-cum-apostrophe* 387, 5)

Litotes: this use of a negated antonym to make an understatement or to replace a superlative does not figure largely in our sources See Quint *Inst* 10, 1, 12 *plurima vero mutatione figurarum* ‘scio’ ‘non ignoro’ et ‘non me fugit’ et ‘non me praeterit’ et ‘quis nescit’, *Carm* ἀντεναντίωσις / *exadversio* (minimis si maxima monstras, RLM 69), Lausberg 586-88

Occurrence in *DM* 18 and 19 18, 15 (369, 17), 18, 16 (369, 21)

Metaphora: or *translatio* See *Rhet Her* 4, 45 *translatio est, cum verbum in quamdam rem transfertur ex alia re, quod propter similitudinem recte videtur posse transferre* Its use *rei ante oculos ponendae causa* / *brevitatis causa* / *obscentitatis vitandae causa* / *augendi causa* / *minuendi causa* / *ornandi causa* Quintilian (*Inst* 8, 6, 4-18) devotes a great deal of attention to this trope, which he dubs *cum frequentissimus* () *tum longe pulcherrimus* (4), and discerns three uses *aut quia necesse est aut quia significantius est aut () quia decentius* (6) His definition is agreeably clear *In totum autem metaphora brevior est similitudo, eoque distat quod illa comparatur rei quam volumus exprimere, haec pro ipsa re dicitur* (8) The metaphor's main categories are *cum in rebus animalibus aliud pro alio ponitur* () *aut inanima pro alius generis eiusdem sumuntur* () *aut pro rebus animalibus inanima* () *aut contra, praecipue ex his oritur mira sublimitas quae audaci et proxime periculum translatione tolluntur, cum rebus sensu carentibus actum quendam et animos damus* (9-11) Metaphors must not occur too frequently, nor be *humiles, sordidae* (14) or *durae* (17) Of the *Rhetores Latini Minores*, only Beda (*De Tropis*, RLM 611-12) discusses the metaphor See further Lausberg 558-64 (and cf 846)

Occurrence in *DM* 18-19 18, 1 (353, 12-13), 18, 2 (354, 13, 354, 18, 355, 7), 18, 3 (personification 355, 19), 18, 4 (personification, 357, 5), 18, 5 (four personifications, 358, 6-10, three personifications 358, 11-12), 18, 6 (personification? 359, 12, 359, 17), 18, 7 (personification, 359, 22 and 360, 21), 18, 8 (personification 361, 2-3 and 361, 8), 18, 9 (personification, 361, 11-12, double metaphor in *isocolon* 362, 5), 18, 10 (personification 363, 9-10), 18, 11 (personification, 364, 21-22), 18, 12 (personification 365, 9, with metonymy 365, 12, personification 366, 11-12), 18, 13 (366, 23, personification 367, 9), 18, 14 (367, 20, 368, 9-10), 18, 15 (personification with metonymy 369, 12), 18, 16 (369, 23), 18, 17 (personification 370, 19), 19, 1 (personification 372, 1, 372, 12, 372, 14), 19, 2 (373, 8, 373, 26), 19, 3 (personifications 373, 27 – 374, 1, 374, 9, 374, 16-17, 374, 23), 19, 4 (personifications 375, 13-14, synonymous doublet 375, 19, 376, 2 [doubtful], 376, 2-3),

19, 5 (personifications 376, 9-10 and 376, 11, 359, 11-12 and 376, 24), 19, 6 (personification or metonymia 377, 19, 377, 21, double personification 378, 5), 19, 7 (double in *exclamatio* 379, 1-2, fourfold personification 379, 3), 19, 8 (379, 23-24, three synonymous personifications and two synonymous metaphors 380, 5-6, personification 380, 12, sustained 380, 16-17, synonymous in isocolon 380, 19-20), 19, 9 (381, 10-12), 19, 10 (double 382, 9-10), 19, 11 (double personification 383, 10-12), 19, 12 (384, 13, two personifications 385, 2-3), 19, 13 (four personifications in asyndetic congeries 386, 5-6, personification or metonymia 386, 13), 19, 15 (containing a personification 387, 18, 387 21, 387, 26-27, personification 388, 7), 19, 16 (personifications in hendiadys 388, 25-26)

Metonymia: Of metonymy and its species *synecdoche* the best definitions are given by Lausberg “Die *metonymia* besteht darin, dass für das *verbum proprium* ein anderes Wort gesetzt wird, dessen eigentliche Bedeutung mit dem okkasionell gemeinten Bedeutungsinhalt in einer realen Beziehung, also nicht in einer Vergleichsbeziehung wie bei der Metapher steht () Die Metonymie verwendet also ein Wort in der Bedeutung eines anderen Wortes, das semantisch mit dem verwendeten Wort in einer realen Beziehung steht” (565) “Die Metonymie quantitativer Beziehung zwischen dem verwendeten Wort und der gemeinten Bedeutung heisst *synecdoche*”(572) For metonymy see further *Rhet Her* 4, 43 (*denominatio est, quae ab rebus propinquis et finitimis trahit orationem, qua possit intellegi res, quae non suo vocabulo sit appellata*), Quint *Inst* 8, 6, 23-28, Mart Cap *Rhet* 32 (equating the figure with *catachresis/abusio*, RLM 474), Albin 37 (RLM 545), Beda *De Trop* (RLM 612-613) For *synecdoche* see further *Rhet Her* 4, 44 (*Intellectio est, cum res tota parva de parte cognoscitur aut de toto pars*), Quint *Inst* 8, 6, 19-22, Albin 37 (RLM 545), Beda *De Trop* (RLM 613)

Occurrence in *DM* 18-19 18, 1 (353, 9-10, 353, 17-18, 354, 1, 354, 6, 354, 8-9, 354, 11), 18, 2 (354, 12), 18, 3 (355, 19, 355, 23, 356, 2), 18, 4 (356, 20-21 2x, 357, 5), 18, 5 (357, 24), 18, 6 (double 358, 7, 358, 22), 18, 7 (360, 9), 18, 8 (360, 22-23), 18, 9 (362, 5, triple *metonymia* in *tricolon* 362, 6-7), 18, 10 (in apostrophe 362, 18, 363, 3-4), 18, 11 (double 364, 14), 18, 12 (with metaphor 365, 12, 365, 18, 366, 9), 18, 13 (367, 5, 367, 10), 18, 14 (368, 10, 368, 22), 18, 15 (369, 7, 369, 8-9, with metaphor 369, 12), 18, 16 (369, 26), 19, 1 (372, 1, 372, 2-3), 19, 2 (373, 4, 373, 5, twice 373, 6, in *hyperbaton* 373, 20), 19, 3 (374, 4), 19, 4 (376, 2), 19, 5 (effect for cause, 376, 9), 19, 6 (377, 15, double, in chiasmus 377, 18-20), 19, 7 (379, 7), 19, 9 (380, 26, 381, 11), 19, 10 (382, 7), 19, 11 (383, 6), 19, 12 (384, 8), 19, 13 (386, 2, or personification 386, 13), 19, 14 (double, synonymous 387, 8-9), 19, 15 (387, 15, 387, 22-23, personification 188, 3)

Oxymoron: detected but not explained in Serv *Verg Aen* 7, 295, the figure is adequately defined in Lausberg 807 as “die gerafft-enge syntaktische Verbindung widersprechender Begriffe zu einer Einheit, die dadurch eine starke Widerspruchsspannung erhält”

Occurrence in *DM* 18-19 18, 1 (354, 5), 18, 9 (362, 8) 18, 10 (363, 8), 18, 11 (364, 17), 18, 15 (369, 15), 19, 7 (379, 1), 19, 12 (384, 8-9)

Parenthesis: *unum [genus] quod interpositionem vel interclusionem dicimus, Graeci παρένθεσιν vel παρέμπτωσιν vocant, cum continuationi sermonis medius aliqui sensus intervenit (...) cui adiciunt hyperbaton qui id inter tropos esse noluerunt*¹⁸ (Quint. *Inst.* 9, 3, 23); Rut. *Lup.* 1, 17 (*periculose ponitur; nam aut mire ineptum aut vehementer iucundum auribus accidere consuevit*, RLM 10); [Iul. Ruf.] *Schem. Lex.* 12 (παρένθεσις / *interruptio vel interiectio*, RLM 51); *Carm. de Fig.* παρένθεσις (= *interiectio*, RLM 68); Beda *De Trop.* (as a species of *hyperbaton*, RLM 614), Lausberg 860 (Verzögerung des spannungslösenden Bezugsgliedes).

Occurrence in *DM* 18-19: 18, 3 (355, 20-21); 18, 4 (357, 1); 18, 9 (361, 13-14); 18, 13 (*interiectio* of a single word 367, 12); 18, 15 (369, 2); 19, 3 (of a single word [see Lausberg 618] 374, 16; 374, 17-18; of a single word 374, 20); 19, 7 (within *exclamatio* 378, 19); 19, 11 (of a single word 383, 23); 19, 15 (of a single word 387, 26); 19, 16 (388, 12-13)

Paronomasia: or *adnominatio* is a (pseudo-)etymological word-play which occurs when a small phonetical or morphological alteration of a particular word yields a different or even contrastive meaning. See *Rhet. Her.* 4, 29; Quint. *Inst.* 9, 3, 66; Aquila 27 (παρονομασία or *levis immutatio*, RLM 30); [Iul. Ruf.] *Schem. lex.* 15 (RLM 51); *Carm. de Fig.* παρονομασία or *supparile (alia aequisono si nomine dicas*, RLM 67); *Schem. dian.* 35 (παρονομασία or *denominatio*), RLM 75; Lausberg 637-38.

Occurrence in *DM* 18-19: 18, 4 (in antithesis, 356, 18-19); 18, 7 (360, 22-23); 18, 9 (361, 10, 11 and 13-14); 18, 10 (in anaphora, 362, 15-16; 363, 15); 18, 12 (feeble 366, 13-14); 19, 3 (without difference of meaning 374, 16); 19, 16 (388, 18-19)

Pleonasmus: can be either a *vitium (cum supervacuis verbis oratio oneratur*, Quint. *Inst.* 8, 3, 53) or a *figura verborum (nonnumquam tamen illud genus adfirmationis gratia adhibetur*, Quint. *Inst.* 8, 3, 54). See also Aquila 45 (πλεονασμός, RLM 36-37); *Carm. de Fig.* πλεονασμός / *exsuperatio*, only as a figure, RLM 70); Mart. Cap. *De Rhet.* 21 πλεονασμός, RLM 483.

Occurrence in *DM* 18-19: 18, 2 (354, 18); 18, 4 (357, 17); 18, 6 (359, 10); 18, 7 (*genitivus inhaerentiae*, 360, 5-6); 18, 12 (365, 17); 19, 1 (372, 2-3); 19, 2 (tautology 372, 22- 373, 1); 19, 4 (375, 11-12); 19, 8 (379, 20); 19, 10 (381, 21; alliterative 382, 10); 19, 11 (tautology 372, 22 – 373, 1); 19, 13 (386, 6-7); 19, 14 (tautology 386, 22; 387, 5); 19, 15 (388, 7-8).

Polyptoton: See Quint. *Inst.* 9, 3, 36-37 (*interim variatur casibus haec et generibus retractatio*; Rut. *Lup.* 1, 10 (RLM 7); Aquila 37 (πολύπτωτον / *ex pluribus casibus*, RLM 33-34); *Carm. de Fig.* (πολύπτωτον / *multiclinatum*, RLM 67); Mart. Cap. *De Rhet.* 41 (482 RLM); Beda *De Schem.* (RLM 610-11); Lausberg 640-648. *Rhet. Her.* does not treat πολύπτωτον as a separate figure, but as a species of *adnominatio* (4, 30).

Occurrence in *DM* 18-19: 18, 1 (& *homoeoteleuton*, 354, 8-9); 18, 3 (anaphoric, 356, 2-3); 18, 4 (356, 22; in *synonymia* 357, 2-3); 18, 5 (anaphoric, 358, 9-10); 18, 6 (359, 19); 18, 7 (360, 4-7); 18, 8 (361, 4); 18, 11 (in *synonymia* 364, 22); 18, 12 (in *chiasmus* 366, 11-12);

¹⁸ See Lausberg 860: das eigentliche Hyperbaton (716) ist ein Satzteil-Hyperbaton, die Parenthese ist ein Gedanken-Hyperbaton

18, 13 (with anaphora, 367, 15-16); 19, 7 (379, 13-14); 19, 9 (380, 23-25); 19, 13 (385, 24); 19, 15 (in isocolon 388, 10-11); 19, 16 (388, 17).

Praeteritio: See *Rhet. Her.* 4, 37, where the figure is called *occultatio*: *cum dicimus nos praeterire aut non scire aut nolle dicere id, quod nunc maxime dicimus (...)* Haec utilis est exornatio, si aut rem, quam non pertineat aliis ostendere occulte admonuisse prodest, aut longum est aut ignobile, aut planum non potest fieri, aut facile potest reprehendi, ut utilius sit occulte fecisse suspicionem, quam eiusmodi intendisse orationem, quae redarguatur. Quint. *Inst.* 9, 2, 47-48 gives examples of *praeteritio* under the heading of ἀντίφρασις, a species of εἰρωνεία.¹⁹ See further Aquila 8 (παράλειψις / *praeteritio*, RLM 24-25); *Schem. Dian.* 29 (παράλειψις / *praeteritio*, RLM 74); Iul. Vict. 20 (παράλειψις, RLM 433); Mart. *Rhet.* 38 (παράλειψις / *praeteritio*, RLM 478); Lausberg 882-886. It should be noted that in *DM* 18-19 *praeteritio* is not commonly used for insinuation, but usually occurs in arguments *a fortiori*.

Occurrence in *DM* 18-19: 18, 4 (*interrogatio per suggestionem*, 356, 20-21); 18, 5 (*a fortiori*, 358, 3-4); 18, 11 (*a fortiori*, 364, 22-23); 19, 6 (in *subiectio* 377, 14-16)

Repetitio: Treated by many authors who use almost as many different terms for this figure of speech. See *Rhet. Her.* 4, 19 (*repetitio est, cum continenter ab uno eodemque verbo in rebus similibus et diversis principia sumuntur*); Quint. *Inst.* 9, 3, 30 (*ab iisdem verbis plura acriter et instanter incipiunt*); Aquila 20 (*repetitio* / ἐπαναφορά, RLM 29) and 34 (ἐπαναφορά / *relatum*, RLM 32-33); [Iul. Ruf.] *Schem. Lex* 6 (ἐπαναφορά / *iteratio*, but: *cum ab eodem verbo plures inchoatae sententiae incipiunt*, RLM 49); *Carm. de Fig.* ἐπαναφορά (/ *repetitio*, RLM 64); Mart. Cap. *De Rhet.* 41 (ἐπανάληψις / *relatio*, RLM 481); Beda *De Schem. anafora* (/ *relatio* / *epanofora* [sic], RLM 609); Lausberg 608-64.

Note the subtype *geminatio*: *Rhet. Her.* 4, 38 *conduplicatio: quom ratione amplificationis aut commiserationis eiusdem unius aut plurium verborum iteratio*; Quint. *Inst.* 9, 3, 28-29 does not define the concept; *Carm. de Fig.* ἐπίζευξις: *cum sensus geminamus eosdem* (RLM 66); Beda *de Tropis* (*de Schem.*, RLM 609); Lausberg 616-18.

Occurrence in *DM* 18-19: 18, 1 (anaphora 353, 15 and 353, 16-18); 18, 2 (in *disiunctio*, 354, 15-16; in πάρισον and with alliteration 354, 20-21); 18, 3 (*geminatio* 355, 15; anaphora 355, 16; anaphora 356, 3-4; anaphora 356, 12); 18, 4 (anaphora in *hendiadys* 356, 17-18; in *disiunctio*, 356, 25-26; in *polyptoton* 357, 2-3; in fourfold *interrogatio* 357, 13-15); 18, 5 (in *synonymia*, 358, 12-13; *epiphora* 358, 15); 18, 6 (anaphora in *hendiadys* 359, 3-4; non-contiguous *geminatio* 359, 4; anaphora in *synonymia* 359, 19-20); 18, 7 (anaphora in *synonymia*, 360, 2; double anaphora in *interpretatio* 360, 7-8; anaphora in *synonymia* [double] 360, 13-14; in *disiunctio* 360, 15-16); 18, 9 (of *anticipatio*, 361, 10; in *interrogationes* 361, 15; non-contiguous *geminatio*, 362, 2-3; anaphora in *synonymia*, 362, 10); 18, 10 (with *paronomasia* 362, 15-16; anaphora in *synonymia* 363, 8; double in isocolon 363, 9-11; anaphora 363, 22-23); 18, 11 (364, 5-6; anaphora 364, 9-10; anaphora in *synonymia* 364, 13-14); 18, 12 (anaphora in isocolon 365, 11-12; anaphora 365, 13;

¹⁹ Αντίφρασις is a term for irony as a trope. Quintilian probably classifies *praeteritio* there because it constitutes a denial or refusal, but not a sincere one.

anaphora 366, 7, double anaphora in synonymous isocola 366, 9-10, anaphora 366, 11), 18, 13 (chiastic, 367, 13-14, anaphora 367, 16), 18, 14 (anaphora 368, 1, anaphora with synonymy and chiasmus, 368, 12-13, anaphora with *homoeoteleuton* 368, 17-18, anaphora with *homoeoteleuton* 368, 24), 18, 15 (epiphora in *interrogationes* 368, 26 – 369, 3, anaphora in double *isocolon* 369, 3-4, anaphora with *homoeoteleuton* in *gradatio* 369, 16-17), 18, 16 (double anaphora in doublet of synonymous *epiphonemata* 370, 1-2, in *disiunctio* 370, 7-9, *complexio* 370, 9 10), 18, 17 (anaphora in synonymous isocolon 370, 17, anaphora in *synonymia* 370, 23-24, with *homoeoteleuton* 371, 1-2), 19, 1 (anaphora in double *exclamatio* 372, 9-10, in *disiunctio* 372, 19 = 354, 15-16), 19, 2 (anaphora 373, 3-4, with hyperbaton and ellipsis 373, 15-16, non-contiguous *geminatio* 373, 18, double anaphora 373, 21-22), 19, 3 (in *disiunctio*, 374, 1-2, in *isocolon* 374, 4, in *isocolon* 374, 5-6, in *synonymia* 374, 9, in antithesis 374, 25 – 375, 1), 19, 4 (anaphora 375, 2-3, 375, 6-7, non-contiguous *geminatio* 375, 21-22, anaphora in συναθροισμός 375, 23), 19, 5 (376, 14, in *synonymia* 377, 5, non-contiguous *geminatio* 377, 5-7), 19, 6 (anaphora in *synonymia* 377, 13-14, anaphora in tricolon 377, 15, double anaphora in *tetracolon* 377, 20 – 378, 1, double anaphora in chiasmus 378, 5-7), 19, 7 (fourfold anaphora 379, 2-3, double 379, 12-13), 19, 8 (in double *interrogatio* 379, 20-22, 380, 2), 19, 9 (with fourfold *homoeoteleuton* 380, 19-20, anaphora with double *synonymia* 381, 6-7, sixfold anaphora in *congeries* 381, 7-9), 19, 10 (anaphora with *hendiadys* 382, 2-3, epiphora of sorts 382, 19, anaphora 382, 20-21, 383, 1-3), 19, 11 (double anaphora in double *exclamatio*, 383, 4-5, anaphora 383, 5, anaphora and chiasmus 383, 14-15, anaphora in *distributio* 383, 17-18, anaphora 383, 18-19, anaphora in tricolon 383, 19-21), 19, 12 (anaphora 384, 7, and *synonymia* 384, 18, anaphora 385, 1-2), 19, 13 (anaphora in isocolon 385, 12-13, anaphora in isocolon 385, 19-20, anaphora and *homoeoptoton* 385, 22-23, anaphora 386, 12), 19, 14 (and antithesis 386, 26, *epiphora* [epistrophe] 387, 3-4, anaphora and *homoeoteleuton* in *synonymia* 387, 6), 19, 15 (anaphora 387, 12, anaphora and *homoeoteleuton* 387, 16, anaphora and alliteration 387, 16-17, anaphora and *homoeoteleuton* in double *exclamatio* 387, 19-21, anaphora in isocolon 388, 3 4 and 388, 9-10), 19, 16 (anaphora 388, 17, double anaphora 388, 18-19, anaphora 388, 23, *geminatio* 388, 25)

Reticentia: or *praecisio*, *obtinentia*, *interruptio*, ἀποσιώπησις see *Rhet Her* 4, 41 *praecisio est, cum dictis quibusdam reliquum, quod coeptum est dici, relinquitur inchoatum*, Quint *Inst* 9, 2, 54 mentions its aims *ipsa ostendit adfectus, vel irae vel sollicitudinis et quasi religionis vel alio transeundi gratia*, for *reticentia* as a form of *emphasis* see *Inst* 8, 3, 85 *positum in voce aut omnino suppressa aut etiam abscisa* and compare *Rhet Her* 4, 41 *hic atrocior tacita suspicio quam disertia explanatio facta est* See further Aquila 5 ἀποσιώπησις / *reticentia* (RLM 24), *Schem Dian* 30 ἀποσιώπησις (RLM 74), Lausberg 887-89

Occurrence in DM 18-19 19, 12 (*emphasis* 384, 13-14), but of course DM 19 as a whole is a perfect example of *reticentia*

Sermocinatio: See *Rhet Her* 4, 65²⁰ *Sermocinatio est, cum alicui personae sermo adtribuitur et is exponitur cum ratione dignitatis* Quint *Inst* 9, 2, 29-37 treats it along with προσωποποιία / *fictiones personarum* and refuses to distinguish between the various figures, in 9, 2, 58 he discusses ἡθοποιία or μίμησις, which *versatur in factis et in dictis* and which is used to express gentler emotions See further Rut Lup 2, 21 ἡθοποιία (RLM 12), Aquila 4 (ἡθοποιία or *moralis confictio*, clearly distinguished from προσωποποιία or *personae confictio*, RLM 23-24), [Iul Ruf] *Schem dian* 13 (ἡθοποιία / *deformatio / effiguratio*, RLM 62), *Schem lex* 20 (διαλογισμός = *soliloquy*, RLM 43-44), *Schem Dian* 5 (ἡθοποιία, RLM 72), Isid 14 and 21, 32 (*de ethopoeia*, RLM 514-15), Lausberg 820-25 and 1131-32 (as a *progymnasma*)

Occurrence in *DM* 18-19 18, 3 (355, 17), 18, 4 (357, 9-10), 18, 5 (358, 5-6), 18, 6 (359, 3), 18, 7 (360, 12-16), 18, 9 (361, 9, 361, 10, 361, 11-13), 19, 6 (377, 20 – 378, 3), 19, 8 (διαλογισμός 380, 12-14), 19, 15 (387, 17)

Subiectio: figure of thought in the form of a game of question and answer, usually directed to one's adversary, the speaker asks a question and supplies his own answer, which is obviously to the advantage of his own case See *Rhet Her* 4, 33 *Subiectio est, cum interrogamus adversarios aut quaerimus ipsi, quid ab illis aut quid contra nos dici possit, deinde subicimus id, quod oportet dici aut non oportet aut nobis adiumento futurum sit aut illis obfuturum sit e contrario* Quintilian discusses the figure under the heading of *interrogatio* in *Inst* 9, 2, 12-15, where he discerns different types of answer *cum aliud interroganti ad aliud occurritur* (12), *dissimulatio, et interrogandi se ipsum et respondendi sibi* (14), *ficta interrogatio*, and the schema *per suggestionem, cum alium rogaveris, non expectare responsum, sed statim subicere* (15) See also Iul Ruf 8 (ἀπόφασις / αἰτιολογία, RLM 40), *Schem Dian* 28 (ἐξετασμός / *exquisitio*, RLM 74) *Carm de Fig* ἀπόκρισις / *responsio* (RLM 64), Lausberg 771-75

Occurrence in *DM* 18-19 18, 2 (in *noema*, 355, 3-6), 18, 4 (357, 4-7, 357, 17-18), 18, 6 (the response is an *epiphonema* 359, 7-9, also 359, 18-21), 18, 7 (*epiphonema* 359, 21-22), 18, 8 (in *apostrophe*, 361, 6-7), 18, 9 (361, 16-18), 18, 12 (*pseudo-gnomic sententia* and *epiphonema* 366, 14-15), 18, 13 (366, 22-24), 18, 15 (369, 6-7), 19, 1 (372, 12-14), 19, 2 (with *epiphonema, ratiocinatio* 373, 5-7), 19, 4 (in *epiphonema*, 375, 19-20), 19, 6 (containing *praeteritio* 377, 14-16, *epiphonema* and *noema* 378, 7-8), 19, 8 (379, 18-20, with *comparatio* 380, 13-17, 380, 18-19), 19, 9 (double 381, 15-18), 19, 12 (385, 1-2), 19, 13 (*epiphonema* 385, 12-14, *anticipatio* 385, 21-25)

Synonymia: For συνωνυμία see Quint *Inst* 8, 3, 16 (*cum idem frequentissime plura significant, quod συνωνυμία vocatur* on *ornatus* in general) and 9, 3, 45 (put on a par with *disiunctio*), Aquila 38 (συνωνυμία / *communio nominis utimur autem eo genere elocutionis, quotiens uno verbo non satis videmur dignitatem aut magnitudinem rei demonstrare ideoque in eiusdem significationem plura conferuntur*, RLM 34) = Mart Cap *de Rhet* 42 συνωνυμία (RLM 482), Isid *De Rhet* 21, 6 (RLM 518), Lausberg 649-656 *Rhet Her* 4, 38 discusses *interpretatio* or synonymous cola (Lausberg 751)

²⁰ See also *Rhet Her* 4 55

A special type is *disiunctio*. This figure of speech is most comprehensively defined by Lausberg (739) “Die *disiunctio* besteht in der Zusammensetzung der Kola aus jeweils synonymen Prädikaten (s) und jeweils semantisch verschiedenen, einander syntaktisch entsprechenden sonstigen Satzteilen (x) () die Kola können hierbei entweder völlig selbständige Sätze bilden oder durch einen dritten Satzteil (q) klammerartig integriert werden () Auch anaphorische Wiederholung des dritten Satzteils q kommt vor ()” and here, we have “eine reduzierte form der *disiunctio* [ie] die Auslassung der semantisch verschiedenen Satzteile bei anaphorischer Wiederholung eines Klammergliedes

q s1

q s2” (see also 740-42)

Disiunctio is treated by the following ancient authors *Rhet Her* 4, 37 (with specific requirements as to the position of the synonym *disiunctio est cum eorum, de quibus dicimus, aut utrumque aut unum quodque certo concluditur verbo*), *Quint Inst* 9, 3, 45 (*Aliquando [] initia quoque et clausulae sententiarum alius sed non alio tendentibus verbis inter se consonant [] Hoc alii συνωνυμίαν alii diunctionem vocant, utrumque etiam si est diversum, recte nam est nominum idem significantium separatio*²¹), *Aquila* 43 (*διεξυγμένον, disiunctum* The word order is free *Animadvertere autem potes nihil interesse utrum in postremis partibus membra disiungantur vicissitudine verborum an in primis an hoc vicissim fiat*, RLM 36), *Mart Cap De Rhet* 41 (*διεξυγμένον/disiunctum*, RLM 482), *Beda De Schem (Hypozeuxis* RLM 608), *Lausberg* 739 742

Occurrence in *DM* 18-19 18, 2 (also *disiunctio*, in *asyndeton* 354, 15-16), 18, 3 (in *anaphora* 356, 3-4), 18, 4 (with *polyptoton* 357, 2-3), 18, 5 (357, 23, 357, 23-25, in *repetitio* 358, 12-13, in *concessio* 358, 19), 18, 6 (double in 359, 5-7, in *repetitio* 359, 19 20), 18, 7 (in *repetitio* 360, 2, 360, 5-6, *interpretatio* with double anaphora 360, 7-8, *interpretatio* 360, 8-9, in *repetitio* [double] 360, 13-14), 18, 8 (361, 5, *interpretatio* with anaphora 361, 5-6), 18, 9 (in isocolon with antithesis 361, 9-10, gnomic *sententiae* 362, 2-3, in anaphora 362, 10), 18, 10 (in chiasmus 363, 4-5, in anaphora 363, 8), 18, 11 (in anaphora 364, 13-14, with *polyptoton* 364, 22-23, with *homoeoptoton* and *homoeoteleuton* 365, 2), 18, 12 (a double *interrogatio* 365, 6-8, in isocola 366, 9-10, 366, 13), 18, 13 (366, 22-23), 18, 14 (in chiasmus 368, 11-12, in chiasmus, with anaphora 368, 12-13), 18, 15 (asyndetic, in antithesis 369, 1-2, asyndetic 369, 12-13), 18, 16 (*epiphonemata* 370, 1-2, two doublets 370, 10-11), 18, 17 (in isocolon 370, 14-15, in isocolon 370, 16-17, in isocolon with anaphora 370, 17, in *homoeoteleuton* 370, 23, with anaphora 370, 23-24), 19, 1 (372, 12-15, in *congeries* 372, 16, *disiunctio* 372, 19 = 354, 15-16), 19, 2 (in *prolepsis* 373, 8-11, 373, 25.), 19, 3 (*disiunctio* 374, 1-2 and 374, 5-6, 374, 9-10, 374, 12, 374, 14, 374, 15-16, in συναθροισμός 374, 20 21, in *antithesis* 374, 25 – 375, 1), 19, 4 (*disiunctio* 375, 13, double metaphor in *subiectio*, 375, 19, *disiunctio* 375, 21-22, 376, 2), 19, 5 (377, 1-3, chiasmic 377, 2-3, with anaphora 377, 5), 19, 6 (with anaphora 377, 13-14), 19, 7 (378, 10, two metaphors 379, 1-2, in tricolon, with *homoeoteleuton* 379, 15-16), 19, 8 (three personifications and two metaphors, 380, 5-6, 380, 7, isocolon 380, 11-12, 380, 13), 19, 9 (double, with anaphora 381, 6-7, 381, 17), 19, 10 (381, 21, chiasmic 382, 1), 19, 11 (of

²¹ Lausberg 656 remarks Die anaphorische Synonymie und die epiphorische Synonymie sind identisch mit der *disiunctio*

paradoxes 383, 10-12, *interrogatio*, *congeries* 383, 16, *interrogatio*, *congeries* 383, 21-22, 384, 4-5), 19, 12 (anaphora in *congeries* 384, 9-11, 384, 11, and anaphora 384, 18, in isocolon 385, 10-11), 19, 13 (in isocolon with *homoeoteleuton* / *homoeoptoton* 385, 12-13), 19, 14 (386, 21, in anaphora with *homoeoteleuton* 387, 6, in isocolon 387, 8-9), 19, 15 (387, 17, alliterative and asyndetic 387, 19), 19, 16 (in chiasmus 388, 26-27)

This glossary is concluded with a short survey of the main types of *sententia* occurring in the DM ²²

Enthymema

There are two types of enthymemes. The oldest is the rhetorical syllogism or *sententia cum ratione* (Quint *Inst* 5, 10, 2), which usually takes the form of a truncated syllogism, see also e.g. Ar *Rh* 1356b 10-17, 1395b 22-24. In its other capacity the enthymeme is a *sententia ex contrariis* (from incompatibles), for which see Rh *Al* 1430a 23-20, *Rhet Her* 4, 25 (*contrarium*), Cic *Top* 55, Quint *Inst* 8, 5, 9

Occurrence in DM 18-19 18, 1 (*epiphonema* and *sententia ex contrariis* 354, 2-4), 18, 2 (*ratiocinatio* and *epiphonema* 354, 13-14), 18, 4 (*epiphonema* 356, 18-19), 18, 5 (*ratiocinatio* 358, 6-11, *epiphonema*, gnomic 358, 14-15), 18, 6 (gnomic *ex contrariis* 359, 13-15, 359, 19-21), 18, 7 (full *ratiocinatio* 359, 23 – 360, 10, within which another *ratiocinatio* 360, 3-4), 18, 9 (*ratiocinatio* of two gnomic *sententiae*, the first of which is a *sententia ex contrariis* 361, 22 – 362, 2, *sententiae ex contrariis* 362, 10-12), 18, 12 (gnomic, *ex contrariis*, *epiphonema* 366, 5-6, *ex contrariis* 366, 18-20), 18, 13 (*ratiocinatio* 367, 17-18), 18, 14 (gnomic, *ex contrariis* 368, 17-18, gnomic, *ex contrariis* and *epiphonema* 368, 34-24), 18, 16 (doublet of *sententiae ex contrariis*, *epiphonemata* 370, 1-2, *ratiocinatio*, gnomic 370, 4-5, *ex contrariis* 370, 9-10), 18, 17 (*ex contrariis* 370, 26 – 371, 2), 19, 1 (*sententia ex contrariis* 372, 8-9, *epiphonema* and *ratiocinatio* 372, 16-18), 19, 2 (isocolon, *epiphonema* and *sententia ex contrariis* 373, 2-3, *ratiocinatio*, *epiphonema*, in *subiectio* 373, 5-7), 19, 3 (isocolon, *ratiocinatio* 374, 10-14), 19, 4 (*ratiocinatio*, *epiphonema* 376, 3-4), 19, 5 (double *sententia ex contrariis*, *epiphonema* 376, 9-10, *ratiocinatio* 376, 25 – 377, 2), 19, 7 (*ratiocinatio* 378, 10-14 within which gnomic *sententia ex contrariis* 378, 13-15, *epiphonema* 379, 4-5), 19, 10 *ratiocinatio* (382, 7-9), 19, 13 (doublet of *sententiae ex contrariis*, gnomic *epiphonema* 386, 7-8)

Epiphonema *et addita in clausula est epiphonematis modo non tam probatio, quam extrema quasi insultatio. Est enim epiphonema rei narratae vel probatae summa acclamatio* (Quint *Inst* 8,5,11). See also Iul Ruf 29 (*Hac*²³ *sententia in fine expositae rei cum affectu enuntiatur*, RLM 45), Iul Vict 22 (RLM 437-38) = Quint *Inst* 8,5,11, cf further Hermog *Inv* 4, 9, Lausberg 879 “ Sentenz hinter längeren Gedankengängen, die nach Art der *argumentatio* den Charakter schlussfolgernder Reflexion oder nach Art der *narratio* feststellenden Charakter haben können – das epiphonem hat nicht immer rein infiniten Charakter, sondern ist häufig situationsverhaftet. Als abschliessender Höhepunkt

²² For a more extensive survey see Breij 2006 b

²³ *Sc figura v l haec*

wird es meistens mit Affekt oder jedenfalls mit gewollter Hervorhebung gesprochen.”; Zinsmaier (60-61) characterizes the epiphoneme as ‘eine *peroratio en miniature*’.

Occurrence in *DM* 18-19: 18, 1 (*epiphonema* and *sententia ex contrariis* 354, 2-4); 18, 2 (*ratiocinatio* and *epiphonema* 354, 13-14; 354, 20-21; gnomic 355, 8-11); 18, 3 (355, 12-15; after *interrogatio* 356, 5-6); 18, 4 (enthymema 356, 18-19; concluding *expolitio* 356, 23-24; in *subiectio* 357, 4-7); 18, 5 (*noema* in *exclamatio* 357, 18-19; gnomic *enthymema* 358, 14-15); 18, 6 (double, with *noema* 358, 22 – 359, 2; 359, 8-9; 359, 19-21); 18, 7 (359, 21-22); 18, 9 (gnomic 361, 18-19; doublet of gnomic *sententiae* 362, 10-13); 18, 10 (*sententia ex contrariis* 363, 1-2; gnomic 363, 12-13; gnomic 363, 23-25); 18, 11 (gnomic 365, 2-4); 18, 12 (365, 10; 365, 14-15; gnomic, *ex contrariis* 366, 5-6); 18, 13 (366, 24 – 367, 2; 367, 10-11); 18, 14 (368, 10; doublet 368, 19-21; gnomic *sententia ex contrariis* 368, 23-24); 18, 15 (369, 16-18); 18, 16 (doublet of *sententiae ex contrariis* 370, 1-2; 370, 6-7; 370, 11; *noema* 370, 21-22); 19, 1 (*epiphonema* and *ratiocinatio* 372, 16-18); 19, 2 (*isocolon*, *sententia ex contrariis* 373, 2-3; *ratiocinatio*, in *subiectio* 373, 5-7); 19, 3 (gnomic 374, 13; 375, 1-2); 19, 4 (*noema* 375, 10; *per subiectionem* 375, 19-20; *ratiocinatio* 376, 3-4); 19, 5 (double *sententia ex contrariis* 376, 9-10; gnomic, *per comparationem*, *ex inopinato* 376, 24-25; antithetical 377, 3); 19, 6 (*noema* 378, 7-8); 19, 7 (gnomic *sententia ex contrariis* 379, 4-5); 19, 8 (379, 16-17; 380, 7-8; 380, 13-14); 19, 9 (gnomic 380, 21-21; *noema* in *subiectio* 381, 2-3; 381, 13-14); 19, 10 (382, 15-16; doublet 383, 1-3); 19, 11 (doublet 383, 10-12; gnomic 384, 5-6); 19, 12 (385, 2-3; gnomic 385, 3-4; 385, 12-14); 19, 13 (doublet of gnomic *sententiae ex contrariis*, 386, 7-8); 19, 14 (386, 19-20); 19, 16 (388, 6; and *noema* 388, 23-24)

Gnomic *sententia*

The eldest type of *sententia* is the γνῶμη, defined succinctly in Quint. *Inst.* 8, 5, 3 as *vox universalis, quae etiam citra complexum causae possit esse laudabilis*. See further Ar. *Rh.* 1394a 21-26; 1395a 32-b 14; *Rhet. Her.* 4, 24-25. In the *DM* many *sententiae* that are in fact peculiar to the case at hand, are given the form of a γνῶμη by means of a generic phrasing.

Occurrence in *DM* 18-19: 18, 2 (*epiphonema* 355, 8-11); 18, 6 (359, 10-13; *e contrariis* 359, 13-15; 359, 16-17; 359, 19-21); 18, 7 (360, 3; 360, 9-10; 360, 11-12); 18, 8 (360, 22-23; 361, 1-2); 18, 9 (*epiphonema* 361, 18-19; *per interrogationem* 361, 20; tricolon 361, 20-21; *ratiocinatio* 361, 22 – 362, 2; tricolon 362, 2-4; doublet, *epiphonema* 362, 10-13); 18, 10 (363, 9; 363, 12-13; 363, 20-21; 363, 23-25) 18, 11 (364, 17-18; doublet 364, 19-22; triplet 364, 24 – 365, 4) 18, 12 (*epiphonema* 365, 14-15; *epiphonema* 366, 5-6; 366, 11-12; 366, 14-15; 367, 13-14); 18, 16 (*ratiocinatio* 370, 4-5); 18, 17 (*epiphonema* 370, 24); 19, 3 (*epiphonema* 374, 13); 19, 5 (doublet 376, 17-19; doublet 376, 20-21; *epiphonema per comparationem*, *ex inopinato* 376, 24-25; 377, 4); 19, 7 (enthymeme 378, 13-14; enthymeme and *epiphonema* 379, 4-5); 19, 9 (*epiphonema* 380, 20-21; 380, 23-24); 19, 10 (381, 23; *ex inopinato*, in *ratiocinatio* 382, 7-8); 19, 11 (doublet 383, 8-10; *epiphonema* 384, 5-6); 19, 12 (384, 6-7 doublet 384, 13-14; *epiphonema* 385, 3-4); 19, 13 (in *epiphonema* 385, 12-14; doublet of *sententiae ex contrariis*, *epiphonema* 386, 7-8); 19, 14 (386, 23)

Noema νόημα, a kind of *sententia* that occurs only sporadically in ancient and modern works on rhetoric, but has been examined thoroughly by Zinsmaier 1993, 61-63. Quintilian, the only rhetor who comments on the phenomenon,²⁴ is fittingly vague: *est et, quod appellatur a novis νόημα; qua voce omnis intellectus accipi potest: sed hoc nomine donarunt ea, quae non dicunt, verum intelligi volunt; ut in eum, quem saepius a ludo redemerat soror, agentem cum ea talionis, quod ei pollicem dormienti recidisset, 'eras dignus, ut haberes integram manum.'* Sic enim auditur 'ut depugnare'²⁵. Zinsmaier (62) concludes: 'nach Quintilians Definition und dem beigefügten Beispiel muss man unter Noema eine besonders dunkle, abründige Äusserung verstehen, die das Gemeinte nur durch eine längere oder kürzere Kette von Assoziationen aus dem Gesagten erraten lässt. Wie das Epiphonem an den sprachlichen, so ist das Noema an den aussersprachlichen, situativen Kontext gebunden.' Ritter 1881, 38 underlines its antithetical character: '...νόημα, wobei der Gedanke eine Antithese bildet zu einem nicht einmal angedeuteten, aber als allgemeine Beobachtung oder durch die vorliegenden Umstände nahe gelegten anderen Gedanken.' Zinsmaier rightly observes a close connection between νόημα and the figure of *emphasis*. *Inst.* 9, 2, 75 is especially apposite (*Quaedam etiam, quae probare non possis, figura potius spargenda sunt. Haeret enim nonnunquam telum illud occultum, et hoc ipso, quod non apparet, eximi non potest; si idem dicas palam, et defenditur, et probandum est.*), and of course the *obliquae sententiae* (9, 2, 79) of the abhorred *controversia figurata* after the theme of *DM* 18 and 19.

Occurrence in *DM* 18-19: 18, 2 (355, 4-6); 18, 4 (in *subiectio* 356, 20-21; 356, 22-23); 18, 5 (*epiphonema* in *exclamatio* 357, 18-19); 18, 6 (in double *epiphonema* 358, 22-23; *epiphonema* 359, 19-21); 18, 17 (*epiphonema* 370, 21-22); 19, 4 (*epiphonema* 375, 10); 19, 6 (378, 7-8); 19, 9 (*epiphonema* 381, 2-3); 19, 16 (388, 14-15; *epiphonema* 388, 23-24).

²⁴ Cousin 1967², 106; Zinsmaier 1992, 63 n. 100 assumes that Sen. *Ep.* 114, 1 refers to νόημα: *abruptae sententiae et suspiciosae, in quibus plus intellegendum esset quam audiendum*

²⁵ *Inst.* 8, 5, 12. The example in question is comparable to many of those provided in *Inst.* 8, 5, 15-25, where Quintilian discusses the *magis nova sententiarum genera*, the majority of which could therefore be classified as νόημα. The use of *novus* in both instances points in the same direction.

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Samenvatting

De 18^e en 19^e *Declamationes Maiores* toegeschreven aan Quintilianus: een commentaar.

De *Declamationes Maiores* (DM) 18 en 19 maken deel uit van een corpus van 19 pronkredevoeringen in het juridische genre, ontstaan vanaf de 2^e eeuw na Christus, die de enige aan ons overgeleverde complete Romeinse declamaties vormen. De onderhavige teksten nemen binnen het genre een bijzondere positie in, omdat zij niet slechts één pleidooi, maar een aanklacht en verdediging betreffen in dezelfde zaak. Deze zaak is in feite een familiedrama, dat zich afspeelt tussen vader, moeder en zoon: de vader verdenkt zijn vrouw en zoon van het onderhouden van een incestueuze relatie. Hij neemt zijn zoon mee naar een geheime kamer en verhoort hem onder marteling; de zoon bezwijkt. De moeder vraagt, wat de zoon tijdens het verhoor heeft gezegd. Wanneer de vader weigert dit te onthullen, is zijn stilzwijgen voor haar aanleiding om hem aan te klagen wegens *mala tractatio* (mishandeling van haarzelf). DM 18 is haar aanklacht, verwoord door een advocaat; DM 19 is de verdediging van de vader. Hoewel beide redevoeringen serieus ingaan op de beschuldiging van *mala tractatio*, hebben de sprekers een verborgen agenda. De advocaat van de moeder gebruikt DM 18 tevens om de moeder vrij te pleiten van verdenkingen van incest, en om de vader wegens moord aan te klagen; de vader op zijn beurt verdedigt zich in DM 19 niet alleen tegen de aanklacht betreffende zijn stilzwijgen, maar ook voor de moord op zijn zoon, en insinueert in zijn redevoering keer op keer dat moeder en zoon schuldig waren. Dit maakt beide redevoeringen tot *controversiae figuratae*: fictieve juridische redevoeringen waarin de spreker tussen de regels van zijn betoog door een verborgen doel probeert te bereiken.

Het proefschrift wordt voorafgegaan door de Latijnse teksten van beide declamaties in de editie van Håkanson (1982). Hieraan verbonden zijn enige voorstellen tot tekstverbetering, die in de commentaar nader worden uitgewerkt. Op de Latijnse teksten volgt de bestaande vertaling van Sussman (1987), waarin een aantal wijzigingen is aangebracht. Deze wijzigingen staan vóór de vertaling opgesomd en worden verantwoord in de commentaar.

De inleiding bij het proefschrift behandelt de belangrijkste vragen die beide Latijnse teksten oproepen vanuit historisch, cultureel-maatschappelijk en rhetorisch perspectief. Het eerste hoofdstuk, *Patria potestas* and the *vitae necisque potestas*, bespreekt eerst historische en juridische aspecten van de grote macht van de Romeinse vader over zijn zoon, en in het bijzonder zijn recht om deze straffeloos te doden. De vele declamaties die de verhouding tussen vaders en zoons tot thema hebben maken duidelijk dat deze twee functies hadden: enerzijds boden zij de machteloze jongemannen die de teksten schreven en uitspraken de gelegenheid om hun frustraties te luchten; anderzijds bereidden ze hen voor op de rol van *paterfamilias*. Het tweede hoofdstuk, Incest, is het resultaat van een kort onderzoek naar het fenomeen incest in (Griekse) mythologie en (Romeins) recht. Van alle vormen van incest werd een seksuele verhouding tussen moeder en zoon het meest verafschuwd; dit oordeel ziet men gereflecteerd in het feit dat alleen DM 18 en 19 het onderwerp durven aan te

snijden In hoofdstuk drie wordt de *actio malae tractationis* aan een onderzoek onderworpen. Hoewel zij overeenkomsten vertoont met een aantal authentieke Griekse en Romeinse procesvormen, moet worden geconcludeerd dat zij thuishoort in de wereld van de declamatie. Daar dient zij meestal als hoofdaanklacht in *controversiae figuratae* waarin een moeder eigenlijk wangedrag van haar echtgenoot jegens haar zoon(s) aan de kaak wil stellen. In *Figured speech*, het vierde hoofdstuk, worden de *controversia figurata* in het algemeen, en *DM* 18 en 19 in het bijzonder, nader beschouwd aan de hand van de relevante Griekse en Latijnse retorische theorie over *figured speech* op het niveau van hele declamaties, hun *partes orationis*, en *emphasis* (zins- en woordniveau). Verder worden alle declamaties besproken waarin stilzwijgen als retorisch middel een belangrijke rol speelt. De inleiding wordt afgesloten met *Some notes on the date of DM 18 and 19*; deze hebben tussen de late tweede eeuw na Chr. en het jaar 384 hun definitieve vorm gekregen, en waarschijnlijk is *DM* 19 eerder geschreven dan *DM* 18.

De commentaar behandelt eerst *DM* 18, dan *DM* 19 per *pars orationis*. Ieder deel wordt voorafgegaan door een korte, schematische samenvatting, die de structuur van het betoog weergeeft. In het commentaar zelf wordt aandacht besteed aan tekstoverlevering, grammaticale en lexicale kenmerken, stijl, intertekstualiteit, retorische middelen en structuur, realia en cultureel-maatschappelijke context. De commentaar wordt afgesloten met een Glossary van stijlfiguren en *sententiae* en een bibliografie.

Curriculum vitae

Bé Breij is geboren op 1 juli 1972 te Den Helder. Daar behaalde zij aan het Johannes College in 1990 het diploma gymnasium alfa. In 1991 begon zij aan de Katholieke Universiteit Nijmegen de studie Engelse Taal- en Letterkunde, die zij in 1996 'met genoegen' afrondde. In 1995 begon zij aan dezelfde universiteit de studie Griekse en Latijnse taal en cultuur, die zij in 1999 'met lof' afrondde. In het schooljaar 1999-2000 was zij docente klassieke talen aan het Odulphus Lyceum te Tilburg. In 2000 begon zij aan haar promotie-onderzoek aan de KU Nijmegen, vanaf 2001 had zij daar tevens steeds een aanstelling als docent Latijn. In de jaren 2003-2005 was zij secretaris van de ondernemingsraad van genoemde universiteit. In de periode 2006-2009 is zij lid van de council van de International Society for the History of Rhetoric.