Quintilian on Cicero's deliberative oratory

van der Blom, Henriette

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Henriette van der Blom
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1 Introduction

The portrayal of Cicero in the work on the orator's education by M. Fabius Quintilianus (ca. AD 35–90s) has long been recognised as particularly rich and highly influential on authors and orators of the imperial period, not least Pliny and Tacitus, in various ways.[1] That Quintilian had a deep and wide knowledge of Cicero's speeches and rhetorical works is clear from his engagement throughout the *Institutio oratoria*, and Quintilian is generally a good witness to Cicero the orator and one of our best sources on the availability of Ciceronian works in the imperial period, alongside Asconius. Nevertheless, Quintilian was also a product of his own time and his engagement with oratory and rhetoric reflects concerns of his own period, as well as his knowledge of republican orators and their speeches.

Quintilian's work is well known for its preference for discussing forensic speech over epideictic and deliberative speech. It has been argued that his focus reflects a decreasing importance of deliberative oratory – speeches delivered in the senate and the popular assemblies – in the imperial period when compared to the republican period.[2] It is true that the parameters for public oratory in the courts, the senate and the popular assemblies changed with the advent of the emperors, bringing new power dynamics, expanded functions of the senate, altered electoral and judicial processes, and – of course – an all-powerful person at the top.[3] It is also likely that these changes had an impact on the pa-

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[1] But perhaps not beyond the imperial period: Winterbottom 1975, 92–95. On Quintilian's portrayal of Cicero, see, among others, Winterbottom 1964; Cousin 1967; Richter 1968, 185–87; Connolly 2007a, 254–61; Gowing 2013, 244–250; Whitton 2018; Keeline 2018, 225–232; La Bua 2019, 120–132, 183–190, 225–230, 266–278. There are also studies of specific aspects of Quintilian's use of Cicero, *e.g.* Casamento 2010; 2018b. Whitton 2019 focuses on Pliny's numerous and variegated imitations of Quintilian's work, including the use of Cicero.

[2] On Quintilian's focus on forensic oratory: Winterbottom 1975, 84; Mastrorosa 2010. On the decreasing importance of contional oratory: Syme 1939, 246; Winterbottom 1975, 81–83; Talbert 1984, 432; Kaster 1998, 262; Robinson 2003, 61; Connolly 2007a, 255; David 2012, 252–253. More balanced overviews are presented in Lévy 2003; Pernot 2005, 128–133; Pepe 2013, 249.

[3] Senate acquiring electoral function: Tac. *ann.* 1.15.1; Vell. Pat. 2.126.2 with Talbert 1984, 341–345; Millar 1977, 300–313; Hollard 2010. Senate acquiring legislative function: Millar 1977, 341–344; Talbert 1984, 431–435. Senate acquiring judicial function: Talbert 1984, 460–474. Emperor's electoral powers: Tac. *ann.* 1.14.4; Vell. Pat. 2.124.3 on candidates to the praetorship under Augus-

rameters of forensic oratory, but arguably even more on deliberative oratory used in the senate and in the *contio*. However, this possible impact is difficult to assess in any specific detail.

This chapter offers one approach to this problem: I shall focus on the presentation of deliberative oratory in Quintilian's work in order to better assess the ways in which Quintilian might have adjusted his presentation to his contemporary audience. This analysis will help to tease out how Quintilian's presentation might reflect some of the changes in deliberative oratory when compared to our knowledge of republican deliberative oratory. The facts that Cicero is the most heavily used republican orator in Quintilian,[4] that Cicero excelled in both forensic and deliberative oratory, and that our knowledge of Cicero's speeches and their contexts is almost as good as Quintilian's makes Cicero an excellent test case for Quintilian's representation of deliberative oratory and its possible changes under the emperors.

I begin by analysing Quintilian's chapter on deliberative oratory (3.8) to set the scene for considering his direct engagement with Cicero's deliberative speeches in this chapter and throughout his work. That consideration takes into account the ratio between Cicero's deliberative and non-deliberative speeches explicitly mentioned by Quintilian, Quintilian's selection of such speeches, and the manner in which he engages with these speeches. I shall conclude by considering the ways in which Quintilian's use of Cicero's deliberative oratory furthers our understanding of the role and parameters of deliberative oratory in the imperial period and how Quintilian uses Cicero as a vehicle for his own agenda. I shall argue that Quintilian's presentation of deliberative speech vacillates between republican and contemporary settings, which suggests not only his dual purpose of, on the one hand, setting out rhetorical theory in historical perspective and, on the other hand, training contemporary orators,[5] but

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tus and Tiberius; Dio Cass. 58.20 on candidates and magistrates generally under Tiberius. Discussion in Levick 1967, 209–214; Siber 1970, 71–72; Talbert 1984, 11–24; Sandberg 2001, 82; Roller 2011, 202. Emperor's involvement in judicial matters, especially *maiestas* trials: cases described in Tac. *ann.* 3.70, 4.29, 13.43; *Agr.* 45; Dio Cass. 57.24.8, 58.21.3, 60.16.3, 67.4.5, 68.16.2; Suet. *Nero* 39; *Dom.* 11; Plin. *ep.* 10.82; SHA *Sev.* 8.3, with discussion in Levick 1979; Talbert 1984, 476–480.

4 A quick look at Russell's 2001 index shows Cicero's dominance. Keeline 2018, 229 has also counted up these references to Cicero as vastly outnumbering those of any other orator in Quintilian. See also Steel (p. 239–43) in this volume.

5 Roche's discussion of Quintilian's preface points out that Quintilian presents his work as one of public service, preparing young men for public life (Roche 2016, 439) and that Quintilian presents himself as an authority guiding his readers through contradictory statements in previous rhetorical handbooks (446). Although Roche does not explicitly discuss this combination of rhet-

also highlights the continued need for deliberative speech in a state run by a monarch. With regard to Cicero, I shall argue that Quintilian's portrayal of Cicero reflects his variegated sources: the historical Cicero, his works as well as imperial-period reworkings and receptions of Rome's greatest orator.

2 Quintilian on deliberative oratory

In order to understand Quintilian's approach to deliberative oratory, we need to start at the end of his chapter on deliberative speech in Book 3 (3.8.70):

> Haec adulescentes sibi scripta sciant, ne aliter quam dicturi sunt exerceri velint et in desuescendis morentur. Ceterum cum advocari coeperint in consilia amicorum, dicere sententiam in senatu, suadere si quid consulet princeps, quod praeceptis fortasse non credant usu docebuntur.

> I should like my young friends [I should like young men] to know that this is written for their benefit, so that they should not want to be trained in ways other than those they will need in real speaking, or waste time acquiring habits they will have to unlearn. Anyway, when they begin to be called into consultation by friends or to give their opinion in the senate or to advise the emperor if he consults them, they will be taught by experience lessons which perhaps they do not believe when they receive them as instruction.[6]

Here, Quintilian – as is his habit throughout his work whenever ending a longer discussion – sets his advice regarding rhetoric into a wider educational and contemporary context: he says that his guidance regarding deliberative speech is written for the benefit of young men (*adulescentes*) so that they are trained for real-life oratorical situations and can avoid acquiring habits they need to unlearn later (with this comment, Quintilian is most likely lashing out against those *rhetores* who focus on the more outrageous and unrealistic declamation exercises).[7] Moreover, he argues that once these young men get to practise

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orical training for contemporaries and guidance through the history of rhetorical theory, his analysis shows that these are (among) Quintilian's purposes with his work.

6 All text passages and translations of Quint. are from Russell 2001; modifications in the translation are indicated by square brackets. For a general discussion of book 3 and Quintilian's division into epideictic, deliberative and forensic causes, see Albaladejo 2003.

7 Quint. 2.10, with discussion of Quintilian's views on declamation, including his accusation of its fictionality, in Winterbottom 1983 (= Winterbottom 2019); Brink 1989, 477–478; La Bua 2019, 116–17. Complaints about themes of and style in declamation, Petron. *Sat*. 1–6 (with Breitenstein [2009]); Quint. 2.10, 5.12.17–23, 7.2.54–56, 12.11.15–16 (with Calboli [2010]); Tac. *Dial*. 31.1, 35.3–5; Juv. 7.150–170; with Kaster 2001, 323 n. 14 gathering those in Seneca the Elder. Bonner 1949, 71–83; Vössing 1995, 94–102; Hömke 2002, 44–82; and Berti 2007, 219–247 discuss

their deliberative oratory, they will experience lessons they might not have believed when taught in theory, again signaling that the reality of oratory may be different from what they thought it would be and that he is the experienced and trustworthy guide into what it takes to be an orator in contemporary society. It is therefore the more significant that Quintilian in the same passage sets out clearly the settings for deliberative oratory in his own time: advocating in private *consilia* of friends, offering opinion (*sententia*) in the senate, or advising the emperor (*princeps*) when asked. To a scholar of Roman republican oratory – ancient as well as modern – these settings look decidedly imperial because of the mention of the emperor, and the explicit mention of private *consilia* alongside the mention of the senate. One of the two major republican venues for deliberative speech – the *contio* – is entirely omitted.[8]

This omission is at odds with some other passages listing oratorical venues in Quintilian's work, in which the *contio* is included. In two passages, Quintilian mentions the venues of senate, *contio* and private *consilia* together when emphasising the need to adjust the style to these venues and their audiences, and, in a third passage, Quintilian groups the courts, *consilia*, *contio* and senate as the venues in which a good citizen must show excellence in addressing an audience.[9] The *contio* is evidently not omitted throughout Quintilian's work.[10]

The question is how these presentations fit with Quintilian's presentation and discussion of deliberative speech throughout his chapter dedicated to this genre. Earlier in Book 3, Quintilian had charted the views of earlier rhetoricians on how to divide up the different genres of speech, or, as he calls them, following Cicero, "kinds of causes" (*genera causarum*).[11] In his work, he says, he will

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these criticisms; Bloomer 2011, 240 n. 1 collects more modern writings; and see esp. Fantham 2002 and Gunderson 2003, 10–12 on how such criticism is to be understood. For discussions of criticism of style, see esp. Brink 1989, 477–482 for Quintilian; and Gleason 1995, 114–121 gathers Quintilian's passages of complaint about incorrect teaching of physical carriage in the rhetorical schools.

8 The Romans, as well as the Greeks (Arist. *Rhet.* 1359b9–10 with Pepe 2013, 160–163), had of course always used deliberative argument in private contexts, and Aristotle mentions it under the deliberative genre, but to exclude the *contio* altogether while emphasising both traditional private *consilia* and the advice to the emperor is decidedly imperial.

9 Quint. 11.3.153, 12.10.69–70, 12.11.1. The *consilia* in these passages may include those of friends and the emperor, which are kept separate in chapter 3.8.

10 I am here focusing on the civic *contio*, not the military *contio*, although Quintilian's mention of battle speeches (2.16.8, 12.1.28) makes clear that this was also a venue for deliberative speech, also in the imperial period. For discussion of military *contiones* in the imperial period, see Pina Polo 1988; 1989, 219–36, 346–61 (appendix of all known imperial military *contiones*); 1995.

11 Quint. 3.3.15, implicitly referring to Cic. *inv.* 1.7, 1.12; *part. or.* 70.

follow the traditional division into forensic, deliberative and epideictic speech,[12] and in Book 3, he engages relatively briefly with epideictic (3.7) and deliberative speech (3.8), before moving on to his long discussion of forensic speech, spanning several books (3.9 – 6.5).[13] We need to look at the structure and argument of chapter 3.8 in more detail in order to understand Quintilian's presentation of deliberative oratory.

Quintilian's discussion of deliberative speech covers the aims of this genre (*honestum* and *utile*, 3.8.1–3), its functions (persuasion and dissuasion, 3.8.4–6), some of its parts and the most important rhetorical appeals (*prooemium*, narrative, emotional appeal, character of the speaker, 3.8.7–16), and Quintilian's normative statement concerning the considerations in deliberative speech: what the proposal is, who are the people discussing it, and who is the adviser (3.8.15). He then goes on to discuss the approaches to the proposal (3.8.16–35), the character of the audience and the speaker (3.8.35–48), the rhetorical device of *prosopopoeia* (3.8.49–54) and the types of *suasoriae* and their practical use in preparing a budding orator for deliberative speech (3.8.55–70).

Quintilian's approach to deliberative speech is in itself influenced by Cicero, as we can see from the opening of his discussion of deliberative speech. Although he adopts the traditional aims of deliberative speech – *honestum* and *utile*, the honourable and the expedient – he also brings in Cicero's contribution to the discussion, namely that the essential characteristic of the genre is *dignitas* (3.8.1–3):

> Deliberativas quoque miror a quibusdam sola utilitate finitas. Ac si quid in his unum sequi oporteret, potior fuisset apud me Ciceronis sententia, qui hoc materiae genus <u>dignitate</u> maxime contineri putat. Nec dubito quin ii qui sunt in illa priore sententia secundum opinionem pulcherrimam ne utile quidem nisi quod honestum esset existimarint. 2. <u>Et est haec ratio verissima, si consilium contingat semper bonorum atque sapientium. Verum apud imperitos, apud quos frequenter dicenda sententia est, populumque praecipue, qui ex pluribus constat indoctis, discernenda sunt haec et secundum communes magis intellectus loquendum.</u> 3. Sunt enim multi qui etiam quae credunt honesta non tamen satis eadem utilia quoque existiment, quae turpia esse dubitare non possunt utilitatis specie ducti probent, ut foedus Numantinum iugumque Caudinum.

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12 Quint. 3.4.4, 3.4.6, 3.4.11, 3.4.14–15. Pepe 2013 discusses the proliferation of genres among ancient rhetoricians, partly known from Quintilian's discussion. Quintilian also suggests that the main division is between oratory in court or not in court.

13 Quintilian's discussion of epideictic oratory is the first treatment by a Roman rhetorician in extant sources. Pepe 2013, 254–255 argues that this reflects the increasing use of epideictic speech in the imperial period.

> I am surprised that Deliberative speeches also have been thought by some to be concerned with only one question, namely that of expediency. If one had to find a single object for them, I should have preferred Cicero's view that the essential feature of this type of theme is <u>dignity</u>. Not that I doubt that those who hold the former opinion also held the idealistic view that nothing that is not honourable can be expedient either. 2. <u>And this principle is perfectly sound, if we are fortunate enough always to be addressing a council of the good and wise. With the inexperienced however (to whom one often has to give advice) and especially with the people, which contains an uneducated majority, we have to keep the two things separate and conform more to ordinary understandings</u>. 3. For there are many who think that even what they believe to be honourable is not also sufficiently expedient, and who can be tempted to approve on grounds of expediency things that they must know to be disgraceful, like the Numantine treaty or the Caudine surrender.[14]

However, the idea of *dignitas* as the aim of deliberative speech sparks Quintilian's discussion about the alignment of aims with the nature of audience: in front of an audience of the *boni* and *sapientes*, deliberative speech can aim at *dignitas*, which includes both the honourable and the expedient. But all too often, he argues, the orator has to advise those without experience or the uneducated common people, where a clear separation between the honourable and the expedient is necessary. In this way, Quintilian characteristically uses Cicero's view as a springboard to offer his own, often practical, perspective on the matter. More importantly, Quintilian's opening discussion of the aims and venues for deliberative speech contrasts with his statement at the end of the chapter: as discussed above, he omits the *contio* as a venue for deliberative speech at 3.8.70, but he starts chapter 3.8 by allowing for the situations in which the deliberate orator needs to address not only the inexperienced but even the uneducated masses. Where else could this happen than in the *contio?* I suggest that this wavering between including and excluding contional speech reflects Quintilian's attempt to straddle rhetorical theory and oratorical practice in both historical and contemporary perspectives: on the one hand, he is trying to show the history of rhetoric and oratory and, on the other hand, to train current students of rhetoric to become effective orators in the imperial-period venues for public speech, for whom knowledge of past oratory is essential.

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14 Van den Berg 2012, 192–194 has shown that Cicero's insistence on *dignitas* forms part of his project to tailor the theory of *honestum* and *utile* to his perspective of the orator rather than the speech. Pepe 2013, 285–288 tracks the connection between the aims and the genres of speech through Roman sources, while Michel 1960, 483–484 points out Cicero's discussion of *honestas* and *utile* in *De officiis* book 3 as fundamentally deriving from Panaetius (the main inspiration for books 1–2).

Alongside this blurring of venues, Quintilian openly argues for the overlaps between the genres of speech. Indeed, the impression of deliberative speech gained from this chapter is that it differs from the other two genres in the setting and audience and in the question at hand, but not markedly in the types of rhetorical appeals and the possibilities in language available.[15] This impression emerges partly through Quintilian's explicit comparisons between the three genres and partly through his discussion, which seems to include aspects of rhetoric relevant not only to deliberative speech (for example, *prosopopoeia*) and to provide examples taken from both deliberative and forensic speeches among other types of material. Quintilian himself explains that these overlaps in discussion are due to the fact that aspects of these genres overlap in both theory and reality. The separation between deliberative on the one hand and epideictic and forensic speech on the other hand is not clear or always productive for the orator (as he clearly states at 3.4.16), even if declamatory exercises suggest they are: *suasoriae* cater for deliberative speech and *controversiae* for forensic speech, but even here there are overlaps.[16] Nevertheless, the separation offers a productive tool for our analysis because it puts the spotlight on Quintilian's presentation of deliberative speech and it might therefore reflect (some of) the ways in which this type of speech was employed in his day.

Indeed, with Cicero's theory on deliberative speech explicitly mentioned, and Quintilian's two opposing perspectives on relevant venues for deliberative speech, where does this leave Quintilian's use of Cicero the orator in this chapter on deliberative speech and of Cicero's deliberative speeches elsewhere in the *Institutio oratoria?*

3 Quintilian's use of Cicero in 3.8

Before going into an analysis of Quintilian's use of Cicero, we need to consider Quintilian's own advice on the use of *exempla* and imitation to see whether he prescribes any limitations with implications for his use of Cicero's example. In

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15 Quint. 8.3.13–14 argues that the difference in setting and audience means that different speaking styles must be adopted between addressing the senate, the people (in assemblies), the jury in criminal trials and the judge/jury in private law trials. This does not contradict his arguments in 3.8 because he does not argue for a (theoretical) difference in rhetorical appeals and choice of language between these settings, simply in the style.
16 Quintilian also discusses *controversiae* and *suasoriae* when dealing with the tasks of the *grammatici* and *rhetores* (2.1.1–3), and argues for the overlaps between deliberative, forensic and epideictic genres in many aspects as well (3.4.15–16; 3.7.28; 5.13.5–6; 7.1.23–24).

his long discussion of *exempla* in Book 5, Quintilian does not warn against taking *exempla* from contexts different from the one at hand, but he does stress the importance of some form of similarity.[17] This discussion of *exempla* forms part of his wider analysis of forensic speech and it is therefore unsurprising that he uses examples from forensic speeches of Cicero to illustrate some of the possibilities of this type of argument.[18] However, later in the same discussion, he includes examples from Cicero's deliberative speeches to illustrate the use of the authority of the gods.[19] This suggests that Quintilian did not shy away from using non-forensic speeches to illustrate points in a wider discussion of forensic oratory when the topic did not concern the difference in speech genres but rather the use of specific rhetorical devices. This ties in with his more general point about the overlap in rhetorical appeals and possibilities of language across the three genres of speech and helps us to understand his use of Cicero and his speeches in the chapter on deliberative speech.

Quintilian uses Cicero in a number of ways in chapter 3.8, but what is most striking about his use is the absence of Cicero's deliberative oratory to illustrate a characteristic of this genre. Instead, Quintilian refers to Cicero's authority, based on Cicero's treatises, to support or discuss general notions of deliberative oratory, such as the nature and appropriate style of this genre.[20] He also mentions Cicero's letter to Brutus regarding Octavian to illustrate the bordering genre of giving advice to a ruler,[21] and the declamatory theme of Cicero begging pardon from Marcus Antonius in exchange for burning his *Philippic* speeches.[22] Although the *Philippics* were deliberative speeches, this aspect is not relevant for Quintilian's point here (about exhorting an audience with an argument about preservation of their reputation). Cicero is also involved in Quintilian's section on *prosopopoeia* in three different ways: first, as a person whose character necessitated a different type of speech written by a potential speechwriter from the characters of Caesar and Cato; second, as a speechwriter for Pompey and Titus Ampius;

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17 Quint. 5.11.1–44.

18 Quint. 5.11.11–13: Cic. *Mur.*; *Mil.*; *Cluent.*

19 Quint. 5.11.42: Cic. *har. resp.*; *Cat.* 3.

20 Quint. 3.8.1 (Cicero on *dignitas* as the essential feature of the *utile:* Cic. *top.* 94), 3.8.14 (Cicero on the deliberative orator's need to know the strengths and *mores* of the state [*vires civitatis et mores:* Cic. *de orat.* 2.337], 3.8.65 (Cic. *part. or.* 97 quoted on the appropriate style of deliberative being simple and dignified (*simplex et gravis*)).

21 Quint. 3.8.42 referencing *Fr. epist.* VII.b Watt.

22 Quint. 3.8.46; cf. Sen. *suas.* 6.14 on this theme and Juv. 10.125 for its popularity. For discussion of this declamation and the reception of Cicero's death, see Homeyer 1964; Roller 1997; Wright 2001; Degl'Innocenti Pierini 2003, 23–30; Migliario 2007, 121–159; 2008; Sillett 2015, 242–252. See also Keeline in this volume (p. 131–33).

and, third, as an orator employing *prosopopoeia* with the example of his *Pro Caelio*.[23] Again, there is no explicit use of deliberative speeches, and perhaps the speeches written for Pompey and Titus Ampius Balbus were more likely speeches to be used in a court setting because we know that Cicero had to work for Pompey and his right-hand man in the 50s BC when Pompey and his supporters were often dragged into court for political reasons.[24] Finally, Quintilian uses Cicero to illustrate the overlaps between deliberative, forensic and epideictic oratory: in his discussion of the issues of deliberative speech including not only quality (*honestum* versus *utile*) but also conjecture, definition and legal issues – all traditionally considered under forensic oratory – Quintilian brings in Cicero's discussion of *tumultus* in *Philippic* 8 and of Servius Sulpicius' honorific statue in *Philippic* 9 to illustrate the use of definition and legal issue in deliberative speeches.[25] Just as Quintilian includes a reference to Demosthenes in this passage, he also combines Demosthenes and Cicero as examples of orators whose deliberative and forensic speeches exhibited the same oratorical brilliance.[26] This was probably due to the facts that Demosthenes was one of the few Greek orators from whom deliberative speeches survived, that Cicero had made Demosthenes his oratorical example and that this pairing of Demosthenes and Cicero was picked up by early imperial authors.[27] While Quintilian here mentions deliberative speeches, he uses them to illustrate the similarity of this genre with forensic speeches rather than the unique qualities of deliberative speech. The reader of this long chapter on the genre comes away with some information about the aims and purposes of deliberative oratory, and a sense of Cicero as an important authority on a wealth of oratorical and rhetorical aspects, but not with any clear examples from the rich corpus of Ciceronian speeches to illustrate the specifics of speeches delivered in the senate or in front of the people.

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23 Quint. 3.8.49 – 50, 3.8.54.

24 For more discussion of Cicero's speechwriting, see van der Blom 2016, 119 – 120, 137.

25 Quint. 3.8.5 – 6 referencing Cic. *Phil*. 8.2, 9.

26 Quint. 3.8.65, specifying Dem. *Phil*. but not any specific speeches of Cicero. I have not been able to find other authors making the same comparison between Demosthenes' and Cicero's speeches.

27 Wooten 1983 on the Demosthenic model to Cicero's *Philippics*; van der Blom 2010, 257– 59 on Demosthenes presented as Cicero's role model. Bishop 2015, 284 – 94 and Bishop 2019, 173 – 217 discusses all three aspects (for Demosthenes' deliberative speeches the only Greek examples circulating in Cicero's day, see p. 192). See also Fantham 1982, 255 – 56 who discusses some of the stories about Demosthenes in Quintilian and their possible origin.

4 Quintilian's use of Cicero's deliberative speeches across the *Institutio oratoria*

If Cicero's deliberative speeches were not central to Quintilian's discussion of this genre in Book 3, one wonders whether Quintilian shows more interest in these speeches elsewhere in his work. I shall now consider the number of Ciceronian deliberative speeches in relation to the total number of Ciceronian speeches mentioned in the *Institutio oratoria*, in which contexts they are used by Quintilian, and, finally, the ways in which Quintilian employs Ciceronian deliberative speech and how this usage reflects wider concerns of changes to the parameters of deliberative speech between the times of Cicero and Quintilian.

Of circa 76 Ciceronian speeches which we know circulated in antiquity, a little over half are forensic (41 ~ 54%) and a little under half are deliberative (33 ~ 43%).[28] Quintilian mentions 53 speeches explicitly, of which 33 are forensic (62%) and 19 are deliberative (36%).[29] In other words, circa two-thirds of the speeches explicitly mentioned by Quintilian are forensic but only about a third are deliberative, compared with the more equally weighted figures of speeches circulating in antiquity. These figures do not take into account the frequency by which each speech is mentioned but instead suggests the spread of speeches used by Quintilian. There could be a number of reasons for this weighting, including Quintilian's general focus on the forensic mode in his work. However, in spite of this overall favour towards forensic speech, Quintilian does include a large number of Ciceronian deliberative speeches, which highlights the need to better understand their function within his work.

A reading of all of Quintilian's references to Cicero's senate and *contio* speeches show that the vast majority of these references are mentions of specific passages or aspects of these speeches to illustrate the use of a particular rhetorical device (figures of thought and figures of speech are the most dominant).[30] One chapter (9.3 on figures of speech) is particularly dense with references to Ci-

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28 2 speeches ~ 3% are epideictic if we count *In Pisonem* and *Pro Marcello* as epideictic; see the appendix for details, which builds on Crawford 1984 and 1994.

29 1 speech ~ 2% is epideictic (*In Pisonem*); see the appendix for details. Steel (p. 241), in this volume, also discusses Quintilian's preference for Cicero's forensic speeches over speeches in other genres.

30 Quintilian's references to Cicero's senate speeches for this purpose: 3.8.5; 4.1.68; 5.11.42; 5.13.38; 6.3.109; 7.3.18; 7.3.25; 8.4.10; 8.4.13; 8.6.15; 8.6.41; 9.2.7; 9.2.32; 9.2.45; 9.3.13; 9.3.19; 9.3.26; 9.3.29 – 30; 9.3.40; 9.3.43; 9.3.44; 9.3.45; 9.3.49; 9.3.50; 9.3.62; 9.3.71; 9.3.72; 12.10.61. References to Cicero's *contio* speeches for this purpose: 5.11.42; 5.13.38; 9.3.46; 9.3.77; 9.3.86.

cero's speeches – both deliberative and forensic – as well as poetic texts by other authors as illustrations. In this chapter, as well as in the other passages referencing Cicero's deliberative speeches, there is no sense that the genre of speech made a difference to the use of these rhetorical devices. This accords well with Quintilian's general point about many overlaps in rhetorical figures and language between the genres of forensic, deliberative and epideictic speech. Quintilian's choice of Cicero's speeches is linked to his overall attitude towards Cicero as the greatest Roman orator.[31] Moreover, his selection of both deliberative and forensic speeches provides Quintilian's reader with the impression that Cicero's speeches – irrespective of genre – are worth studying for their uses of rhetorical figures, and that they are worth studying for their brilliance. As we saw earlier, Quintilian emphasised that Cicero was as brilliant in his senate and *contio* speeches as he was in his forensic speeches.[32]

Alongside this general impression of unimportance of genre in Quintilian's attitude to Cicero's speeches, a couple of passages employ Ciceronian *contio* speeches in a way which indicates that genre did matter after all. In a discussion of the elements of *progymnasmata* (2.4), the exercises practiced with a *grammaticus* before the more demanding *suasoriae* and *controversiae* were taken up with a *rhetor*, Quintilian focuses on ways in which to criticise laws (2.4.33):

> Legum laus ac vituperatio iam maiores ac prope summis operibus suffecturas vires desiderant: quae quidem suasoriis an controversiis magis accommodata sit exercitatio consuetudine et iure civitatium differt. Apud Graecos enim lator earum ad iudicem vocabatur, Romanis pro contione suadere ac dissuadere moris fuit; utroque autem modo pauca de his et fere certa dicuntur: nam et genera sunt tria sacri, publici, privati iuris.

> Praise and denunciation of laws need greater powers, such as are almost equal to the highest tasks of the orator. Whether this exercise is more like a deliberative or a forensic declamation depends on the custom and law of the states concerned. Among the Greeks, the proposer of a law was called before a judge; in Rome, the practice was to speak for and against the proposal in an assembly of the people. In both cases, the points made are few and pretty well defined. For there are in fact just three kinds of law: sacred, public, and private.[33]

Quintilian starts by saying that the exercise can relate to different genres depending on the custom and law of the state concerned because in Greece the proposer of a law was called before a judge and therefore the exercise belongs to the forensic genre. By contrast, in Rome it was common to speak for or against a proposal for law in the *contio*. The perfect tense (*fuit*) suggests that it is no longer the

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31 Quint. 4.3.13; 12.1.19, recently discussed in Keeline 2018, 225–230 and La Bua 2019, 121–125.
32 Quint. 3.8.65 and above.
33 Cf. Reinhardt/Winterbottom 2006, 112–118.

case in Quintilian's day that laws are presented to and debated in front of a contional audience, which makes the reader wonder whether the advice on criticism of law is still relevant. Another point is that such an introduction makes the reader expect Quintilian to use *contio* speeches to illustrate his points in this passage, because he is after all writing for a Roman audience. However, Quintilian mainly prefers general remarks, apparently partly based on Greek rhetoricians, over specific examples.[34] Of the few references to such examples of criticism of laws, Quintilian mentions Cicero's argument about the illegality of Clodius' tribunician law but without mentioning Cicero or *De domo sua*.[35] This speech was not delivered in a court of law, but the context of a hearing in front of the *pontifices* makes it very close to a forensic speech.[36] Quintilian's only reference to a *contio* speech in this passage is to illustrate an exception: Cicero's *Pro lege Manilia* is mentioned as an example of a law not meant to be permanent. However, Quintilian immediately goes on to say that he offers no advice on the criticism of such laws because they are of a special and not a common quality.[37] In this way, a passage about criticism of laws, which – in the Roman context – were placed in a *contio* setting, provides only one reference to a *contio* speech that has no general application to the topic of criticism.

Although the utility of this *progymnasma* was discussed by ancient rhetoricians and Quintilian's discussion also seems a little inadequate,[38] this passage nevertheless highlights three important points about deliberative speech in Quintilian: 1) that one of the functions of deliberative speech in the *contio* – the debate of proposals for law – was no longer relevant in Quintilian's day; 2) that Quintilian nevertheless chooses to mention this republican practice of scrutinising proposals for law in the *contio*; and 3) that Cicero provides the few examples to illustrate the possible types of criticism of law. One could argue that Quintilian includes this particular type of *progymnasma* for the sole reason of comprehensiveness; it was a type in the works of his Greek predecessors and he tailors his discussion to cover both the Greek and Roman (republican) contexts for the sake of his audience.[39] The comprehensiveness helps fulfil

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34 Reinhardt/Winterbottom 2006, 112–118 provide references to and discussion of these influences on Quintilian.

35 Quint. 2.4.35.

36 And the speech is categorised as forensic in the *Appendix* below.

37 Quint. 2.4.40.

38 The utility of the *progymnasma* was discussed by Hermogenes and Aphthonius, as mentioned by Reinhardt/Winterbottom 2006, 112–113.

39 See Keeline 2018, 227 on Quintilian's treatment of technical points of rhetoric as "a very skilled distillation and codification of well-known principles".

one of Quintilian's two purposes of his work, namely the overview of Greek and Roman rhetorical theory and practice. But the passage also supports Quintilian's other purpose – the training of contemporary young men in oratory – by offering a view into one of the core functions of the deliberative genre: to debate choices. Combined, this passage provides insights into the use of deliberative speech and the changes in this use between Cicero's republic and Quintilian's monarchy.

The second passage offering insights into the genre-specific characteristics of deliberative speech, as depicted in Quintilian, comes from his discussion of the usefulness of rhetoric in Book 2. As part of his discussion of this age-old question, he includes a reference to Cicero's speeches against Rullus' agrarian laws in early 63 BC (Quint. 2.16.7):

> Num igitur negabitur deformem Pyrrhi pacem Caecus ille Appius dicendi viribus diremisse? Aut non divina M. Tulli eloquentia et contra leges agrarias popularis fuit et Catilinae fregit audaciam et supplicationes, qui maximus honor victoribus bello ducibus datur, in toga meruit?

> Then will anyone deny that Appius the Blind destroyed the disgraceful peace with Pyrrhus by the power of his oratory? Did not Cicero's divine eloquence earn popular support when he spoke against the agrarian laws? Did it not crush Catiline's criminal audacity?

Quintilian, of course, plays on Cicero's declaration in the second speech against the agrarian law that he would be a *popularis consul*,[40] and his own declaration that Cicero is *ille divinus orator*.[41] But more importantly for our discussion here, Quintilian uses the example of Cicero's *contio* speeches against the agrarian law to show the positive power of oratory and the decisive capacity of deliberative oratory to change minds, to win support, and, ultimately, do good. Although forensic oratory has that capacity as well, it does this mainly for individuals, whereas deliberative oratory can do this for communities and societies because it deals with questions of political choice.

Presenting his version of the concept of the *vir bonus dicendi peritus*, Quintilian suggests that the perfect orator can show his true talent only through speeches in the senate and in the *contio*, as opposed to in the law courts (12.1.25 – 26):[42]

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40 Cic. *leg. agr.* 2.9 (cf. 2.6 – 7).
41 Quint. 4.3.13.
42 See Stoner's chapter in this volume for a discussion of Quintilian's presentation of Cicero as *vir bonus dicendi peritus* in 12.1.

> Cur non orator ille, qui nondum fuit sed potest esse, tam sit moribus quam dicendi virtute perfectus? Non enim forensem quandam instituimus operam nec mercennariam vocem neque, ut asperioribus verbis parcamus, non inutilem sane litium advocatum, quem denique causidicum vulgo vocant, sed virum cum ingenii natura praestantem, tum vero tot pulcherrimas artis penitus mente complexum, datum tandem rebus humanis, qualem nulla antea vetustas cognoverit, singularem perfectumque undique, optima sentientem optimeque dicentem. 26. <u>In hoc quota pars erit quod aut innocentis tuebitur aut improborum scelera compescet aut in pecuniariis quaestionibus veritati contra calumniam aderit? Summus ille quidem in his quoque operibus fuerit, sed maioribus clarius elucebit, cum regenda senatus consilia et popularis error ad meliora ducendus.</u>

> Why should not the ideal orator, who has never existed but may exist some day, be perfect in character as well as in oratory? The man I am educating is no law-court hack or hired voice, nor even (let us avoid hard words) a serviceable case advocate, what is commonly called a *causidicus*, but a man of outstanding natural talent who has acquired a profound knowledge of many valuable arts, a man vouchsafed at long last to humanity, such as history has never known, unique, perfect in every way, noble in thought and noble in speech. 26. <u>It will be a small fraction of this man's achievement that he will protect the innocent, repress the crimes of the wicked, and defend truth against calumny in financial disputes. Of course he will be supreme in this field too, but it is in greater things that his glory will shine more brightly, when he has to guide the counsels of the senate or lead an erring people into better ways.</u>

In spite of Quintilian's long discussions of forensic speech, as opposed to the short chapters on epideictic and deliberative speech, and the weighting of Cicero's forensic speeches over deliberative speeches when choosing illustrative examples, Quintilian positions the venues for deliberative oratory above the courtroom, because by guiding the senate or leading the people through speech, the orator will influence greater things and thereby create greater glory for himself. Quintilian is here not focusing on the differences in style between forensic and deliberative oratory but rather on the purpose, content and consequences of speech in these venues: whereas trials in the courts of law can deal with questions of justice and truth, Quintilian seems to suggest that these concern individuals only whereas debate in the senate and the *contio* is political and has implications for larger groups of people, even states. It is these "greater things" (*operibus maioribus*) which allow the perfect orator to shine.

By choosing the passage from Cicero's *contio* speech against Rullus' agrarian law as part of his overall defence of rhetoric and by advocating the senate and the *contio* as the venues in which a good orator's glory will shine more brightly, Quintilian implicitly shows and explicitly argues that deliberative oratory is the most glorious of all genres and that it belongs in a society welcoming debate on political issues. Was this still relevant in Quintilian's Rome?

5 Deliberative oratory and Cicero's portrayal in Quintilian – concluding thoughts

Quintilian's engagement with the deliberative genre across his work suggests that deliberative oratory was still relevant in imperial Rome, but also that the venues, in which discussion of political choices through deliberative debate took place, had changed. Apparently, the *contio* was no longer an important locus for this debate, as it had been in the republican period; instead, deliberation took place in private *consilia*, in the senate and through advice to the emperor. The venues, and therefore the audiences, had changed, seemingly excluding the common people from participation in the debate.

When Quintilian nevertheless includes mention of contional oratory, it is partly an attempt to offer background to his discussion of deliberative oratory and the history of oratory, and partly a way of enhancing the figure of the orator.[43] However, he also uses the *contio* in opposition to the senate as the ultimate example of the need to tailor a speech to the audience: the *populus* needs a *concitatius* ("more vehement") tone as opposed to the *sublimius* ("loftier") tone in the senate.[44] In these passages, there is no sense that the *contio* is no longer relevant or that Quintilian's readership is unaware of this oratorical venue. This impression is strengthened by the fact that Quintilian tends to mention the *contio* as a space for public deliberation and public consumption of speech irrespective of historical context.[45]

Nevertheless, other passages do indicate a distance between Quintilian's contemporary oratorical scene and the republican context for public speech. I have discussed the passage in which Quintilian remarks that laws were discussed in front of the people, where the past tense suggests that this was no longer the case in Quintilian's day. Of course, law-making had changed because the senate had acquired the power to pass laws in the early principate and the em-

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43 The passage from book 12 on the glory obtained through contional oratory leads Quintilian to mention Virgil's simile (*Aen.* 1.148–56) about the *pius* statesman at whose sight the turbulent crowds fall silent and listen to his speech. While Virgil uses this as a simile to Neptune's calming of the waters – that is, comparing a god to an orator – Quintilian uses his reference to Virgil's simile to implicitly compare an orator to a god. While a turbulent popular assembly is a useful parallel to turbulent waters, so the great orator calming the people in the assembly has an almost godlike quality. I thank Rosalie Stoner for suggesting this point to me.
44 Quint. 8.3.13–14; see also 11.1.45 for exactly the same point.
45 Quint. 2.17.28; 3.8.6–14; 3.8.64–69; 6.3.105; 10.3.28–30; 12.2.6–9; 12.10.69–70; 12.11.1.

peror's edicts also functioned as law.[46] In fact, the imperial senate's extension of powers to include passing of laws and sitting as a court could have spurred Quintilian to devote more specific discussion of deliberative speech in the senate. Instead, his work introduces the three genres of speech but only seriously prepares the reader for forensic speech because it comes first in an orator's career and because the orator moving from forensic speeches to deliberative speeches will be able to extrapolate from the guidance on court case oratory except for the aspect of audience and tone. Quintilian's perspective therefore assumes that the orator would indeed start as an advocate before moving on to advise friends, fellow senators and the emperor.

In this perspective, Cicero is also the perfect example. Apart from his brilliant oratory in all genres and his authority as a scholar of rhetoric, Cicero had of course followed the same career path as that which Quintilian expects of his reader: starting with advocacy in the civil courts, moving to criminal cases of higher public profile before entering the senate and only addressing the *populus* in the *contio* when he had already reached the praetorship. Although Quintilian does not emphasise the relevance of Cicero's career pattern to his readership, Cicero is clearly exemplary in a number of ways. Indeed, the portrayal of Cicero in Quintilian picks up on both Cicero's practice as an orator and his theories on rhetoric, exemplified through the most extensive range of examples from Cicero's works found in imperial Latin literature. Quintilian knew Cicero's works intimately and could use them intelligently, but his portrayal of Cicero was also deeply influenced by Cicero's self-presentation, as argued by several scholars,[47] and by the early reception of Cicero.

Among the different usages of Cicero in Quintilian's chapter on deliberative speech, several of them originate not in Cicero but in later reworkings such as the imperial declamatory topic of Cicero begging pardon from Antonius or the example of Cicero, Caesar and Cato as possible characters in a *prosopopoeia*, which must reflect declamatory exercises, too.[48] I would also suggest that Quintilian's mention of Cicero's letter to Brutus about the best way to persuade Octavian reflects the possibility that this situation had been used as a declamatory theme.[49] Indeed, the entire section on audience in the chapter on deliberative speech (3.8.36–47), in which we find Cicero's letter and Cicero as declamatory

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46 Senate's legislative function: Millar 1977, 341–344; Talbert 1984, 431–435. Emperor's legislative powers: Siber 1970, 71–72; Sandberg 2001, 82–84.
47 Explicitly argued: van der Blom 2017. More implicit in their argument: Gowing 2013, 245; Keeline 2018, 225–229; La Bua 2019, 123–125.
48 Quint. 3.8.46, 3.8.49.
49 Quint. 3.8.42.

theme, offers a whole host of declamatory, historical and dramatic reworkings of republican deliberative situations, which leads Quintilian directly on to the topic of *prosopopoeia*. For Quintilian's educational purpose, it did not make sense to separate Cicero's historical deliberative oratory from the useful reworkings of Cicero's life and work in order to illustrate deliberative scenarios and declamatory possibilities. Quintilian's employment of Cicero is as multi-faceted as the overall reception of Cicero (see Tab. 1).

This multi-faceted employment of Cicero within Quintilian's discussion of deliberative speech shows that this genre, as exemplified by Cicero (and by "CICERO", to pick up Kaster's terminology),[50] used not just Cicero's speeches but also his position and iconic status to think up new declamations in the training of deliberative speech.[51] Such reworkings had probably always taken place and thus the training in deliberative speech may not have changed much from republic to empire; what had changed was that this training now had a major resource to tap into which it had not had before: Cicero, his work and self-presentation. In that sense, Quintilian's portrayal of Cicero and his deliberative oratory is not just a reflection of the historical Cicero but also, or more importantly, a reflection of the variegated receptions and reworkings of Cicero in the one-and-a-half century between Cicero's death and Quintilian's *Institutio oratoria*.

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50 Kaster 1998.

51 Kaster 1998, 262 argues that Quintilian's presentation of Cicero as the perfect, even divine, orator whose name exemplified not a person but eloquence itself (1.10.112) reflected a transformation in Cicero's reception that had happened already in the Augustan period, as exemplified by the declamations recorded in Seneca's *Controversiae* and *Suasoriae*.

Tab. 1: Quintilian's mentions of Ciceronian speeches.

Ciceronian speeches known to have circulated (Crawford 1984 and 1994)[52], whether still extant today, in roughly chronological order	Ciceronian speeches mentioned explicitly in Quintilian (based on index in Russell's Loeb edition)
Pro Quinctio (forensic)	*Pro Quinctio* (forensic)
Pro Vareno (forensic)	*Pro Vareno* (forensic)
Pro Roscio Amerino (forensic)	*Pro Roscio Amerino* (forensic)
Pro Roscio comoedo (forensic)	
Cum quaestor Lilybaeo decederet (forensic)	
Pro Scamandro (forensic)	*Pro Scamandro* (forensic)
Pro Tullio (forensic)	*Pro Tullio* (forensic)
Divinatio in Caecilium + In Verrem I-II (forensic)	*Divinatio in Caecilium + In Verrem* I-II (forensic)
Pro Fonteio (forensic)	*Pro Fonteio* (forensic)
Pro Oppio (forensic)	*Pro Oppio* (forensic)
Pro Caecina (forensic)	*Pro Caecina* (forensic)
Pro Cluentio (forensic)	*Pro Cluentio* (forensic)
Pro Manilio (forensic)	
Pro Fundanio (forensic)	*Pro Fundanio* (forensic)
Pro Cornelio I-II (forensic)	*Pro Cornelio* (forensic)
Pro lege Manilia (deliberative, *contio*)	*Pro lege Manilia* (deliberative, *contio*)
De rege Alexandrino (deliberative, senate)	
Pro Mucio (forensic)	
Pro Q. Gallio (forensic)	*Pro Q. Gallio* (forensic)
In toga candida (deliberative, senate)	? *In competitores* (deliberative, ?)
de proscriptorum liberis (deliberative?)	*de proscriptorum liberis* (deliberative?)
De Othone (deliberative, *contio*)	
De lege agraria 1–3 (deliberative: senate 1, contio 2–3)	*De lege agraria* 2 (deliberative, *contio*)

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52 Crawford 1984 includes both lost and unpublished speeches, of which I have included the lost speeches only, alongside the fragmentary speeches listed in Crawford 1994.

Tab. 1: Quintilian's mentions of Ciceronian speeches. *(Continued)*

Ciceronian speeches known to have circulated (Crawford 1984 and 1994)[52], whether still extant today, in roughly chronological order	Ciceronian speeches mentioned explicitly in Quintilian (based on index in Russell's Loeb edition)
Pro Rabirio perduellionis reo (forensic)	*Pro Rabirio perduellionis reo* (forensic)
In Catilinam 1–4 (deliberative: senate 1, 4, *contio* 2, 3)	*In Catilinam* 1–4 (deliberative: senate 1, 4, *contio* 2, 3)
Pro Murena (forensic)	*Pro Murena* (forensic)
Contra contionem Q. Metelli (deliberative, senate: Hall 2009, 153, n. 45)	*Contra contionem Q. Metelli* (deliberative, senate: Hall 2009, 153, n. 45)
In Clodium et Curionem (deliberative, senate, really pamphlet)	*In Clodium et Curionem* (deliberative, senate, really pamphlet)
Pro Sulla (forensic)	
Pro Archia (forensic)	*Pro Archia* (forensic)
Pro Flacco (forensic)	*Pro Flacco* (forensic)
Post reditum in Senatu (deliberative, senate)	
Post reditum ad populum (deliberative, *contio*)	
De domo sua (forensic, in front of pontifices)	*Pro domo* (forensic, in front of pontifices, close to senate)
Pro Sestio (forensic)	*Pro Sestio* (forensic)
In Vatinium (forensic: cross-examination)	*In Vatinium* (forensic: cross-examination)
De haruspicum responsis (deliberative, senate)	*De responsis Haruspicum* (deliberative, senate)
Pro Caelio (forensic)	*Pro Caelio* (forensic)
De provinciis consularibus (deliberative, senate)	
Pro Balbo (forensic)	
In Pisonem (epideictic, senate)	*In Pisonem* (epideictic, senate)
Pro Vatinio / Pro Gabinio (forensic)	*Pro Gabinio et Vatinio* (forensic)
Pro Plancio (forensic)	
Pro Scauro (forensic)	*Pro Scauro* (forensic)
Pro Rabirio Postumo (forensic)	*Pro Rabirio Postumo* (forensic)
Pro Milone (forensic)	*Pro Milone* (forensic)

Tab. 1: Quintilian's mentions of Ciceronian speeches. *(Continued)*

Ciceronian speeches known to have circulated (Crawford 1984 and 1994)[52], whether still extant today, in roughly chronological order	Ciceronian speeches mentioned explicitly in Quintilian (based on index in Russell's Loeb edition)
De aere alieno Milonis (deliberative, senate)	
Pro Marcello (deliberative/epideictic, senate)	
Pro Ligario (forensic)	*Pro Ligario* (forensic)
Pro rege Deiotaro (forensic)	*Pro rege Deiotaro* (forensic)
Philippics (deliberative: senate 1, 3, 5, 7 – 14, *contio* 4, 6, *Phil.* 2 as if senate, but never delivered)	*Philippic* 2, 3, 4, 8, 9, *Philippics* (3.8.46, 8.4.9, 8.6.70) (deliberative, senate 3, 8, 9, *contio* 4, *Phil.* 2 as if senate but never delivered).
Cicero's speeches: all known (whether extant or not), including those of doubtful title 76 in total 41 forensic 33 deliberative 2 epideictic (here *Pro Marcello* is included although it is both epideictic and deliberative in order not to overestimate the number of deliberative speeches)	Cicero's speeches mentioned in Quint. [61 speeches in total with *Philippics* counting as 14 because Quint. sometimes mentions *Philippics* in general] 53 speeches in total (only named *Philippics*) 33 forensic [27 deliberative with *Philippics* counting as 14] 19 deliberative (only named *Philippics*) 1 epideictic