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Handling of Facts and Forensic
Tactics in Cicero's Defence
Speeches

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Preface

Quintilian wrote about Cicero: “...he was born as a gift of providence so that all power of rhetoric could manifest itself in him. Who can teach more profoundly, move deeper than he can; and has anybody ever had more enthralling grace? We might think that he achieves easily what he wrings out by force, and when by his enormous power he drives the judge to a direction contrary to his standpoint, the judge seems to follow him voluntarily rather than to be swept away by him.”¹ The present monograph intends to get closer to understanding the mechanism of operation of this impact by analysing ten pieces of the orator’s life-work more profoundly from legal and rhetorical aspects in terms of the lawyer’s handling of the facts of the case and rhetorical tactics applied by Cicero in these speeches. As they are oral pleadings and statements of the defence—since Cicero undertook to “represent” the charge only once in his career, in the proceedings against C. Verres—we have grouped the ten speeches according to the facts of the case that provide grounds for the charge, and (as a general rule that allows exception) the chronological order.

The speeches given in defence of Sextus Roscius from Ameria in 81² and in defence of Aulus Cluentius Habitus in 66 were delivered in lawsuits brought by the charge of homicide—*par(r)icidium* and *veneficium*. These two speeches were made at the very beginning of Cicero’s career—as he established his reputation as an orator by *Pro Roscio Amerino* as a twenty-six years old young man—and in the first third of it (preceding consulship in 63); so, the former *oratio* shows great promise of becoming the master of rhetorical strategy and demonstrates his handling of the facts of the case now constituting an individual system, yet not free from certain exaggerations of a young man, and the latter one reveals the orator’s ingenious tactics, now mature, leading (misleading) the court of justice with formidable assurance. The speeches made in the lawsuit of Lucius Licinius Murena in 63 and in the lawsuit of Cnaeus Plancius in 55 were delivered in defence of future magistrate having won the (consul’s and aedil’s) election but charged of election bribery by competitors defeated in the fight for the office, and so these speeches give a captivating and exciting view of the practical operation of the Roman election system, and the lawyer’s, orator’s handling of the facts of the case that kept the candidates’ eligibility rather than historical facts of the case in view when judging election bribery. Furthermore, it deserves attention that in *Pro Murena*—by this speech Cicero provides defence as a consul in office of his successor following him in the rank—it is the voice of the politician at the summit of his career in public affairs and the mature orator fully aware of the influence he can produce on the court of justice that can be heard.

The speeches given in defence of Marcus Caelius Rufus and Publius Sestius in 56 and in defence of Titus Annius Milo in 52 were made in a lawsuit brought by the charge of *vis*. *Vis (publica)* as *crimen* covered a general group of crimes that comprised several state of facts from violent disturbance of public order to certain cases of manslaughter. The historical background of all the three speeches is provided by the personal and, for political reasons, hostile relation between Cicero and Clodius, who forced him into exile in 58 for one year. By *Pro Caelio* the orator defended his one-time disciple against the charge moved by Clodius and his elder sister, Clodia, who can be most probably identified with Catull’s Lesbia, and *Pro Sestio* was made as refutation of the charge brought by Clodius, who sent Cicero into exile,

¹ Quint. *inst.* 10, 1, 109–110. ...*dono quodam providentiae genitus in quo totas vires suas eloquentia experiretur. Nam quis docere diligentius, movere vehementius potest, cui tanta unquam iucunditas adfuit? Ut ipsa illa quae extorquet impetrare eum credas, et cum transversum vi sua iudicem ferat, tamen ille non rapi videatur sed sequi.*

² All dates relating to ancient events in this volume are BC.

against Sestius, who resolutely fought for calling Cicero home. In their analysis, as *Pro Sestio* was delivered in March and *Pro Caelio*, Cicero's wittiest speech that presented a real comedy to the court of justice, was given in April, we have upset the chronological order prevailing within the chapters—which does not cover a highly relevant difference in time in the present case—in order to connect *Pro Sestio* more organically with *Pro Milone* which shows close thematic relation with it, i.e., the speech made in defence of Milo who killed the primordial enemy, Clodius. *Pro Milone* represents an exception in two aspects both among the speeches analysed in the volume and left to us as Cicero's life-work: on the one hand, this is the *oratio* whose original was delivered by the orator in a lost lawsuit, however, later on, guided by political considerations, he published its revised version; on the other hand, *Pro Milone* is the speech of which we exactly know that the version published by Cicero and left to us is different from the oration given before the court of justice not only in style and structure but in its essence. Both *Pro Sestio* and *Pro Milone* are essential constituent parts and sources of Cicero's philosophy of the state that produced hardly overestimatable impact on European thinking, that is, in them Cicero as an orator and a politician, trying in vain to get back to the summit of his former influence, formulates his concept on the theory of the state pointing far beyond the handling of the facts of the case and the rhetorical tactics as well as the rhetorical situation, which later on crystallised and constituted the subject matter in his theoretical works.

The three speeches discussed in the last chapter—the so-called *orationes Caesarianae*, i.e., *Pro Marcello* and *Pro Ligario* given in 46 and *Pro rege Deiotaro* delivered in 45—are arranged not so much around a single state of facts, instead, they are connected by the fact that the addressee of all the three speeches is Caesar. The speech made for the benefit of Marcus Claudius Marcellus is only seemingly a statement of the defence, actually it is a political speech: in it Cicero, who sided with Pompey in the civil war, and later on was granted pardon by Caesar, expressed his thanks to the dictator in the senate for the pardon given to one of the leading figures of the anti-Caesarian forces, Marcellus. By *Pro Ligario* Cicero defended Quintus Ligarius before Caesar as judge, who also took a position in the civil war against Caesar, and who—after he had been given acquittal in legal terms and pardon in view of the real political situation—appeared among Caesar's assassins on the Ides of March 44. The *oratio* made in defence of King Deiotarus is the fruit (if possible) of a both legally and rhetorically more delicate and critical situation: the judge of the case is identical with the injured party of the act brought as a charge, Caesar, that is, the proceedings, conducted in the absence of the accused, in which eventually no judgment was passed, should be considered manifestation of Caesar's arrogance, who made mockery of the lawsuit, rather than a real action-at-law. All the three speeches have outstanding significance both in terms of the lawyer's/orator's handling of the facts of the case under circumstances far from usual or regular, and the development of the relation between Cicero and Caesar as well as the thoughts on the theory of the state framed by Cicero, the analysis of the fight against Caesar's dictatorship gaining ground, for the sake of saving the order of the state of the Republic.

At this point, let me express my thanks to professors Egon Maróti, János Zlinszky and Imre Molnár from whom I received so much help, encouragement and precious advice during the years for translating Cicero's rhetorical works and analysing them in terms of rhetoric and Roman law.

Tamás Nótári

Introduction

According to tradition, an oration—using the terminology introduced by Cicero and Quintilianus—is made up of the following parts, as it were arising from the nature of the thing³: the *prooemium*, in which the orator tries to win his audience’s attention; the *narratio*, that is, description or narration of the facts of the case; the *argumentatio*, that is, the argument, discussion of the facts of the case, which can be disputed due to what is contained in the *narratio* regarding either their fact-based nature or their (legal) assessment; and the *peroratio*, that is, summary of what has been said, which is at the same time a call addressed to the judges with respect to the decision to be adopted in the case.⁴ In Cicero’s youth—an account of this is given in *De inventione* and *Auctor ad Herennium*—in addition to the above, *ars oratoria* distinguished the following parts of the speech: the *propositio*, that is, accurately naming the disputed point, following the *narratio*; the *partitio*, i.e., outline of the division, structure of the *argumentatio*. Furthermore, the *argumentatio* was divided into confirming, i.e., positive and refuting, i.e., negative parts: *confirmatio* and *refutatio*. The *peroratio* had to contain the *enumeratio*, that is, summary of what has been said, the *indignatio*, that is, whipping up antipathy towards the opponent, and the *conquestio*, arousing sympathy for the defended case.⁵

At the same time, we must make it clear that this textbook pattern can be applied to Cicero’s speeches with strong restrictions only,⁶ as the theoretical categories and system of rhetoric, the *praecepta*—as it is emphasised by both Cicero⁷ and Quintilian⁸—can be useful references; yet, rhetoric as a theoretical system arises from rhetorical practice, art of rhetoric and not the other way round.⁹ This fact was, of course, recognised by the authors and works that summed up the theory of rhetoric, distinguishing *ordo naturalis* from *ordo artificiosus* demanded by *causa* in the *dispositio*, i.e., the structure of the speech.¹⁰ (Wilfried Stroh uses the following military comparison aptly to the relation between the two *ordines*: the science of strategy can teach the commander how to set the battle array in a combat, however, in a combat victory, success is the only measure and goal; therefore, in a given case, depending on the features of the terrain and the size and character of the enemy’s army, he can set the battle array contrary to the textbook example, if this will promise success.¹¹) The young orator, having perfectly acquired the theory of rhetoric, could draw further inspiration from the speeches heard on the Forum: *praecepta docent, exempla trahunt!* It is not by chance that Cicero published the written version of his delivered speeches because he wanted to set *exemplum*, among others, to young people who desired to acquire the practice of rhetoric.¹² The three supporting pillars of the oration are *inventio*, that is, finding arguments arising from recognition of the rhetorical and lawsuit situation; *dispositio*, that is, arrangement of what the orator has got to say and the arguments, editing them in a structure; and *elocutio*, that is, (form of) performance; and *dispositio* is provided by the overall effect of three factors: *causa*, *praecepta* and *exempla*. It

³ Cic. *De orat.* 2, 307; Quint. *inst.* 2, 17, 6.

⁴ Cf. Cic. *part.* 4; *De orat.* 2, 311; Quint. *inst.* 8, *prooem.* 7.

⁵ Stroh 1975. 12.

⁶ Neumeister 1964. 7ff.

⁷ Cic. *De orat.* 1, 109. 145; 2, 232.

⁸ Quint. *inst.* 2, 17, 5ff.; 5, 10, 120; 7, 10, 10.

⁹ As analogy cf. Paul. D. 50, 17, 1. *Non ex regula ius sumatur, sed ex iure, quod est, regula fiat.*

¹⁰ Auct. ad Her. 3, 16f.; Cic. *De orat.* 2, 307f.; Quint. *inst.* 4, 2, 85; 4, 1, 70; 7, 1, 12. 63; 7, 2, 40.

¹¹ Stroh 1975. 13.

¹² Cic. *Brut.* 122. 127. 164; *Att.* 2, 1, 3; 4, 2, 2; *Q. fr.* 3, 1, 11.

is within their frameworks that the orator can carry out his threefold task, *movere, delectare, docere*, and that is how *flexanima atque omnium rerum regina oratio* can be created.¹³

In the analysis of Cicero's speeches, one should never forget about two essential circumstances. On the one hand, Cicero never published his speeches in the form that they were delivered but in a revised and edited form. On the other hand, they are addressed to the audience and by no means to the analyser who wants to interpret them word by word or to the readers in general; the written text is a dead material, it was made alive by the orator's voice, gestures, the interaction between the speaker and the audience—in the Antiquity versions published subsequently were also read out, more precisely, performed continuously and aloud. The edited nature of the speeches, as a matter of fact, did not mean what Jules Humbert presumed,¹⁴ namely, that during the lawsuit Cicero took the floor several times—which can be true—and in the published speech these parts can be identified, i.e., can be and should be separated, and by this dissection they should be put back to their “original” place in the process of the lawsuit;¹⁵ instead, it only means that the delivered and the written text is more or less identical in terms of its essential content and form; yet, certain differences need to be taken into account, however, their extent—except for *Pro Milone*—is not on the merits: in other words, the published speech is not a starting point and raw material for reconstructing the delivered *oratio*.

When editing the speeches for publication, Cicero, as a matter of fact, might have modified the text—and in certain cases, for example, in *Pro Murena* and *Pro Caelio* at certain points he did modify it¹⁶—sometimes in order to spare the sensitivity of the parties concerned in the lawsuit, but these modifications must have been by no means considerable, in other words—except for the above mentioned *Pro Milone*—did not lead to “forging” the speech. This will be supported if we examine Cicero's intention to publish the speeches. In addition to setting *exemplum* to those who study the craft/art of rhetoric, in several cases, Cicero was undoubtedly driven by political intentions to publish his speeches because he wanted to raise a monument to the memory of his own deeds and achievements¹⁷ by making his speeches available to “eternity”. It cannot be denied that regarding certain political speeches—e.g. the *Catilinarian orations*—he was accused in the Antiquity already for the published text excessively differing from the delivered one¹⁸. As, however—and this is increasingly true regarding the oral pleadings—he was led by the intention to set *exemplum*, at most he might have woven certain information into the text that seemed to be irrelevant in the lawsuit or was public knowledge but was possibly indispensable for the reader of the speech as background information, thus making the speech a complete whole. Furthermore, it should not be forgotten: publication of oral pleadings did not arise primarily from political motivation, and by a completely rewritten speech the orator could have highly shaken his own trustworthiness.¹⁹ The distortions, “shifts of the point” in the handling of the facts of the case and the *argumentatio*, easier to identify in the written version, which could not strike the judges who only listened to and did not read the speech and could not turn back the pages, were not disturbing either²⁰—it was just by this that Cicero (who proudly declared that in

¹³ Cf. Cic. *De orat.* 2, 187.

¹⁴ Humbert 1925. passim

¹⁵ See Stroh 1975. 31–54.

¹⁶ Cf. Classen 1985. 3f.

¹⁷ As evidence of Cicero's awareness of his achievements see Ps.-Sall. *Cic. 5. O, fortunatam natam me consule Roman!*

¹⁸ Cf. Dio Cass. 47, 7, 3.

¹⁹ The reasons of changes will be analysed in the chapter about *Pro Milone*.

²⁰ Cf. Classen 1985. 7.

Cluentius's case he threw sand, that is, dust into the judges' eyes²¹) wanted to show to people who read him: that is how one must achieve the goal, have success, win a lawsuit!

As we "should" read the published speeches (in accordance with Cicero's intention too) continuously, without turning over and back the pages, that is, without any interruption and break; thus, the analysis—basically contrary to the author's intention, i.e., the nature of the work—can in each case only comment on the speech, whose prime aim is to produce impact on the audience and achieve success. So, we should not forget about the fact that the description, "labelling" of the parts of the given speech by the technical terms of rhetoric often cannot say anything about the *oratio* itself: that is where the dividing line of rational aesthetics—and rational analysis at all—runs. We can take even the St Peter's Basilica to pieces: limestone, marble from Carrara, gilding—yet, the arithmetical addition of limestone, marble from Carrara and gilding will not produce St Peter's Basilica as a result. The whole is always more than the sum of its parts!

²¹ Quint. *inst.* 2, 17, 21.

I. Order of procedure of penal adjudication in Cicero's age

In the legal terminology of the age of the Republic the term “*quaerere*” indicated a body, which was operated under the control of the magistrate, consisting of *iudices*, and was to adjudge certain crimes. In what sense does the activity denoted by the verb *quaerere* apply to the operation of the court, or its specific elements? Most often *quaerere* denotes the activity of the magistrate controlling *quaestio*, sometimes that of *iudices*,²² however, it is not used for the parties' activity in the lawsuit. It is unclear what the function *quaerere* originally covered. Theodor Mommsen supposed that as part of the *quaerere* activity the magistrate controlling *quaestio* addressed questions to the defendant and the witnesses regarding the case. It is hard to prove this assumption because descriptions are available only from the periods after Sulla, and in this epoch the role of the magistrate and the *iudices* were rather passive, the way the lawsuit was conducted was controlled by the parties. Thinking of the criminal proceedings of the archaic age it is hard to imagine—knowing the complicated structure of the Roman order of procedure of this age strictly adherent to form—that the magistrate was free to address questions to the parties.

Furthermore, *quaerere* can be explained in two other ways: this term was used to denote the investigation conducted by the *quaestio* on the case, or the question of the magistrate controlling the *quaestio* addressed to *iudices* regarding the defendant's guilt. The first interpretation fits the order of procedure used in the 1st century B.C., but cannot be applied—as Theodor Mommsen's assumption cannot be either—to the legal order of the archaic age. The latter interpretation can be seen as fully corresponding to the early order of procedure, and can be brought into harmony with the sources of the 1st century, if it can be supposed that the original meaning of the word had obscured, and that is why certain loci refer to *iudices* as the subjects of *quaerere*.²³ It is in this sense *quaestiones perpetuae* can be postulated from the 2nd century using Cicero's formulation.²⁴ These forums can be called permanent because at the beginning of the official year the praetor urbanus made a list enumerating the name of the members of the courts of justice typically assigned to adjudicating specific crimes, which was in effect throughout the year, so there was no need to set up new courts of justice in each case. In addition to *quaestiones perpetuae*, or *ordinariae*, there were *quaestiones extraordinariae* (although this term does not occur in sources), which were usually set up to adjudge cases with heavier political weight.²⁵

Several hypotheses have been made in the literature to explain the origin and development of the procedure of *quaestio*,²⁶ and for a long time it was supposed that this form of procedure evolved not earlier than the 2nd century, so, for example, Theodor Mommsen discovered the analogy of the procedure of the *recuperatores* in it,²⁷ and Hitzig tried to explain it with influence produced by Greek judicial process.²⁸ However, taking the fact into account that both *lex Calpurnia* from 149 regulating *quaestio repetundarum*, the oldest form we have knowledge of, and *lex Acilia repetundarum* included provisions on the typical Roman legal institution *sacramentum* in action,²⁹ then this theory becomes groundless. A drastically new and still prevailing result was attained by Wolfgang Kunkel, who believed that the Romans

²² Mommsen 1899. 187.

²³ Kunkel 1974b 35.

²⁴ Cic. *Brut.* 106.

²⁵ See e.g. the Bona Dea trial.

²⁶ See Lenglé 1971. 25ff.

²⁷ Mommsen 1887–1888. I. 182.

²⁸ Hitzig 1909. 41f.

²⁹ *Lex Acilia* 23.

strictly separated the institutions of *coercitio* and *iudicatio* right from the outset; and—contrary to Theodor Mommsen’s interpretation—the option of *provocatio ad populum* referred only to the latter. The scope of comitial adjudication covered crimes of political nature, while other kinds of crime were assigned to the scope of *iurisdictio* by the magistrate, which meant nothing else than adjudging the case under the *quaestio*.³⁰

At the turn of the 3rd and 2nd centuries, in the organisation of the state having assumed the form of an empire, penal *iurisdictio* exercised solely by the magistrate and the popular assembly no longer seemed to be properly efficient because an institution system set for frameworks of a city-state could not be expected to survey matters increasingly extensive both in terms of territory and complexity and especially to judge them competently. For these reasons, more and more often they reached back to the legal institution of *quaestiones extraordinariae* applied earlier sometimes in judging political crimes.³¹ Livius gives an account of a case, which can be accepted as authentic, where originally they wanted to roll up a conspiracy in Capua—for this purpose a special dictator was elected, then, the control over the proceedings was taken over by the consuls—however, soon suspicion was cast on organisations set up in the city of Rome, suspicious of corrupt practices³² and the investigation was conducted thereafter following this track.³³ Initially, similar kind of punitive court of justices were set up much rather for suppressing organising activity of the unruly allies,³⁴ however, from the first half of the 2nd century more and more often they used this legal institution also for investigating the cases of former Roman magistrates. Initially, the *quaestio extraordinaria* was set up in each case by *senatus consulta*,³⁵ or by *plebiscita* too,³⁶ yet, the senate continued to draw certain cases to its own powers.³⁷

The *quaestio* was chaired by some magistrate, who announced the judgment of the *consilium iudicum*; so, in the case of these *quaestiones* it is possible to speak about regular *iudicium publicum*. However, regarding all the matters that the accounts describe it should not be forgotten that they came into the limelight in relation to deeds or persons that aroused public interest, and presumably that is why the senate took great care to investigate and set the form of imposing sanction on them. As regards judging crimes of perpetrators from lower layers of people, not carrying any political significance, it is hard to imagine that in each case a *senatus consultum* or as well *plebiscitum* adopted specially for this reason would have dealt with them; it is more probable that they were decided by the *tresviri capitales*, who could proceed ex officio or on the grounds of reporting.³⁸

On the setup and order of procedure of *iudicia publica* prior to A. C. Gracchus very few data have been preserved, but the following can be established with tolerable certainty: in the event of *quaestiones extraordinariae* constituted in some cases by *senatus consulta* and *plebiscita* the participants of the *quaestio*, as a matter of fact, had to be gathered again in each case, the head of the procedure (*quaesitor*) was appointed by the senate. Presumably the senate also had its say in selecting the members, but could also entrust a *quaesitor* to do so. A permanent list of senators eligible for being members in the *quaestio* most probably did not exist; all the more as the number of senators was too low to make it possible to set up several lists.³⁹

³⁰ Kunkel 1962. 21ff.

³¹ Kunkel 1974b 46.

³² Liv. 9, 26, 9.

³³ Liv. 9, 26, 6f.

³⁴ Liv. 10, 1, 3; 28, 10, 4; 29, 36, 10f.

³⁵ In the early period of the Roman Republic *quaestiones extraordinariae* could be set up only by *senatus consulta*.

³⁶ E.g. the case of M. Popilius Laenas (consul in 173-ban) and L. Hostilius Tubulus (praetor in 140).

³⁷ Cf. Liv. 39, 41, 5; 40, 37, 4; Cic. *Lael.* 37; Val. Max. 4, 7, 1.

³⁸ Cic. *Caecil.* 50; Cic. *Cluent.* 39.

³⁹ Kunkel 1974b 51.

In view of the above it becomes clear that *quaestio extraordinaria* was nothing else but a committee established by the senate to investigate a particular case, which selected and delegated members from its own staff, whose composition was thus determined fairly arbitrarily, allowing ample ground for entertaining political sympathy and antipathy disguised in law. In the development of the legal order it must have become an aim to create *quaestiones perpetuae*, that is, to set up lists including names of citizens who could be nominated and elected members of *quaestiones* that would stay in effect during the entire official year. This was, however, prevented by the low number of nominees since at that time the senate consisted of only three hundred persons, and the lists would have needed to include a multiple of the headcount necessary for conducting the proceedings. In theory there were two ways to eliminate this obstacle: either by raising the number of the members of the senate, or by terminating the privilege setting forth that only citizens ranked among senators were allowed to elect a member of the *quaestio*. During the times unsuccessful attempts were made on three occasions to raise the number of the members of the senate to six hundred persons,⁴⁰ which later only Sulla managed to achieve for no other way did he see it possible to ensure the legislative monopoly of the senate.⁴¹ From the decades between C. Gracchus and Sulla sources report on the existence of a *quaestio perpetua de veneficiis* with full certainty, and the existence of *quaestiones perpetuae* can be assumed with great probability also in the event of crimes endangering the stability of public life (*ambitus*⁴² *crimen maiestatis*, *peculatus*⁴³). *Quaestiones* were chaired by the *iudex quaestionis*, which office was established most probably by C. Gracchus.

The date of creating *quaestio de sicariis* and *quaestio de veneficis* is not known; however, they certainly existed before 130 because at that time L. Cassius Longinus (consul in 127) provably fulfilled the chairman's office of *quaestio de sicariis*.⁴⁴ According to the general view, Sulla merged these two courts of justice (*quaestio de sicariis et veneficis*);⁴⁵ yet, for example, Andrew Lintott presumes that they continued to operate separately.⁴⁶ Nevertheless, this does not seem to be probable because in this case the two states of facts would have been regulated also by Sulla in two separate acts.⁴⁷ At a locus Pomponius refers to Sulla's court of justice purportedly set up for investigating *par(r)icidium*;⁴⁸ however, competent literature agrees with the point that *par(r)icidium* also fell within the powers of *quaestio de sicariis et veneficis*, and Sulla did not set up an independent *quaestio de par(r)icidio*,⁴⁹ as it is proved by the *oratio, Pro Roscio Amerino*, analysed by us. Erich S. Gruen presumes the existence of an independent *quaestio de par(r)icidio* before Sulla;⁵⁰ however, Cloud convincingly refutes this hypothesis, and points out that murder of relatives—depending on its means and form of committing—was to be judged before the *quaestio de sicariis* or *quaestio de veneficis*.⁵¹ Sulla's jurisdiction reforms kept and renewed the system of *quaestiones perpetuae* to the extent that only persons ranked among senators were allowed again to participate in the *quaestio* as jurors, and in 81 he stipulated the order of procedure in a law. From these laws no

⁴⁰ All three attempts (made by Ti. Gracchus, C. Gracchus and M. Livius Drusus) to raise the number of the senate failed.

⁴¹ Cf. Plut. C. *Gracch.* 5; Liv. *perioch.* 60.

⁴² Val. Max. 6, 9, 14; Plut. *Mar.* 5, 3.

⁴³ Plut. *Pomp.* 4, 1; Cic. *Brut.* 230; Val. Max. 5, 3, 5.

⁴⁴ Auct. ad Her. 4, 41.

⁴⁵ Cf. Santalucia 1998. 146.

⁴⁶ Lintott 1978. 127.

⁴⁷ Sáy 2001. 303.

⁴⁸ Paul. D. 1, 2, 2, 32.

⁴⁹ Santalucia 1998. 148.

⁵⁰ Gruen 1968. 261f.

⁵¹ Cloud 1971. 41ff.

more have been preserved by sources, i.e., Cicero's speeches and the writings of the jurists of the period of the Roman Empire, than what served their own purposes. That is, what can be discerned from the orators' arguments regarding the process of the proceedings, and what continued to be in effect in the period of Augustus and in later legislation since the lawyers of the classical age of jurisprudence were mostly not interested in legal history. In the mirror of the above, we have sure knowledge of the existence of Sulla's laws creating the following permanent *quaestiones*: *de sicariis et veneficiis*,⁵² *lex Cornelia testamentaria nummaria*,⁵³ *lex Cornelia de iniuriis*,⁵⁴ *lex Cornelia maiestatis*,⁵⁵ *lex Cornelia repetundarum*.⁵⁶ Concerning the existence of *lex Cornelia de ambitu* some doubt might arise; and no source on the existence of a possible *lex Cornelia de peculatu* is available.⁵⁷

Although several registers have been preserved with the list of the members of the *quaestio*, their composition, the form of assembling them, they mostly lack any systematic structure and are hard to survey, and give detailed account of cases that for some reason do not meet the usual order of procedure; so, they do not entitle the author to draw conclusions from them with full certainty with a view to answering the above questions. A point of reference is provided by the epigraphic material on the establishment of *quaestio repetundarum* introduced by C. Gracchus; yet, it cannot be considered the prototype of *quaestiones*.⁵⁸ Accordingly, the names of the potential members of *quaestio repetundarum* were included in a list consisting of four hundred and fifty persons to be compiled by the praetor peregrinus within ten days from entering into office on the grounds of the census from the range of citizens who belonged to *ordo equester*. The members of *quaestio* who were to adjudge the given case were selected from this list—read out by the *praetor* before the *contio* and confirmed by taking an oath on its authenticity—as follows. First, the accused was obliged to name all the jurors with whom he were kin or brothers-in-law, or maintained fiduciary relation as a member of the same *sodalitium* or *collegium*. Then, in twenty days the prosecutor selected one hundred from the four hundred fifty jurors who were not allowed to maintain the above relations with the prosecutor (*editio*). After that, in forty days the accused was allowed to reject fifty from the one hundred designated jurors (*reiectio*). The fifty persons so produced constituted the jury of the *quaestio repetundarum*. Since only the *lex repetundarum* gives an account as a creditworthy source of the order of procedure of this period, the author can only presume that in the periods before Sulla the other *quaestiones* operated also on the grounds of the *editio* and *reiectio* principle.⁵⁹

Through Sulla's legislation the exclusive right of participation in the *quaestiones* was restored to the *ordo senatorius*, and by that the range of potential jurors significantly narrowed, which did not allow the exercise of principle of *editio* and *reiectio* widely exercised formerly by the parties. Thereafter, jurors were selected on the basis of *sortitio*, and the parties' right of rejection became very limited. The key sources on the order of procedure of this period are provided by Cicero's speeches. He handled certain procedural issues in detail in several speeches, those against Verres and the one delivered in defence of Cluentius. The members of the *quaestiones* were designated on the grounds of the register of senators which was divided into ten *decuriae*, where each *decuria* included the names of sixty senators, of whom those who fulfilled some magistrates were not eligible as potential jurors; so, one *decuria* provided

⁵² Coll. 1, 3, 1; 12, 5; Cic. *Cluent.* 148; Marci. D. 48, 1, 1. 3, 1; Marci. D. 48, 8, 1 pr.; Gai. D. 29, 5, 25 pr.–1.

⁵³ Cic. *Verr.* 2, 1, 108; *nat.* 3, 74; Paul. 5, 25; Inst. 4, 18, 7; D. 48, 10.

⁵⁴ Ulp. D. 47, 10, 5 pr.–5; Paul. 5, 4, 8; Inst. 4, 4, 8.

⁵⁵ Cic. *Pis.* 50; Tac. *ann.* 1, 72.

⁵⁶ Cic. *Rab.* 9; *div. in Caec.* 17.

⁵⁷ Kunkel 1974b 62.

⁵⁸ Cf. Cic. *Verr.* 2, 1, 26.

⁵⁹ Kunkel 1974b 69.

approximately forty-fifty senators. Each of these *decuriae* was assigned at the beginning of each official year to a specific *quaestio*,⁶⁰ and in specific lawsuits it was from them that jurors were selected by drawing lots.⁶¹ Although both of the parties had the option of *reiectio*, albeit, within a narrow scope, an accused not belonging to the order of *senatores* was allowed to reject three, an accused belonging to the *ordo senatorius* was presumably allowed to reject somewhat more jurors.

The *quaestio* established from the *decuria* of the senate through *sortitio* and *reiectio* had a much lower headcount than those before Sulla's time. The composition of this body possibly further changed when any of them died, or did not take part in the work of the *quaestio* for reasons established and approved by law, in these cases the headcount was completed from another *decuria* of the senate.⁶² One of the most clearly observable cankers of Sulla's *quaestiones* was liability to be bribed, which was enhanced by the low number of members. That is what made L. Aurelius Cotta *praetor* enact *lex Aurelia iudiciaria* in 70, which terminated the legislative monopoly of the order of *senatores*, and ordered to compile the list of jurors from each of the orders of senators, knights and aerar tribunes. Cicero reports that in this age three hundred senators were allowed to act as jurors. The lists were compiled at the beginning of his year of office by the praetor urbanus, most frequently he took over his predecessor's list after having made necessary amendments. In particular lawsuits—as it can be ascertained from quite limited number of sources—the jurors were selected not from the list of nine hundred but from the chapters thereof divided into specific *quaestiones*.

⁶⁰ Cf. Cic. *Verr.* 1, 158; 2, 2, 79; *Cluent.* 103.

⁶¹ Cf. Cic. *Verr.* 1, 16.

⁶² Cic. *Verr.* 2, 1, 158.

II. Homicide—murder of relatives, poisoning (*Pro Roscio Amerino*, *Pro Cluentio*)

II. 1. Lawsuit of Sextus Roscius from Ameria

Pro Sexto Roscio Amerino is Cicero's first "criminal case", in which he tries to clear his defendant of the charge invented by his relatives and the dictator's confidant under the pretext of Sulla's massacres. Sextus Roscius junior was charged with patricide by his relatives asserting that he had his father murdered in June 81. By the assistance of Sulla's confidant, Chrysogonus the relatives attained that the victim's name—although he was considered the dictator's adherent—should be included in the register of persons inflicted by *proscriptio*, and so his property could be sold by auction, of which both Chrysogonus and the relatives of the murdered man had their handsome share, except for, "as a matter of fact", Roscius senior's son, who was thus done out of his inheritance. To enjoy the treacherously obtained property in safety, they wanted to get the lawful inheritor out of the way by a well-thought out *Justizmord*, therefore, they charged him with *par(r)icidium*. The case covered a dangerous political swamp, so they thought that none of the illustrious advocates of the age would undertake the defence. However, the young Cicero resolved to represent the case that seemed hopeless not so much for legal but much more for political reasons; his undertaking—which was eventually crowned by success—required a lot of courage, precise handling of the facts of the case and rhetoric skill, yet, in the long run established the reputation of the ambitious advocate and launched his career as an orator and a man of public affairs. Afterwards, the orator speaks about the acknowledgement obtained through the successful statement of the defence, on the one hand; and, seriously criticises his own one-time overflowing, unrestrained style, yet, appreciating his own courage, on the other.

First, we intend to shed light on the historical situation (II. 1.); after that, we outline the statutory background of the crime that provides grounds for the charge (II. 2.); finally, we analyse the handling of the facts of the case applied in *Pro Roscio Amerino* and the rhetorical tactics by which he uncovered the real movers of the invented charge and their motivation and attained the acquittal of the accused (II. 3.).

II. 1. 1. Historical background of *Pro Roscio Amerino*

By his oration delivered in 80 in defence of Sextus Roscius from Ameria, the twenty-six/twenty-seven years old Cicero assumed the role of counsel for the defence in a criminal action for the first time.⁶³ This period of the Republic of Rome saw the so-called Sulla restoration, under which the commander had himself named dictator vested with powers entrusted with law-making and governance of the state (*dictator legibus scribundis et rei publicae constituendae*)—he was helped to obtain this procedure legitimising all his former acts by the interrex, the law proposed by L. Valerius Flaccus. After his victory, on 1 November 82, at Porta Collina, Sulla proscribed the adherents of his enemies, Marius⁶⁴ and Cinna, that is, on the grounds of *lex Cornelia sive Valeria* he imposed *proscriptio* on them.⁶⁵ Their names—through Sulla's *proscriptiones* approximately four thousand seven hundred citizens were killed—were put on a table (the phrase *pro-scribere* comes from here), and

⁶³ See Kinsey 1967. 61ff.

⁶⁴ See Carney 1960. 83ff.

⁶⁵ See Baker 1927. passim; Behr 1993. passim; Bloch–Carcopino 1935. passim; Christ 2002. passim; Diehl 1988. passim; Hantos 1988. passim; Heftner 2006. passim; Hurlet 1993. passim; Lehmann 2005. passim; Linke 2005. passim; Santangelo 2007. passim; Schur 1942; Volkmann 1958. passim

citizens were obliged to capture the persons concerned and report the place where they stayed to the authorities. Twelve thousand *denarius* blood-money was offered for each person inflicted by *proscriptio*, and if the owner subjected to *proscriptio* was killed by his slave, in addition to money reward, he was given *status libertatis* and “Cornelius” as *nomen gentile*. Descendants of persons inflicted by *proscriptio* were deprived of eligibility; their property devolved to the state and was sold by auction on the Forum, which created a real state of paradise for professional buyers up (*sectores*).⁶⁶

Such danger-fraught historical times carry, by nature, the opportunity of abuses; the facts of the case providing grounds for *Pro Roscio Amerino* serves a text-book example for that. Sextus Roscius senior, a respected and well-to-do citizen of Ameria in Umbria, eighty-three kilometres north of Rome—who actually lived in Rome—in addition to his significant movable estate, owned thirteen estates in the provinces; he entrusted his son cca. forty years old at the time of the lawsuit to administer them, with whom he did not maintain a highly cordial relation (presumably due to their different conduct of life, the father’s urban, the son’s rustic attitude). After the lawful conclusion of the *proscriptio* and forfeiture of property, i.e., 1 June 81, Roscius senior, who was returning home from a supper party, was murdered near the Circus Flaminius. The relatives, who maintained a hostile relation with the victim, Titus Roscius Capito and Titus Roscius Magnus notified L. Cornelius Chrysogonus, Sulla’s libertine and confidant. Chrysogonus attained that Roscius senior’s name—although he was from first to last Sulla’s committed adherent—was put, subsequently, beyond the statutory deadline, on the list of persons inflicted by *proscriptio*; his goods were confiscated and sold by auction. Chrysogonus acted as the professional purchaser—nobody dared to make any bids against him—and acquired the property worth six million *sestertii* for two thousand (!) *sestertii*. And the Roscii were granted great reward; Capito was given three estates, and Magnus became the administrator of Chrysogonus’s business affairs. Sextus Roscius junior, to save his life, fled from Ameria to Rome where he found shelter in the house of Caecilia, who belonged to the notable *gens* of the Metelli. Chrysogonus, Capito and Magnus, who felt that the property so acquired was not secure from contest, decided to get the son of the victim out of the way by the invented charge of patricide. Although the charge was rather shaky, they trusted that paying regard to Chrysogonus’s relation to Sulla nobody would dare to act as counsel for the defence against the prosecutor of doubtful reputation, C. Erucius. Regarding this point, however, they were wrong. The young Cicero, who had until then accomplished only one case, Quinctius’s private law action, undertook and brilliantly solved the dangerous and delicate task.

To refute the official charge did not seem to be a hard task since Erucius did not even try to make the version presented by him too believable,⁶⁷ the only palpable argument against the accused was that he had not immediately interrogated the slaves present when his father was murdered and had not had minutes made out of that. When later on he wanted to do that, he no longer had the possibility to do so as by then the slaves had belonged to Chrysogonus’s suite. So, the difficulty implied in the lawsuit was of political nature. By amazing sense of tactics, Cicero hammered it again and again into the audience that just as Jupiter cannot care for every tiny problem of mortals,⁶⁸ Sulla cannot know of the foul deeds of his liberated slave.⁶⁹ Likewise, he called upon the nobility—as they could thank to Sulla that they regained their old lustre and influence—to distance themselves from elements like Chrysogonus,

⁶⁶ Krüger 1994. 143f.; Richter–Fleckeisen–Amon 1906. 1ff.; Mommsen 1899. 938¹. Cf. Sall. *Cat.* 51.

⁶⁷ Cic. *Rosc. Am.* 59ff.

⁶⁸ Cic. *Rosc. Am.* 131.

⁶⁹ Cic. *Rosc. Am.* 21. 25. 26. 91. 110. 130.

thereby again serving Sulla's intention, who placed great emphasis on fairness of court proceedings.⁷⁰

Accordingly, the structure of the speech is as follows.⁷¹ The introduction (*exordium, prooemium*) prepares the audience for what follows (*conciliare*)⁷² so that in the *narratio*⁷³ the presentation of the facts of the case (*docere*) could be given proper emphasis. In the *partitio*⁷⁴ Cicero outlines the planned order of demonstration, which is followed by the *argumentatio* itself,⁷⁵ meant to convince (*probare*). The *argumentatio* can be divided into three parts: Cicero first deals with Erucius,⁷⁶ then with the Roscii,⁷⁷ after that with Chrysogonus.⁷⁸ The *peroratio* of summary character intends to produce effect primarily on the audience's emotions.⁷⁹ This division is, of course, not carried through mechanically by the orator; at several points he makes digressions (*egressio, digressio*) where he again wants to win his audience's feelings over to his case and his defendant.⁸⁰ He somewhat separates the person of Sulla's freedman, Chrysogonus from the Roscii, casting the suspicion of committing the crime on the latter, and does not omit to stress the victim's political conviction, loyalty to Sulla, and the social role and responsibility of the nobles several times.⁸¹ The speech is characterised from first to last by a kind of harrowing pathos, which later on the orator himself attributed to his young age,⁸² which he successfully threw off after his studies in Greece.⁸³ In *Pro Roscio Amerino* he used excessive, archaising and everyday language elements more often; later on, as a mature orator he distanced himself from them.⁸⁴ The oration—as Roscius junior was acquitted⁸⁵—and undertaking the perils involved by it⁸⁶ bore worthy fruit to Cicero too, since from then on he was kept in evidence as one of the prime advocates of Rome.⁸⁷

II. 1. 2. Statutory regulation of the crime of *par(r)idicium*

The charge brought against Sextus Roscius was *par(r)idicium*, that is, patricide, murder of father—similarly, in a broader sense, this phrase was used for the facts of the case when somebody knowingly, in bad faith killed a free man.⁸⁸ Presumably, it goes back to Romulus that in accordance with law the Romans did not punish murder of relatives separately because they qualified killing of each Roman citizen patricide.⁸⁹ Later on, the crime of homicide was

⁷⁰ Cic. *Rosc. Am.* 154ff.

⁷¹ Krüger 1994. 146.

⁷² Cic. *Rosc. Am.* 1–14.

⁷³ Cic. *Rosc. Am.* 15–29.

⁷⁴ Cic. *Rosc. Am.* 29–36.

⁷⁵ Cic. *Rosc. Am.* 37–142.

⁷⁶ Cic. *Rosc. Am.* 37–82.

⁷⁷ Cic. *Rosc. Am.* 83–123.

⁷⁸ Cic. *Rosc. Am.* 124–154.

⁷⁹ Cic. *Rosc. Am.* 143–154.

⁸⁰ Cic. *Rosc. Am.* 13. 29ff.; 55ff.; 59ff.; 64ff.

⁸¹ Krüger 1994. 147.

⁸² Cic. *Brut.* 108.

⁸³ Cic. *Brut.* 316.

⁸⁴ Cic. *Or.* 107; *Phil.* 2, 30f.

⁸⁵ Plut. *Cic.* 3, 6.

⁸⁶ Cic. *off.* 2, 51.

⁸⁷ Cic. *Brut.* 312.

⁸⁸ Fest. 221. *Parricida non utique is, qui patrem occidisset, sed qualemcunque hominem indemnatum ... Si qui hominem liberum dolo sciens morti duit, par(r)icidas esto.*

⁸⁹ Plut. *Rom.* 22. For religious connotations see Agamben 1998. 54ff.

ranked into three states of facts: they called manslaughter in general *homicidium*, highway murderers and robbers *sicarii* and poison mixers and vicious murderers *venefici*. To prosecute these acts, Sulla set up a separate *quaestio* by *lex Cornelia de sicariis et veneficis*, until then, however, investigation against murderers was carried out by *quaestores par(r)icidii*.⁹⁰ Albeit, folk etymology deduced *par(r)icidium* (often written in the form *parricidium*) from *patricidium*, that is, *murder of father*, even Theodor Mommsen did not consider it well-founded in terms of history of language.⁹¹ Theodor Mommsen asserts that already in Cicero's age erroneous folk etymology served the use of *par(r)icidium*, which originally meant *voluntary manslaughter*, as *murder of father or relatives*.⁹²

Lex Pompeia de par(r)icidiis discussed *par(r)icidium* again in a narrower sense, that is, it applied it to killing parents, relatives and dependants,⁹³ once the ancient Roman *par(r)icidium* had been replaced by *homicidium*. Thus, Pompey ranked murder and attempted murder committed against relatives in the ascending and the descending line, siblings, parents' siblings, their children, spouse, the betrothed, parents of spouses and the betrothed, child's betrothed and spouse, step-parent, stepchild and liberating *patronus* under this law.⁹⁴ The occurrence of *par(r)icidium* in a stricter sense—as our sources prove—was not very frequent in Rome; the first murderer of father known by name is known from the times following the second Punic war, L. Hostius. The case of the first murderer of mother documented by name, Publicius Malleolus was discussed by rhetoric manuals in sufficient details,⁹⁵ and therefore we know the punishment imposed on *par(r)icidae*, sacking (*poenae cullei*) in proper details.⁹⁶ In the beginning, *poena cullei* must have been a sacrifice conciliating higher powers, *procuratio prodigii* rather than a sanction.⁹⁷ The Romans called the customary order, standstill of the world *pax deorum*, which meant gods' peaceful attitude towards man, and if this order was upset, it could be always traced back to gods leaving this standstill.⁹⁸ Upsetting the cosmic order, so, any extraordinary, new event was considered *prodigium*.⁹⁹ *Par(r)icidium* was also such a phenomenon violating the cosmic order, *pax deorum*.

The etymology of the word *prodigium* is doubtful; in Alois Walde's and Johann B. Hofmann's interpretation *prodigium* comes from *prod-aio*, which claims that *prodigium* means *foretelling* and *forepointing*.¹⁰⁰ This approach does not seem to be satisfactory because *prodigium* itself does not state anything, and definitely calls for interpretation; for this reason, pontifices used the Sibylline Books or haruspices to carry it out.¹⁰¹ It seems to be a more exact interpretation that the word comes from the compound *prod-agere*, consequently, *prodigium* is nothing else than “*supernatural forces which hide behind the surface, breaking through this shell, come forth, become manifest*”.¹⁰² Upon the occurrence of *prodigium*, be it of either

⁹⁰ Zlinszky 1991. 109; Cloud 1969. 258ff.; Santalucia 1998. 146; Sary 2001. 301ff.

⁹¹ Mommsen 1899. 612³.

⁹² Mommsen 1899. 613.

⁹³ Marci. D. 48, 9, 1. *Lege Pompeia de par(r)icidiis cavetur, ut, si quis patrem matrem, avum aviam, fratrem sororem patrualem matrualem, patruum avunculum amitam, consobrinum consobrinam, uxorem virum generum socrum, vitricum, privignum privignam, patronum patronam occiderit cuiusve dolo malo id factum erit, ut poena ea teneatur quae est legis Corneliae de sicariis. Sed et mater, quae filium filiamve occiderit, eius legis poena adficitur, et avus, qui nepotem occiderit: et praeterea qui emit venenum ut patri daret, quamvis non potuerit dare.*

⁹⁴ Zlinszky 1991. 113; Cloud 1971. 41ff.

⁹⁵ Cic. *inv.* 2, 149.

⁹⁶ Cf. Egmond 1995/96. 159ff.

⁹⁷ Mommsen 1899. 922f.

⁹⁸ Koves-Zulauf 1995. 61.

⁹⁹ Zintzen 1979. 1151.

¹⁰⁰ Walde–Hofmann 1954. II. 368.

¹⁰¹ Zintzen 1979. 1153

¹⁰² Koves-Zulauf 1995. 62.

private or state nature, once its meaning has been cleared up, that is, interpreted, *procuratio* had to be carried out, and proposition on its form was made also by the interpreters; if the same *prodigium* recurred more frequently, pontifices always ordered the same conciliation.

The punishment of *par(r)icida*, that is, sacking/being sewn in a sack considered *procuratio*—which was still in practice in the period of the Roman empire—was carried out as follows. After the sentence was delivered, the face of the convicted was covered with wolf skin and a wooden sole was tied to his feet so that his breath should not stain the air or his feet the earth. After that, he was whipped until he was covered with blood;¹⁰³ then, he was sewn in a sack made of rawhide together with a monkey, a cock, a dog and a viper. This sack with the convicted and the animals was thrown into the sea,¹⁰⁴ and so the person who had violated all natural laws could not be in direct contact with any natural elements, either with water or sunshine or earth or air, and could not deface them. Specific animals are often mentioned also by authors from the period of the Roman Empire,¹⁰⁵ especially because emperor Claudius took exceptional pleasure in the spectacle of executing qualified death penalties.¹⁰⁶ Why these animals were put into the sack beside the convicted cannot be decided with full certainty because—the sanction having become a symbol—in several cases antique authors themselves were reduced to conjectures.¹⁰⁷ They might have played a part in this ceremony as follows: the dog as an actor fulfilling tasks of guarding and warning—or possibly failing to fulfil them—the monkey as the caricature of man, the snake as a treacherous enemy living in wilderness and the cock as the animal of the goddess of the night, Hecate.¹⁰⁸

This cruel punishment, of course, did not threaten Roscius in reality as he would have had the opportunity—in view of the fact that he was not *par(r)icida manifestus*—to exercise *ius exulandi*, that is, the right of going into voluntary exile, which every Roman citizen was entitled to in the event that the proceedings conducted against him due to crime sanctioned by capital punishment took a turn unfavourable for him and he had to be afraid of being declared guilty. So, it is a rhetorical exaggeration by Cicero to repeat it again and again that Chrysogonus was thirsting by all means for Roscius's blood.¹⁰⁹ Consequently, *exilium* was not punishment but fleeing from punishment.¹¹⁰ If he had indeed had to be afraid of death penalty, Roscius would have had ample opportunity to do so, and the prosecutors would have been fully satisfied even with that.¹¹¹

The trial itself was held without either the facts of the case having been exactly cleared up or possible witnesses having been heard. The place and part of day of the crime was known, the date when it was committed was not—similarly, the number of perpetrators or assailants remained a mystery. Although Erucius brought out witnesses, to whom questions could be addressed by the parties, Cicero claimed that these witnesses were one by one bribed by the prosecutors' money. Slaves' testimony could be taken into account on the merits in a lawsuit only if it was taken from them under torture (*tormentum, eculeus*). Two slaves could have served additional information on the merits in the lawsuit indeed, and the accused could deliver his slaves voluntarily for being questioned by torture (*in quaestionem polliceri*).¹¹²

¹⁰³ Cf. Liv. 1, 26, 11.

¹⁰⁴ Mod. D. 48, 9, 9 pr. *Poena par(r)icidii more maiorum haec instituta est, ut par(r)icida virgis sanguineis verberatus deinde culleo insuatur cum cane, gallo gallinaceo et vipera et simia: deinde in mare profundum culleus iactatur. Hoc ita, si mare proximum sit: alioquin bestiis obicitur secundum divi Hadriani constitutionem.*

¹⁰⁵ Sen. *contr.* 5, 4; Sen. *clem.* 1, 15; Iuv. 8, 214; 13, 155.

¹⁰⁶ Suet. *Claud.* 34.

¹⁰⁷ Richter–Fleckeisen–Amon 1906. 13.

¹⁰⁸ Plin. *nat.* 29, 57; Ov. *fast.* 1, 455; Iuv. 13, 233; Cic. *nat.* 1, 97; Plaut. *Merc.* 761.

¹⁰⁹ Cic. *Rosc. Am.* 6.

¹¹⁰ Zlinszky 1991. 78.

¹¹¹ Richter–Fleckeisen–Amon 1906. 14.

¹¹² Cf. Cic. *Mil.* 59; Tac. *ann.* 2, 30, 12. On later regulation see Ulp. D. 48, 18, 1, 17–18; Mommsen 1899. 447ff.

Sextus Roscius would have done that with pleasure as his slaves could have proved his innocence, but these slaves had been removed from his ownership due to forfeiture of property imposed on him, and now he could demand extradition of the slaves only from T. Roscius Magnus administering Chrysogonus's property (*in quaestionem postulare*). Magnus refused to do so; and at that time the rule adopted in the period of the Roman empire was not in effect yet that during the action, on the parties' demand, even in spite of the owner's will, this part of the demonstration, that is, questioning of slaves by torture, could be conducted.¹¹³ In such cases the judge had to decide if the slaves made testimony only upon the effect of torture or their confession reflected reality.¹¹⁴

II. 1. 3. Handling the facts of the case in *Pro Roscio Amerino*

In order to reconstruct the facts of the case of *Pro Roscio Amerino*, it is evident to set out of the *narratio*¹¹⁵ of the speech. Roscius senior could come and go with a clear conscience in Rome even during the time of Sulla's *proscriptiones*¹¹⁶ as he had several friends from the circles of the nobility, who later on—when the oration was delivered—ran to help his son charged with patricide.¹¹⁷ Doom struck him from elsewhere: two of his relatives,¹¹⁸ T. Roscius Capito and T. Roscius Magnus, with whom he had maintained a hostile relation for a long time, allied to murder him.¹¹⁹ Regarding the details of implementing the murder Cicero does not make any effort to clear up mystery either:¹²⁰ Roscius senior was killed in Rome, sometimes in one of the evenings of the autumn of 81, just when he was going home from a supper party.¹²¹ The news of murder reached Ameria the same evening, however, the messenger, Mallius Glaucia—Roscius Magnus's friend—runs to the house of Roscius Capito, instead of the victim's son to tell the news.¹²² Ensuing events reveal the goal that moved the murderers: to grab Roscius's property.¹²³ The relatives straight away inform Sulla's libertine, L. Cornelius Chrysogonus, who was just staying in Volaterrae,¹²⁴ and ask for his help to obtain disposal over the property. Chrysogonus appears helpful: although the deadline of *proscriptiones* expired months before, he has Roscius senior put on the list of persons inflicted by *proscriptio*,¹²⁵ and from that moment his property worth six million *sestertii* becomes confiscable, and it is acquired by Chrysogonus himself for two thousand *sestertii*.¹²⁶ Roscius Magnus is entrusted with administering the property in his capacity as *procurator*, and he is not slow in grasping the opportunity of getting rich quickly;¹²⁷ from the victim's thirteen estates Roscius Capito seizes three,¹²⁸ and they simply chase the son of the murdered man away from his father's house.¹²⁹

¹¹³ Cf. Paul. 5, 16, 3.

¹¹⁴ Ulp. D. 48, 18, 1, 22. 27.

¹¹⁵ Cic. *Rosc. Am.* 15–29.

¹¹⁶ Cic. *Rosc. Am.* 16.

¹¹⁷ Cic. *Rosc. Am.* 1–4. 27. 77. 119. 147–149.

¹¹⁸ Cf. Cic. *Rosc. Am.* 96.

¹¹⁹ Cic. *Rosc. Am.* 17. 87.

¹²⁰ Cic. *Rosc. Am.* 97–98.

¹²¹ Cic. *Rosc. Am.* 18. 126.

¹²² Cic. *Rosc. Am.* 19. 95–99. 102.

¹²³ Stroh 1975. 55.

¹²⁴ Cic. *Rosc. Am.* 20. 105–108.

¹²⁵ Cic. *Rosc. Am.* 20f.; 32.

¹²⁶ Cic. *Rosc. Am.* 6. 21.

¹²⁷ Cic. *Rosc. Am.* 21. 23. 108.

¹²⁸ Cic. *Rosc. Am.* 17. 21. 99. 103. 108. 115. 117.

¹²⁹ Cic. *Rosc. Am.* 23ff.

To demonstrate their indignation, citizens of Ameria send a mission to disclose Roscius's political belonging to Sulla—that he is an adherent loyal to Sulla—and the injury suffered by Roscius junior.¹³⁰ The delegates, however, include Roscius Capito too, who does everything to mislead his fellow-delegates;¹³¹ and Chrysogonus arranges that the people from Ameria could not get before Sulla, and promises them that he himself will take measures to get the subsequent *proscriptio* declared invalid and the victim's son reinstated in his father's property.¹³² The naive country kinsmen, getting richer with a resolute false promise, return home without having fulfilled their duty; Chrysogonus and his accomplices resolve that they need to kill Sextus Roscius junior too so that they could enjoy the treacherously acquired property in peace¹³³—the candidate for victim, however, escapes to Rome to his father's friends.¹³⁴

Those who desired to keep the property had been left with no other choice than *Justizmord*: they brought a charge against the victim's son by virtue of patricide.¹³⁵ The representation of the charge was undertaken by Erucius, having already often acted as prosecutor,¹³⁶ whom Roscius Magnus, administrator of Chrysogonus's robbed property, served with a lot of "useful" advice¹³⁷—yet, Roscius Magnus was not an *accusator* in the strict sense of the word: although, as Cicero claims, he is among the prosecutors,¹³⁸ and he refers to him as *accusator* in the *peroratio*,¹³⁹ the orator would certainly not have omitted to mention Roscius Magnus being a prosecutor as exceptional impudence.¹⁴⁰ Roscius Capito acted as witness,¹⁴¹ and Chrysogonus, as Sulla's confidant and influential mover of the events, was to assume the part to prevent the real background of the facts from being disclosed.¹⁴² The prosecution pleaded that the murder arose from a family strife: Roscius junior had always hated his father,¹⁴³ and when his father planned to disinherit his son, the son decided to kill his father to avert it.¹⁴⁴ Cicero asserts that only his action has unmasked the vile plot that Chrysogonus himself wants to keep Roscius senior's property, and his accomplices are no other than the murderers themselves.¹⁴⁵

At first sight, Cicero's form of presentation seems to be round and free from contradictions—especially because young Cicero fulfilling the defence acts as a resolute and clean protector of justice and moral. According to several authors, for example, Richard Heinze,¹⁴⁶ Gustav Landgraf,¹⁴⁷ Ernst Lincke¹⁴⁸ and Wilfried Stroh,¹⁴⁹ Cicero does not properly justify the charge against the two Roscii. The motif of their act is logical as both profited from the murder,¹⁵⁰

¹³⁰ Cic. *Rosc. Am.* 24–25.

¹³¹ Cic. *Rosc. Am.* 26. 109–117.

¹³² Cic. *Rosc. Am.* 26.

¹³³ Cic. *Rosc. Am.* 13. 26.

¹³⁴ Cic. *Rosc. Am.* 27.

¹³⁵ Cic. *Rosc. Am.* 28.

¹³⁶ Cic. *Rosc. Am.* 28. 55. 61. 89.

¹³⁷ Cic. *Rosc. Am.* 35.

¹³⁸ Cic. *Rosc. Am.* 17. 87. 95. 104.

¹³⁹ Cic. *Rosc. Am.* 152.

¹⁴⁰ Stroh 1975. 56. (The opposite view—see Zumpt 1871. 519.)

¹⁴¹ Cic. *Rosc. Am.* 84. 101–103.

¹⁴² Cic. *Rosc. Am.* 5f.; 28. 58. 60f.

¹⁴³ Cic. *Rosc. Am.* 40ff.

¹⁴⁴ Cic. *Rosc. Am.* 52–54. 58.

¹⁴⁵ Stroh 1975. 57.

¹⁴⁶ Heinze 1960. 101.

¹⁴⁷ Landgraf 1914. 170.

¹⁴⁸ Lincke 1890. 187ff.; 193ff.

¹⁴⁹ Stroh 1975. 57ff.

¹⁵⁰ Cic. *Rosc. Am.* 17. 84–88. 99. 107. 152.

yet, at the moment when the murder happened they must have been far from being certain about the success of their plan. On the one hand, the period of *proscriptions* and forfeiture of property was long over at the time of the murder, and Chrysogonus did not side with the Roscii yet. On the other hand, according to Cicero's narrative, Roscius Capito was given his three estates at the same time¹⁵¹ when Chrysogonus entrusted Roscius Magnus with administering the estate grabbed by him: later, however, Roscius Capito appears in the delegation of the citizens of Ameria, which wanted to speak for returning the goods of the murdered Roscius senior to his son. How come they delegated Roscius Capito to the mission, and how could he deceive the rest of the members of the delegation by conspiring with Chrysogonus—at least as Cicero claimed? Cicero's explanation about the credulousness of the simple-minded kinsmen from the provinces is, according to Wilfried Stroh, simply a *topos*.¹⁵² If Capito was indeed sent to Volaterrae together with the delegation, then he could get the estate only later;¹⁵³ Cicero, however, cannot disclose this version to the judges because he would inevitably substantiate the presumption that Chrysogonus bribed Capito as a member of the delegation, that is, the commencement of the community of interest between them cannot be dated to the period preceding the murder. The interest of the defence requires that Capito should be “involved” in the chain of events as early as possible because that is what the hypothesis of the Roscius Magnus—Roscius Capito alliance can be founded on.

The starting point of Cicero's system of production of evidence should be looked for in the following: as the innocence of Roscius junior cannot be proved beyond any doubt—that is, he cannot completely refute either that the victim's son stayed in Ameria and not on the scene of the act, in Rome, at the time of the murder or that making a profit as motivation of patricide can be clearly ruled out (being subsequently done out of the inheritance does not exclude hope for the inheritance at the time of the act)—he needs to find the perpetrator(s) who can be substituted for the role of Sextus Roscius junior mentioned in the charge; in other words, he needs to make his own version believable.¹⁵⁴ It is quite interesting, however, that he does not choose the most obvious explanation, which would more or less run as follows: primarily Chrysogonus was behind the murder (perhaps with Roscius Magnus as joint offender) since it was him who benefited the most from the crime and it was him who prevented the interrogation of the eyewitness slaves—and Capito was, first, also indignant at the foul deed but was bribed by Chrysogonus and, so, he readily shut his eyes to the iniquity. Cicero knew very well that he could not directly attack Chrysogonus! It is not by chance that Cicero does not want to hear the delegates from Ameria as witnesses as they would probably testify that Sulla's libertine bribed Roscius Capito and thereby his argumentation would be ruined. Nor is it in the interest of the representative of the prosecution, Erucius to hear these testimonies as thereby attention would be inevitably drawn to whom the murder was in the interest of in the first place—without any special logical skills anybody could infer the answer: the man who entrusted him, Chrysogonus. So, albeit, Cicero charges Sulla's favourite, Chrysogonus, at the same time, he acquits him, and shifts the greater part of the weight of the crime onto Capito and Magnus.¹⁵⁵

Here, we come up against a rather paradoxical situation. Why did Chrysogonus want at any cost to have Roscius junior sentenced for patricide, although he himself put the victim on the list of persons inflicted by *proscriptio*, and it was paying regard to this circumstance that he could get his property through auction? Why did Cicero not use the fact of selling the victim's property by auction (*venditio bonorum*) for proving the innocence of his defendant or lack of

¹⁵¹ Cic. *Rosc. Am.* 21.

¹⁵² Stroh 1975. 58.

¹⁵³ Lincke 1890. 196.

¹⁵⁴ Stroh 1975. 59.

¹⁵⁵ Stroh 1975. 60f.

his motivation? To these questions Richard Heinze has given a highly probable explanation. If Roscius junior had wanted to prove his own innocence, more exactly, lack of crime by referring to the fact of *proscriptio*, thereby, for that matter, he would have served Chrysogonus's interests because he would have acknowledged the lawfulness of selling the father's property by auction and would have deprived himself of the legal grounds for reclaiming the inheritance. Verdict of acquittal resting on this basis would have been all grist to Chrysogonus's mill.¹⁵⁶ With respect to one element, Wilfried Stroh specifies Heinze's hypothesis, but thereby this explanation is even more confirmed. Citing Sulla's *proscriptio* laws, Cicero himself distinguished between the two reasons for forfeiture of property and auction: on the one hand, the property of those who were actually subjected to *proscriptio*, on the other hand, the goods of those who were killed in armed conflicts with Sulla's adherents were sold by auction *ex officio*.¹⁵⁷ First, Cicero suggests that Chrysogonus was able to acquire Roscius senior's property because he belonged to the first category,¹⁵⁸ and at this point the orator's form of expression becomes somewhat obscure; however, later on, when he investigates the fact of auction with a lawyer's eyes, he makes it clear that Chrysogonus had intentionally ranked the murdered man to the group of citizens who were done away with during the fight against Sulla's adherents.¹⁵⁹ Consequently, not even in theory could Roscius junior defend himself by, albeit, acknowledging murder of his father but, paying regard to *proscriptio*, referring to the point that his act was legally not considered crime—even if he does not take the burden of patricide (in the present case, not to be sanctioned under criminal law, “merely” to be condemned morally) upon himself, it would have been sufficient for him to refer to fact that his father was killed during fights.¹⁶⁰ The lawsuit would be by all means concluded with acquittal, yet, Chrysogonus would have invariably disposed over the inheritance—that is, the accused would have been compelled to play the role that he was meant to in accordance with the scenario forced upon him by the charge brought against him. It was exactly this cast that Cicero wanted to change!

In his statement of the prosecution, Erucius does not mention either Chrysogonus's name or the fact of *venditio bonorum*,¹⁶¹ from that moment—in accordance with the logic of the prosecution—the defence would be offered two options: either it would too not bring up the sale of the property of the murdered by auction or it would found the strategy of defence just on this piece of evidence, asserting that the fact of *venditio bonorum* would prove that Roscius senior was killed in the fight against Sulla's adherents and was not murdered by his son. If the defence tried to proceed along the first path, then, in the short run, Chrysogonus would become the winner in the case because the accused would be sentenced for patricide, yet, simultaneously, it would become clear that Sulla's libertine unlawfully possesses the victim's goods and could anytime expect a lawsuit brought by the Roscii laying claim to such goods. If, however, the defence chose the second path, and Roscius junior were acquitted based on Chrysogonus's tactics—as the murder happened during the fights—then, Chrysogonus could keep the property of the murdered and by that the lawfulness of the auction would be also proved, and the victim's son could not lay claim to paternal inheritance.¹⁶² Thus, Chrysogonus's interest was exactly acquittal of the accused in such form!

¹⁵⁶ Heinze 1960. 99.

¹⁵⁷ Cic. *Rosc. Am.* 126. *Ut aut eorum bona veneant, qui proscripti sunt ... aut eorum, qui in adversariorum praesidiis occisi sunt*

¹⁵⁸ Cic. *Rosc. Am.* 32.

¹⁵⁹ Cic. *Rosc. Am.* 127.

¹⁶⁰ Stroh 1975. 61f.

¹⁶¹ Cic. *Rosc. Am.* 60.

¹⁶² Stroh 1975. 62f.

All this explains why Erucius's statement of the prosecution was so weak as if he did not really strive for the conviction of the accused.¹⁶³ Cicero claims that Erucius has compiled the counts of the indictment so carelessly because he hoped that nobody would dare to defend the accused as thereby he would oppose the influential Chrysogonus too—although, Chrysogonus's name was not even mentioned in the statement of the prosecution. If, however, we presume that the conviction of the accused was not in the interest of the possessors of the property of the murdered—because the version on Roscius killed during the fights and selling the property lawfully by auction would have been more suitable for their plans—then, Erucius's low-key statement becomes understandable: the outcome of a well-built effective statement of the prosecution would have been unpredictable as, in case of a weaker defence, the judges would have convicted the accused. So, the prosecution waited to see to what direction the defence wants to proceed: if they step in the trap of the tactics sparing the life of the accused but letting the property get lost, then Chrysogonus's party has achieved their goal. If they don't, then in the later phase of the lawsuit they can increase the pressure on the judges aimed at sentencing the accused. So, they have provided an excellent example of how brilliantly a bad statement of the prosecution can serve the interests of the prosecution! Another trick of the prosecution: Capito brings it to the knowledge of the accused what (either true or invented) facts he could disclose to the judges in his testimony. In general, it is not customary to “let the opponent into” the strategic secrets of the prosecution—except when dropping certain information is nothing else than intimidation. According to the well harmonised collusion between Erucius and Capito, although the representative of the prosecution retains certain information from the judges, the witness of the prosecution “warns” the accused lest he should cherish excessive hopes based on the mild statement of the prosecution.¹⁶⁴

Cicero could choose (could have chosen) between the two paths “offered” by the prosecution and a third “own” path. If he accepts the lifeline thrown by the opponent, which states that the victim's death was caused not by his son but military actions, he spares the life of the accused but he can say goodbye to his property for ever. (A less talented counsel for the defence perhaps follows this tactics, for we should not forget: even a hook will be a lifeline for somebody drowning!) If he does not bring up the auction not mentioned by the prosecution, his defendant can keep his property, yet, he does not clear him of the charge of patricide, his life will continue to be in danger. (Who knows what incriminating confessions Capito and his associates will come forward with in the lawsuit? The political climate would also make conviction for patricide probable—as it is admitted by Cicero too.¹⁶⁵) As a matter of fact—and Chrysogonus had to think of that too—Cicero can unmask and prove the real intentions of the prosecution that the aim is nothing else than acquittal of the accused and thereby grabbing of his inheritance. Here, however, he might have argued as follows: if the defence doubted the lawfulness of *venditio bonorum*, then, on the one hand, it would put Sulla himself in negative light as all that took place on his behalf;¹⁶⁶ on the other hand, the judges might include several senators who profited from the *proscriptiones*, so, to attack auctions “en bloc” would be a serious tactical error. Finally: if the victim was killed not in the fights and was not murdered by his son either, the question would righteously arise: who the actual murderer could have been. Pursuant to the *cui prodest* principle, of course, Chrysogonus would be suspected as instigator, however, it would call for highly great courage—much rather recklessness—for the

¹⁶³ Cic. *Rosc. Am.* 59.

¹⁶⁴ Stroh 1975. 64.

¹⁶⁵ Cic. *Rosc. Am.* 28.

¹⁶⁶ Cic. *Rosc. Am.* 6. 143.

defence to search for the perpetrator of the crime among Sulla's direct confidants, whom the dictator has, besides, made the possessor of the goods of the deceased.¹⁶⁷

As a starting point, Cicero chooses the third path but he does not follow it through: on the one hand, he makes it clear that the primary purpose of the lawsuit is not to avenge Roscius senior's death but to decide the fate of the property left by him; on the other hand, he leaves the effort of the prosecution in obscurity that the proceedings should be concluded by the acquittal of Roscius junior. He does everything to prevent the judges from realising the opponent's strategy, what is more: from first to last he hammers into them that Chrysogonus wants to have the victim's son sentenced to death to enable him to grab the property. So, Cicero's form of representation is much more pathetic than reality: the accused is fighting for his life rather than his property; and he does not beg the judges to reinstate the party injured by *proscriptio*s in this property, he begs them to decide not to deprive the unlucky fellow, already done out of his property, of his life.¹⁶⁸ He obscures his own tactics too, as its aim is, among others, just to get the property of the accused back.¹⁶⁹ In the course of that, he, as a matter of fact, has to attack Sulla's favourite, Chrysogonus, who, in his own words, produces huge impact on public affairs too¹⁷⁰: Cicero claims that the liberated slave has unlawfully grabbed the property of the murdered man, and has commenced the lawsuit from the background against the victim's son based on invented charge so that he could keep the property. It is literally a matter of life and death for the orator to separate the person of Sulla and Chrysogonus strictly from one another: the absolute ruler of the state knows nothing of the libertine's proceeding for if he knew about it, he would not allow that such flagrant roguery could be committed under the protection of his name!¹⁷¹ Perhaps, the delegates from Ameria managed to appear before Sulla but the dictator refused their request in order to favour his confidant—it is not by chance that the counsel for the defence does not summon the members of the delegation as witnesses; yet, he is aware that the prosecutor cannot put this question to them either since thereby he would shed bad light on Sulla: Erucius is compelled to tolerate that Cicero clears Sulla of accusations in the case for if he contradicts him, he himself will denigrate the dictator.¹⁷²

At this point, in contrasting Sulla with Chrysogonus Cicero's voice sounds rather false, yet, he cannot go too far in the outbursts against Chrysogonus: he can denigrate him just as much as it is absolutely necessary for the sake of the case, so, he must clear him of the charge of murder, provided that he finds a suitable murderer. That is where Roscius Capito and Roscius Magnus come into the picture. In the person of Capito, based on his conduct of life and depraved morals¹⁷³ and the benefit of three estates gained from the victim's goods, an ideal murderer could be found, but the fact that he was elected a member of the delegation sent to Sulla—for being a member of the board of the town council of Ameria,¹⁷⁴ which otherwise makes the obvious character of depraved conduct of life questionable—seems to contradict all this. In the case of Magnus, the situation is just the opposite: his conduct of life cannot be contested, and only indirectly does he benefit from the victim's death but he stays in Rome at the time of the murder and Chrysogonus appoints him to be the administrator of the property acquired in the auction.¹⁷⁵ So, one by one they are not suitable for the role of the murderer for

¹⁶⁷ Stroh 1975. 65.

¹⁶⁸ Cic. *Rosc. Am.* 7. 32. 49. 128. 143ff.; 150.

¹⁶⁹ Heinze 1960. 102.

¹⁷⁰ Cic. *Rosc. Am.* 6.

¹⁷¹ Cic. *Rosc. Am.* 6. 21ff.; 25. 91. 127. 130.

¹⁷² Stroh 1975. 66f.

¹⁷³ Cic. *Rosc. Am.* 17. 84. 100.

¹⁷⁴ Cic. *Rosc. Am.* 25.

¹⁷⁵ Cic. *Rosc. Am.* 17. 86.

Cicero, the two together, however, constitute a pair that perfectly fits in the orator's form of presentation, and that is how Cicero creates from them the pair of Castor and Pollux of the case, who operate inseparably in unity of intention.¹⁷⁶

Here, the orator builds the disposition with amazing virtuosity: the usual *prooemium* should be followed by *narratio* expounding his own version created of the events and the *argumentatio* proving that. However, as his own *narratio* would not form a rounded whole, by placing the most important element of the *argumentatio* before the *narratio* he integrates it in the *prooemium*.¹⁷⁷ At the very beginning of the speech, by a crushing tirade he brings it to the knowledge of the judges: the murder serves the interests of Chrysogonus and not of the accused, the purpose of the lawsuit is nothing else than that Chrysogonus could keep the unlawfully grabbed property. He has not yet said a word of the murder committed, he right away turns the cast of the lawsuit around: Roscius junior's case itself is a statement of prosecution against Chrysogonus, and the representative of the prosecution can at best defend its points.¹⁷⁸ The judges could not easily withdraw from this influence—they must have felt that Cicero has opened their eyes, and from then on they gladly shut their eyes to minor contradictions of the defence.¹⁷⁹ It is not by chance that in the *argumentatio* embedded in the *prooemium*, the orator refrains from directly bringing up the murder or investigating after the perpetrators for if he does that, in the spirit of *cui prodest*, he would have cast the suspicion on Chrysogonus—and he had to carefully avoid that. So, he must give an account of the form of the murder in the *narratio*.¹⁸⁰ After he describes Roscius senior at length, and he does not omit to emphasise that he was a committed adherent of the nobility and Sulla himself,¹⁸¹ he calls—and for that matter right away as an inseparable pair, in the inner circle of Chrysogonus—Capito and Magnus to the stage.

It is at this point where he formulates his hypothesis on the motif and circumstances of the murder. Here come the arguments on the Roscii's past: Cicero calls Capito an old gladiator, which is quite a degrading *appositio*, and adds that Magnus became his follower too. At the same time, the statements regarding the perpetrators' past can be inferred from the crime itself. The *narratio* follows the order of the events—of course, by increasingly highlighting dramatic moments—and breaks through the order of the events at one point only: according to the orator's narrative Capito receives his share from the victim's property as early as before his participation in the delegation, thereby the judges can see that it is proved that he was part of the conspiracy from the outset. The *argumentatio* following the above¹⁸² is preceded by a brief *partitio*.¹⁸³ In accordance with the rules of *anticategorica*¹⁸⁴ Cicero, first, puts forward evidence to prove Roscius junior's innocence,¹⁸⁵ then, he starts his attack against Capito and Magnus¹⁸⁶—his aim here is to protect his defendant's life. This is followed by the argumentation on Chrysogonus's unlawful grabbing¹⁸⁷—here, the orator is driven by the motif of getting the robbed paternal inheritance back. Cicero's narrative on the murder already contains the presumption that the auction was from the first illegal.¹⁸⁸

¹⁷⁶ Stroh 1975. 68.

¹⁷⁷ Cic. *Rosc. Am.* 6ff.

¹⁷⁸ Heinze: 1960. 101; Büchner 1964. 83.

¹⁷⁹ Stroh 1975. 69.

¹⁸⁰ Cic. *Rosc. Am.* 15–29.

¹⁸¹ Cic. *Rosc. Am.* 15.

¹⁸² Cic. *Rosc. Am.* 37–142.

¹⁸³ Cic. *Rosc. Am.* 35–36.

¹⁸⁴ Cf. Quint. *inst.* 7, 2, 23.

¹⁸⁵ Cic. *Rosc. Am.* 37–82.

¹⁸⁶ Cic. *Rosc. Am.* 83–123.

¹⁸⁷ Cic. *Rosc. Am.* 124–142.

¹⁸⁸ Stroh 1975. 70f.

In the part of the *argumentatio*, which is aimed at clearing Roscius junior, Cicero starts his reasoning by enumerating the so-called *argumenta de vita*.¹⁸⁹ Cicero claimed that the representatives of the prosecution could bring up nothing against Roscius junior's conduct of life. Although Erucius charged him with misappropriation of funds (*peculatus*),¹⁹⁰ he was unable to produce evidence on the merits to certify his statement. Cicero takes the charge of *peculatus*—which nevertheless referred to some kind of greed—out of the original context and by referring it to the scope of other lies, he dismisses it briefly. The exploration of the so-called *argumenta e causa*¹⁹¹ is more profound and precise than it would be required by Erucius's pleadings: the orator wins the sympathy of the audience by lengthy digressions and introduces more scope for usual topoi (the prosecutors' bad conscience, high appreciation of peasant's way of life in Rome, etc.). Much more original is the structure of the so-called *argumenta e facto*.¹⁹² Although the prosecution asserts that Roscius, as an indirect perpetrator with the assistance of slaves, killed his father,¹⁹³ Cicero ignores this statement and considers the following opportunities one by one: Roscius did away with his father by himself, with the assistance of others—freemen or slaves from Ameria or Rome. As slaves are listed at the end of the enumeration only, the orator judges this opportunity by stating that his defendant—if he had been the perpetrator—would have used this tool only in a fit of despair. Yet, he refutes this count of the indictment with the greatest of ease, stating that Roscius junior asked that the slaves should be subjected to interrogation and, in the course of that, torture, Roscius Magnus and Chrysogonus prevented their interrogation. The so-called *argumenta e tempore* following the above prepares the attack against Capito, Magnus and Chrysogonus.¹⁹⁴

In the attack against the opponents, Cicero puts forward his arguments in an order following the chronology of the events.¹⁹⁵ First, he takes account of the line of *argumenta e causa* and *argumenta e vita anteacta* with respect to Roscius Magnus presented by the orator as the actual perpetrator of the murder.¹⁹⁶ The framework of *argumenta e facto*—more specifically *argumenta e loco*,¹⁹⁷ *e tempore*,¹⁹⁸ *e tempore consequenti*¹⁹⁹—is filled primarily by expounding the importance of the role of the messenger of the murder, Mallius Glaucia and the news forwarded by him to Capito.²⁰⁰ It is by this that Cicero brings the other Roscius, the accomplice of the murder, Capito in the picture, against whom he straightaway puts forward his reasoning to be formulated on the basis of *argumenta e causa*²⁰¹ and *argumenta e vita*,²⁰² which he closes with a tirade against the two Roscii.²⁰³ Cicero does not carry through the analysis of the importance of the news immediately forwarded to Chrysogonus,²⁰⁴ however, by stressing the extent of grabbing he allows to presume the motif of the crime.²⁰⁵ Spending a long time with the role of the delegation sent to Volaterrae is primarily aimed at increasing

¹⁸⁹ Cic. *Rosc. Am.* 37–39.

¹⁹⁰ Cic. *Rosc. Am.* 28.

¹⁹¹ Cic. *Rosc. Am.* 40–73.

¹⁹² Cic. *Rosc. Am.* 73–81.

¹⁹³ Cic. *Rosc. Am.* 79.

¹⁹⁴ Cic. *Rosc. Am.* 80ff.

¹⁹⁵ Cic. *Rosc. Am.* 83–123.

¹⁹⁶ Cic. *Rosc. Am.* 84–91.

¹⁹⁷ Cic. *Rosc. Am.* 92.

¹⁹⁸ Cic. *Rosc. Am.* 93.

¹⁹⁹ Cic. *Rosc. Am.* 93–98.

²⁰⁰ Cic. *Rosc. Am.* 92–98.

²⁰¹ Cic. *Rosc. Am.* 99.

²⁰² Cic. *Rosc. Am.* 100.

²⁰³ Cic. *Rosc. Am.* 102–104.

²⁰⁴ Cic. *Rosc. Am.* 105–107.

²⁰⁵ Cic. *Rosc. Am.* 108.

the antipathy against Capito.²⁰⁶ At this point, Cicero again turns to the refusal of the opportunity of interrogating the slaves,²⁰⁷ which, albeit, supports Roscius junior's innocence, leaves little surface of attack on the movers of the charge as the orator is compelled to declare that the present owner of the slaves, Chrysogonus is little interested in the murder itself, only by his power (*potentia*) did he help the infamy of the infamous Capito and Magnus (*audacia*).²⁰⁸ His last "argument" could not have been convincing to the judges either; yet, paying regard to the dangerous political circumstances of the case, the orator must have thought—as a matter of fact, leaving it open for the judges to draw the conclusion that Sulla's confidant must have had a greater part in committing the murder—that he had better declare that as far as he is concerned he tries to judge Chrysogonus's acts "in good faith": namely, that his corruptness does not make Chrysogonus a murderer.²⁰⁹

The *argumentatio* against Chrysogonus hides several difficulties attributable, among others, to the deterioration of the text;²¹⁰ however, building the reasoning reminding of tightrope walking between interests could not represent an easy task even to Cicero. First, he qualifies the sale of the victim's property unlawful;²¹¹ then, he again emphasises that the idea of the lawsuit has been made up and the action is moved by nobody else than Chrysogonus, who is motivated solely by the intention to keep the unlawfully grabbed property thereby.²¹² These difficulties must have arisen not so much in outlining the psychological background but in presenting arguments in such form that the judges coming from the nobility should not feel injured: as a part of them enjoyed the benefits of *proscriptiones*, Cicero had to refrain from doubting the appropriateness and lawfulness of forfeitures of property and auctions for in this case he most probably could have been afraid of the nobles setting their rows straight against the orator, who attacks the *proscriptio* and its consequences, and his defendant.²¹³ Accordingly, first, he sharply separates Chrysogonus's deeds in the past from the procedure of others who benefited from auctions and *proscriptiones*,²¹⁴ then, with overwhelming pathos he argues that if the judges distance themselves from the corrupt practices of this kind of parvenus—quite clearly he refers to the class-consciousness and human envy of the nobles—the cause of the nobility will shine all the more brightly and immaculately.²¹⁵

After the orator has flattered the self-respect of the nobility, he must convince the judges simultaneously of two, completely contradictory demands: on the one hand, he must insist on that Roscius junior has no other desire than sparing his life, and in return he would be pleased to deliver his property voluntarily to Chrysogonus²¹⁶—on the other hand, he must not forget about his actual goal, specifically, that simultaneously with obtaining verdict of acquittal, he should get the robbed paternal inheritance back for his defendant. Inspired by a brilliant idea, he separates the claim of the accused from his own desire (formulated as a general statement for the public): when he begs the judges for sparing Roscius's life, he speaks on behalf of his defendant²¹⁷—and when he demands reinstating of the lawful property status, he turns to the judges in his own voice but on behalf of public order calling for security in law.²¹⁸ By doing

²⁰⁶ Cic. *Rosc. Am.* 109–118.

²⁰⁷ Cic. *Rosc. Am.* 119ff.

²⁰⁸ Cic. *Rosc. Am.* 122.

²⁰⁹ Stroh 1975. 74.

²¹⁰ Cic. *Rosc. Am.* 124–142.

²¹¹ Cic. *Rosc. Am.* 124–131.

²¹² Cic. *Rosc. Am.* 132ff.

²¹³ Stroh 1975. 75.

²¹⁴ Cic. *Rosc. Am.* 124–125.

²¹⁵ Cic. *Rosc. Am.* 135–136.

²¹⁶ Cic. *Rosc. Am.* 144.

²¹⁷ Cic. *Rosc. Am.* 128.

²¹⁸ Cic. *Rosc. Am.* 129.

so, he maintains the legal claim for paternal inheritance, but by nothing does he impair the passionate course of the *peroratio* begging for mercy, referring to eternal laws of humanity²¹⁹—and while the judges are listening to Cicero’s soul shaking periods with deep emotion, they can safely forget about the real subject of the lawsuit at stake for both of the parties: the six million *sestertii*.²²⁰

It is not without any reason that Cicero himself considered this oration delivered by him at the age of twenty-six his masterpiece²²¹ as he solved numerous quite conflicting tasks by brilliant rhetorical tactics: he built his own version on the murder, in which he unmasked and at the time obscured the opponent’s intentions; on behalf of his defendant he waived the paternal inheritance worth several millions, at the same time, on behalf of the public he maintained, from first to last, the claim of the accused to get it back; he set up the “hierarchy of infamy” where the two infamous Roscii, Magnus and Capito are placed as murderers at one pole, the “merely” greedy and corrupt Chrysogonus in the middle, and, compared to the murderers, a complete opposite is constituted by the other pole, the dictator, Sulla knowing nothing of abuses and foul deeds, whose name has been abused in bad faith by his subjects and confidants.²²²

While recognising the virtues of content of the speech, Wilfried Stroh criticises its structure at several points. He argues that the *partes orationis* excessively, one might say, in a schoolish manner, follow the order set in the literature of rhetorical training, and they allow to infer a kind of *superstitio praeceptorum*,²²³ almost superstitious insistence on what has been acquired in training. Accordingly, Cicero too sharply separates *narratio* from *argumentatio* and does not finish certain threads once started (so, for example, the references to Magnus’s profiteering or to the purported assassination attempt against Roscius junior), which might have aroused the audience’s suspicion or at least interest.²²⁴ These matters of detail and criticised elements would have been probably handled by greater circumspection by the mature Cicero, however, we should not forget that this *oratio* is the second speech of the twenty-six years old orator; yet, among cases of greater importance, his first serious and successful attempt.

The formal exaggerations, the Baroque-like amplitudes of the asianism, the pathetic rattle sometimes almost crossing the border of good taste were cut off of Cicero’s style by practice and further rhetoric studies—nevertheless, the ingenuity of rhetorical disposition, the precise yet flexible handling of the legal facts of the case, the masterly implementation of merging logical and topical arguments, which later on served the basis of Cicero’s *ars oratoria*, we can see blossoming out already in *Pro Roscio Amerino* in full pomp.

II. 2. Lawsuit of Aulus Cluentius Habitus

The statement of the defence delivered in the criminal action (*causa publica*) of Aulus Cluentius Habitus—Cicero’s longest actually delivered speech left to us—is from 66, that is, the year when Cicero was *praetor*. In certain respect, it is the precious stone of Cicero’s *ars oratoria* since its narrative is vivid, full of turns like a crime story; events, scenes, planes of time replace one another boldly, sometimes seemingly illogically but, being subordinated to the effect the orator means to attain, in an exactly premeditated sequence. Cluentius was

²¹⁹ Cic. *Rosc. Am.* 143–154.

²²⁰ Stroh 1975. 76f.

²²¹ Cic. *Brut.* 312.

²²² Stroh 1975. 77.

²²³ Cf. Quint. *inst.* 4, 2, 85.

²²⁴ Stroh 1975. 78.

charged, on the one hand, with poisoning his stepfather, Staius Albius Oppianicus. The other part of the charge was founded on the criminal proceedings under which eight years before Cluentius charged Oppianicus with poisoning attempt against him, as a result of which Oppianicus was compelled to go into exile—in the current lawsuit, however, the prosecution brought it up against him that the former court of justice declared Oppianicus guilty purely because Cluentius had bribed the judges. *Lex Cornelia de sicariis et veneficis* of 81 served as basis for judging crimes that provide grounds for the charge of poisoning; however, the prohibition of bribing judges applied to the order of senators only, and Cluentius belonged to the order of knights.

First, we intend to outline the historical background of the oration, so to say, the historical facts of the case (I. 2. 1.); then, we turn our attention to the opportunity of applying statutory facts of the case, i.e., *lex Cornelia de sicariis et veneficis*. (II. 2. 2.) After that—in accordance with the system of arguments divided into two of the *oratio*—we analyse handling of the charge of bribe arising in relation to *iudicium Iunianum* and discussed at length (II. 2. 3.), and the counts of the indictment on poisoning commented upon shortly by Cicero, in terms of the rhetorical tactics and handling of the facts of the case followed in the speech. (II. 2. 4.) Finally, we examine the rhetorical tools of Cicero’s strategy to explore how the orator handled, modified or distorted the system of the charges and chronology—to support the argument, which can be considered brilliant with a lawyer’s eyes too. (II. 2. 5.)

II. 2. 1. Historical background of *Pro Cluentio*

Cicero refers to the oration delivered in defence of Aulus Cluentius Habitus in 66 in *Orator* written twenty years later as an example of using the three genres of style in the same speech,²²⁵ and quotes a truly successfully made phrase²²⁶ from it.²²⁷ Writing about the orator’s power of judgement Quintilian brings up *Cluentiana* as a textbook example of properly built rhetorical strategy,²²⁸ and elsewhere he expounds that Cicero threw sand (that is, dust) into the judges’ eyes.²²⁹ The oration is cited by Gellius too;²³⁰ Pliny considers it Cicero’s most outstanding rhetorical achievement,²³¹ and from among Claudius Tryphoninus mentions it.²³² Philology of the modern age also devoted considerable scope to the *Pro Cluentio*, Theodor Mommsen refers to the speech as an outstanding example of antique “criminal statistics”.²³³ The accused of the lawsuit, A. Cluentius Habitus was born in Larinum in north Apulia controlled by the Auri, Albi, Cluentii and Magii related by manifold marriage connections and kinship,²³⁴ which shows the reflection of crimes growing wild in Rome²³⁵ and it cannot be said that at a rate of a small town.²³⁶ He lost his father, Cluentius senior when he was fifteen,

²²⁵ Cic. *Or.* 103.

²²⁶ Cic. *Cluent.* 199.

²²⁷ Cic. *Or.* 108.

²²⁸ Quint. *inst.* 6, 5.

²²⁹ Quint. *inst.* 2, 17, 21. *gloriatu est offudisse tenebras iudicibus Cluentianis*

²³⁰ Gell. 16, 7, 10.

²³¹ Plin. *epist.* 1, 20, 4.

²³² Tryph. D. 48, 18, 39. Cf. Nörr 1978. 122ff.

²³³ Mommsen 1875. 528. *Die Criminalstatistik aller Zeiten und Länder wird schwerlich ein Seitenstück bieten zu einem Schaudergemälde so mannichfaltiger, so entsetzlicher und so widernatürlicher Verbrechen, wie es der Prozeß des Aulus Cluentius in einem Schoß einer der angesehensten Familien einer italischen Ackerstadt vor uns aufgerollt.*

²³⁴ See Hoenigswald 1962. 109f.

²³⁵ Cf. Sall. *Cat.* 11, 4.

²³⁶ Kroll 1924. 176.

in 88;²³⁷ two years later his mother, Sassia got married again, and to the husband of her daughter, Cluentia, that is, her own son-in-law, A. Aurius Melinus, at that.²³⁸ That is where Cicero dates the bad relation between the accused and his mother from as he claims that Cluentius was so much shocked at Sassia's act that he decided not to maintain any relation with his mother.²³⁹ Aurius—purportedly as a result of the machinations of St. Abbius Oppianicus—fell victim of Sulla's *proscriptiones*,²⁴⁰ and Cluentius's mother married Oppianicus, who earlier divorced at least two wives, Papia (Magius's widow) and Novia, and lost two wives, the elder Cluentia and Magia.²⁴¹

It is worth noting that to illustrate the hatred between Oppianicus senior and Cluentius Cicero does not use the opportunity that he could properly exploit as the psychological motivation of the assassination attempted by Oppianicus against his stepson, namely, he does not mention how Cluentius responded—possibly with antipathy or anger—to the fact of the marriage of his mother and Oppianicus.²⁴² Magia was the mother of Oppianicus junior, who acted as accuser against Cluentius, that is, the son of his stepmother in 66. Oppianicus senior purportedly wanted to get his stepson, Cluentius poisoned and used C. Fabricius for carrying out his plan, who tried to win the help both of Scamander, the libertine and the slave of the physician who treated Cluentius for performing the murder.²⁴³ It is impossible to clarify how much the fact of the assassination attempt could be considered proved; however, Cluentius brought a charge first against Scamander, then Fabricius and finally his stepfather, Oppianicus senior. The court of justice found all the accused persons guilty; however, Oppianicus was convicted with a little majority of the votes cast.²⁴⁴ The lawsuit involved several suspicious circumstances, for example, the judges were drawn irregularly,²⁴⁵ the suspicion of bribe²⁴⁶ emerged with respect to several senators, e.g., C. Fidiculanus Falcula,²⁴⁷ M. Atilius Bulbus and Staienus.²⁴⁸

Based on all that, suspicion extensively spread that the lawsuit was influenced by bribes and bribe attempts. In spite of the fact that Oppianicus was convicted, Cicero tries to present the case as if Oppianicus himself might have been the briber and it was thanks to this that almost half of the members of the court of justice voted for his innocence, in contrast with Scamander and Fabricius who were unanimously convicted; on the other hand, Oppianicus's counsel, L. Quinctius suspected Cluentius of bribe as by his formal accusation he eventually won success, and used this case for agitating as a tribune before the popular assembly against the corruptness of the order of senators constituting the courts of justice.²⁴⁹ Consequently, the lawsuit caused political stir and served as grounds for proceedings against several senators who participated in the lawsuit as judges.²⁵⁰ Cicero, who defended Scamander in the 74 proceedings, refers to the case as a textbook example of the bribeability of courts of justice

²³⁷ Cic. *Cluent.* 11.

²³⁸ Cic. *Cluent.* 12f.

²³⁹ Cic. *Cluent.* 16. Cf. Hoenigswald 1962. 115.

²⁴⁰ Cic. *Cluent.* 25.

²⁴¹ Cic. *Cluent.* 27f.

²⁴² Hoenigswald 1962. 116.

²⁴³ Cic. *Cluent.* 47ff.

²⁴⁴ Cf. Cic. *Caecin.* 29.

²⁴⁵ Cic. *Verr.* 2, 1, 157.

²⁴⁶ Cic. *Verr.* 1, 29.

²⁴⁷ Cic. *Caecil.* 28f.

²⁴⁸ Cic. *Verr.* 2, 2, 79.

²⁴⁹ Cic. *Cluent.* 74ff.

²⁵⁰ Classen 1985. 21.

just because Oppianicus was sentenced by only little majority of the votes cast, from which he wanted to create evidence of or at least arguments on the bribe committed by the accused.²⁵¹ Two years after he was convicted, in 72, Oppianicus senior died in exile but near Rome²⁵²—the prosecution claimed that Cluentius had him poisoned²⁵³—however, no factual data are available on the circumstances of his death. His widow, Sassia suspected her son (that is, Oppianicus’s stepson), Cluentius of having poisoned Oppianicus, and she tried to confirm her suspicion by testimonies—primarily forced from slaves—but she did not succeed in it.²⁵⁴ However, after further deaths occurred, and Cluentius got involved in them under unclarified circumstances, in 66 Abbius Oppianicus junior—presumably twenty-one years old at the time of the lawsuit²⁵⁵—brought a charge against Cluentius, a member of the order of knights, based on Sulla’s *lex Cornelia de sicariis et veneficis*, which contained the state of facts elements homicide, illegal possession of arms, making and passing on poison for the purpose of manslaughter, arson and certain procedural crimes, such as for example bribing the court of justice in order to have innocent persons sentenced—however, it extended this later scope of state of facts to magistrates and senators only.²⁵⁶ Based on that—paying regard to the letter of the law—Cluentius could not be declared guilty in the charge of bribe if for no other reason than because he did not belong to the scope of subjects of the law as he came from a family in the order of knights and had never held a state office.²⁵⁷ The office of *iudex quaestionis* was fulfilled by Q. Voconius Naso;²⁵⁸ the young Titus Attius, knight of Pisaurum acted on the side of the prosecution,²⁵⁹ the defence of Cluentius, who can be most probably considered guilty in the charges brought against him, was undertaken by Cicero, a *praetor* in 66, who attained that the accused was acquitted.²⁶⁰ The court of justice consisted of thirty-two jurors, made up, on the grounds of *lex Aurelia iudiciaria* of 70, of senators, knights and aerar tribunes each constituting one-third of the panel.²⁶¹

The defence followed a double path: it did not come to the main count of the indictment immediately; instead, it dealt with the issue of bribe first. In order to support his own narrative on bribe, to discuss the subject of bribe more extensively than the accuser: first, he details Oppianicus senior’s guilty past record, and deals with two former lawsuits related to the assassination attempt against Cluentius. In the introduction Cicero announces that in his statement of the defence he will follow the double path indicated by the prosecution and will justify why he deals with the first point more profoundly than with the second one: the charge of poisoning is fully unfounded, therefore, it can be get done with briefly; the bribe case has been generally known for eight years already, and the joint effort of the counsel for the defence and the judges will be required to do away with it. The first part of the statement of the defence consists of three subchapters, which deal with Oppianicus senior’s past record, the poisoning lawsuit of the year 74 and the bribe case. In the second part of the oration, which now covers the main count of the indictment, i.e., the issue of assassination committed by Cluentius against Oppianicus by poison, the orator passes over other purported acts of the accused and the crime of poisoning with lapidary conciseness and almost suspicious ease, and

²⁵¹ Cic. *Verr.* 1, 38–40.

²⁵² Kroll 1924. 174.

²⁵³ Cf. Cic. *Cluent.* 161ff.

²⁵⁴ Hoenigswald 1962. 111; Kroll 1924. 175.

²⁵⁵ Stroh 1975. 195.

²⁵⁶ See Mommsen 1899. 628; Kunkel 1962. 64–70; Cloud 1969. 258–268; Classen 1965. 140; Humbert 1938. 276.

²⁵⁷ Stroh 1975. 196.

²⁵⁸ Cic. *Cluent.* 147f.

²⁵⁹ Cic. *Cluent.* 65. 84. 156; *Brut.* 271.

²⁶⁰ Kroll 1924. 174.

²⁶¹ Stroh 1975. 202.

he spends more time only on the testimonies enforced from slaves brought up by the prosecution as evidence.

II. 2. 2. Applicability of *lex Cornelia de sicariis et veneficis* in Cluentius's lawsuit

In the beginning of the speech, in the *prooemium*, Cicero strictly separates the charge of murder committed by poison and the charge of bribing the court of justice that passed sentence on Oppianicus senior eight years before, which was politically highly exploited by *subscriptor* Attius.²⁶² The charge could be based (i) on assassination and mixing of poison, (ii) several poisoning attempts and bribing the court of justice, (iii) simply on assassination attempt.²⁶³ It makes it rather difficult to reconstruct the facts that Cicero both conceals facts unpleasant to his defendant and dispenses with elements self-evident to the audience of the period but no longer known to the reader of the present day. It is clear that as counsel for the defence Cicero's task was to prove to the judges that his defendant had not committed the crime(s) he was charged with—that is, in accordance with the fundamental rhetorical principles he had to proceed in compliance with *status coniecturalis*.²⁶⁴

To a lawyer's eyes, one of the most interesting questions of *Pro Cluentio* is whether the charge brought by Oppianicus junior based on *lex Cornelia de sicariis et veneficis* against Cluentius applied to manslaughter committed by poison only or covered bribe of the court of justice too, which the accused committed, as claimed by the accuser, eight years before, in the lawsuit against Oppianicus senior. In clarifying the question, as a matter of fact, the problem of the reliability of the source base arises as Cicero's form of presentation and his references to the text of the law are most probably tendentious—even if he could not have modified or distorted the text of the law on the merits when citing it—and the form of Sulla's laws left to us is from a much later age;²⁶⁵ furthermore, it must be taken into account that the text effective at the time of the lawsuit is not necessarily identical with the text left to us.²⁶⁶ Although the later version of *lex Cornelia de falsis* sanctions active bribe in court of justice, it is not probable that the original *lex Cornelia testamentaria* contained provisions to such effect. In the attempt to determine the counts of the indictment precisely, one should not forget about the circumstance that in the *quaestio* proceedings the accuser was allowed to present everything to the jurors that he could bring up against the accused since his aim was to declare guilt in general only and not to fix guilt that can be declared in specific counts of the indictment since punishment was not based on the discretion of the court of justice.²⁶⁷ We cannot know for sure if in *delatio nominis* it was mandatory to notify the law and if in addition to naming the law that provided grounds for the charge it was mandatory to specify its exact passage or if it was mandatory to name other counts of the indictment to be referred to in the scope of the charge and whether they were binding with respect to the continuation of the lawsuit in the event that they were determined.²⁶⁸

There is a good chance of stating that in the introduction of the lawsuit it was mandatory to set the counts of the inducement in writing, as Cicero notes this in *De inventione* regarding the period before Sulla.²⁶⁹ It is worth looking at how much Cicero specifies statutory grounds of

²⁶² Cic. *Cluent.* 1–2. 11. 119. Cf. Humbert 1938. 287.

²⁶³ Classen 1972. 1–17; Classen 1978. 604ff.; Köhler 1968. 100–109; Pugliese 1970. 155–181.

²⁶⁴ On the different *status* see Martin 1974. 22ff.

²⁶⁵ Paul. 5, 23; Coll. 1, 2. 3; D. 48, 8. Cf. Mommsen 1899. 628ff.; Cloud 1969. 258ff.

²⁶⁶ Classen 1972. 2.

²⁶⁷ Classen 1972. 3.

²⁶⁸ Mommsen 1899. 385⁴.

²⁶⁹ Cic. *inv.* 2, 58.

the charge of the given lawsuit in his speeches and to what extent he comments on the introductory part of the lawsuit (*postulatio, delatio nominis, receptio nominis*). References to the state of facts and charge of *de pecuniis repetundis*,²⁷⁰ *de maiestate*,²⁷¹ *de ambitu*,²⁷² *peculatus*,²⁷³ *inter sicarios* and *veneficii*,²⁷⁴ *iniuriarum*,²⁷⁵ *furti*,²⁷⁶ *de vi*,²⁷⁷ *de alea*²⁷⁸ and *de parricidio*²⁷⁹ can be found item by item.²⁸⁰ Furthermore, in several cases he names the particular law, for example *lex Plautia de vi*,²⁸¹ *lex Iulia de pecuniis repetundis*,²⁸² *lex Papia*,²⁸³ *lex Acilia*²⁸⁴ and *lex Scantinia*.²⁸⁵ In several orations he refers *expressis verbis* to the charge being in conformity with the facts of the case, for example, in *Pro Roscio Amerino*,²⁸⁶ *In Verrem*—among others regarding the statues erected²⁸⁷—*Pro Scauro*,²⁸⁸ *Pro Rabirio Postumo*²⁸⁹ and *Pro Ligario*.²⁹⁰

In *Pro Cluentio* Cicero's form of presentation is twofold. On the one hand, it gives the impression that the court of justice is competent exclusively in the case of poisoning,²⁹¹ and article six of *lex Cornelia de sicariis et veneficis* on bribing the court of justice does not apply to Cluentius as the scope of persons is restricted to the order of senators;²⁹² on the other hand, it deals with bribe continuously as *crimen*. The *quaestio* chaired by Q. Voconius Naso was undoubtedly competent primarily in cases of poisoning—which, as a matter of fact, does not exclude bringing up other counts of the indictment—at the same time it contained a section that sanctioned bribe.²⁹³ It is worth looking at the points referred to by Joachim Classen in order to clarify if the charge was in conformity with the facts of the case. In spite of incomplete source base it can be pointed out that in no other cases was a charge brought due to bribe in court of justice on the grounds of *lex Cornelia de sicariis et veneficis* as there were other opportunities for sanctioning bribe of the court of justice. Furthermore, it is not probable that *iudex quaestionis* would have sustained the charge contrary to the letter of the law, more specifically, that the prosecutor would extend the state of facts of Sulla's law to the order of knights, beyond the order of senators. Cicero asserts that Attius often referred to *aequitas*, by which he argued for the extensive interpretation of the law, and Cicero—although he wants to protect Cluentius against the peril arising from the suspicion of bribe—does not refer to bribe even once as *crimen* in conformity with the charge, and quotes no testimony to refute it;

²⁷⁰ Cic. *Caecil.* 76; *Verr.* 2, 2, 142; *Q. fr.* 3, 1, 15; *fam.* 8, 8, 2. 3.

²⁷¹ Cic. *Q. fr.* 3, 1, 15; *inv.* 2, 72; *fam.* 3, 2, 3; *Phil.* 1, 23.

²⁷² Cic. *Cael.* 16. 76; *De orat.* 2, 274. 280; *Q. fr.* 1, 2, 15; 2, 3, 5; 3, 2, 3; *Cluent.* 114.

²⁷³ Auct. ad Her. 1, 22.

²⁷⁴ Cic. *inv.* 2, 58; *Rosc. Am.* 90; *Cluent.* 21; Auct. ad Her. 4, 23.

²⁷⁵ Cic. *dom.* 13; *inv.* 2, 59.

²⁷⁶ Cic. *Cluent.* 163; *fam.* 7, 22; *Flacc.* 43.

²⁷⁷ Cic. *red. in sen.* 19; *Q. fr.* 2, 3, 5; *Sest.* 90. 95.

²⁷⁸ Cic. *Phil.* 2, 56.

²⁷⁹ Cic. *Rosc. Am.* 28. 64.

²⁸⁰ Classen 1972. 5.

²⁸¹ Cic. *fam.* 8, 8, 1.

²⁸² Cic. *Rab. Post.* 12.

²⁸³ Cic. *Balb.* 52.

²⁸⁴ Cic. *Verr.* 2, 1, 26.

²⁸⁵ Cic. *fam.* 8, 12, 3; 8, 14, 4.

²⁸⁶ Cic. *Rosc. Am.* 28. 61. 64. 76.

²⁸⁷ Cic. *Verr.* 2, 2, 141.

²⁸⁸ Cic. *Scaur.* 1.

²⁸⁹ Cic. *Rab. Post.* 8. 9. 37.

²⁹⁰ Cic. *Lig.* 1. 4. 5. 9. 11.

²⁹¹ Cic. *Cluent.* 1. 2. 148. 164.

²⁹² Cic. *Cluent.* 144ff.

²⁹³ Classen 1972. 10f.

instead, he underlines it much rather as a point brought up by the prosecution that can generate prejudice²⁹⁴ and bias.²⁹⁵

II. 2. 3. The “charge” of *iudicium Iunianum* and bribe in court of justice

As the starting point of his speech Cicero chose the speech of *subscriptor* Attius—as the main accuser, Oppianicus scarcely said anything²⁹⁶—apparently he recognised it as a rhetorical achievement. In his very first sentences he tried to reflect on the opponent’s speech and mitigate its effect, which, however, might raise considerable suspicion as to whether he had reconstructed the opponent’s argument without any distortion.²⁹⁷ By the appearance that he speaks accepting Attius’s division²⁹⁸ he undoubtedly made an effort to give the impression of sincerity, insistence on truth and lack of rhetorical tactics to the audience.²⁹⁹ Some paragraphs later the hearer or the reader will be surprised to notice that it is just deviation from the accuser’s system, individual arrangement of the facts, circumstances and evidence by which Cicero wants to convince the judges of his truth, emphasising that they will be able to form an opinion and make judgment on what had happened after having learned of the full scope of the structure set up by him.³⁰⁰ Cicero looks forward, with trust, to the refutation of the actual charge discussed by the opponent—as the orator claims³⁰¹—just touching on the issue, that is, the charge of poisonings (more accurately three poisonings), and he contrasts it with the extensively discussed charge sufficiently known to the public, the charge of bribing the court of justice passing sentence eight years before; at the same time, he stresses that only the charge of poisonings falls within the competence of the court of justice set up now.³⁰² (Based on Cicero’s statement of the defence the charges of poisoning brought against Cluentius might have been the following:³⁰³ poisoning Oppianicus senior by abetment of Strato, Micostratus and M. Asellius,³⁰⁴ poisoning C. Vibius Capax³⁰⁵ and assassination attempt against Oppianicus junior.³⁰⁶) At the same time he cannot fully ignore the charge of bribe—as Attius talked about it at length—instead, he starts a counter-attack: he qualifies this charge libel arising from political motifs, and as such a threat that must be taken seriously and whose treatment requires the counsel for the defence to use a non-routine strategy and the judges to show deep and wise consideration.³⁰⁷ Thereby he manages to make the charge general enough as if it were aimed against the fact of bribe and corruption in court of justice only and not against the person of Cluentius.³⁰⁸

By trying to present his defendant as a person persecuted for political reasons for years, the orator, as a matter of fact, tries to win the judges’ compassion, to whom he does not omit to stress his faith in their objectivity and sense of justice, which he underlines by recurrently

²⁹⁴ Cf. Cic. *Cluent.* 142.

²⁹⁵ Classen 1972. 14f.

²⁹⁶ Cic. *Cluent.* 65.

²⁹⁷ Classen 1985. 24.

²⁹⁸ Cic. *Cluent.* 1. Cf. Classen 1965. 106; Stroh 1975. 194.

²⁹⁹ Cf. Cic. *Cluent.* 4. 5. 6. 81. 83. 88. 142. 172. 183; Quint. *inst.* 9, 2, 19.

³⁰⁰ Cic. *Cluent.* 6.

³⁰¹ Quint. *inst.* 4, 1, 36.

³⁰² Cic. *Cluent.* 1. 2. Cf. Classen 1965. 107; Hoenigswald 1962. 109.

³⁰³ Stroh 1975. 195.

³⁰⁴ Cic. *Cluent.* 169ff.

³⁰⁵ Cic. *Cluent.* 165.

³⁰⁶ Cic. *Cluent.* 161–163.

³⁰⁷ Cic. *Cluent.* 2. 4. 5. 6. 77. 78. 79. 93. 95. 103. 108. 110. 113. 127. 130. 139. 202.

³⁰⁸ Classen 1985. 26.

using the concept of *aequitas*.³⁰⁹ At the end of the introduction, Cicero sums up the plan of his statement of the defence, in which, however, he mentions the strategy of handling only the charge of bribe, which is—according to his earlier statement—legally insignificant.³¹⁰ Concerning this point he announces that the charge of bribe is far from being unfounded but its direction is totally different from what public opinion has been poisoned with so far: namely, in the case of Oppianicus senior the judges were indeed bribed, yet, not by Cluentius but against Cluentius.³¹¹ By the latter circumstance—which he would not have needed necessarily, as it would have been enough for him to clear his defendant by proving: it was not Cluentius who bribed the court of justice—he wanted to achieve a double goal: on the one hand, he connects the cases of Scamander and Fabricius with the lawsuit of Oppianicus by presenting the sentences passed therein as *praeiudicium*,³¹² on the other hand, he enables himself to deal in depth with Oppianicus's all foul deeds deemed relevant and suitable for deterring the court of justice and the audience. In other words, before going into the defence of Cluentius he turns the positions of the fight around and launches an attack against the accuser, more exactly against his father.³¹³

In the following sentences Cicero's intention becomes even more unambiguous. He explains the act taken by the young accuser by his obligations as a son,³¹⁴ and his own decision to expound the crimes of Oppianicus senior at length by his obligations as counsel for the defence,³¹⁵ more specifically by pointing out that if it is possible to help a living person by causing harm to a dead person, it must be done.³¹⁶ By apologising to the judges for perhaps dedicating too much room to Oppianicus senior—ensuring them that once he has explored all the circumstances of the case, he can clarify the situation of Cluentius defended by him—he creates the opportunity for himself to involve all additional information directly or indirectly related to the case as he pleases in the scope of the *oratio*.³¹⁷ So, in the introduction³¹⁸ after expressing seeming acknowledgement and sympathy for the accuser and the *subscriptor* as well as regret over his defendant's miserable situation, he resolutely separates the counts of the indictment: the bribe that can be perhaps better supported by facts although it is legally irrelevant in the given case, yet, it is represented as dangerous for political reasons and the assassination attempt having great significance in terms of the proceedings, which, however, can be easily refuted—wasting relatively few words on both the accuser and the accused, driving the judges' attention to Oppianicus senior.³¹⁹

Cicero begins to describe the events as in a report,³²⁰ in a lean style he speaks about the death of Cluentius senior, a venerable citizen and about the marriage concluded by Cluentia junior with A. Aurius Melinus.³²¹ Soon, he comes to Cluentius's mother, Sassia, who married her own son-in-law. At this point he interrupts his sentence at the word mother and emphasises that in spite of all her vileness he calls her mother,³²² perhaps all the more because it would be

³⁰⁹ Cic. *Cluent.* 5. 6. 7. 81. 94. 142. 147. 156. 159. 199. 200. 202.

³¹⁰ Cic. *Cluent.* 9. Cf. Classen 1965. 137.

³¹¹ Cic. *Cluent.* 9.

³¹² Hoenigswald 1962. 110.

³¹³ Classen 1985. 29f.

³¹⁴ Cic. *Cluent.* 65. 172.

³¹⁵ Cic. *Cluent.* 118.

³¹⁶ Cic. *Cluent.* 10. Cf. Classen 1965. 135.

³¹⁷ Cic. *Cluent.* 11. Cf. Humbert 1938. 277.

³¹⁸ Cic. *Cluent.* 1–11.

³¹⁹ Classen 1985. 32.

³²⁰ Cic. *inv.* 1, 28–29; Quint. *inst.* 4, 2, 129f.

³²¹ Cic. *Cluent.* 11.

³²² Cic. *Cluent.* 12.

difficult to rephrase the Greek term *mētēr amētōr*³²³ in Latin.³²⁴ On several occasions he emphatically calls Sassia mother so that by contrasting this naming with the foul deeds attributed to her he could highlight that the deeds committed by her are unnatural and guilty, and as Sassia's procedure was aimed against her daughter, Cluentia and not against Cluentius, the orator can build the connection between the circumstances only through some skilful manoeuvres.³²⁵

Contrary to the original announcement—that he intends to discuss Oppianicus's lawsuit in 74 and the bribes that took place in relation to it³²⁶—Cicero as soon as he utters Sassia's name, as if guided by sudden temper, comes to her marriage concluded with her son-in-law and expelling of her daughter,³²⁷ and at this point he does not confine himself to enumerating the facts objectively; instead, he dramatizes the series of events concerning them in a fortissimo imbued from first to last with powerful indignation, shifting from the instrumentation of defence to that of prosecution.³²⁸ He makes his attack not on the person who is directly related with bribe or poisonings but on the person only loosely connected with the charge, by all that—in accordance with the basic topos of antique rhetoric—he demonstrates that the motivations of the acts of a given person can be explored from his conduct of life.³²⁹ It is not by chance that Cicero tries to work up temper against Sassia since he somewhat offsets the aversion to and prejudice against Cluentius, and tries to present Oppianicus junior's formal accusation as an act of a child's *pietas*.³³⁰ Before returning to the basic story, he again points out that the judges have to listen to all that to be able to understand the full scope of the events.³³¹

Regarding the questions raised by *pietas*—after he has mitigated the effect that the child's sentiment emphasised by the prosecutor produced on the judges, which was or could have been suitable from the first for turning the audience against Cluentius—the orator had to tackle the following problems involving great difficulties. Cicero had to decide (i) if he should treat *crimina veneficii* following the prosecutor's *dispositio* after *iudicium Iunianum* or he should turn the order round; (ii) if he should proceed *status collectionis* (that is, referring to the interpretation in accordance with the letter of the law) or in accordance with *status coniecturalis* (by denying and refuting the charge of bribe committed by Cluentius); (iii) how he should turn the judges' sympathy aimed at Oppianicus junior towards Cluentius.³³²

By this narrative the orator—without coming to the actual refutation of the charges—gave a palpable picture, so to say suggesting the prosecutor's motivation, of the conduct of life of the accuser's stepmother, who was most probably present at the trial.³³³ By characterising Sassia in such form Cicero sheds light on the source of Cluentius's all troubles, of the intriguing and lawsuit conducted against him, thereby while outlining the facts he strives to manipulate his audience by powerful psychological effects at the beginning of the speech already to be able to rely on value judgements so formulated while building his further arguments.

After that he again reminds his audience of Oppianicus's crimes and conviction,³³⁴ and in order to stop disbelief in Oppianicus's foul deeds he tries to present Cluentius's earlier

³²³ Soph. *El.* 1154.

³²⁴ Classen 1985. 33.

³²⁵ Cf. Cic. *Cluent.* 14. 18. 44. 167. 169. 174. 178. 186. 188. 190. 192. 199. 200. 201.

³²⁶ Humbert 1938. 276.

³²⁷ Cic. *Cluent.* 12–16.

³²⁸ Cic. *Cluent.* 14. 15.

³²⁹ Cic. *Cluent.* 23. 39. 41. 46. 50. 70. 83. 97. 101. 111. 124. 125. 167. 195.

³³⁰ Classen 1985. 35.

³³¹ Cic. *Cluent.* 17–18.

³³² Stroh 1975. 199.

³³³ Cic. *Cluent.* 18. Cf. Classen 1985. 36.

³³⁴ Cic. *Cluent.* 19.

accusation against his stepfather as lawful defence and make solely Oppianicus responsible for the failed poisoning attempt³³⁵—while in the characterisation of Oppianicus he tendentiously speaks about *crimina* and not the single *crimen* the sentence is based on as if the sentence had been passed due to several crimes.³³⁶ By discussing Oppianicus's penal record Cicero finds the point of attack, beside Sassia, in another person not directly concerned in the lawsuit, thereby diverting the judges' attention from the particular case and the accused before starting to refute the charge on the merits at all.³³⁷

After that the orator dwells on the fate of Dinaea and her family as well as Magia, Oppianicus senior's second (or third) wife and the accuser's mother, depicting the murder committed against Magia's stepbrother, Oppianicus's escape and return under Sulla's protection with vivid colours.³³⁸ Cicero mentions the precedents and preparation for Oppianicus's marriage to be concluded with Sassia as a textbook example of Oppianicus's *audacia*³³⁹ by relating the sudden death of his two sons—the accuser's stepbrothers.³⁴⁰ The narrative might give the impression to the superficial spectator—more exactly listener or reader—as if murders had taken place or Oppianicus had been responsible for the death of his sons. Looking at the text closer it becomes clear that Cicero does not state any of the opportunities *expressis verbis*, his formulation makes it possible to draw any conclusions, however, his tone might have aroused his audience's suspicion with good reason that Oppianicus is far from being innocent in the children's death. By what tools does the orator produce this effect? First, he makes general statements on Oppianicus's and Sassia's turpitude, then he describes Sassia's reluctance to propose to her new suitor without exactly specifying its cause. After having sufficiently excited his audience's curiosity, as the reason for reluctance he puts the answer to Sassia's mouth that she does not resolve to marry Oppianicus because he has three sons, thereby suggesting that Oppianicus was compelled to choose between his sons and his future wife. At this point the orator reminds of Oppianicus's greed and obscurely refers to it that he realised: he must find remedy against delaying his wedding-feast in his own house. He does not say a word about killing the children by Oppianicus, he only relates that Oppianicus, departing from his habit, had one of his sons brought to him, and after he suddenly died, he hastily had him buried. Regarding the other son he notes that he was killed; yet, he says nothing about who the murderer could have been; then, he draws the conclusion: now nothing was in the way of the marriage of Oppianicus and Sassia. These paragraphs are perfectly suitable for shedding light on Cicero's rhetorical tactics in *Pro Cluentio*. He selects and enumerates various facts with good sense, and by his style reflecting contempt he suggests the unspoken conclusion with compelling force to his audience: Oppianicus has murdered his own sons for the sake of Sassia.³⁴¹

It was not by chance that Cicero must have felt: he used this trick so successfully that he can bravely draw conclusions regarding the mood of the judges of the former lawsuit under which it was not these deaths that Oppianicus was held responsible for.³⁴² He addresses a rhetorical question to those listening to him if there is anybody who should consider Oppianicus innocent and a victim of judicature defying law.

While turning to the next part Cicero emphasises that now he will discuss it briefly and will soon come to treating the issues closely related to his defendant's case, that is, not the charges

³³⁵ Cic. *Cluent.* 19–20.

³³⁶ Classen 1985. 38.

³³⁷ Classen 1985. 38.

³³⁸ Cic. *Cluent.* 21–25.

³³⁹ Cf. Cic. *Cluent.* 23. 27. 29. 31. 33. 42. *audax/audacia*

³⁴⁰ Cic. *Cluent.* 26–29.

³⁴¹ Classen 1985. 41.

³⁴² Cic. *Cluent.* 29–30.

yet, however, to avoid the appearance of unfavourable accuser's role he does not omit to stress again that getting to know all these "antecedents" is indispensable for getting better acquainted with Cluentius's case.³⁴³ In what follows Cicero suggests rather than states as a sentence Oppianicus's guilt in the death of certain persons, for example, his first wife, the elder Cluentia and her brother, C. Oppianicus,³⁴⁴ focusing on his two "dear" crimes arising from his character: murder and bribe in court of justice.³⁴⁵ Although the enumeration of deaths is highly effective and dramatic, their discussion brings the audience farther from rather than closer to their clarification since the orator does not save the topoi of court of justice rhetoric (such as for example "double murder" committed against a pregnant woman) and proper tools of style, among others *anaphorē*, *antithēsis*, *exclamatio* and *correctio*.³⁴⁶

One could believe that the pathos of the picture cannot be enhanced anymore; yet, Cicero takes one step further: he reminds his audience of the kinship relation between Cluentius and his mother, Sassia and his stepfather, Oppianicus,³⁴⁷ in the light of which he can legitimise Cluentius's procedure in resolving to bring a charge solely due to the direct danger threatening his life.³⁴⁸ This way he presents his defendant's earlier formal accusation against Oppianicus as a step just as necessary as Oppianicus junior's formal accusation against Cluentius, by which he can contrast the incompatibility of Sassia's role in the lawsuit and Oppianicus senior's assassination attempt against Cluentius with both legal and ethical norms, that is, *pietas*.³⁴⁹ To make direct threat to Cluentius's life more unambiguously clear, the orator now speaks no longer about the fact that the poison was caught in the act³⁵⁰ but that the assassination attempt itself was caught in the act,³⁵¹ and he does not omit to name its motif, the greed of Oppianicus craving for his stepson's inheritance.³⁵² (The fact that according to Cicero Oppianicus hoped to become the heir of Cluentius lets one presume that Cluentius did not make any last will and testament so the estate devolving to Sassia might have sooner or later—as well through a new foul deed of Oppianicus "experienced in murder of wife"³⁵³ now to be committed against Sassia—devolved to his stepfather.³⁵⁴)

When describing the preparations for the assassination attempt, Cicero first outlines a rather negative picture of Fabricius,³⁵⁵ which is very noteworthy because a few years before he defended him as the accused—which he refers to with good sense only somewhat later.³⁵⁶ Accordingly, Fabricius, entrusted by Oppianicus, tried to get Diogenes, one of the slaves of Cleophantus, Cluentius's physician, to commit the murder but this plan failed since the slave betrayed the plan to his master, who warned Cluentius and at the same time sold him the slave. At this point the orator relates further events rather—what is more suspiciously—briefly: the poison was soon handed over and in a few days' time "reliable persons" not specified any closer jumping out of their hiding place discovered the money with the Fabricii's libertine, Scamander.³⁵⁷ Instead of enumerating any further possible proofs he

³⁴³ Cic. *Cluent.* 30.

³⁴⁴ Cic. *Cluent.* 30ff.

³⁴⁵ Cic. *Cluent.* 39.

³⁴⁶ Classen 1985. 43.

³⁴⁷ Cic. *Cluent.* 42.

³⁴⁸ Cic. *Cluent.* 18–20.

³⁴⁹ Classen 1985. 45.

³⁵⁰ Cic. *Cluent.* 20.

³⁵¹ Cic. *Cluent.* 43.

³⁵² Cic. *Cluent.* 44. Cf. Cic. *Cluent.* 27. 31. 33f.; 36ff.

³⁵³ Cf. Cic. *Cluent.* 52.

³⁵⁴ Hoeningwald 1962. 116.

³⁵⁵ Cic. *Cluent.* 45ff.

³⁵⁶ Cic. *Cluent.* 49–55.

³⁵⁷ Cic. *Cluent.* 47.

stresses his indignation by rhetoric questions and discloses by efficient *exclamatio* that Oppianicus could not have been acquitted under any circumstances from the charge of crimes—tendentiously referred to in plural.³⁵⁸ No doubt, the description of the circumstances is far from satisfying and provides several points of attack—as the poison was not found at Scamander—because an attempt similarly depicted by the prosecution was torn to pieces in *Pro Caelio* by Cicero himself.³⁵⁹

General references to the fact that the crimes mentioned in general, not specified any closer were obvious and “caught in the act” do not make Cicero’s narrative clearer.³⁶⁰ Reference to the fact that the poison was caught in the act and was captured is also rather general as the orator does not name the person with whom the poison was captured.³⁶¹ Concerning senator Baebius’s testimony Cicero again formulates obscurely because he states that Scamander was caught in the act with the poison and money.³⁶² Prior to that he asserts that Cluentius first brought charge against the person whom he caught in the act with the poison in his hand,³⁶³ however, this statement is not valid if for no other reason because elsewhere it is not claimed that Cluentius has caught anybody in the act.³⁶⁴ The reference to the Scamander lawsuit—in which Cicero acted as Scamander’s counsel for the defence against Cluentius—makes the obscurity thicker because in connection with it the orator gives account of the pleading that Diogenes and Scamander agreed in handing over medicine and not poison, and recalls the question of the prosecution why Scamander made an appointment for a remote spot and why he went there alone.³⁶⁵ If Scamander had been indeed caught in the act with the poison, Cicero would have certainly worded this point more clearly with more cutting remarks. Similarly, his statement made later in the speech that Oppianicus was caught in the act when he wanted to poison his stepson can be considered powerful distortion³⁶⁶ because he provides no information as to who brought the poison there, and his answer to the question with whom the poison was found—due to uncertainties of the texts left to us³⁶⁷—is not unambiguous.³⁶⁸ The following facts can be established: a libertine was caught in the act with a package containing money, and a slave was caught in the act with poison, however, the slave later on was given into the ownership of the accuser, that is, Cluentius, so his confession cannot stand beyond any doubt,³⁶⁹ and the authenticity of senator Baebius’s testimony, who maintained good relation with Cluentius, can be questioned too. In view of the fact that—in the light of the above—the proofs do not seem to support Cicero’s argument and his reconstruction of the events, he could not be satisfied with simple description of the facts since it would not have produced the picture that he wanted to outline; instead, he had to, on the one hand, mitigate and distract the judges’ attention by bits of information and obscure suggestions carefully placed at clearly separable points and arouse indignation by a stream of questions, and, on the other hand, to kindle and grasp their attention with respect to the hypotheses suggested by him as necessary conclusions.³⁷⁰

³⁵⁸ Cic. *Cluent.* 48.

³⁵⁹ Cf. Cic. *Cael.* 61–69.

³⁶⁰ Cf. Cic. *Cluent.* 43. 48. 189.

³⁶¹ Cic. *Cluent.* 20. 50. 201.

³⁶² Cic. *Cluent.* 53.

³⁶³ Cic. *Cluent.* 49.

³⁶⁴ Classen 1985. 49.

³⁶⁵ Cic. *Cluent.* 53.

³⁶⁶ Cic. *Cluent.* 125.

³⁶⁷ See Rizzo 1983. *passim*

³⁶⁸ Classen 1985. 50.

³⁶⁹ See Schumacher 1982. 69–75; Robinson 1981. 223ff.; 235ff.

³⁷⁰ Classen 1985. 51.

Cicero is able to use even the circumstance that in the Scamander's lawsuit he acted as the counsel for the defence of the accused, that is, against Cluentius, to support his own argument:³⁷¹ in the detailed but far from accurate narrative of the facts he presents his procedure as proof of his intention to help and sense of obligation rather than personal standpoint.³⁷² To conceal his own role, he again makes an attack on Oppianicus, however, he leaves no doubt that the conviction of Scamander and the conviction of Oppianicus senior as a *praeiudicium* are closely interrelated.³⁷³ The plane of narrative and the plane of argument again slide into each other, a fact clear to the attentive reader only—the judges listening to the speech certainly did not notice it. The narrative of Fabricius's lawsuit does not supply us with new information, Cicero asserts that owing to his friendship with Oppianicus he is to be necessarily considered an abettor or at least a person initiated in the poisoning attempt.³⁷⁴ He adds the defence of Fabricius by Caepasius (an untalented advocate) as a comic element to his speech as it were to let the judges take a rest after the horrible acts depicted in the foregoing but his conclusion drawn from it is again absolutely clear: Fabricius was declared guilty by his own conduct, that is, his own sentence.³⁷⁵ Only somewhat later do we learn of the rate of the probably unanimous voting from Cicero,³⁷⁶ from which it can be inferred with good chances that here again the orator knowingly conceals certain facts and connections.³⁷⁷ After that, following a long transition full of rhetorical questions and fictitious dialogue,³⁷⁸ in which he again underlines the significance of the earlier judgments as it were to prove Oppianicus's guilt, he starts to discuss Oppianicus's lawsuit.³⁷⁹ His tone gets increasingly heated, which enables him to skip longer demonstration and argument without attracting attention, and after that he comes to the first actual charge announced at the beginning of the speech, not falling within the competence of the court of justice though, the issue of bribing the judges in Oppianicus's lawsuit in 74.³⁸⁰

When determining the identity of the briber Cicero highly narrows the scope of deliberation as he alleges that if it was probably not Cluentius who bribed the court of justice, then it must have been done by nobody else than Oppianicus, and if it is proved that Oppianicus was the briber, then Cluentius will be freed from the charge.³⁸¹ This locus was highly appreciated also by Quintilian as a textbook example of refutation by *remotio*,³⁸² disregarding its lack of conformity with facts—for in his other orations Cicero did not deny that both the accuser and the accused had most probably bribed the members of the court of justice, albeit, with different success.³⁸³ Being clear, suggesting sincerity, his wording was perfectly suitable for lulling the attention of the listener of the period—or the (superficial) reader of the present day—as he sets up his alternative by reference to statements excluding each other, and henceforth he continues to approach the issue of corruption from the aspect of Oppianicus: by proving Oppianicus's guilt he automatically exonerates Cluentius—in other words, he sets himself the task of proving Oppianicus's guilt rather than Cluentius's innocence,³⁸⁴ as most

³⁷¹ Humbert 1925. 28.

³⁷² Cic. *Cluent.* 49–50. Cf. Quint. *inst.* 11, 1, 74.

³⁷³ Cic. *Cluent.* 50–55.

³⁷⁴ Cic. *Cluent.* 59. 61.

³⁷⁵ Cic. *Cluent.* 59.

³⁷⁶ Cic. *Cluent.* 62. 105.

³⁷⁷ Classen 1985. 53.

³⁷⁸ Cic. *Cluent.* 59–61.

³⁷⁹ Cic. *Cluent.* 61–63.

³⁸⁰ Cic. *Cluent.* 64ff.

³⁸¹ Cic. *Cluent.* 64.

³⁸² Quint. *inst.* 5, 10, 68.

³⁸³ Cic. *Verr.* 1, 39; 2, 2, 78f.

³⁸⁴ Classen 1985. 56; Classen 1965. 110; Humbert 1938. 284.

probably the prosecution tried to support Cluentius's guilt rather than Oppianicus's innocence.³⁸⁵ The seemingly self-assured statement that he must present clear and unambiguous facts to the judges was meant to dispel possible further doubts of the audience—while dispensing with arguments based on probability.³⁸⁶ (It is not needless to say that in his oration Cicero does not dedicate too much room to Cluentius's character study, for that matter, he gets down with it by a few commonplaces,³⁸⁷ and makes no effort to support his defendant's irreproachableness by further arguments derived from the scope of *vita anteacta*.³⁸⁸)

After the introduction consisting of several sentences³⁸⁹ Cicero starts the characterisation of Oppianicus's abettor, senator Staienus.³⁹⁰ In the following part, *narratio* and *argumentatio* again merge (almost inseparably or at least indistinctively),³⁹¹ combining unprejudiced statements of facts, assumptions placed in proper form suggesting objective information, characterisation of persons—undeniably one-sided yet capable of influencing the audience—(fictitious) dialogues in a personal tone and sometimes witty, sometimes dramatic questions inspiring confidence.³⁹² In the course of that by unaffected elegance Cicero disregards certain problems and facts; for example, he lets the process of Oppianicus's lawsuit and the reasons for convicting him remain in obscurity, and he gets down with the rate of votes cast by the judges by a less lifelike explanation. He asserts that it was just the judges bribed by Oppianicus who voted for Oppianicus's guilt because they found the amount of bribe too little or were convinced that the intermediary had embezzled a major part of it;³⁹³ the judges who wisely deliberated the case and viewed the judgment made in the Scamander and Fabricius lawsuits, considered as *praeiudicium* or meant to be presented by Cicero as such, by keeping their distance abstained;³⁹⁴ there might have been (as the orator later obscurely suggests) at least ten such judges,³⁹⁵ while five unbribed judges took stand for the innocence of the accused.³⁹⁶ To avoid that no doubt should arise in the audience—for that matter righteously—whether Oppianicus was indeed guilty and if the court of justice was bribed solely by Oppianicus, the orator, leaving no time for breath, comes to the consequences, political aspects of the lawsuit,³⁹⁷ and at the same time—for reasons of *captatio benevolentiae*—formulates open praise to the judges, offering his thanks for newly obtained “security in law”.³⁹⁸

All this he sums up as antecedents only so that he could explore, in accordance with his own concept, it was in the interest of whom to bribe the court of justice in the lawsuit in 74?³⁹⁹ He suggests that Oppianicus's guilt was from the outset clear to everybody beyond any doubt; he contrasts the prosecutor's self-assuredness with the desperate flurry of the accused being aware of his own guilt, and in the light of the outcome of the lawsuit he makes it clear that it must have been in the interest of only Oppianicus—as a last resort—to bribe the members of

³⁸⁵ Stroh 1975. 196.

³⁸⁶ Cic. *Cluent.* 64.

³⁸⁷ Cic. *Cluent.* 83. 133.

³⁸⁸ Hoenigswald 1962. 117.

³⁸⁹ Cic. *Cluent.* 65.

³⁹⁰ Cic. *Cluent.* 66.

³⁹¹ Stroh 1975. 210.

³⁹² Cf. Classen 1985. 57.

³⁹³ Cic. *Cluent.* 75.

³⁹⁴ Cic. *Cluent.* 76.

³⁹⁵ Cic. *Cluent.* 107.

³⁹⁶ Cic. *Cluent.* 76.

³⁹⁷ Cic. *Cluent.* 77–79.

³⁹⁸ Cic. *Cluent.* 80–81.

³⁹⁹ Cf. Cic. *Cluent.* 81.

the court of justice.⁴⁰⁰ To make his argument more convincing, Cicero brings up Cluentius's accounts, which contain no reference to any payment of such nature, as a proof;⁴⁰¹ however, he does not mention Oppianicus's accounts. Picking out some of the arguments of the opponent most probably as a result of subjective selection, he repeats them and by speaking about them he makes the appearance of refuting them.⁴⁰² He considers the fact that Staienus also voted for Oppianicus's guilt a trick of Staienus, who embezzled the money, to demonstrate to his fellow-judges that Oppianicus had deceived him.⁴⁰³ Concerning the six hundred and forty thousand *sestertii* handed over by Oppianicus to Staienus Cicero notes that mathematically it would have been sufficient for corrupting sixteen judges, however, he conceals the fact that seventeen votes would have been needed for conviction⁴⁰⁴ and in this case Staienus should have been awarded some allowance beyond the above, which might strike the eyes of the reader of the oration but must have been missed by the judges listening to it.⁴⁰⁵

Here, in theory, he could conclude his reasoning as he has thoroughly described the opponent's character, procedure, the motifs of his deeds, dwelled on the significance of earlier lawsuits and can consider corruption of the court of justice adjudicating in 74 by Oppianicus proved, however, he has not responded yet at all to the opponent's more important arguments, which he carefully obscured at the beginning of the oration in the *partitio*. So, now, after he has swept off the opponents' more easily refutable arguments very efficiently, he must turn to discussing the arguments of the prosecution more difficult to refute and less easily handled by high-sounding commonplaces.⁴⁰⁶

To start with he repeats the opponent's allegation that several judgments were adopted which prove that Cluentius bribed the court of justice in the Oppianicus lawsuit, yet he immediately gives a comprehensive response to it suitable for distracting the judges' attention. Masking defence by attack, he states that no judgment has been passed in the case of bribe Cluentius has purportedly committed and that the judgments referred to and applied to this scope of issues by the opponent have no relevance in the case, and that this is the very occasion when Cluentius can respond to the charge of corrupting the court of justice.⁴⁰⁷ This argumentation might seem to be peculiar all the more when one considers that Cicero emphasises at the beginning of the *oratio* too that the court of justice ordered to pass judgment on Cluentius is competent in the matter of poisonings only, in the matter of bribe it is not.⁴⁰⁸ After he has discussed the issue of bribe at length, by a daring stroke he tries to give the impression to his audience that his arguments made so far have not constituted a part of *extra causam* reasoning at all.⁴⁰⁹ He considers the earlier judgments a part of the campaign of heckling before the popular assembly,⁴¹⁰ describes them partly as misfortune, partly as irrelevant and insignificant in Cluentius's case, partly as having an outcome favourable to Cluentius, and he contests that they can be called "judgments" at all.⁴¹¹ It is in the light of the above that he starts discussing

⁴⁰⁰ Classen 1985. 59.

⁴⁰¹ Cic. *Cluent.* 82.

⁴⁰² Cic. *Cluent.* 84–87.

⁴⁰³ Cic. *Cluent.* 83.

⁴⁰⁴ Cic. *Cluent.* 74.

⁴⁰⁵ Classen 1985. 61; Humbert 1938. 290.

⁴⁰⁶ Cic. *Cluent.* 88–116; ill. 88–137.

⁴⁰⁷ Cic. *Cluent.* 88.

⁴⁰⁸ Cic. *Cluent.* 1ff. Cf. Classen 1965. 114.

⁴⁰⁹ Classen 1985. 62.

⁴¹⁰ Cf. Cic. *Cluent.* 4. 8.

⁴¹¹ Cic. *Cluent.* 88.

one of the most critical consequences of earlier events, the conviction of C. Iunius, chairman of the bribed court of justice that adjudicated in 74.⁴¹²

First, he strives to underline that the lawsuit against Iunius—which can be considered the outcome of *iudicium Iunianum* that has become proverbial, a synonym of corrupt adjudication⁴¹³—was tendentious, hasty and irregular; then, he turns the attention to the political motifs of the lawsuit; finally, he doubts that the judgment was well-founded in terms of content.⁴¹⁴ He stresses that Iunius was actually convicted not due to bribe,⁴¹⁵ and in this argument he generously disregards the fact that in Roman criminal action it was the facts and circumstances deliberated in the proceedings and not the statements set forth in the charge (indictment) that served as basis of the judgment—all this the orator does, as a matter of fact, in order to take the edge of the judgment against Iunius as a *praeiudicium*.⁴¹⁶ He presents the proceedings against Iunius as the product of tribunes' campaign of heckling, calling it a storm with devastating power rather than judgment, and contrasts the tools and goals of court proceedings with those of influencing public opinion at popular assemblies by strong colours and emphatically warns his audience of the dangers of tribunes' populist campaigns.⁴¹⁷ He tactfully keeps quiet about the fact that although the lawsuit was commenced on tribunes' initiative the judgment was passed as a result of the decision of the senators' court of justice, that Iunius—as he suggested earlier—was one of Cluentius's friends,⁴¹⁸ and that in the given case he himself is conducting political agitation against excesses of people's party politics; instead, he makes the audience aware again and again that the conviction of Iunius is the consequence of a storm with ill outcome and not an action at law conducted in accordance with rules of procedure.⁴¹⁹ It must not be forgotten: the court of justice could not have convicted Cluentius *de iure* in the charge of bribe, if, however, Cicero did not annul this charge, nothing would have prevented the judges from declaring the accused guilty in the charge of poisoning—primarily not because poisoning was proved but due to their being convinced that the bribe had taken place—since no reasons were attached to the judgment and the *quaestio* adjudicated in the issue of guilt based on the overall impression developed about the case rather than provedness of the charges; in other words, it would have been possible to convict Cluentius due to bribe but by virtue of poisoning!⁴²⁰

Again he emphasises that Iunius's case must be strictly separated from Cluentius's case, and as if he believed that too, he considers the conviction of Bulbus, who adjudicated in the lawsuit in 74, and further judges brought to court with other charges unworthy of any further discussion as insignificant accessory circumstance, paying regard to the fact that it cannot be proved that the conviction was based on the case of poisoning of the Oppianicus lawsuit, undoubtedly included in the counts of the indictment.⁴²¹ Thereby Cicero makes resolute efforts to take the edge of usability of former judgments as *praeiudicium* since he is compelled to touch upon the Staienus lawsuit quite embarrassing to him, in which he acted as counsel for the defence.⁴²² After a longer *praeteritio*⁴²³ he starts to build his argument, and its

⁴¹² Cic. *Cluent.* 89–96.

⁴¹³ Stroh 1975. 195.

⁴¹⁴ Cic. *Cluent.* 91.

⁴¹⁵ Cic. *Cluent.* 92.

⁴¹⁶ Classen 1985. 64.

⁴¹⁷ Cic. *Cluent.* 93–95.

⁴¹⁸ Cic. *Cluent.* 55.

⁴¹⁹ Cic. *Cluent.* 96.

⁴²⁰ Stroh 1975. 199.

⁴²¹ Cic. *Cluent.* 97–98.

⁴²² Cic. *Cluent.* 99–102.

⁴²³ Cic. *Cluent.* 99–100.

weak points are not noticed by the audience at first hearing.⁴²⁴ First, Cicero touches upon the prosecutor's statement—whether it was made like that or Cicero replicates his opponent's argument in a somewhat distorted form cannot be known—that Staienus received monies of bribe from Oppianicus, which seems to be supported by Staienus's conduct of life, by using *argumenta e vita anteacta*, and he, of course, keeps quiet about the charge which could be brought up in the lawsuit that Staienus was possibly bribed by Cluentius too. He mentions Cluentius only when he draws his conclusions in a rather long sentence consciously made somewhat incomprehensible, repeating the logically imperfect alternative set up earlier⁴²⁵ which states that the bribe committed by Oppianicus excludes Cluentius's guilt, and so using as a premise the conclusion made probable earlier and not supported fully with logical reasons that the fact of bribe cannot be proved regarding Cluentius he suddenly draws his conclusion: the conviction of Staienus—which, similarly to judgments mentioned earlier, cannot be considered the result of a properly conducted lawsuit much rather the outcome of a terrible blow⁴²⁶—is absolutely not against Cluentius but supports his innocence.⁴²⁷

By the summary made here Cicero as it were makes the bed for the lawsuit of C. Fidiculanus Falcula with an outcome different from the formerly outlined cases, from which he wants to make an argument to support his own reasoning. The case of Falcula charged on the grounds of *crimen repetundarum* yet acquitted—who accepted money of bribe as a judge from Cluentius in Oppianicus's lawsuit as the charge claimed—could be undoubtedly brought up by Attius. (It is worth mentioning that Cicero makes it unambiguously clear in *Pro Caecina* that Falcula—as both the public and he is convinced about it—voted for Oppianicus's guilt just upon the effect of the amount of bribe received from Cluentius.⁴²⁸) At this point Cicero takes Falcula's case out of the context outlined by Attius and includes it in the order of other *praeiudicia* meant to be considered insignificant so that he could crown his argument by the lawsuit concluded by acquittal to reach a favourable end asserting that the poisoning charges brought against the judges adjudicating over Oppianicus have nothing to do with Cluentius's case.⁴²⁹ In his argument he emphatically underlines that tribune L. Quinctius conducted a campaign of political heckling against Falcula, whose first lawsuit he discusses shortly, the second one more profoundly,⁴³⁰ but he places emphasis not on Falcula's innocence but on the sheer fact of his having been acquitted as it were indicating that having knowledge of the outcome of the lawsuits against Scamander and Fabricius was absolutely enough for the judges to convict Oppianicus without any external influence.⁴³¹ As Oppianicus was convicted by a low majority,⁴³² Cicero somehow has to place his argument on firmer bases since as an *argumentum* for guilt he could bring up only an unanimous or almost unanimous judgment with no scandalous consequences for the judges. Therefore, to distract the audience's attention and to lull their vigilance, he starts a lengthy argument interspersed with poetic questions on the ways judges formed an opinion, enumerating several respected judges by name who voted for Oppianicus's guilt, whose moral integrity is meant to support the lawfulness of the judgment⁴³³—although this digression is based on conjecture and assumptions, the enumeration by names gave the impression to the audience as if the orator

⁴²⁴ Classen 1985. 66.

⁴²⁵ Cic. *Cluent.* 9. 64.

⁴²⁶ Cf. Cic. *Cluent.* 88.

⁴²⁷ Cic. *Cluent.* 102.

⁴²⁸ Cic. *Caecin.* 28–30.

⁴²⁹ Classen 1985. 67.

⁴³⁰ Cic. *Cluent.* 103.

⁴³¹ Cic. *Cluent.* 104–106.

⁴³² Hoenigswals 1962. 110.

⁴³³ Cic. *Cluent.* 105–107.

had discussed this issue profoundly in conformity with facts. Accordingly, the political background outlined, the emphasis on fomentation and campaign setting out from L. Quinctius, the invective against the tribune's excessive power support the innocence of both Falcula and the others,⁴³⁴ so the prosecutor had no other choice than accepting either that the lawsuit against Oppianicus was proper and fair or the *praeiudicia* were irrelevant with regard to Cluentius's lawsuit.⁴³⁵

In what follows Cicero again strives to annul the arguments of the prosecution and to demonstrate that they are insignificant instead of refuting them.⁴³⁶ Just as he does not accept the *iudicium Iunianum* with scandalous outcome, causing great excitement even years later⁴³⁷ as a real *iudicium* and as he does not recognise the *iudicia* of the lawsuits against Bulbus, Gutta and Popilius as relevant *praeiudicium* in terms of the Cluentius lawsuit⁴³⁸ because they were not based *expressis verbis* on the state of facts of bribe received as a judge, at this point he tries to shake the formal validity of the *litis aestimatio*—the “decree” declaring the punishment imposed in the *repetundae* lawsuits—adopted in P. Septimius Severus's case.⁴³⁹ Thereby he substantiates the relativity of the sanction of *infamia*, i.e., loss of honour imposed under the censor's *regimen morum*,⁴⁴⁰ and the argument by which he can qualify this measure less significant than the judge's decisions.⁴⁴¹ This historical/public law digression must have been a refreshing digression to the audience, yet Cicero used this moment for breath to undermine the power of censorial moral adjudication by setting up a sophisticated alternative.⁴⁴² According to his argument either censors' measures have to provide grounds for establishing the facts or their measures should be preceded by production of evidence and followed by reasons: in the first case they would have tyrant's power, in the second case they should marshal proofs both in favour of Cluentius's guilt and Oppianicus's innocence. After setting up the logically not fully satisfactory alternative, before the persons present could come to their senses, Cicero showers the list of Oppianicus's all crimes—specified or suggested earlier—upon his audience.⁴⁴³ To increase temper, the orator suddenly goes into an invective like outburst, he scourges the errors, temporal restrictedness and unfoundedness of former *censorial* measures, taking his examples from his own practice and cases widely known to the public.⁴⁴⁴

The fact that the censors inflicted *infamia* on a total of two judges enables Cicero to draw further conclusions: he can formulate unfounded charges cited from military practice, and by underlining the political motifs of censors' procedure and the disagreements between them he can further reduce the weight of their measures through which he prepares his effort to shake the significance of the circumstance brought up by the prosecution, the censorial reprimand against Cluentius.⁴⁴⁵ In addition to asserting that Cluentius's conduct of life is irreproachable, he states that his defendant has not had the opportunity to refute false accusations, incriminations and defamation⁴⁴⁶—and he considers that Cluentius's innocence has been sufficiently proved by this rather obscure sentence. Cicero gets down with Egnatius 's last

⁴³⁴ Classen 1985. 68f.; Humbert 1938. 292.

⁴³⁵ Cic. *Cluent.* 114.

⁴³⁶ Cic. *Cluent.* 115–137.

⁴³⁷ Kroll 1924. 177.

⁴³⁸ Humbert 1938. 295.

⁴³⁹ Cic. *Cluent.* 115–116.

⁴⁴⁰ Kroll 1924. 178; El Beheiri 2005. 1ff.

⁴⁴¹ Cic. *Cluent.* 119–122.

⁴⁴² Cic. *Cluent.* 123.

⁴⁴³ Cic. *Cluent.* 125.

⁴⁴⁴ Cic. *Cluent.* 126–127.

⁴⁴⁵ Cic. *Cluent.* 128–132. Cf. Hoenigswald 1962. 111.

⁴⁴⁶ Cic. *Cluent.* 134.

will and testament, in which the father excluded his son from the inheritance who falsely adjudicated in the Oppianicus lawsuit upon the effect of purported bribe, briefly by setting up a highly sophisticated but not fully satisfactory alternative that cornered the prosecutor,⁴⁴⁷ and criticises the *senatus consultum* sanctioning the corruption of the judges⁴⁴⁸ due to its inaccurate wording and ineffectiveness.⁴⁴⁹

The audience's attention must have undoubtedly languished after this long, complicated argument interspersed with several intellectual manoeuvres—and Cicero's aim might have been successful application of tactics of tiring out⁴⁵⁰ for once he had disputed and annulled the significance of *praeiudicia* he had to fight with his own statements made earlier.⁴⁵¹ Elsewhere he tried to use the fact of Scamander's defence to advance his own purposes,⁴⁵² just as Fidiculanus Falcula's case;⁴⁵³ he tactfully does not reflect upon his statements made in the oration delivered in favour of Aulus Caecina—which Attius most certainly did not omit to refer to—and is satisfied with using the general name *iudicium Iunianum*.⁴⁵⁴ Although the prosecutor most probably confronted him with his statements made in the Verres case on corruptness of senators' adjudication, in his response Cicero remains on the plane of general considerations and points out that the content of his oral pleadings—since oral pleadings cannot be of such weight as law or court decision—are always the product of the given situation and age, that is, does not mirror his own conviction.⁴⁵⁵ As a parallel he refers to outstanding orators of the generation preceding him, M. Antonius and M. Crassus,⁴⁵⁶ which can be considered an effort to distract attention rather than refutation on the merits; yet, it is suitable for warning and urging judges to decide the case objectively free from prejudice.⁴⁵⁷ Cicero emphasises that he has responded to all relevant charges, or at least all charges deemed relevant by the prosecutor, brought up by him against Cluentius with regard to bribing the judges in the Oppianicus lawsuit eight years before,⁴⁵⁸ however, instead of summing up the above he starts—in spite of his defendant's desire⁴⁵⁹ but for reasons that become obvious later on—to expound what Attius most probably expected at the beginning of the statement of the defence: the issue of competence of the *quaestio*, adjudicating in the state of facts of assassination and mixing poison, with respect to bribe committed by knights, amounts of bribe given to judges since the competence of the court of justice extended to bribes committed by members of the order of senators only.⁴⁶⁰ By choosing defence in terms of content and not form he manifests self-assurance and faith in the success of Cluentius's case to the audience and he can keep the judges' attention alive, who are waiting for the part on the merits,⁴⁶¹ while tiring them out without being noticed. He explains why he discusses the issue of bribe so long by necessity required by public interest,⁴⁶² then he comments on Attius's arguments—albeit, by short references and quotations only⁴⁶³ not to refresh the judges'

⁴⁴⁷ Cic. *Cluent.* 135.

⁴⁴⁸ See Kroll 1924. 177.

⁴⁴⁹ Cic. *Cluent.* 136–138.

⁴⁵⁰ Cf. Classen 1985. 72.

⁴⁵¹ Cic. *Cluent.* 138–142.

⁴⁵² Cic. *Cluent.* 49–55.

⁴⁵³ Cic. *Cluent.* 103ff.

⁴⁵⁴ Cic. *Cluent.* 138.

⁴⁵⁵ Cic. *Cluent.* 139.

⁴⁵⁶ Cic. *Cluent.* 140ff.

⁴⁵⁷ Cic. *Cluent.* 142.

⁴⁵⁸ Cic. *Cluent.* 143.

⁴⁵⁹ Quint. *inst.* 4, 5, 20.

⁴⁶⁰ Cic. *Cluent.* 143–160.

⁴⁶¹ Quint. *inst.* 4, 5, 10.

⁴⁶² Cic. *Cluent.* 145–147.

⁴⁶³ Cic. *Cluent.* 145. 150.

memory—by which his opponent compared the letter of the law⁴⁶⁴ (i.e., the relevant provision of *lex Cornelia de sicariis et veneficis* applies to the acts of the members of the order of senators only) with the spirit of the law,⁴⁶⁵ that is, *aequitas*,⁴⁶⁶ which seemed to be justified also by changed circumstances for while at the time of the scope of Sulla's reforms administration of justice was considered the privilege of the order of senators, based on *lex Aurelia* enacted in 70 members of courts of justice were made up by senators, knights and aerar tribunes each constituting one-third of the panel, and so it could be considered justified that identical criminal law norms should apply to persons who fulfilled identical tasks but came from different orders.⁴⁶⁷

In his reasoning certain common topoi take ample room: he emphasises the importance of laws for the sake of maintaining the State and reminds judges of their duty, i.e., the obligation to serve laws.⁴⁶⁸ He analyses relevant passages of *lex Cornelia de sicariis et veneficis* in details,⁴⁶⁹ and proves that no charge could have been brought against Cluentius for bribe based on this law.⁴⁷⁰ He expounds—and tries to legitimise—the different status and evaluation of members of the order of senators and knights, and warns the judges against interpreting the provisions of the law extensively through their own judgment, that is, interpretation used by them in dispensation of law.⁴⁷¹ If Cicero had from the first moment adhered to the letter of the law strictly and admittedly, which the prosecutor expected, he would have openly acknowledged Cluentius's guilt in the charge of bribing the court of justice and he could have referred to no more than lack of personal scope of the law as a cause excluding culpability, however, by that he would have fundamentally shaken the image developed and meant to be maintained from first to last about his defendant's innocence, which might have led the judges to infer that Cluentius would not have shrunk back from murder either.⁴⁷² In the summary of his argumentation Cicero, first, formulates praise of judges who adjudicate by abiding by the law; secondly, he refers to Cluentius's innocence, now fully proved as he claims in the charge of bribe; thirdly, in connection with the polemical, exaggerated and misinterpreting reconstruction of Attius's train of thoughts he formulates warning as a patron and statesman thinking responsibly to the court of justice, cautioning the judges that by accepting the extensive interpretation they would shake the authority of the court of justice and thereby the fundamentals of the State.⁴⁷³

What causes could have induced Cicero to take his argument to the plane of politics? Nothing can be inferred from Attius's oration since it has not been left to us,⁴⁷⁴ and the effective text of *lex Cornelia de sicariis et veneficis* is known from Cicero's oration only, although he must have made no significant modifications therein.⁴⁷⁵ Joachim Classen raises the following three opportunities as possible explanation for Cicero's tactics. First, it is possible that Attius as the prosecutor placed the poisoning cases in the centre of the charge and used the issue of bribe in the lawsuit in 74 only for influencing the climate of opinion against Cluentius so that he could achieve his goal more safely in the mirror of the past of the accused: to prove the charge of

⁴⁶⁴ Classen 1965. 111.

⁴⁶⁵ On the topic of *aequitas* see Büchner 1954. 11ff.; Carcaterra 1971. 627ff.; Fuhrmann 1970. 80ff.; Fuhrmann 1971. 53ff.; Nótári 2004. 301ff.; Nótári 2008. 123ff.; Stroux 1926.

⁴⁶⁶ Cic. *Cluent.* 145. 150. 160.

⁴⁶⁷ Cf. Classen 1985. 76; Stroh 1975. 234; Hoenigswald 1962. 111.

⁴⁶⁸ Cic. *Cluent.* 146–148.

⁴⁶⁹ Cic. *Cluent.* 149ff.

⁴⁷⁰ Cic. *Cluent.* 154.

⁴⁷¹ Cic. *Cluent.* 148. 155. Cf. Stroh 1975. 197.

⁴⁷² Stroh 1975. 197f.

⁴⁷³ Cic. *Cluent.* 156–159.

⁴⁷⁴ Stroh 1975. 195ff.

⁴⁷⁵ Classen 1985. 78.

bribe brought against Cluentius in accordance with the spirit—and not the letter—of the law. Secondly, it cannot be ruled out that the assassination attempt served only as a starting point for him to have Cluentius convicted, by making the judges accept the extensive interpretation of the law, due to the bribe committed in the Oppianicus lawsuit held under scandalous circumstances and producing not less scandalous after-effects. Thirdly, it cannot be ruled out either that Attius was led primarily by political purposes to introduce the extensive interpretation of the law implemented in dispensation of justice—at least as a later basis of reference to public opinion and adjudication practice.⁴⁷⁶

The prosecutor's primarily political motifs are contradicted by the identity of the participants of the lawsuit, more specifically that as a prosecutor solely Attius not having any special political significance supported Oppianicus junior not having any major political influence either and his mother, the otherwise unknown Sassia from Larinum, and that Cicero provided defence alone without using the assistance of one of the orators of the age having influence in public affairs, for example, Hortensius. Most probably it was not in the interest of the order of either the senators or the knights to implement the extensive interpretation of Sulla's law to the extent that the order of knights should be included in the scope of persons to be sanctioned in the case of passive bribe in court of justice since thereby they would have extended the scope of persons to be sanctioned in active bribe too, which would have allowed to reveal several bribes so far left in obscurity where judges of senator's rank accepted amounts of bribe. Consequently, in this respect *concordia ordinum* that Cicero desired to attain must have been realised indeed against the trend of *populares*.⁴⁷⁷ It is worth adding that the court of justice reform proposed by M. Porcius Cato in 61, which set the aim of sanctioning all kinds of bribe in court of justice, could never assume the form of law, because it would have endangered this special form of manifestation of *concordia*.⁴⁷⁸ So, there are good chances that taking the oration to the plane of politics is one of Cicero's doings, which is explained partly by his selected lawsuit tactics—and not the path he was forced to take by the prosecutor—partly by the effort to emphasise his own role in public affairs.⁴⁷⁹ (Cicero is compelled to discuss the charge of bribing the court of justice to such an exhaustive extent, among others, because the prosecutor most probably prepared and confirmed the charge of poisoning falling within the competence of the court of justice psychologically by expounding the events of the Oppianicus lawsuit; consequently, the defence necessarily had to refute or at least counteract it.⁴⁸⁰)

II. 2. 4. Handling the charge of *veneficium*

After this reasoning Cicero makes it clear that what he still has got to say is short and can be summed up briefly, by which he not only refers to the length of what he has got to say but tries to reduce the weight of the opponent's charges since—as he claims—these charges are pure fiction, and after taking the edge of the campaign against Cluentius they cannot stand their ground.⁴⁸¹ He responds to the arguments aimed against Cluentius regarding the motifs of poisonings—Cluentius's greed and cruelty—at a stormy speed, more exactly he sweeps them

⁴⁷⁶ Classen 1985. 79.

⁴⁷⁷ On *concordia ordinum* see Strasburger 1931; Fuhrmann 1960. 481ff.; Boyancé 1941. 172ff.; Wirszubski 1954. 1ff.

⁴⁷⁸ Cf. Cic. *Att.* 1, 17, 8; 1, 18, 3; 2, 1, 8.

⁴⁷⁹ Classen 1985. 80ff.

⁴⁸⁰ Classen 1985. 84.

⁴⁸¹ Cic. *Cluent.* 160. Cf. Humbert 1938. 294f.

off by a few commonplaces,⁴⁸² he devotes no more than a few sentences to any of them—instead of refutation in conformity with facts and consistent argumentation he dedicates room to wittiness and invective like outbursts;⁴⁸³ however, from first to last he is able to give the impression as if he had refuted Attius's allegations point by point for the fairly tired out audience must have been just as much waiting for the conclusion of the speech. At the same time, the orator cannot allow himself not to touch upon material elements, more specifically each of the poisonings because later on even the highly tired out judges would have certainly noticed that distraction of attention was excessively drastic and for this reason not tactical at all.⁴⁸⁴

Regarding the charge of murdering C. Vibius Capax, by way of refutation Cicero confines himself to the testimony of L. Plaetorius as a rescue witness and emphasising the unimpeachable character of the witness, but he tactically keeps quiet about what specific points of the testimony make the charge void,⁴⁸⁵ and substitutes the exact description of the case by more general wordings.⁴⁸⁶ He dedicates somewhat more room to Balbutius's death, which purportedly took place because he drunk up the poison cup made by Cluentius for Oppianicus junior at his wedding ceremony.⁴⁸⁷ In his reasoning, first, he points out the lack of any motif, which is based primarily on conclusions drawn from the character of the accused, secondly on the allegation that Cluentius had no reason at all to fear Oppianicus junior, but he carefully avoids to mention other possible motivations—just those by which he tried to support Oppianicus's assassination⁴⁸⁸ against Cluentius.⁴⁸⁹ From the scope of motives he picks only the elements that he considered easily refutable, but to make them more authentic he crowns his refutation by questions as if he has answered all questions.⁴⁹⁰ Yet, he does not content himself with taking the narrative of the prosecution to elements or with mere *praeteritio*, he refutes Attius's allegations seemingly in details. He states that Balbutius's death is not the result of murder, which he supports by the later death and purported illness of the deceased, which seems to be certified by the testimony of his father, Balbutius senior.⁴⁹¹ It is worth observing that in his argument he does not deny that the poison was made or that Balbutius drank it, instead he takes the edge of the charge merely by the fact that his death occurred later and he was ill. So, how is his argumentation built at this point? First, he emphasises his defendant's innocence; then, he doubts the order of the events reconstructed by the accused and that their content is true; finally, he crowns this by the testimony of a witness who maintains kinship relation with the victim—and is otherwise absent—thus giving the impression of refutation on the merits to the judges.⁴⁹²

After Cicero has concluded the two former cases without but with the appearance of refutation on the merits, now he can come to the most essential count of the indictment, the issue of poisoning Oppianicus senior by Cluentius with the assistance of M. Asellius as abettor,⁴⁹³ which must have been from first to last present in the mind of the judges and the audience in the light of which five-sixth of the oral pleading can become understandable. As most probably the actual reason for the formal accusation by Oppianicus junior might have

⁴⁸² Hoenigswald 1962. 118.

⁴⁸³ Cic. *Cluent.* 161–164.

⁴⁸⁴ Classen 1985. 90ff.

⁴⁸⁵ Cf. Hoenigswald 1962. 111.

⁴⁸⁶ Cic. *Cluent.* 165.

⁴⁸⁷ Cic. *Cluent.* 166–168.

⁴⁸⁸ Cic. *Cluent.* 44.

⁴⁸⁹ Hoenigswald 1962. 120f.

⁴⁹⁰ Cf. Quint. *inst.* 5, 7, 37.

⁴⁹¹ Cic. *Cluent.* 168.

⁴⁹² Classen 1985. 94.

⁴⁹³ Cic. *Cluent.* 169–187.

been his father's murder and death, the orator is compelled to depict the victim as unfavourably as possible in the first part of his speech so that the formal accusation could appear to the judges nothing else than a campaign of revenge motivated by immense hatred and he could give a relatively acceptable explanation for the circumstances of Oppianicus's death. In the light of that Cicero had to discuss the bribe in court of justice strictly separated—and as remote as possible—from poisoning since the fact of the charge brought against the stepfather itself could have generated an image in the audience from which the crime of poisoning would not have been alien either. Furthermore, this separated discussion enabled the orator to refer to the hypotheses set up and conjectures formulated and suggested to the judges in the first part of the oration as facts proved in the refutation of the second count of the indictment.⁴⁹⁴

As the first point of his reasoning Cicero denies that Cluentius had any motif to murder Oppianicus,⁴⁹⁵ what is more—now referring to Oppianicus's foul deeds enumerated and made probable as proved facts—he argues by claiming that Cluentius would have been more interested in his stepfather living in exile and poverty,⁴⁹⁶ however, this (high-sounding) *topos* can be considered unfounded to the extent that Oppianicus was never forced to go to *exilium* and certainly never lived in misery. After that, just as in connection with the Balbutius case, he starts to shake particular factual circumstances one by one;⁴⁹⁷ more specifically, he disputes that using M. Asellius as abettor was reasonable⁴⁹⁸ and that poison put in bread was lifelike;⁴⁹⁹ however, with good sense (at least for the time being) he omits to touch upon the testimony of the witness of the prosecution, Strato; instead he starts to relate a real thriller and puts Cluentius's mother, Oppianicus junior's stepmother, that is, Oppianicus senior's widow, Sassia in the centre.⁵⁰⁰ In the course of that he does not strive to prove his allegations in conformity with facts, he contents himself with highlighting the most repugnant moments of the series of events⁵⁰¹—and there were good chances for them to duly arouse the tired out audience's interest and maintain their attention—emphasising Sassia's "well-known" cruelty,⁵⁰² and directing the suspicion of poisoning towards her too.⁵⁰³

In his presentation, as a matter of fact, he does not shrink back—in order to depict a darker image of Sassia—even from contradicting himself hard to be noticed by the audience; for example, on the one hand, he speaks about Oppianicus's highly respected friends;⁵⁰⁴ on the other hand, he stresses that the neighbourhood avoided and despised him.⁵⁰⁵ Later, giving up even the appearance of the objectivity of the narrative, he showers a torrent of exasperated questions and commonplaces on the audience and Sassia and, in fact, just at the strategic point where he should respond to the allegations of the prosecution in conformity with facts: in connection with the third torture of Strabo the slave—it is worth adding: slaves' testimony was considered evidence only in the event that it was taken from them in torture (*tormentum, eculeus*)⁵⁰⁶—and he declares that the slave's testimony cannot be evaluated in view of the

⁴⁹⁴ Classen 1985. 94f.

⁴⁹⁵ Cic. *Cluent.* 169.

⁴⁹⁶ Cic. *Cluent.* 170f.

⁴⁹⁷ Cf. Hoenigswald 1962. 121f.

⁴⁹⁸ Cic. *Cluent.* 172.

⁴⁹⁹ Cic. *Cluent.* 173.

⁵⁰⁰ Cic. *Cluent.* 174–187.

⁵⁰¹ Cic. *Cluent.* 181.

⁵⁰² Cic. *Cluent.* 177.

⁵⁰³ Cic. *Cluent.* 175.

⁵⁰⁴ Cic. *Cluent.* 66. 78. 172. 175. 176. 182. Cf. Hoenigswald 1962. 114.

⁵⁰⁵ Cic. *Cluent.* 41. 170. 175.

⁵⁰⁶ Cic. *Cluent.* 181–187.

circumstances of the confession since he was not brought in court,⁵⁰⁷ without commenting on its content on the merits.⁵⁰⁸ Referring back to the beginning of his oration, in a *praeteritio* full of exaggerations, Cicero discusses Sassia's foul deeds committed against her son, Cluentius,⁵⁰⁹ and underlines the case of *Fabricianum venenum* from among them, i.e., the poisoning purportedly attempted against her son, and although he does not give account of its circumstances, he tries to present it as a fact decisive in terms of the outcome of the lawsuit and the verdict of the judges.⁵¹⁰ Sassia's foul deeds culminate in preparing the lawsuit against Cluentius,⁵¹¹ when she tried to kill his son by the assistance of the accuser and unlawfully exploiting the tools provided by law—when depicting the above Cicero several times efficiently contrasts the word “mother” with conduct worthy of a mother and eventually makes Sassia her own son's accuser;⁵¹² then, in a powerful invective he presents a stylised figure of Sassia as a superhuman, subhuman monster.⁵¹³ Thereby the orator manages to magnify the danger implied by the charge to real *vis maior* since whereas he classifies Oppianicus junior's acts as procedure guided by a (step)son's *pietas*, he presents the mother's motivations as an inhuman campaign of revenge.⁵¹⁴ In the *peroratio*⁵¹⁵ Cicero, on the one hand, addresses begging to the judges, on the other hand, he crowns his outbursts against Sassia.⁵¹⁶

The *dispositio* applied with respect to the subject, the alternation of detailed reasoning and briefly made declarations and the system of arguments and hypotheses confirming each other create the construction by which Cicero made Cluentius's case—not promising much success *prima facie*—successful.⁵¹⁷ Undoubtedly, it was a significant achievement that he was able to revive the events and after-effects of the Oppianicus lawsuit having taken place years before, which became generally known as scandalous moments, and in accordance with his own concept, at that.⁵¹⁸ Likewise, by masterly tactics he separated arguments, facts and circumstances belonging to each other and connected completely separate arguments, facts and circumstances, by interweaving the planes of *narratio* and *argumentatio* almost impossible to unravel.⁵¹⁹

II. 2. 5. Rhetorical tactics and double handling of the facts of the case in *Pro Cluentio*

Discussion of *crimina veneficii*, that is, actual, legally relevant counts of the indictment in the first place could give the impression to the judges that Cicero tries to evade the less considerable but highly effective part of the charge, *iudicium Iunianum*, for this reason, he admittedly—in fact only apparently since he starts discussing the Oppianicus lawsuit on the merits much later only⁵²⁰—follows the system set up by Attius. Regarding the forced choice between *status collectionis* and *status coniecturalis* Cicero resolves to perform a stunt, a

⁵⁰⁷ Stroh 1975. 198.

⁵⁰⁸ Cic. *Cluent.* 181. 183.

⁵⁰⁹ Cic. *Cluent.* 188–194.

⁵¹⁰ Cic. *Cluent.* 189.

⁵¹¹ Cic. *Cluent.* 190f.

⁵¹² Cic. *Cluent.* 190–192.

⁵¹³ Cic. *Cluent.* 192–194.

⁵¹⁴ Classen 1985. 100.

⁵¹⁵ Cic. *Cluent.* 195–202.

⁵¹⁶ Cic. *Cluent.* 199.

⁵¹⁷ Classen 1985. 102.

⁵¹⁸ Humbert 1938. 114.

⁵¹⁹ Volkmann 1885. 162f.; Stroh 1975. 210.

⁵²⁰ Cic. *Cluent.* 59ff.

highly break-neck one, at that, which he, however, already used successfully in *Pro Roscio Amerino*⁵²¹: he separates his own intentions and his defendant's interests and claims by stating that for him as counsel for the defence it would have been absolutely sufficient to refer to the law itself,⁵²² but at the request of Cluentius, who wanted not only to win the lawsuit but to restore his reputation⁵²³ he has chosen the more difficult way, specifically he wants to prove the innocence of the accused not only formally but also substantively.⁵²⁴ By that he can absolutely give the impression as if each of the two *status*es represented proper weight for him to make a success of his case.⁵²⁵

The double argument technique, at the same time, fits in with the “needs” of the members of the court of justice with brilliant accuracy since by applying *status collectionis* he defends the interests of the order of knights adhering to the words of the law, which take them out of the scope of culpability;⁵²⁶ at the same time, he arouses fear in them that in the event that the extensive interpretation gains ground, charge can be brought at will in the future due to bribe against knights too;⁵²⁷ on the other hand, he does not have to be afraid of drawing the anger of judges who come from the order of senators because having used *status coniecturalis* he can be sure of their sympathy since by proving bribe committed by Oppianicus and not by Cluentius and by having explored that only a few judges were bribed in the Oppianicus lawsuit and only Staienus was actually given money,⁵²⁸ through a kind of “washing the Moor white”—so kind to senators so much damaged by the events of the lawsuit in 74—he restores the honour of the judges in the present case by providing them with a scapegoat.⁵²⁹ With respect to the application of two *status*, in the *dispositio* of *Pro Cluentio*, together with Wilfried Stroh we can create the following system:⁵³⁰ in the discussion of *iudicium Iunianum*,⁵³¹ *status coniecturalis* (i.e., it was not Cluentius who committed bribe) was addressed to senators⁵³² and *status collectionis* (i.e., Cluentius could not be punished pursuant to section six of *lex Cornelia de sicariis et veneficis*) to knights,⁵³³ and it is followed by the discussion of *crimina veneficii*.⁵³⁴

To counteract the sympathy shown towards Oppianicus junior, Cicero chooses a masterly tool: he enters in the picture Cluentius's mother (that is, the widow of Oppianicus senior and stepmother of Oppianicus junior), Sassia, who is fired by *hostile odium* and *crudelitas* against her son, and in whose hands—for she is moving the threads of the charge—Oppianicus junior guided by a child's *pietas* is merely a tool for accomplishing her revenge.⁵³⁵ It is worth examining closer at what points and in what context Cicero mentions Sassia.⁵³⁶

Directly after *exordium/prooemium* he names Sassia as a mother guided by cruelty and hatred and as the source of the charge.⁵³⁷ The question whether Sassia (as Joachim Classen argues)

⁵²¹ Cic. *Rosc. Am.* 128ff.

⁵²² Cic. *Cluent.* 145.

⁵²³ Cic. *Cluent.* 144.

⁵²⁴ Stroh 1975. 200.

⁵²⁵ Quint. *inst.* 6, 5, 9.

⁵²⁶ Cic. *Cluent.* 150–155.

⁵²⁷ Cic. *Cluent.* 152, 157. Cf. Mommsen 1899. 634f.

⁵²⁸ Kroll 1924. 178.

⁵²⁹ Stroh 1975. 203.

⁵³⁰ Stroh 1975. 204.

⁵³¹ Cic. *Cluent.* 9–160.

⁵³² Cic. *Cluent.* 9–142.

⁵³³ Cic. *Cluent.* 143–160.

⁵³⁴ Cic. *Cluent.* 161–187.

⁵³⁵ Cic. *Cluent.* 12ff. Cf. Quint. *inst.* 6, 5, 9; 11, 1, 62.

⁵³⁶ Stroh 1975. 205ff.

⁵³⁷ Cic. *Cluent.* 12ff.

was personally present at the trial⁵³⁸ or (as Wilfried Stroh and Jules Humbert asserts) was absent⁵³⁹ cannot be settled, as Cicero does not address her directly at any point and it is not known if she testified or not, and perhaps it is not exceptionally relevant. He emphatically alludes to Sassia's significance in terms of the lawsuit,⁵⁴⁰ and states that for the sake of saving Cluentius he cannot show consideration for her,⁵⁴¹ however, it is much later, in the discussion of *crimina veneficii* that we learn what this significance is.⁵⁴² The minutes of the interrogation of the slave was read (caused to be read) by Attius before the court of justice,⁵⁴³ but it is doubtful if Sassia's name occurred in it;⁵⁴⁴ however, the most probably rather subjective reconstruction of the events imbued with rhetorical exaggerations enabled Cicero to make an attack against Cluentius's mother.⁵⁴⁵ The orator keeps the promise made earlier⁵⁴⁶ only after that, and he presents a stylised image of the mother as *monstrum* to the judges who probably had not known anything about the relation between mother and son before the trial. Accordingly, she was already part of the assassination attempt against Cluentius,⁵⁴⁷ she made her stepson her son-in-law in order to enter him as an accuser acting resolutely against her son;⁵⁴⁸ then, after brief summary of the interrogation of the slave⁵⁴⁹ the orator creates the image of Sassia who manipulates witnesses, arrives to Rome to hasten her son's ruin, holds the threads in her hands in the background but hides from public.⁵⁵⁰

As the prosecutor most probably did not mention Sassia, instead, tried to strengthen the "*pious Oppianicus—impious Cluentius*" opposition in the judges, Cicero, with good sense, using the tool of *retorsio criminis* let the characterisation set up by the prosecution fall back—if not on Oppianicus junior, of whom the orator could not speak much ill for he was young and gave a good impression to the judges—on Sassia purportedly manipulating the charge, who seemed to be suitable for this role all the more because the fact of her marriage entered into with her son-in-law⁵⁵¹ around 86 offered the defence the opportunity to expound the topos of a female violating the order of nature and for this reason undoubtedly not shrinking back from other foul deeds either.⁵⁵² Cicero achieves all that by brilliant regrouping of the events since it is just this *ordo artificiosus* that allows him to build the *narratio* divided into two into the *argumentatio* and to get from here straight to the *peroratio* that fulfils the function of invective against Sassia, in which the attention and effort of the judges should be aimed no longer at deliberating if Oppianicus junior was right or wrong in taking vengeance for the conviction and death of his stepfather but at saving the son from the revenge of the mother, who is treading under foot the laws of nature and wants to use administration of justice to achieve this goal.⁵⁵³

In the part on *iudicium Iunianum*⁵⁵⁴ Cicero handles the tools of *narratio* and *argumentatio*, traditionally and theoretically clearly separable and to be separated, with brilliant and

⁵³⁸ Classen 1985. 36.

⁵³⁹ Stroh 1975. 206; Humbert 1925. 115f.

⁵⁴⁰ Cic. *Cluent.* 17.

⁵⁴¹ Cic. *Cluent.* 18.

⁵⁴² Cic. *Cluent.* 176ff.

⁵⁴³ Cic. *Cluent.* 184.

⁵⁴⁴ Stroh 1975. 206.

⁵⁴⁵ Cic. *Cluent.* 176–187.

⁵⁴⁶ Cic. *Cluent.* 17.

⁵⁴⁷ Cic. *Cluent.* 189.

⁵⁴⁸ Cic. *Cluent.* 190. Cf. Kroll 1924. 175; Hoenigswald 1962. 111.

⁵⁴⁹ Cic. *Cluent.* 191.

⁵⁵⁰ Cic. *Cluent.* 192ff.

⁵⁵¹ Cic. *Cluent.* 12.

⁵⁵² Stroh 1975. 208; Hoenigswald 1962. 113.

⁵⁵³ Stroh 1975. 210.

⁵⁵⁴ Cic. *Cluent.* 9–142.

deceptive ease. Although after the *propositio*⁵⁵⁵ and the interposed narrative on Sassia⁵⁵⁶ he starts the *narratio* that culminates later in *confirmatio*,⁵⁵⁷ its given parts,⁵⁵⁸ for example, the paragraphs on Oppianicus's foul deeds⁵⁵⁹ and those relating *praeiudicia*⁵⁶⁰ actually fulfil the function of *probabile e causa* working towards the purpose to be proved⁵⁶¹ because they are meant to support that it was not Cluentius but Oppianicus who might have had and did have a reason for bribing the court of justice.⁵⁶² Similarly, the argument on the amount of bribe as *probabile e facto* partly precedes,⁵⁶³ partly follows,⁵⁶⁴ that is, surrounds the *narratio* on this topic;⁵⁶⁵ in other words, the *argumentatio* discussing these events, outlining an approximate chronology is of a narrative kind.⁵⁶⁶

This complicated procedure is indispensably necessary for Cicero to make the—lesser lifelike—train of thoughts believable to the judges which states that in the lawsuit in 74 it was not the winner Cluentius but Oppianicus declared guilty that bribed the court of justice and in such fashion, in fact, that the hired intermediary, Staienus promised to hand over the bribe to the judges but later he alleged that the accused was not willing to pay, thereby he turned the judges against him and made sure that Oppianicus would be convicted, and all that he did in order to keep the whole amount for himself. Cicero, however, did not shower this narrative on the audience without any preparation, therefore, he was compelled to give reasons for the reconstructive *narratio* by a preceding *argumentatio* claiming that Oppianicus—being aware of his numerous foul deeds and *praeiudicia* negatively influencing his case—must have had a serious motif to bribe the court of justice.⁵⁶⁷ Cicero, as a matter of fact, gets into conflict with his promise that in his speech he intends to follow the order set up by the opponent;⁵⁶⁸ yet, he more or less keeps his promise during the actual *narratio*, although prior to it he speaks about the points not touched upon by the prosecutor. And in long preparatory passages he assures the judges several times that he wants to make it short what he has got to say,⁵⁶⁹ which he can do because right at the beginning of the *oratio* he states that he does not intend to conceal anything of the facts of the case and is willing to deal with every circumstance mentioned by Attius.⁵⁷⁰

Breaking strict chronology can be clearly observed especially in discussing *praeiudicia* that are against Cluentius's case and the list of Oppianicus's crimes. The chairman of the Oppianicus lawsuit (*iudex quaestionis*), C. Iunius was convicted in 74, and in the same year the senate issued a resolution that made it possible to hold judges affected by *iudicium Iunianum* responsible for bribe.⁵⁷¹ In 73, C. Fidiculanus Falcula was acquitted in two lawsuits;⁵⁷² in 72, P. Septimius Scaevola was convicted for *crimen repetundarum*, between 73 and 70 M. Atilius Bulbus was convicted for *crimen maiestatis*; in 70, on the occasion of

⁵⁵⁵ Cic. *Cluent.* 9–11.

⁵⁵⁶ Cic. *Cluent.* 11–18.

⁵⁵⁷ Cic. *Cluent.* 81.

⁵⁵⁸ Cic. *Cluent.* 21–61.

⁵⁵⁹ Cic. *Cluent.* 21ff.

⁵⁶⁰ Cic. *Cluent.* 49ff.

⁵⁶¹ Stroh 1975. 211.

⁵⁶² Cic. *Cluent.* 62. 64. 81.

⁵⁶³ Cic. *Cluent.* 64f.

⁵⁶⁴ Cic. *Cluent.* 82.

⁵⁶⁵ Cic. *Cluent.* 66–81.

⁵⁶⁶ Stroh 1975. 211.

⁵⁶⁷ Stroh 1975. 312.

⁵⁶⁸ Cic. *Cluent.* 1.

⁵⁶⁹ Cic. *Cluent.* 19. 20. 30. 36. 41.

⁵⁷⁰ Cic. *Cluent.* 1.

⁵⁷¹ Cic. *Cluent.* 136.

⁵⁷² Cic. *Cluent.* 114.

census M. Aquilius, Ti. Gutta and P. Popilius—just as Cluentius himself—were reprimanded by the censors; in the following years Popilius and Gutta were convicted due to *ambitus*, Staienus was convicted on the grounds of other charges.⁵⁷³ The prosecutor presents each of these lawsuits and judgments as it were—independently of the nature of the particular charge—as the outcome of *iudicium Iunianum*,⁵⁷⁴ whereas Cicero, contrary to natural chronology, sets up an artificial chronology that suits his intentions as counsel for the defence, in which judgments appear as the consequence of the *invidia* stirred up by tribune Quinctius,⁵⁷⁵ furthermore, by anticlimactic editing, from cases with greater weight⁵⁷⁶ through Septimius Severus's *listis aestimatio*,⁵⁷⁷ censorial measures considered weightless,⁵⁷⁸ Egnatius's last will and testament⁵⁷⁹ and the *senatus consultum*⁵⁸⁰ he gets to his own opinion formulated in *Verrine orations*,⁵⁸¹ thereby—by striking a tone ranging from pathetic to irony—he gives the impression of decrescendo of the *invidia* to the audience.⁵⁸²

Similarly, with respect to Oppianicus's murders and foul deeds—real ones and those attributed to him⁵⁸³—a relative chronology suitable for rhetoric tactics set up by Cicero can be clearly observed. The first murder: Oppianicus poisons his wife, Cluentia, Cluentius's aunt with his own hands.⁵⁸⁴ The second and third murders: Oppianicus poisons the pregnant wife of his brother, C. Oppianicus and then his brother to get his inheritance.⁵⁸⁵ After that, following the death of his brother-in-law, Cn. Magius, who named Oppianicus junior as his inheritor, Oppianicus senior induces Magius's pregnant widow to abort the embryo, then marries her.⁵⁸⁶ The fourth murder and counterfeiting of the last will and testament: by the assistance of a travelling pharmacist/poison mixer Oppianicus poisons his former mother-in-law, Dinaea, who had named him as her inheritor in her last will and testament, then, he has the last will and testament, from which he had already deleted bequest orders, drafted again and has it sealed by a forged seal.⁵⁸⁷ The fifth murder: Oppianicus gives order to find and murder M. Aurius, Dinaea's son, of whom he learns—he bribes the messenger to provide false information for the relatives—that he was taken prisoner of war and lives in Gallia as a slave, and to whom his mother left four hundred thousand *sestertii*.⁵⁸⁸ The sixth, seventh, eighth and ninth murders: by creating the appearance of *proscriptio* Oppianicus has A. Aurius killed, who threatened to sue him due to the assassination of M. Aurius, and has three other citizens of Larinum killed under the pretext of the same legal title.⁵⁸⁹ The tenth and eleventh murders: Oppianicus wants to marry A. Aurius's widow, Sassia, but she does not want to be the stepmother of three male children, therefore, Oppianicus kills two of his sons and leaves only Oppianicus junior alive.⁵⁹⁰ Counterfeiting of the last will and testament and the twelfth murder: to indicate himself as inheritor Oppianicus forges the last will and testament of

⁵⁷³ Stroh 1975. 215f.

⁵⁷⁴ Cic. *Cluent.* 115.

⁵⁷⁵ Hoenigswald 1962. 111; Kroll 1924. 174ff.

⁵⁷⁶ Cic. *Cluent.* 89–114.

⁵⁷⁷ Cic. *Cluent.* 115–116.

⁵⁷⁸ Cic. *Cluent.* 117–134.

⁵⁷⁹ Cic. *Cluent.* 135.

⁵⁸⁰ Cic. *Cluent.* 136–138.

⁵⁸¹ Cic. *Cluent.* 138–142.

⁵⁸² Stroh 1975. 217.

⁵⁸³ Cic. *Cluent.* 20–41.

⁵⁸⁴ Cic. *Cluent.* 30.

⁵⁸⁵ Cic. *Cluent.* 30–32.

⁵⁸⁶ Cic. *Cluent.* 33–35.

⁵⁸⁷ Cic. *Cluent.* 40–41.

⁵⁸⁸ Cic. *Cluent.* 21–23.

⁵⁸⁹ Cic. *Cluent.* 23–25.

⁵⁹⁰ Cic. *Cluent.* 26–28.

Asuvius from Larinum, then has Asuvius killed, and pays off Q. Manlius, *triumvir capitalis* who starts investigations in the case.⁵⁹¹

Changing this chronology Cicero gives account of Oppianicus's crimes in the following chronology: assassination of M. Aurius,⁵⁹² A. Aurius and three citizens from Larinum,⁵⁹³ the two male children,⁵⁹⁴ Cluentia,⁵⁹⁵ the sister-in-law and the brother, C. Oppianicus,⁵⁹⁶ instigation for abortion,⁵⁹⁷ counterfeiting of the last will and testament and assassination of Asuvius,⁵⁹⁸ assassination of Dinaea and forging her last will and testament.⁵⁹⁹ Why was Cicero "compelled" to act like that?⁶⁰⁰ As the *narratio* is not directly linked to the Cluentius case, the orator cannot dwell on specific cases by supporting them by documentary evidence or testimonies, instead, he must content himself with flashing the appearance of demonstration from time to time.⁶⁰¹ Furthermore, possible demonstration would be made difficult by the fact that the crime story like narrative is not lifelike because it would be hard to explain: why a Richard III like serial murderer Oppianicus, who gets his victims from his own family, who settles in their estate, who marries his victim's widow, was called to account for his deeds only one and a half decades after his first assassination; why he was named as their inheritor in their last will and testament by several persons during the times although they must have known that thereby they hastened their own death; why his brother, C. Oppianicus should have made the murderer of his wife his inheritor; why he killed his two sons only and left the third one alive; and why he had M. Aurius killed although earlier, when forging Dinaea's last will and testament he had already deleted the bequest ordered to be given to the son.⁶⁰²

The orator does not even try to refute the counter-arguments listed above; much rather he makes efforts to avoid that they should occur to the audience at all, that is, to achieve his goal, instead of obvious lies, by delicately dislocating and concealing facts and arbitrarily determining the dramaturgical order of the cases—and that in doing so he meets success is proved by the sheer fact that the authors of later comments did not form a suspicion either, and only Wilfried Stroh made an attempt at reconstructing the actual order of events.

Placing the assassination of M. Aurius first in the order proved to be a masterly trick since as "evidence" it was possible to bring up the idle talk about the case and the open threat by A. Aurius,⁶⁰³ and as the cause of failure to commence any trial it was possible to bring up the use of Sulla's *proscriptiones*, that is, the assassination of A. Aurius by political machinations,⁶⁰⁴ which supported failure to call Oppianicus to account for his deeds regarding other cases by his political influence.⁶⁰⁵ Cicero eliminates questions that might arise regarding Dinaea's death and last will and testament by similar ingenuity. When Dinaea is mentioned for the first time, only her illness and death and the existence of her last will and testament is referred to

⁵⁹¹ Cic. *Cluent.* 36–39.

⁵⁹² Cic. *Cluent.* 21–23.

⁵⁹³ Cic. *Cluent.* 23–25.

⁵⁹⁴ Cic. *Cluent.* 26–28.

⁵⁹⁵ Cic. *Cluent.* 30.

⁵⁹⁶ Cic. *Cluent.* 30–32.

⁵⁹⁷ Cic. *Cluent.* 33–35.

⁵⁹⁸ Cic. *Cluent.* 36–39.

⁵⁹⁹ Cic. *Cluent.* 40f.

⁶⁰⁰ Stroh 1975. 220.

⁶⁰¹ Michel 1960. 257ff.

⁶⁰² Stroh 1975. 221.

⁶⁰³ Cic. *Cluent.* 23.

⁶⁰⁴ Kroll. 1924. 176.

⁶⁰⁵ Stroh 1975. 222.

but counterfeiting of the last will and testament is not,⁶⁰⁶ and only much later—once he has showered the stream of Oppianicus’s crimes on the audience, which as it were makes the new and umpteenth murder logical—does the orator bring up the fact of the assassination of Dinaea and forging of her last will and testament.⁶⁰⁷ Cicero explains the momentum that Oppianicus was willing to murder also his own sons not from the character of Oppianicus but of Sassia, who agreed to marry him only under this condition, and the dark portrait depicted of Sassia who married the murderer of her husband⁶⁰⁸ does not rule out but definitely makes the double assassination probable.⁶⁰⁹ Lack of evidence does not prevent Cicero in his narrative at all, he turns necessity into a virtue and reminds the judges of the point that their indignation must be dwarfed by the indignation of the court of justice eight years before that examined proofs and heard witnesses in details.⁶¹⁰

Referring to shortage of time, Cicero gets down briefly with the assassination of the one-time wife, Cluentia and the sister-in-law and brother, C. Oppianicus, however, there are good chances that reference to Sassia after the former wife, Cluentia—of whom he does not state *expressis verbis* that she remained Oppianicus’s wife until his death—might make the audience believe that Cluentia was Oppianicus’s wife later, after Sassia; and suspicion that the orator speaks about events that occurred before 82 does not even arise. Undoubtedly: Cicero’s aim must have been just to confuse the chronology and thereby the audience completely since he could not prove, only complain of the assassinations listed here.⁶¹¹ The gifts given by Oppianicus to the widow of his brother-in-law, Magius by themselves would make only the intention to marry probable, however, connecting them not with the marriage but with the abortion carried out by Magia upon Oppianicus’s instigation presents them as *merces abortionis*.⁶¹² To make the assassination of Dinaea and especially counterfeiting of her last will and testament⁶¹³ lifelike, Cicero inserts the assassination of Asuvius after the above—in whose last will and testament Oppianicus was indicated in the first place as inheritor—which is supported by the testimony of Oppianicus’s accomplice, Avillius, and thereby inheriting through assassination is made the outstanding motivation of Oppianicus’s deeds,⁶¹⁴ and so poisoning of Dinaea and forging of her last will and testament are now nothing else than enhancement of the motives of the Asuvius case.⁶¹⁵

Cicero’s *narratio* in *Pro Cluentio* is a beautiful example of the appearance of *ordo artificialis*—and *mos Homericus*⁶¹⁶—in which *perspicuitas* considered a virtue is replaced by the strategy justified by *utilitas causae*, based on which in the representation of both the chain and the internal structure of events elements that are more believable and better supported by proofs precede elements that can be proved with difficulties—or cannot be proved at all—as it were creating credit and basis for having them accepted too.⁶¹⁷

To give a technical summary of the rhetorical virtuosity of *Pro Cluentio*: by discussing the charge of bribe and the charge of poisoning separately Cicero doubles *narratio* and *argumentatio*; he inserts *propositio*, which usually follows *narratio*, directly after *prooemium*; *argumentatio* in connection with both the first and second count of the indictment unnoticeably

⁶⁰⁶ Cic. *Cluent.* 21f.

⁶⁰⁷ Cic. *Cluent.* 40f.

⁶⁰⁸ Cic. *Cluent.* 12–16.

⁶⁰⁹ Stroh 1975. 222.

⁶¹⁰ Cic. *Cluent.* 29.

⁶¹¹ Stroh 1975. 223.

⁶¹² Cic. *Cluent.* 34.

⁶¹³ Cic. *Cluent.* 40f.

⁶¹⁴ Cic. *Cluent.* 36–39.

⁶¹⁵ Stroh 1975. 224.

⁶¹⁶ Quint. *inst.* 7, 10, 11.

⁶¹⁷ Stroh 1975. 224f.

and almost inseparably flows together with *narratio*; *peroratio* is a logical outcome of *narratio* inserted as conclusion; the narratives inserted *extra causam*, free handling of chronology and joint application of *status collectionis* and *status coniecturalis* built on each other strengthen the positions of the defence. This rhetorical tactics becomes astonishing just by the fact that the listener or the reader never feels that he is the victim of Cicero's knowing misleading, what is more, the links of the narrative are intertwined without spectacular jumps, seemingly integrated in a logical order, which is supported also by the fact that, except for Wilfried Stroh, modern commentators of the text mostly set out from the order of the events outlined by Cicero in order to reconstruct the historical facts of the case.⁶¹⁸

As *exemplum* of the exemplary combination of the three genres of style of rhetoric Cicero himself also referred to *Pro Cluentio*,⁶¹⁹ in which extended introduction, soberly brief descriptions, precise argumentation, colourful narrative, reasons full of emotions, pathos and irony, linguistic humour and keywords hammered with passion, apposite characterisations, polemical statements not free from exaggerations, questions formulated with tormenting temper and invective like insertions are combined into a harmony not seen anywhere else.⁶²⁰ Thanks to Cicero, Cluentius was acquitted; however, as we can learn it from Quintilian's account, the orator himself admitted that he had achieved that by cleverly manipulating the judges.⁶²¹ Perhaps for this reason, Cicero considered *Pro Cluentio* one of the maximum outputs of his orator's career,⁶²² which both Quintilian⁶²³ and Pliny, who praised this *oratio* as Cicero's most excellent speech, agreed with.⁶²⁴ The oration can be indeed considered exemplary: the orator masterly changes elements of style; combines pathos, simple description and humour; represents situations and characters appropriate for a crime story with apt preciseness; palpably connects arguments and planes of time, except when he intends to make obscurity denser, without distorting lucid arrangement of facts. From first to last engaging the attention of the audience—since later he himself admitted that he had to throw dust in the judges' eyes during his speech⁶²⁵—and leading the judges qualified to decide the case, as a matter of fact, towards the direction he wanted to.

⁶¹⁸ Stroh 1975. 226f.

⁶¹⁹ Cic. *Or.* 103. Cf. Humbert 1938. 280.

⁶²⁰ Classen 1985. 105.

⁶²¹ Quint. *inst.* 2, 17, 21.

⁶²² Cic. *Or.* 107f.

⁶²³ Quint. *inst.* 4, 1, 35; 6, 5, 9.

⁶²⁴ Plin. *epist.* 1, 20, 4.

⁶²⁵ Quint. *inst.* 2, 17, 21.

III. Election bribery (*Pro Murena, Pro Plancio*)

III. 1. Lawsuit of Lucius Licinius Murena

Cicero delivered his speech in November 63 in defence of Lucius Licinius Murena, an applicant for the office of the next year's consul, who was charged by his competitors with election fraud, *ambitus*. The condemnation of Murena would have broken not only the commander's political career, it would have driven the Republic into serious danger. So, it was not only the honesty of a member of the Roman political elite but the stability of the Roman State that Cicero was destined to defend, as he clearly states it in his speech. In his statement of defence, it is not primarily the personal merits of the competitors, Licinius Murena and Sulpicius Rufus that the orator compares, it is their career, the commander's, the jurist's activity that he puts on the scales of public good, and provides a fairly humorous, witty assessment of these. The outcome of the lawsuit is known, the court acquitted Murena, who thus was able to start his service as a consul, and take over the office from the previous year's consul and his own counsel for defence, Cicero.

First, we shall analyse the historical background of *Pro Murena*, describing the political events surrounding the delivery of the speech in details as the *oratio* was made just at the time of revealing Catilina's plot, and so it cannot be taken out of the context of the stormy political conditions of the those months. (III. 1. 1.) After that—in the course of analysing the legal background of the lawsuit—we shall survey the order of the election of consuls in the last century of the Republic, and the state of facts of election bribery organically related to it and the legislation efforts made to impose sanctions on *ambitus*, not necessarily satisfactory in their effect, and the role of associations (*collegia*) in the election campaign. (III. 1. 2.) Finally, we shall discuss the rhetorical tactics used in *Pro Murena, contentio dignitatis*, that is, the strategy typically used in *ambitus* lawsuits by which Cicero compared development of the career and personality of the competing candidates to enable him to demonstrate—not so much his defendant's innocence in the charge of election bribery—much rather eligibility of Murena, who won the election, and ineligibility of his opponent, Sulpicius Rufus, to the consul's dignity. (III. 1. 3.)

III. 1. 1. Historical background of *Pro Murena*

In 63 Lucius Licinius Murena and Decimus Iunius Silanus were elected consuls for the year of 62. Apart from them, however, Lucius Sergius Catilina and Servius Sulpicius Rufus, the most excellent jurist of his age also applied for this office. Before the election, M. Porcius Cato made an oath that he would charge anybody who had won the election with *ambitus*, except for his brother-in-law,⁶²⁶ Silanus.⁶²⁷ In Rome it was far from being a rare thing to charge the magistrates elected with *ambitus*. In 66 both *consules designati*, P. Cornelius Sulla and P. Antonius Paetus were actually condemned, and in 54 none of the four applicants managed to avoid the proceedings taken due to *ambitus*.⁶²⁸ The act of condemning a *consul designatus*, as a matter of fact, was likely to shake the stability of the Republic to a considerable extent.⁶²⁹ The fact that the charge made by Sulpicius and Cato went far beyond

⁶²⁶ Plut. *Cato min.* 21, 3.

⁶²⁷ Cic. *Mur.* 43–46.

⁶²⁸ Adamietz 1989. 1.

⁶²⁹ Cic. *Mur.* 79. 82.

the usual extent of the possible danger to the *res publica* was justified by the events taking place in the year of 63. The delivery of *Pro Murena* can be dated to November 63; that is, one of the periods burdened with the greatest crisis of the Roman Republic. The year of 63—when Marcus Tullius Cicero and Caius Antonius Hybrida became consuls—saw the second Catilina’s plot.⁶³⁰ What follows is a brief summary of the key events of the conspiracy.⁶³¹ Lucius Sergius Catilina, a very gifted, yet uninhibited patrician from an impoverished noble family and an oligarch, who disguised himself as a reformer, gathered people of the widest orders and ranks around him, and promised them cancellation of their debt in case he came to power. Imre Trencsényi-Waldapfel assumes that Catilina probably did not have a definite program, except for seizing power.⁶³² By his “many-colouredness” implied by the characterisation by Sallustius Crispus⁶³³ he was able to make a few noble citizens side with him too.⁶³⁴ After Catilina was defeated in the election of consuls held in the summer of 63, he saw no other possibility to obtain power than brute force. To this end, he made arrangements for armed actions,⁶³⁵ simultaneously, G. Manlius organised an army in Etruria, and was only waiting for Catilina’s order to run to help him with this army.⁶³⁶ Cicero learned of Catilina’s plans through the lover of one of the supporting actors of the plot,⁶³⁷ Quintus Curius:⁶³⁸ Fulvia.⁶³⁹ Of all this and the assassination against the senators scheduled for 28 October Cicero gave an account in the senate on 20 October. On 21 October the senate ordered state of emergency with *senatus consultum ultimum*, by that vesting the consuls with full powers to take any action necessary to ensure the safety of the State.⁶⁴⁰ Since the senate had received news that on 24 October Manlius started armed actions, and that commotion was observed among the slaves in Capua and Apulia, L. Aemilius Paulus Lepidus brought a charge of *vis* against Catilina,⁶⁴¹ who in turn offered to place himself under the free custody of a leading politician, but nobody was willing to take him.⁶⁴² During the night from 5 to 6 November, Catilina called his accomplices to M. Porcius Laeca’s house, and there announced that he would join Manlius, and assigned the roles for triggering armed conspiracy. The only problem he had was that beforehand he had to kill Cicero.⁶⁴³ To set Catilina free from this problem, two men, senator L. Vargunteius and C. Cornelius from the order of the knights undertook to murder Cicero during the morning *salutatio*.⁶⁴⁴ Cicero learned of this plan too; and he did not let the two assassins who appeared in the morning on 7 November into his house which was now protected by armed guards. After that he immediately convened the senate to the Jupiter Stator temple where Catilina also appeared to everybody’s great astonishment.⁶⁴⁵ It was on this occasion, on 8 November when Cicero delivered the first *Catilinarian oration*. He exposed Catilina’s intrigues⁶⁴⁶ and called him to leave Rome.⁶⁴⁷ Catilina suddenly realised

⁶³⁰ See Meier 1968. 61ff.

⁶³¹ Drexler 1976. 124ff.

⁶³² Trencsényi-Waldapfel 1959. 38.

⁶³³ Sall. *Cat.* 5, 1–5.

⁶³⁴ Cf. Cic. *Cael.* 14.

⁶³⁵ Giebel 1977. 41.

⁶³⁶ Giebel 1977. 41.

⁶³⁷ Sall. *Cat.* 23, 1.

⁶³⁸ Sall. *Cat.* 23, 3–4.

⁶³⁹ Sall. *Cat.* 26, 3.

⁶⁴⁰ Cic. *Cat.* 1, 3.

⁶⁴¹ Cf. Sall. *Cat.* 31, 4.

⁶⁴² Cic. *Cat.* 1, 19.

⁶⁴³ Cic. *Cat.* 1, 9.

⁶⁴⁴ Cic. *Cat.* 1, 9.

⁶⁴⁵ Cf. Cic. *Cat.* 1, 33.

⁶⁴⁶ Cic. *Cat.* 1, 1.

⁶⁴⁷ Cic. *Cat.* 1, 10.

that he was completely left alone, he ran out of the senate, and left the city during the same night. He pretended to go into exile; actually, he joined Manlius actually. Next day, on 9 November, in his second speech against Catilina Cicero communicated to the people what had happened so far. In mid November it became public knowledge that Catilina took over the control over Manlius's army, so he was declared *hostis populi Romani*. Catilina had left quite a number of his accomplices in Rome, whose presence and functions Cicero learned of from Fulvia, but for lack of any evidence they were not able to take any action against them. At this point, chance was of help to Cicero: what happened was that the conspirators contacted foreign delegates (*allobroges*⁶⁴⁸) staying in Rome, and tried to win them to join the plot.⁶⁴⁹ Having become aware of this, Cicero put forward the proposal to obtain written evidence on the conspirators, what was accomplished.⁶⁵⁰ Cicero acquired this proof through an attack that took place at⁶⁵¹ Pons Mulvius.⁶⁵²

At the session of the senate under the weight of these evidences, the leaders of the plot having stayed in Rome were forced to make confession. Of these actions Cicero gave an account in the evening of the same day (on 3 December) to the people that gathered on the Forum. It was on this occasion when the so-called third *Catilinarian oration* was delivered. The fourth *Catilinarian oration* was addressed on 5 December at the Concordia temple,⁶⁵³ where decision had to be made on what to do with the conspirators having been taken into custody. Iunius Silanus proposed to impose the severest, capital punishment, and he was supported by the majority. However, Caesar⁶⁵⁴ voted for confinement for life, and he was supported by a few. Here Cicero intervened, and in the fourth *Catilinarian oration* summing up the opinions expressed so far, he asked the senators if they accepted the proposal of Silanus or Caesar; and then the scales seemed to tilt in favour of Caesar. Then Marcus Porcius Cato rose to speak, who demanded death sentence for the traitors,⁶⁵⁵ and the senate voted for it. In the evening of the very same day the sentence was executed in Tullianum. Cicero was celebrated by the people and the senate unanimously as Rome's saviour,⁶⁵⁶ and Q. Lutatius Catulus greeted him as *pater patriae*, which title Cicero was proud of until the end of his life. Catilina and his troops were defeated in 62 at Pistoria in a battle, and the commander of the army died there too.⁶⁵⁷

On the grounds of the above, an attempt can be made to place *Pro Murena* in time.⁶⁵⁸ Catilina's accomplices were not taken into custody yet,⁶⁵⁹ and Cato had not started his activity as a tribune,⁶⁶⁰ as it was referred to by Cicero too.⁶⁶¹ On the other hand, Catilina's leaving from Rome can be defined as *terminus post quem*, for the speech gives an account of it as an event that had already taken place.⁶⁶² Furthermore, Cicero expresses his wish that Antonius should take armed action against Catilina; the relevant order was adopted in a few days after

⁶⁴⁸ Celtic tribe that was conquered by Cn. Domitius and Q. Fabius Maximus Allobrogicus in 121.

⁶⁴⁹ Cic. *Cat.* 3, 4.

⁶⁵⁰ Cic. *Cat.* 3, 6.

⁶⁵¹ I.e., the Via Flaminia leading to Etruria.

⁶⁵² Sall. *Cat.* 45, 1.

⁶⁵³ Cf. Plut. *Cic.* 21.

⁶⁵⁴ Cf. Sall. *Cat.* 51, 1–43.

⁶⁵⁵ Cf. Sall. *Cat.* 52, 2–36.

⁶⁵⁶ Giebel 1977. 45; Trencsényi-Waldapfel 1959. 40.

⁶⁵⁷ Sall. *Cat.* 57, 5ff.

⁶⁵⁸ Drexler 1976. 154ff.

⁶⁵⁹ I.e., before 3 December 63.

⁶⁶⁰ I.e. before 10 December 63.

⁶⁶¹ Cic. *Mur.* 81.

⁶⁶² Cic. *Mur.* 6. 78.

Catilina had left.⁶⁶³ On the grounds of the above, the delivery of the speech can be dated to the last days of November 63.⁶⁶⁴

The lawsuit involved four prosecutors (Ser. Sulpicius Rufus, M. Porcius Cato, Ser. Sulpicius Rufus minor and a certain C. Postumius not specifically known) and three counsels for defence (Q. Hortensius Hortalus, M. Licinius Crassus and Cicero). The proceedings were terminated with the acquittal of Murena.⁶⁶⁵

III. 1. 2. The order of election of *consules* and *ambitus* – the role of associations

In the age of the Republic of Rome there were four popular assemblies (*comitia curiata*, *comitia centuriata*, *comitia tributa*, *concilium plebis*); however, in the last century of the Republic only *comitia centuriata*, which elected *magistratus maiores*, including consuls, and *comitia tributa*, which elected *magistratus minores*, had any practical significance. According to tradition, the assembly of *centuriae* was formed by King Servius Tullius, however, his operation can be proved from the middle of the 5th century only. Originally, this *comitia* operated in accordance with a division defined in terms of military companies (*centuriae*); later, however, this military character faded.⁶⁶⁶ Based on censors' property estimate, citizens constituted one hundred and ninety-three *centuriae*: cavalry *centuriae* and foot *centuriae*, the latter divided into classes, which were originally distributed as follows. Knights, who were over classes amounted to eighteen *centuriae*; based on the *census* their property had to exceed one hundred thousand *asses*. Citizens ranked into classes constituted five classes: eighty *centuriae* with property over one hundred thousand *asses*, twenty *centuriae* with property over seventy-five thousand *asses*, twenty *centuriae* with property over fifty thousand *asses*, twenty *centuriae* with property over twenty-five thousand *asses* and thirty *centuriae* with property over eleven thousand *asses*. Below the *classes* the five unpropertied *centuriae* were placed: *fabri* and *cornices*, each of which had two *centuriae*, and *proletarii* one. After 215, the representation of the first class decreased from eighty to seventy *centuriae*, which was divided into thirty-five *centuriae* of the *iuniores* (encompassing citizens in age groups between eighteen and forty-six years) and thirty-five *centuriae* of the *seniores* (encompassing citizens in age groups between forty-seven and sixty years). Before the elections, one of the *centuriae* of the *iuniores* was selected by a draw so that it should be *centuria praerogativa*, i.e., it should vote first, as it were to indicate the final outcome of the voting.⁶⁶⁷ (As a matter of fact, the most propertied *centuriae* did not contain one hundred persons, while the number of persons in *centuriae* that did not have any property amounted to several thousands.)

Voting took place per *centuriae*; first, the more propertied voted, after that, the poorer, finally—in theory—unpropertied people that constituted a significant part of the population. Although citizens' votes had equal value, votes were aggregated per *centuriae*, and this way eventually each one *centuria* embodied one *yes* and *no* vote depending on the majority of votes cast within the *centuria*. It should be mentioned that counting of the votes did not take place upon voting had been terminated but continuously, that is—by a logical twist that seems peculiar but served political interests—they continued voting only until the *centuriae* that cast their votes reached a rate of voting over fifty percent. So, for election victory it was sufficient if more than half of the one hundred and ninety-three *centuriae* voted “properly”: eighteen votes of the knights and eighty votes of the first class were more than half of the votes of all

⁶⁶³ Sall. *Cat.* 36, 3.

⁶⁶⁴ Adamietz 1989. 3.

⁶⁶⁵ Cic. *dom.* 134.

⁶⁶⁶ Földi–Hamza 2009. 34.

⁶⁶⁷ Földi–Hamza 2009. 34; Németh 2006. 138f.; Németh–Nótári 2006. 268ff.

centuriae. (Later, when the weight of the first class somewhat decreased, it was sufficient if twenty *centuriae* of the second property class joined the knights and the first class.) The first ninety-eight *centuriae* amounted to a fraction of the entirety of citizens only, thus, election was far from representing the decision of the majority of citizens.⁶⁶⁸ It was far from all of the citizens who took part in the election because the site of voting, the Campus Martius could take seventy thousand citizens, and the total number of citizens several times exceeded this number in the 2nd century already. Poorer layers who lived in the countryside mostly did not travel to Rome for voting because the time of election of consuls fell on the second half of July, that is, the period of reaping of barley and harvesting of beans; so, the election was decided by the votes of the most propertied, also due to this circumstance under this peculiar order of voting.⁶⁶⁹

The person controlling the election, after his speech (*contio*), announcement of the names of the candidates and prayer addressed to gods, opened voting; then, took a seat on the *sella curulis* set up beside the voting bridge. Voters, who lined up per *centuriae*, were given a wax covered piece of wooden board, on which they wrote the initials of the name of the candidate preferred by them; then, they cast their board in the ballot-box (*cista*) set up at the other end of the wooden bridge. After one *centuria* had cast their votes, votes were aggregated in the ballot counting chamber, and candidates' names were written down, marking the *centuriae*'s decision by scores beside their names. Once two candidates had reached fifty percent plus one vote of the ballots of *centuriae*, voting was discontinued and was proclaimed conclusive. The institution of campaign silence was unknown in the Republic of Rome, so, agents tried to campaign for their candidate even at the gate of the bridge. If it was foreseen that the result of voting would be unfavourable for the ruling class, they tried to influence the outcome sometimes by rather powerful intervention, for example, the voting bridge collapsed "accidentally", or augures stated that they were seeing ill omen⁶⁷⁰—in both cases election was declared void or postponed by several days, which provided sufficient time for turning public feeling.⁶⁷¹

Just as the election of magistrates was a necessary part of the order of the state of the Republic of Rome, in these elections election fraud/bribery (*ambitus*) played a part too. Very soon after the making of the Twelve Table Law, in 432, the first statutory provision was published, which prohibited for applicants to call their fellow citizens' attention to themselves with specially whitened clothes made shining. In accordance with Roman terminology, it was always only *ambitus* that violated legal order, *ambitio* did not; the latter was often used in the sense of *petitio*, its meaning was sometimes undoubtedly pejorative but it never became a legal term.

From the second half of the second century we know of the existence of two acts that sanctioned *ambitus*—they are *lex Cornelia Baebia* from 181⁶⁷² and an act from 159,⁶⁷³ but their content is not known. In the age between C. Gracchus and Sulla, the system of *quaestiones perpetuae* was already quite extended. The first news provided on a lawsuit specifically on the charge of *ambitus* is dated to this period: in 116 one of the consul's offices for the year of 115 was won by a *homo novus* Marcus Aemilius Scaurus, who was charged by his rival having lost the election, P. Rutilius Rufus with *ambitus*. In turn Scaurus did the same against Rufus; otherwise both of the accused—who were prosecutors at the same time—were

⁶⁶⁸ Németh 2006. 138f.; Németh–Nótári 2006. 268ff.

⁶⁶⁹ Laser 2001. 16.

⁶⁷⁰ Plut. *Cato min.* 42

⁶⁷¹ Németh 2006. 145.

⁶⁷² Liv. 40, 19, 11.

⁶⁷³ Liv. *epit.* 47.

acquitted.⁶⁷⁴ The existence of *lex Cornelia de ambitu* made by Sulla is somewhat disputed,⁶⁷⁵ our understanding of *leges Corneliae* is not complete since there are two sources on these acts available. First, Cicero's speeches; secondly, the writings of the lawyers of late principate, which are known only in the form bequeathed in the *Digest*. Cicero refers to these acts only to the extent his interests manifested in the given speech, that is, the rhetorical situation makes it necessary; so in no way does he make an effort to be exhaustive as it is not his duty. The lawyers of the principate dealt with only those acts of Sulla that remained in force after Augustus's reforms. The following reference, however, gives ground for considering the existence of *lex Cornelia de ambitu* possible. It asserts that in earlier ages⁶⁷⁶ the convicted were condemned to refrain from applying for magistrate for ten years.⁶⁷⁷ The aforesaid *lex Cornelia* can be hardly *lex Cornelia Baebia* from 181 since between his speech delivered in defence of Publius Cornelius Sulla and *lex Cornelia* more than ten years had passed⁶⁷⁸, and as in this period other laws sanctioning *ambitus* were also made, it cannot be supposed that the extent of punishment would have remained the same.⁶⁷⁹

In the periods after Sulla, *quaestio de ambitu* was usually headed by a praetor, so for example in 66 C. Aquilius Gallus fulfilled the office of *praetor ambitus*.⁶⁸⁰ On the laws following this stage, information is supplied by Cicero in *Pro Murena*. At the request of a tribune, C. Cornelius in 67, *lex Calpurnia* was born,⁶⁸¹ what can be known about its sanctions is as follows. It contained expulsion from the senate, banning from applying for offices for life (contrary to the ten years' term defined under *lex Cornelia*) and certain pecuniary punishments.⁶⁸² A *senatus consultum* from 63 emphatically sanctioned a part of the acts regulated under *lex Calpurnia*; so for example, the act of recruiting party adherents for money upon the reception of the applicant in Rome; the act of distributing a great number of free tickets and seats for gladiators' games; and the act of hospitality to an excessive extent.⁶⁸³ This *senatus consultum* probably interpreted and specified the aforesaid law.⁶⁸⁴ The events of the year 64, however—primarily the increasing losses of Antonius and Catilina—made it necessary to make a new law. This law became *lex Tullia* enacted in 63, supported by all the candidates applying for the consulate of the year 62, which threatened with ten years' exile as a new punishment, and took firmer action against distributing money, and punished absence from legislation due to alleged illness. Furthermore, it banned the arrangement of gladiators' games during two years before applying, with the only exemption from such ban being an obligation to do so as set forth in a last will and testament.⁶⁸⁵ That is how the law wanted to prevent paying money directly to voters, and intended to limit the number of the entourage of the applicants (as an increasingly great entourage almost appearing to be a triumphal procession might have suggested sure victory to voters). It is a fact however—as Joachim Adamietz's witty and quite to the point remark reveals—that the actual limits of *ambitus* were determined by nothing else than the confines of the financial possibilities of the candidates.⁶⁸⁶

⁶⁷⁴ Gruen 1968. 120–122.

⁶⁷⁵ Kunkel 1974b 61.

⁶⁷⁶ I.e. before *lex Calpurnia* was born.

⁶⁷⁷ Schol. Bob. *ad Cic. Sulla* 5, 17.

⁶⁷⁸ P. Cornelius Sulla, the nephew of L. Cornelius Sulla was successfully defended by Cicero in 62.

⁶⁷⁹ Mommsen 1899. 867.

⁶⁸⁰ Cic. *Cluent.* 147.

⁶⁸¹ Cic. *Mur.* 46; Dio Cass. 36, 38, 39.

⁶⁸² Cic. *Mur.* 47; Jehne 1995. 66f.

⁶⁸³ Cic. *Mur.* 67. Cf. Laser 2001. 14ff.; 22ff.

⁶⁸⁴ Adamietz 1989. 25.

⁶⁸⁵ Cic. *Mur.* 5.

⁶⁸⁶ Adamietz 1989. 27. *Letztlich fand der ambitus eine wirkliche Grenze nur in den beschränkten finanziellen Möglichkeiten der Kandidaten.*

In relation to election campaign, it is absolutely necessary to mention *Commentariolum petitionis*, written in, the oldest campaign strategy document that has been preserved for us, in which Quintus Tullius Cicero, Marcus's younger brother, gives advice to his elder brother on how Marcus can win consul's elections, that is, how he can rise to the highest position of the Roman Republic. It is rather dubious if Quintus published—could have published—this work after it had been possibly revised by Marcus, in which he outlines the organisation and management of the election campaign since he explores the details of the fight for votes with relentless honesty. Günter Laser sums up the core of Quintus's writing as follows: in order to obtain the consul's office the applicant should not shrink back from any tricks, false promises, lies, pretence and approaching/flattering any group that fits the purpose.⁶⁸⁷ The exploration of this uninhibited opportunism and manoeuvring was in no way in the interest of the ruling class of the late Republic, and it would have put especially Marcus in an unpleasant situation since he could not have shielded himself from the shadow of the suspicion that—especially as a *homo novus*—he was able to win consulate because he used all these tools in practice.⁶⁸⁸

As a matter of fact, Marcus was not lacking knowledge of the process of applying for offices either, however, it can justify Quintus's effort to sum up relevant experience that he had also applied for minor offices (*magistratus minores*), and so he could add his personal observations to his brother's strategy.⁶⁸⁹ The plural used in sentences with more personal tone⁶⁹⁰ also indicates that the writer of the letter might have had a direct relation with the addressee. As a matter of fact, the *Commentariolum* was not published by Marcus either in 64 or later since by doing so he would have allowed to have an insight into his own political intentions and opportunism, but the charges against Antonius and Catilina gathered in these notes he could use with clear conscience and comfortably in his later oration *In toga candida*.⁶⁹¹ Quite openly, Quintus explores his brother's far from favourable situation in applying for the consul's office. In the eye of the nobility he is considered *homo novus*,⁶⁹² who is not backed either by a proper group of clients, or sufficient financial support; while his competitors, Antonius and Catilina are abounding in all these.⁶⁹³ Although the term *homo novus* was never defined exactly, it was used in a dual sense: as a narrower denotation it meant all of those who did not have any consul among their ancestors; in a wider sense it denoted those whose forefathers, even if not having obtained the highest rank, did obtain some office or were allowed to be the members of the senate. The *optimates* used this term contemptibly since for them it meant only the parvenu; however, Cicero declared about himself quite proudly that he had obtained all possible offices at the youngest age permitted by law, although he did not come from the aristocracy of the senate. A similar thought can be read in *Pro Murena* too.⁶⁹⁴

For Marcus his own character and view of life must have meant a disadvantage too since being a Platonist it was alien to him to apply pretence (*simulatio*) indispensably necessary for application,⁶⁹⁵ and to make friends with people in order to adjust to voters.⁶⁹⁶ His key weapon was his oratory skills that helped him to make himself popular among the people (*popularis*);⁶⁹⁷ on the other hand, he had to beware of appearing a people's party politician

⁶⁸⁷ Laser 2001. 5.

⁶⁸⁸ Laser 2001. 5.

⁶⁸⁹ Laser 2001. 7.

⁶⁹⁰ Cf. *Comm. pet.* 56.

⁶⁹¹ Till 1962. 317; Laser 2001. 6.

⁶⁹² *Comm. pet.* 2. 13.

⁶⁹³ *Comm. pet.* 55.

⁶⁹⁴ *Cic. Mur.* 17.

⁶⁹⁵ *Comm. pet.* 1. 45.

⁶⁹⁶ *Comm. pet.* 42. 45. 54.

⁶⁹⁷ *Comm. pet.* 2. 55.

since it was not the urban masses (*urbana multitudo*) that would decide the outcome of the election.⁶⁹⁸

In what follows it is worth surveying what role associations played in election campaign, which sheds light on the operation of one of the important tools of Clodius's politics to be discussed in the next chapter, as associations were established not only for the sake of influencing the election. The associations founded by private persons, usually called *collegium*, held together the communities providing protection and assistance for persons living at the same settlement and belonging to the same religious cult but were primarily not meant to serve everyday political fights.⁶⁹⁹ To cover their expenses certain associations claimed admission fees (*capitulare*) or regular monthly membership fees (*stips menstrua*),⁷⁰⁰ which of course limited the number of members; that is, most often the members of the *collegia* were from the wealthier layers of urban common people (*plebs urbana*), traders, craftsmen, ship owners and not from simple labourers.⁷⁰¹ If an association, which did not claim any membership fees, was not able to finance its expenses from its own resources, it could rely on the generosity of its leaders, or a patron but if it engaged a conduct which was contrary to the maintainer's intentions, then it could lose the support.⁷⁰² The political significance of *collegia* increased during periods of applications for magistrates; however, even then it was enough for the applicant to win over the leading personalities of the *collegium* to his goals, the rest of the members obediently followed the opinion leaders.⁷⁰³

Clodius's activity added a peculiar element to the political operation of certain associations. Clodius definitely raised the number of *collegia* that did not claim any membership fees and brought together the scum of the city, which highly shocked Cicero.⁷⁰⁴ The maintenance and "representation" expenses of these associations were most probably covered by Clodius himself, and in return the members could express their gratitude to their patrons in several ways and forms; consequently, in theory Clodius could easily mobilise masses.⁷⁰⁵ These *collegia* led by Clodius were actually gangs operated by keeping the appearance of legality but used as tools to raise riots; and it was not in the interest of decent citizens to risk their reputation, proceeds and life—by closing their shops and leaving their daily jobs—for the sake of Clodius.⁷⁰⁶ Later, Clodius made efforts to use the *collegia* maintained by him as a kind of private army,⁷⁰⁷ which were, looking at their "results", sufficient for Clodius achieving his short-term plans and disturbing the privacy of the public for a short while, but for seizing power for a longer period (which was perhaps not included in Clodius's intentions) both financial resources and proper motivation were missing. After Clodius's death, the *collegia* lost their impact produced on political events; nevertheless, later on the leaders of the State were very careful in their ways with associations.⁷⁰⁸

The question arises, what proportion of the population the institution of the clientele covered and as part of that what services the *clientes* were obliged to provide for their *patronus*; and to what extent the wider masses could be manipulated and mobilised through the clientele. Since the early period of the Republic the relation between the patron and the client had been based on mutual trust (*fides*), under which patricians, having outstanding authority (*auctoritas*),

⁶⁹⁸ *Comm. pet.* 52.

⁶⁹⁹ Kornemann 1900. 380; Laser 1997. 102.

⁷⁰⁰ *Marci. D.* 47, 22, 1; *CIL* 14, 2112.

⁷⁰¹ Ausbüttel 1982. 42ff.

⁷⁰² Laser 1997. 103.

⁷⁰³ *Comm. pet.* 30.

⁷⁰⁴ *Cic. Pis.* 9.

⁷⁰⁵ Laser 1997. 104.

⁷⁰⁶ *Cic. dom.* 13. 54. 89; *ac.* 2, 144; *Sall. Cat.* 50, 1; *Iug.* 73, 6.

⁷⁰⁷ *Cic. Mil.* 25; *red. in sen.* 33; *Sest.* 34. 85; *Pis.* 11. 23.

⁷⁰⁸ Laser 1997. 105. f.

dignity (*dignitas*) and wealth (*vires*), and later plebeians undertook to protect citizens in need of and asking for protection,⁷⁰⁹ as well as travelling aliens (*hospites*) in the form of various benefits and favours (*beneficia, merita*) both financially and before the law.⁷¹⁰ In spite of their dependant relation to their patron the clients preserved their personal freedom, and were not compelled to waive their right to political activity or participation in public life; what is more, their patrons promoted them to do so.⁷¹¹ In addition to expressing esteem (*reverentia*) and gratitude (*gratia*) the clients were obliged to provide several services for their patron.⁷¹² So, for example, they arranged for accommodation for their patron or his friends,⁷¹³ shared the payment of penalties,⁷¹⁴ supported their patron in court proceedings,⁷¹⁵ during the period of applying for or fulfilling offices they provided spiritual and financial support for their patron,⁷¹⁶ in danger they undertook to protect him personally,⁷¹⁷ as a foreign client they supplied goods to the patron,⁷¹⁸ and preferably they informed as many people as possible about the generosity of their patron.⁷¹⁹ On the grounds of all the above, the clients were in many cases meant to articulate the patron's interests and views to the wider masses clearly and efficiently.⁷²⁰ Although the clientele provided an essential basis of support for the patron, the citizens fulfilling *patronatus* were far from relying only on clients in search of tools that could be used for their political purposes since the attachment of the clientele was of ethical rather than legal nature, on the one hand, and the clients, pursuing their own occupation, could not always be available to the patron, on the other.

The social significance of the clientele depended to a great extent on the social position of the client, and, therefore, the *patronus—ingenuus* relation and the *patronus—libertinus* relation must be clearly separated from each other. A part of free-born clients belonged to a social and economic layer identical with or similar to that of the patron, and needed the patron's support only for the sake of strengthening their own position, or for obtaining an office⁷²¹—in this case the clientele meant friendship between persons of equal rank (*amicitia*).⁷²² These clients belonged to the higher *census* class, and so at the *comitia centuriata* and in a provincial *tribus* they could articulate their opinion and advance their patron's interests as competent persons.⁷²³ As a matter of fact, not all free-born citizens belonged to the wealthier layers, and they turned to the patron primarily for urgent legal or financial help, but they could hardly return the favours did to them as due to the peculiar features of the Roman election system they did not have the opportunity to cast their votes and these votes were not evaluated unless the elections were expected to produce a dubious outcome.⁷²⁴ Compared to the latter, the applicant for the office appreciated the support of men with greater prestige much more; so, for example, the support of the leaders of *collegia (principes)*, who in the given case did not

⁷⁰⁹ Spielvogel 1993. 10; Laser 1997. 111; Cic. *Brut.* 97; *Rosc. Am.* 5. 58; *Verr.* 2, 4, 41. 80; *Quinct.* 2. 34; *Cluent.* 51. 109; *Caecin.* 57; *Mur.* 10; *Planc.* 75; *Scaur.* 26; *Phil.* 6, 15; *fin.* 4, 56; *Comm. pet.* 2.

⁷¹⁰ Cic. *Rosc. Am.* 106; *Cat.* 4, 23; *Sest.* 10; *Cato* 32; Liv. 3, 16, 5; 4, 13, 2.

⁷¹¹ Spielvogel 1993. 11; Laser 1997. 112.

⁷¹² Liv. 3, 44, 5; 57, 3.

⁷¹³ Liv. 39, 14, 3.

⁷¹⁴ Liv. 38, 60, 9.

⁷¹⁵ Liv. 3, 58, 1.

⁷¹⁶ Plut. *Cic.* 8, 2.

⁷¹⁷ Sall. *Cat.* 19, 5; 26, 4; Liv. 23, 3, 2.

⁷¹⁸ Cic. *Att.* 1, 20, 7; Liv. 4, 13, 2.

⁷¹⁹ Laser 1997. 113.

⁷²⁰ Cf. *Comm. pet.* 17.

⁷²¹ Cic. *off.* 1, 122f.

⁷²² Cic. *Lael.* 26.

⁷²³ *Comm. pet.* 29.

⁷²⁴ Laser 1997. 115.

constitute a part of the clientele but produced major influence in their association, district and their entire place of living, and had considerable impact on changes in the morale of voters.⁷²⁵ The representation of the institution of salutation (*salutatio*) casts interesting light on the applicant's social relations: *salutatores* from lower layers of society visited several applicants on the same day, so the conduct engaged by them during the election could not be considered secure and stable (*communes/fucosi suffragatores*). Therefore, the patron applying for the office ought to have appeared grateful to them, and had to praise their activity both to their face and in front of their friends as by doing so he could expect them to leave their other patrons and become firm and committed voters (*proprii/firmi suffragatores*)—the applicant was not supposed to bring up his suspicion arising or proved regarding their loyalty, and against his better conviction he had to assert his trust in them.⁷²⁶ The patron could never be absolutely sure of the support and gratitude of *salutatores* for they could compare the goods and benefits received from him to the allowances granted by other applicants they had also visited, i.e., economically independent citizens seemed more secure voter's base. The endeavour to recruit and hold inconstant *salutatores* and clients becomes understandable when one considers that the patron applying for a magistrate could produce the appearance of popularity and influence by having a lot of people crowding around him during salutation.⁷²⁷ More important and more respectful *salutatores* were allowed to have a word directly with the patron; their presence made the masses aware that the applicant was worthy of more extensive support.⁷²⁸ The *salutatio* provided opportunities for the applicant for gathering information on the morale and desires of common people, which their close circle of friends (*amici*) did not provide insight into; consequently, the patron—client relation served mostly exchange of information. The relation between the patron and the freedmen developed somewhat differently: their relation remained closer even after liberation but this relation was based as much on the requirements of moral standards as on the requirements of legal norms; in 118 in his edict Rutilius Rufus limited the range of services that could be demanded by the patron,⁷²⁹ but a freedman was not allowed to take legal action against the patron,⁷³⁰ and it was only Augustus's *lex Aelia Sentia* that formulated statutory sanctions against ungrateful freedmen.⁷³¹

Accordingly, the clientele made up of free-born citizens and freedmen cannot be considered uniform in terms of the strength of their attachment to the patron since it was exactly due to the moral nature of the attachment that the patron did not have any legal means to collect outstanding claims and unfulfilled obligations. Although a patron deceitfully acting against his clients became the object of the contempt of society, this did not mean that he was deprived of his rights. Servius's commentary quoting the text of the Twelve Table Law attached to the relevant locus of Vergil's *Aeneis*⁷³²—which asserted that the patron deceiving his client should be damned (*sacer*)—implied ethical offence and not criminal law facts. In this case the term *sacer* presumably did not mean a person who was to be sacrificed to gods and could be killed freely⁷³³ but a person who engaged guilty, that is, despicable conduct;⁷³⁴ Servius most probably followed the tendency of the late period of the Republic of Rome that

⁷²⁵ *Comm. pet.* 30.

⁷²⁶ *Comm. pet.* 42. 35.

⁷²⁷ Laser 1997. 117.

⁷²⁸ *Comm. pet.* 30.

⁷²⁹ Paul. D. 38, 1, 1.

⁷³⁰ Cf. Cic. *Att.* 7, 2, 8; Suet. *Claud.* 25, 1.

⁷³¹ Paul. D. 37, 14, 19, 1.

⁷³² Serv. in *Verg. Aen.* 6, 609.

⁷³³ Fest. 467; Dion. Hal. 2, 9–11; 10, 3; Brunt 1988. 403.

⁷³⁴ Plaut. *Poen.* 88; Verg. *Aen.* 3, 57.

idealised Roman past.⁷³⁵ Even if we presume close patron—client relations regarding the archaic age, the significance of clientele dramatically diminished by the 3rd century, and owing to the growth of the number of citizens we can no longer reckon with stable *clientelae* during Sulla's rule of terror, much rather ad hoc patron—client relations organised for specific purposes should be presumed under which fulfilment of moral obligations was no longer of great account.⁷³⁶ If there had been no mobility of such a great extent within and between clientele, then the patrons and applicants for offices would not have been compelled—even at the expense of *ambitus*—to recruit clients.⁷³⁷ Clients from lower layers of society became important to the patron not so much for getting their votes—which sometimes they were not even allowed to cast in the elections—much rather for their capacity to mediate the opinion of the masses to him, which helped him to prepare for what opinion they would like to hear from him in public appearances.⁷³⁸

With the loosening of the patron—client relation, or owing to the fact that the client would seek a patron that represented his interests better, and the patron would seek clients in his environment who had more considerable influence and so had greater capital of relations, this process reached the stage where the lower layers of society, which constituted a considerable part of clients, were able to produce direct influence on political leaders. A grand entourage represented the acknowledgement of the politician and his legitimisation by the citizens,⁷³⁹ whereas a decreasing number of people forced him to revise his views entertained so far.⁷⁴⁰ On the other hand, it was just due to the unstable and unreliable nature of the clientele that in the last century of the Republic applicants for offices relied, in addition to their clients, on their relatives, friends, neighbours in the district, their freedmen and slaves when compiling the urban accompaniment—this diversity enriched not only the spectacular entourage but opened roads to each layer of society and created relations for the applicant.⁷⁴¹ So the clientele was only one of the means of political fight, and far from being the only or the most important one,⁷⁴² all the more as Livius's description asserts that the purpose of the clients taking action before the court of justice was not to raise sympathy with the defendant much rather to prevent a larger mass from getting together.⁷⁴³

III. 1. 3. *Contentio dignitatis* as rhetorical strategy in *Pro Murena*

The structure of the speech can be outlined as follows.⁷⁴⁴ Cicero replies to the reproaches addressed to him for having undertaken defence.⁷⁴⁵ In antique rhetoric it is not rare for the counsel of defence to apply the strategy to clear himself first. His style is solemn right in the first sentence both in terms of vocabulary and rhythm, the use of *creticus*.⁷⁴⁶ In the main part⁷⁴⁷ he follows the disposition of the charge divided into three parts.⁷⁴⁸ In the first very

⁷³⁵ Laser 1997. 120.

⁷³⁶ Brunt 1988. 32; Laser 1997. 121.

⁷³⁷ *Comm. pet.* 40. 47.

⁷³⁸ *Cic. Rosc. Am.* 19. 96; *De orat.* 3, 225; *Sall. Iug.* 71, 5.

⁷³⁹ *Dion. Hal.* 2, 10, 4.

⁷⁴⁰ Laser 1997. 124.

⁷⁴¹ *Cic. Cluent.* 94; *Mur.* 69; *Rosc. Am.* 93; *Phil.* 6, 12; 8, 26; Brunt 1988. 415f.

⁷⁴² Laser 1997. 125f.

⁷⁴³ *Liv.* 2, 35, 4.

⁷⁴⁴ Fuhrmann 1970. 293ff.; Classen 1985. 124ff.; Adamietz 1989. 83ff.

⁷⁴⁵ *Cic. Mur.* 1–10.

⁷⁴⁶ *Quint. inst.* 9, 4, 107.

⁷⁴⁷ *Cic. Mur.* 11–83.

⁷⁴⁸ Fuhrmann 1970. 293.

short part, he refuses the charges brought against Murena's conduct of life (*deprehensio vitae*). In the second part, he deals with the chances of the election of the two competitors.⁷⁴⁹ This was required because the charge subsequently stressing the point that Murena had no chance intended to prove that he had won owing to nothing else but dishonest means: that was what Cicero wanted to reply to. He emphasises that social background and the office obtained through it are equal in the case of both parties,⁷⁵⁰ by virtue of this none of them could overcome the other. Murena obtained esteem with his career till then and achieved victory for himself by using this esteem.⁷⁵¹ He compares the glory of the orator's and the soldier's career to the lawyer's career,⁷⁵² in which competition (*studiorum atque artium contentio*)—as the rhetorical situation required—as a matter of fact the eloquence and the *res militaris* become the winner. After that, however, Cicero puts forth more compelling reasons to support Murena:⁷⁵³ for example, the *ludi* that he arranged as praetor.⁷⁵⁴ The fact that, contrary to Sulpicius Rufus,⁷⁵⁵ he undertook to administer a province,⁷⁵⁶ and finally that his election was supported also by commander Lucullus and his troops, who returned from the third war with Mithritades to Rome. Then he launches an attack against Servius:⁷⁵⁷ he criticises the tactics followed by him, in particular that instead of advancing his own victory Sulpicius prepared the evidence of the charge of *ambitus* against his enemies right from the outset, and by that involuntarily drove those who were afraid of Catilina's victory to Murena's camp.⁷⁵⁸ It is in the third part⁷⁵⁹ where he comes to the actual charges. First, he replies to the charges brought by Cato, and the consideration thereof,⁷⁶⁰ since it was Cato's excessively exercised firmness that made him support the charge.⁷⁶¹ As earlier pettiness and certain out-of-date institutions of the jurisprudence,⁷⁶² now he makes the sometimes exaggerating strictness of Stoic ethics the subject of scorn.⁷⁶³ This charge is followed by his factual but rather narrow and not too convincing disproof.⁷⁶⁴ Emphasis is laid not so much on production of evidence but on the assertion that the lawsuit itself is a highly false step and that anyone who wanted to attain through it that next January only one consul should enter office would deliver the *res publica* in the hands Catilina and his accomplices.⁷⁶⁵ Thus, his aim is to protect the State and his citizens.⁷⁶⁶ In the *peroratio*⁷⁶⁷ he calls the judges' attention to the point that in their decisions they should keep public interest in view.⁷⁶⁸

In *Pro Murena* Cicero—in addition to emphasising the political weight of the lawsuit—achieved success, that is, Murena's acquittal by comparing the career of the two applicants (*studiorum atque artium contentio* and *contentio dignitatis*), in which he was helped by

⁷⁴⁹ Cic. *Mur.* 15–53.

⁷⁵⁰ Cic. *Mur.* 15–17.

⁷⁵¹ Cic. *Mur.* 18–21.

⁷⁵² Cic. *Mur.* 22–30.

⁷⁵³ Cic. *Mur.* 37–42.

⁷⁵⁴ Cic. *Mur.* 38.

⁷⁵⁵ Cic. *Mur.* 42.

⁷⁵⁶ Cic. *Mur.* 42.

⁷⁵⁷ Cic. *Mur.* 43–52.

⁷⁵⁸ Cic. *Mur.* 52.

⁷⁵⁹ Cic. *Mur.* 54–83.

⁷⁶⁰ Cic. *Mur.* 61–66.

⁷⁶¹ Cic. *Mur.* 64.

⁷⁶² Cic. *Mur.* 22–30.

⁷⁶³ Classen 1985. 163ff.; Adamietz 1989. 203ff.

⁷⁶⁴ Cic. *Mur.* 66–77.

⁷⁶⁵ Cic. *Mur.* 78.

⁷⁶⁶ Cic. *Mur.* 78.

⁷⁶⁷ Cic. *Mur.* 83–90.

⁷⁶⁸ Cic. *Mur.* 86.

moderately used humour and irony as the most important tools. In the *Orator* Cicero provides theoretical foundations for all the three kinds of style, however, he points out that, in addition to its other attributes (avoiding prose rhythm and complex sentence, dropping hiatus, use of *munditia* and *elegantia*, moderation in applying both ornament and tropes, figures)⁷⁶⁹ the most characteristic trait of simple style is witticism and irony. When using them the orator is to make sure that he should not cause irreparable harms; should thrust stings only into his enemies; should do that with moderation and not ceaselessly; and should not hurt all of them and not in any way. Regarding temperance to be followed by the orator—and actually complied with by Cicero in *Pro Murena*—Quintilian notes that the orator should not ever want to hurt anybody, and especially should not have the slightest intention of being compelled to give up a friend rather than a witty remark.⁷⁷⁰ It is worth observing that Cicero behaved in a very similar spirit towards Sulpicius too: he states of Sulpicius *expressis verbis* that owing to his other merits, i.e., self-control, dignity, justness, loyalty and all his other merits he has always considered him especially worthy of consul's and any other dignity,⁷⁷¹ and he deems it highly praiseworthy that he has acquired erudition in civil law, kept awake, worked a lot, helped many people.⁷⁷² Ironic remarks are in each case aimed only at *iurisprudentia*.⁷⁷³ In the light of that, we should survey the career of the two competitors, Murena defended by Cicero for political reasons and Sulpicius Rufus, the opponent in the lawsuit, who otherwise maintained a friendly relation with the orator, and the orator's relation to the field represented by them, *res militaris* and *iurisprudentia*.

Lucius Licinius Murena was born in 105, and fulfilled war service under his father's commandship between 83 and 81 in Asia Minor, and took part in his triumphs too.⁷⁷⁴ In 75, he fulfilled quaestorship together with Sulpicius.⁷⁷⁵ In 74, with consul L. Lucullus he returned to the war against Mithridates ignited again in the meantime.⁷⁷⁶ In 65, he was again Sulpicius's *collega*, and as praetor urbanus he had plenty of occasions to become quite popular through organising the pompous *ludi Apollinares*.⁷⁷⁷ As a propraetor in 64 he was given Gallia Narbonensis as his class. The prosecutors reproached him with the newness of his clan,⁷⁷⁸ but Murena was not *homo novus* in the traditional sense of the word since he was the fourth in the row of generations who attained the office of *praetor*, and this term was used for those whose family members had not obtained any of the *magistratus curules* providing *ius imaginum*.⁷⁷⁹ One of the pillars of his success was his strong financial background proved among others by the games organised by him as *praetor*, and improved by his activity as propraetor in Gallia. Also, the current political situation was grist that came to his mill: against the danger Catilina was threatening with a well organised combat ready army was required, and among the applicants only Murena had such an army.⁷⁸⁰ No significant acts taken by him are known from the period after his consulate. The life work of Servius Sulpicius consisting of one hundred and eighty volumes, irrespective of the given political

⁷⁶⁹ Adamik 1998. 130.

⁷⁷⁰ Quint. *inst.* 6, 3, 28.

⁷⁷¹ Cic. *Mur.* 23.

⁷⁷² Cic. *Mur.* 19.

⁷⁷³ See Bürge 1974. 80ff.

⁷⁷⁴ Cic. *Mur.* 11. Cf. Münzer 446.

⁷⁷⁵ Cic. *Mur.* 18.

⁷⁷⁶ Cic. *Mur.* 20. 89.

⁷⁷⁷ Cic. *Mur.* 38.

⁷⁷⁸ Cic. *Mur.* 17.

⁷⁷⁹ Adamietz 1989. 15.

⁷⁸⁰ Adamietz 1989. 18.

situation and the results of the election, properly shows the jurist's intellectual superiority over Lucius Licinius Murena, who was a rather colourless character.⁷⁸¹

The Romans considered war a natural part of life, and were fully aware that they can thank their imperium to their military virtue, *virtus militantis*. So in their mind the craft/art of war, *res militaris* preceded any other activity, and the conditions under which they could be exercised were created by the peace won/forced by *res militaris*. *Corpus Ciceronianum*, however, does not include plenty of loci that express this view: although Cicero acknowledges that the glory bequeathed by the ancestors to the people of Rome is present in many things, almost in everything, especially military affairs.⁷⁸² When praising the statesman's vision and perfect orator's skills of Cn. Pompey he points out that it is exactly these traits that constitute the essence of a commander's dignity.⁷⁸³ In *De officiis* he further elaborates the traditional Roman view proclaiming the priority of *res militaris*: it is true, he says, that for a young man the best recommendation for glory is given by his war merits,⁷⁸⁴ but it is necessary to review and deny the opinion supported by many which asserts that deeds of war are greater and more glorious than deeds of peace—he warns.⁷⁸⁵ Then, drawing the conclusion he takes the position that if we want to judge properly, we must acknowledge that several deeds of peaceful civil life have appeared greater and more excellent than deeds of war.⁷⁸⁶ Convinced and convincingly, he quotes the sentences, which some evil and envious people dare to attack,⁷⁸⁷ proving that brave deeds of peaceful civil life are of not less importance than deeds of war, what is more we must make greater efforts to carry out the former than the later.⁷⁸⁸

Servius Sulpicius Rufus came from a patrician clan but his family did not play an important part in public life of Rome.⁷⁸⁹ His grandfather did not attain any significant position in *cursus honorum*, and his father belonged to the order of knights.⁷⁹⁰ As a young man he pursued studies just like Cicero; he studied rhetoric in Rhodes. Then, having returned from there he turned from elocution to jurisprudence.⁷⁹¹ He fulfilled quaestor's office in Ostia, presumably in 75,⁷⁹² in 65, he became praetor and chaired the *quaestio peculatus*.⁷⁹³ He fulfilled both of the offices in the same year as Murena.⁷⁹⁴ After he acted as praetor he did not accept any province but stayed in Rome and continued to act as *iuris consultus*.⁷⁹⁵

As it is known, in 63 he lost the elections. What were the reasons for that? Servius Sulpicius did not have proper social background and relations. Cicero notes regarding the orator's activity that with these abilities men without noble origin also won consul's dignity since they had obtained considerable influence, highly strong friendly relations and great support.⁷⁹⁶ With the phrase *homines non nobiles* Cicero refers to his own career too, which was not

⁷⁸¹ Adamietz 1989. 19.

⁷⁸² Cic. *imp. Cn. Pomp.* 6.

⁷⁸³ Cic. *imp. Cn. Pomp.* 42.

⁷⁸⁴ Cic. *off.* 2, 45.

⁷⁸⁵ Cic. *off.* 1, 74.

⁷⁸⁶ Cic. *off.* 1, 74.

⁷⁸⁷ Cic. *off.* 1, 77.

⁷⁸⁸ Cic. *off.* 1, 78.

⁷⁸⁹ Cic. *Mur.* 16.

⁷⁹⁰ Cic. *Mur.* 16.

⁷⁹¹ Cic. *Brut.* 151. *Nam et in isdem exercitationibus ineunte aetate fuimus et postea una Rhodum ille etiam profectus est, quo melior esset et doctior, et inde ut rediit, videtur mihi in secunda arte primus esse maluisse quam in prima secundus.*

⁷⁹² Cic. *Mur.* 18.

⁷⁹³ Cic. *Mur.* 35. 42.

⁷⁹⁴ Cic. *Mur.* 18.

⁷⁹⁵ Cic. *Mur.* 42.

⁷⁹⁶ Cic. *Mur.* 24.

unprecedented but highly rare as the six hundred consuls of the last three centuries of the Republic included only fifteen *homines novi*.⁷⁹⁷

Gratia was sine qua non of Roman public life, which a politician had to have by all means among its adherents and the people,⁷⁹⁸ and was indispensable when obtaining an office.⁷⁹⁹ Although today the means of obtaining *gratia* would be assigned to the scope of corruption,⁸⁰⁰ Cicero also clearly distinguished *gratia* from fraud/bribery.⁸⁰¹ Without this strong social intertwining several institutions of Roman law—for example *mandatum*, *negotiorum gestio*, *commodatum*—would have become inoperable,⁸⁰² and if *gratia* and *amicitia* had not tied leading Roman circles together, then a much greater public administration apparatus would have been needed to govern the empire.⁸⁰³ Cicero points out that in jurisprudence none of these (*gratia*, *amicitia*, *studium*) can be found.⁸⁰⁴ It is, of course, questionable to what extent this statement can be considered Cicero's own opinion and to what extent a necessity generated by this particular political situation. *Beneficentia* and *liberalitas* (just as *gratia*, *amicitia* and *studium* referred to in *Pro Murena*)⁸⁰⁵ are not purely ethical categories but also tools of success in public life.⁸⁰⁶ Once cultivating jurisprudence had become proper means to achieve that, the first men of the State held it in their possession, but in the troublesome present age it has lost its shining. The great jurist of the age means Servius Sulpicius Rufus; it is with him that the order of knights starts to enter the field of jurisprudence. So the statement that claims that jurisprudence does not provide proper background for acting in public was dictated only by the given political situation and not by Cicero's own conviction. Similarly, the statement that by no means does a safe path lead from jurisprudence to consulate is only partly true.⁸⁰⁷ In 63 the *res publica* no longer lived in times when jurists often got to the top of *cursum honorum*. On the other hand, until 95 we know of eighteen lawyers who occupied consul's office (Appius Claudius Caecus and Cornelius Scipio Nasica even twice); the twenty consulates so produced took place between 201—95.⁸⁰⁸ The next year after 95 in which the consul's office was fulfilled by a jurist was 51, and the jurist was Servius Sulpicius Rufus.⁸⁰⁹ Sulpicius's failure in 63 was due to personal reasons too. Not being a quite determinant character he saw his competitors' initial success, gave up fighting too early, and instead of working hard to achieve his own victory, he made efforts to come up with charges against the would-be winners.⁸¹⁰ This tactics—in view of Murena's popularity based on his activity as praetor, and the general fear from Catilina—as it were predestined Sulpicius to lose. When in 51—winning over Cato, who fought on his side in 63⁸¹¹—he finally attained consulate, he was not able to take firm and determinant actions in that highly stormy period.⁸¹² He died in 43 as an intermediary of peace in the civil war flaring up.⁸¹³ Cicero

⁷⁹⁷ Bürge 1974. 100ff.

⁷⁹⁸ Cic. *inv.* 2, 161. *off.* 1, 48. Cf. Bürge 1974. 101.

⁷⁹⁹ Cic. *Planc.* 9.

⁸⁰⁰ Bürge 1974. 103.

⁸⁰¹ Cic. *Att.* 1, 16, 12.

⁸⁰² Schulz 1934. 106.

⁸⁰³ Bürge 1974. 103.

⁸⁰⁴ Cic. *Mur.* 24.

⁸⁰⁵ Cic. *Mur.* 24.

⁸⁰⁶ Kunkel 1967. 38.

⁸⁰⁷ Cic. *Mur.* 23.

⁸⁰⁸ Kunkel 1967. 41.

⁸⁰⁹ In case Cicero is not regarded as a jurist.

⁸¹⁰ Cic. *Mur.* 43.

⁸¹¹ Plut. *Cato min.* 49, 2; Dio Cass. 40, 53.

⁸¹² Cic. *fam.* 8, 10, 3.

⁸¹³ Münzer 1926. 853.

highly acknowledged the merits of Servius Sulpicius both in his life,⁸¹⁴ and after his death⁸¹⁵—he did not doubt his personal excellence in the *Pro Murena* either.⁸¹⁶ He demanded public funeral ceremony and the erection of his statue before the *rostra*; both acts of paying last honours took place as Cicero requested.⁸¹⁷

Servius Sulpicius's jurist activity deserved to be praised by Cicero since his life work was quite extensive and composite. He bequeathed a *responsum* collection consisting of one hundred and eighty books,⁸¹⁸ which was made public by his disciples, Aufidius Namusa⁸¹⁹ and Alfenus Varus,⁸²⁰ and he is noted for the creation of three new genres. He was the one among the lawyers of the age of the Republic on whom the influence produced by Greek philosophy was the most manifest.⁸²¹ His achievement in establishing a school is characterised by the fact that ten of his disciples are known.⁸²² Cicero himself praised this method applied by Servius when walking on new roads in jurisprudence surpassing his predecessors,⁸²³ and pointed out that through his philosophical education he was able to create a coherent system often missed by Cicero from earlier jurisprudence. He completely broke with the traditions of the past; beside *ius civile* he cultivated *ius praetorium* with scientific demand; and extensively used the method of dialectic.⁸²⁴

In the analysis of Cicero's relation to jurisprudence we should dispense with the description of the literature of the subject area of *Cicero iuris consultus*, now accumulated to an immense extent. Following the system of Gábor Hamza's⁸²⁵ analysis it seems to be more appropriate to look for an answer in the mirror of the sources to the question what role Cicero meant to assign to legal knowledge, jurisprudence in his own activity, rhetorical training and steering the ship of State.

In his letter written to *iuris consulti*, citing examples of the technical elements of jurisprudence he uses the terms *vos soletis*⁸²⁶ and *in vestris libris*,⁸²⁷ i.e., clearly separates himself from those who pursue this craft in practice. It is with reason to attribute similar meaning to the phrases used in *Topica*—offered to and created at the urging of Trebatius⁸²⁸—*in vestris actionibus*,⁸²⁹ and *vestris mysteriis* in *Pro Murena*,⁸³⁰ *vestris formulis atque actionibus*⁸³¹ and *vestrae exercitationi*.⁸³² Likewise, he proudly cites Gallus's statement that the given topic is subject not to law but to the field of Cicero.⁸³³ In *Digest* several references are made to Cicero. In the fragments of Pomponius's *Enchiridion* Cicero is quoted primarily as *exemplum*,⁸³⁴ and his sentences are of rhetorical-political weight rather than having legal

⁸¹⁴ Cic. *Brut.* 150–157; Cic. *off.* 2, 65.

⁸¹⁵ Cic. *Phil.* 9, 10.

⁸¹⁶ Cic. *Mur.* 23.

⁸¹⁷ Pomp. D. 1, 2, 2, 43.

⁸¹⁸ Pomp. D. 1, 2, 2, 43.

⁸¹⁹ Pomp. D. 1, 2, 2, 44.

⁸²⁰ Schulz 1961. 254.

⁸²¹ Paul. D. 26, 1, 1 pr.=*Inst.* 1, 13, 1; Ulp. D. 15, 1, 9, 2–3; Ulp. D. 34, 2, 27, 3; Gai. D. 50, 16, 30 pr.

⁸²² Pomp. D. 1, 2, 2, 44.

⁸²³ Cic. *Brut.* 152.

⁸²⁴ Földi–Hamza 2009. 67.

⁸²⁵ Hamza 1983. 59. (See Gasguy 1887. 285ff.; Weil 1986. 9ff.; Stein 1978. 176ff.)

⁸²⁶ Cic. *fam.* 13, 21, 1.

⁸²⁷ Cic. *fam.* 7, 17, 3.

⁸²⁸ Cic. *top.* 1.

⁸²⁹ Cic. *top.* 64.

⁸³⁰ Cic. *Mur.* 25.

⁸³¹ Cic. *Mur.* 29.

⁸³² Hamza 1983. 60.

⁸³³ Cic. *top.* 51.

⁸³⁴ Nörr 1974. 50.

auctoritas.⁸³⁵ In *Digest* one can find quotations from non-legal authors at several points;⁸³⁶ e.g., in Marcianus⁸³⁷ and Pomponius.⁸³⁸ Apart from *Enchiridion*, Cicero is quoted in *Digest* at four points,⁸³⁹ regarding each legal case in the aforesaid spirit. So these references do not prove that classic *iuris consulti* considered Cicero a *collega*.⁸⁴⁰

All this, however, does not justify to handle Cicero as an alien body in jurisprudence, or to consider jurisprudence a field basically far from Cicero since the opinion. “*Nihil hoc ad ius; ad Ciceronem*” was indeed shared only by *iuris consulti*, and emphasises no more than pursuing law in practice, in the technical sense was alien to Cicero. Legal practice is, however, only one branch of *iurisprudentia*, its usefulness in everyday life does not provide evidence of its primacy in an absolute sense. It is a fact, on the other hand, that during his whole life Cicero maintained a quite close relation with those who pursued jurisprudence in practice. He considered the two Scaevolae, the augur and the pontifex as two of his masters. In *Laelius de amicitia* he gives an account that after he had put on *toga virilis*, his father took him to Mucius Scaevola, the augur, and from then on he never leaved his side; then, after his death he went to pontifex Scaevola, whom he calls one of the most talented and most diligent men of the Roman State.⁸⁴¹

Furthermore, it is worth surveying what role or significance Cicero attributed to legal knowledge in orators’ training. In Cicero’s values eloquence definitely preceded jurisprudence, which is quite obvious from the statement he made regarding Servius Sulpicius Rufus that he wanted to be the first in the second science rather than the second in the first;⁸⁴² that is why he elected to pursue eloquence instead of jurisprudence. The field of jurisprudence is narrower than that of elocution, and due to its nature elocution is subtler than jurisprudence since a *iuris consultus* can act successfully without any knowledge of *ars oratoria*, but an orator cannot do without certain legal knowledge. Thus, orators’ training must include legal studies,⁸⁴³ as an orator—and specifically a *perfectus orator* defined in *De oratore*—may not despise any science since they are all associates and servants of an orator’s speech.⁸⁴⁴

This formulation of this conclusion Cicero puts in the mouth of Crassus, his master, one of the protagonists of the dialogue in *De oratore*.⁸⁴⁵ He emphatically underlines the use of legal knowledge in the later stages of the dialogue too. In particular, by asserting that people would need to undertake the burden of studying, even if understanding law were a great and hard task, because of the great benefit that they can win by acquiring it, but in his view there is no science that could be more easily acquired than jurisprudence.⁸⁴⁶ In *Brutus*, when praising his only worthy, at that time already dead, opponent, colleague, Hortensius, Cicero underlines his legal knowledge;⁸⁴⁷ and in *Pro L. Valerio Flacco* he makes his opponent, who is not well versed in law, the target of scathing irony.⁸⁴⁸ Furthermore, he points out that for him—

⁸³⁵ Hamza 1981. 149.

⁸³⁶ Nörr 1974. 50.

⁸³⁷ Marci. D. 32, 65, 4.

⁸³⁸ Pomp. D. 1, 2, 2, 38.

⁸³⁹ Ulp. D. 42, 4, 7, 4; Pap. D. 48, 4, 8; Tryph. D. 48, 19, 39; Cels. D. 50, 16, 96 pr.

⁸⁴⁰ Hamza 1981. 150.

⁸⁴¹ Cic. *Lael.* 1.

⁸⁴² Cic. *Brut.* 151.

⁸⁴³ Cic. *De orat.* 1, 18. 159.

⁸⁴⁴ Cic. *Orat.* 120.

⁸⁴⁵ Cic. *De orat.* 1, 75.

⁸⁴⁶ Cic. *De orat.* 1, 185.

⁸⁴⁷ Cic. *Brut.* 322.

⁸⁴⁸ Cic. *Flacc.* 35.

contrary to most of the orators—the knowledge of *ius civile* had always been very important.⁸⁴⁹

As a summary of *studiorum atque artium contentio* it is possible to quote Quintilian's opinion on the entire *Pro Murena* when he praises Cicero's procedure stating that, albeit, he acknowledged all the merits of Sulpicius and praised him, yet advised him not to apply for the consulate.⁸⁵⁰ Cicero takes the edge of Sulpicius's and Cato's charges by the weapons of humour and irony. While doing so, to increase the comic effect aimed against lawyers he often uses Grecisms, proverbs, terms taken from legal jargon, quotations from (*legis actio*) procedure, and adds comments in standard language, in a chattering tone to them. On the contrary, when he turns to *res militaris* and eloquence, his style becomes ceremonially high-flown. It is, however, quite apparent that a considerable part of his statements are rhetorical topoi, repetition of widespread critical comments regarding a specific occupational group (in this case lawyers)—of which several comments are made as righteous criticism. Praise is always addressed to the given person, Sulpicius, whereas carping affects only his occupation. In *Pro Murena* Cicero does not deny the general importance of jurisprudence and the law as a system of norms, the importance of the role they play in the life of the public and the State, but makes a (successful) attempt in a given—and as we have seen highly critical—political situation to avoid the Scylla of the condemnation of Murena and by that the flaring up of Catilina's plot and the Charybdis of insulting alienation from his dear friend, Sulpicius. Throughout the speech he refrains from shaking the bases of law and order; his criticism remains on the surface; and this criticism—just as the praising of *res militaris*—is not inevitably Cicero's own conviction but merely a necessity dictated by the oratorical situation.

III. 2. Lawsuit of Cnaeus Plancius

The speech in defence of Cnaeus Plancius was delivered in early autumn 54, immediately before or after the speech in defence of M. Aemilius Scaurus. Cn. Plancius won the office of aedil of the year 54 by winning the election, and, as it was not rare in Rome, his competitor, who lost in the election, M. Iuventius Laterensis charged him of election bribery/fraud. As co-prosecutor L. Cassius Longinus took sides with him, defence was provided by Cicero (and as quite often Hortensius), who—as was his custom—rose to speak as the last one. The court of justice was chaired by C. Alfius Flavius, of whom—in spite of his people's party affiliation—Cicero made positive statements elsewhere. The close relation between Cicero and his defendant was highly influenced by the fact that Plancius, who acted in Macedonia as quaestor, gave shelter to the exiled politician, which was equal to saving his life in the orator's interpretation. Cicero responds to the allegations of general significance made by the prosecution, in not too exhaustive details; however, he turns the attention from the accused and his acts to his own person, and the style of the speech here is elevated to hymn of gratitude addressed to his friend and saviour, Plancius, who stood by the orator-statesman from first to last even during his exile. As on several occasions earlier and later, he convincingly hammered the conviction into his audience that his voluntary and self-sacrificing exile saved the people of Rome from terrible civil war and bloodshed, and he tried to clarify his relation with the triumvirs far from being free from contradictions, yet stylised into a harmonic relation in the given situation. By describing his exile and escape in vivid colours and presenting a stylised figure of Plancius as a heroic saviour, he aroused the

⁸⁴⁹ Cic. *part.* 100.

⁸⁵⁰ Quint. *inst.* 11, 1, 68. *Quam decenter tamen Sulpicio, cum omnes concessisset virtutes, scientiam petendi consulatus ademit! quam molli autem articulo tractavit Catonem!*

audience's compassion with the accused in a pathetic *peroratio*—and not without impact since, as it is known, in the proceedings Plancius was acquitted.

After brief description of the historical background of the lawsuit (III. 2. 1.), we analyse *Pro Plancio* more profoundly to investigate the rhetorical handling of the facts of the case, which will be compared to *Pro Murena* examined earlier at several points to ensure better understanding. (III. 2. 2.) Although the case was not one of the events that stirred huge political storms in the last century of the Republic, and so it was soon forgotten, it can be considered important among charges brought due to election bribery and lawsuits conducted on this subject to the extent that, after *Pro Murena*, *Pro Plancio* is the second—and the last—speech delivered by Cicero in *ambitus* lawsuits that have been left to us, which provides us with the opportunity for profound and comparative analysis of the Ciceronian handling of the facts of the case that he usually applied in *crimen ambitus*.

III. 2. 1. Historical background of *Pro Plancio*

Cnaeus Plancius came from a family in the order of knights; he was born presumably in 96 as the son of an honourable and wealthy publican (tax farmer). After he acted as military tribune and quaestor, he applied for aedil's office in 55, running together with Iuventius Laterensis, somewhat younger than him, as his opponent. At that time, he won the majority of the votes cast; however, the election was postponed, and was repeated in the following year.⁸⁵¹ Plancius and A. Plotius won, Laterensis and Q. Pedius—the latter obtained very few votes—lost the election.⁸⁵² Laterensis did what many people did in such a case in Rome: he brought a charge of *ambitus*, i.e., election fraud/bribery against Plancius. Beside Laterensis, L. Cassius Longinus, brother of one of Caesar's later assassins, acted as co- or secondary accuser; the defence was provided by Hortensius and Cicero. As the basis of the charge he did not choose *lex Tullia de ambitu* created in 63 during the period of Cicero's consulship but *lex Licinia de sodaliciis* created in 55 on Crassus's initiative to sanction use of associations set up for distributing bribes during election campaigns. This law seemed to be more favourable to the prosecutor not because of its sanction—since earlier laws held out the prospect of properly strict punishment: ten year exile, expulsion from the senate, being barred from applying for offices for life and a certain fine—but because of its procedural law aspect. For, in accordance with this law, the prosecutor could determine the four *tribus* from whom the judges had to be selected and the accused could refuse only one *tribus*, that is, his right of *reiectio*—right to refer to bias and to expel certain judges without any special reason—was considerably impaired compared to usual *quaestio* proceedings. In the procedure, actually used in practice, first the accused had to name the judges whom he was related to by marriage and kinship or confidential relation as a member of the same *sodalitium* or collegium, in twenty days. Then, the prosecutor selected one hundred from among the four hundred and fifty judges (*editio*), who were not allowed to maintain the above-mentioned relations with the prosecutor; after that, as part of his right of *reiectio*, the accused was allowed to reject fifty from among the designated one hundred judges, within forty days.⁸⁵³

Since it evolved in relation to winning the office of aedil and not consul, the lawsuit did not have great political significance; however, Cicero had to cope with a rather critical situation due to his personal relations with the accused and the accuser⁸⁵⁴ because both Plancius and

⁸⁵¹ Cic. *Planc.* 50.

⁸⁵² Cic. *Planc.* 17.

⁸⁵³ Kunkel 1974b 69.

⁸⁵⁴ Cf. Cic. *Planc.* 79.

Laterensis and his family did significant services and favours to him during his exile.⁸⁵⁵ As he was more indebted to Plancius, whom he had supported during his election campaign already, due to the outstanding *officium* to him he had to undertake his defence.⁸⁵⁶ Laterensis obviously took it in bad part,⁸⁵⁷ and tried to lessen Plancius's services done to and merits obtained regarding Cicero.⁸⁵⁸ It was not by chance that Cicero noted at the beginning of his speech that he hoped that in passing judgment the judges would appreciate the merits that Plancius obtained with regard to the one-time consul, all the more because the court of justice consisted of mostly Cicero's friends and good acquaintances, which gave hopes for the acquittal of the accused from the first;⁸⁵⁹ it was just their emotions that the orator wanted to move in his⁸⁶⁰ *peroratio* formulated with huge pathos as usual.

III. 2. 2. *Contentio dignitatis* and *patronus's auctoritas* as rhetorical tactics

To the best of our knowledge, Cicero acted as counsel for the defence at least on eight occasions in criminal actions due to *ambitus*, however, not all the speeches were published and only two of them have been left to us: the *oratio* delivered in 63 in defence of Lucius Licinius Murena elected consul and Cnaeus Plancius elected aedil in 54. It is striking in both lawsuits that Cicero deals with the state of facts of *ambitus* and tries to refute the allegations made by the prosecution in merely one-fourth⁸⁶¹ and one-fifth⁸⁶²—or, in the latter case, *stricto sensu*, one-twentieth⁸⁶³—of the *oratio*. This similarity allows to infer that what we have here is a rhetorical tactics independent of the specific case, which the judges and the audience actually expected the advocate to come up with in *ambitus* lawsuits.⁸⁶⁴ It might also arouse the attention that in both speeches Cicero speaks about himself at length, which is not justified by the legal facts of the case at all. The explanation for this is found in the practice of Roman orators/advocates as in Rome it was not only his rhetorical competence but his entire authority that an advocate or a patron made available to the accused or client brought before court and thereby guaranteed the authenticity of the case undertaken and the person defended, by full weight of his personality to the judges—what is more, he identified himself with his acts and fate.⁸⁶⁵ Accordingly, the opponent, as a matter of fact, worked towards attacking and shaking the authenticity of both the accused and his defending counsel; therefore, in the two particular cases the prosecution considered it necessary to speak exhaustively about Cicero too. This custom can be seen again, for example, in *Pro Cluentio*⁸⁶⁶ and is explained in *De oratore*.⁸⁶⁷ In *Pro Murena*, the orator feels it necessary in the *prooemium* already to respond to reproaches against him for having undertaken the case at all.⁸⁶⁸ As one of the four accusers, beside Servius Sulpicius Rufus, who lost the elections, and S. Sulpicius Rufus junior and C. Postumius, not known specifically, M. Porcius Cato—who took an oath in public before the

⁸⁵⁵ See Cic. *Planc.* 73. 78.

⁸⁵⁶ Kroll 1937. 128.

⁸⁵⁷ Cic. *Planc.* 72.

⁸⁵⁸ Cic. *Planc.* 4. 95.

⁸⁵⁹ Cic. *Planc.* 2. 4.

⁸⁶⁰ Cf. Cic. *Or.* 128ff.

⁸⁶¹ Cic. *Mur.* 54–77.

⁸⁶² Cic. *Planc.* 36–57.

⁸⁶³ Cic. *Planc.* 53b–57.

⁸⁶⁴ Adamietz 1986. 102f.

⁸⁶⁵ Thierfelder 1965. 385ff.

⁸⁶⁶ Cic. *Cluent.* 140f.

⁸⁶⁷ Cic. *De orat.* 2, 220ff.

⁸⁶⁸ Cic. *Mur.* 2b–10.

elections that if the election would be won by any other person than his brother-in-law, Silanus, he would bring a charge of *ambitus* against him⁸⁶⁹—criticised Cicero (although as a consul he created *lex Tullia de ambitu*⁸⁷⁰ which held out the prospect of ten year exile as a new punishment and took firmer action against those who distributed money) for having undertaken the defence of Murena charged of election bribery. Cicero was highly criticised also by Servius Sulpicius Rufus, the most significant jurist of the age, who considered Murena's defence a betrayal of their friendship. All this was meant to undermine the authenticity of Cicero as a defending counsel, which would have weakened his defendant's position too.⁸⁷¹

In *Pro Plancio*, Cicero notes that in their statement for the prosecution M. Iuventius Laterensis and L. Cassius Longinus spoke more about him than about Plancius;⁸⁷² accordingly, in the third third of his speech Cicero discusses solely his own person and the services and favours done to him by Plancius.⁸⁷³ Several allegations of the prosecutors were involved in the statement of the defence in the form of remarks; for example, the allegation that in the description of his own exile Cicero went too far in praising Plancius's merits.⁸⁷⁴ The merits obtained by the accused with regard to the defending counsel are described in details not only in *Pro Plancio*.⁸⁷⁵ *Pro Sestio* also contains longer arguments with such content.⁸⁷⁶ Obviously, the prosecutors' intention must have been to separate Plancius completely from the judges' sympathy towards Cicero owing to his exile, that is why Laterensis insisted on his allegation that the merits Plancius had obtained regarding Cicero's exile—if they were true at all—should not have any weight in the Judges' eyes.⁸⁷⁷ In harmony with that, the prosecutors recalled scornfully that Cicero had begged in tears to the judges in vain in defence of Cispus, who also did several services to him.⁸⁷⁸

The rather trivial commonplaces brought up as argument by Laterensis included the point that Cicero had earlier as a consul caused to involve exile in the sanctions ordered by *lex Tullia de ambitu* for no other reason than to be able to make the *peroratio* of his defence speeches more efficient.⁸⁷⁹ Also, he reproaches the orator for his years of study on Rhodes in order to point out that the moral looseness of eastern provinces must have been dear to Cicero.⁸⁸⁰ It is rather double-edged criticism by the prosecutor that Cicero failed to exploit the point inherent in Laterensis's stay on Crete: the play on the words island and chalk (*creta*).⁸⁸¹ For applicants for offices made their clothes more shining and white by chalk, which was prohibited by law very early, in 432.⁸⁸² Furthermore, he condemns Cicero for addressing a letter on his consulate to Pompey, the commander, probably with unpleasant content, highly stressing his own merits, which circulated in Rome—we have no further information on its content as it has not been left to us.⁸⁸³ Similarly, he criticises Cicero's decision that he had gone into exile

⁸⁶⁹ Plut. *Cato min.* 21, 3.

⁸⁷⁰ Cic. *Mur.* 5.

⁸⁷¹ Adamietz 1986. 104f.

⁸⁷² Cic. *Planc.* 3. 58.

⁸⁷³ Cic. *Planc.* 68ff.

⁸⁷⁴ Cic. *Planc.* 4. 68. 71. 72. 95.

⁸⁷⁵ Kiváltképp Cic. *Planc.* 87ff.; 90ff.

⁸⁷⁶ Cf. Cic. *Sest.* 45ff.; 49ff.

⁸⁷⁷ Cic. *Planc.* 4.

⁸⁷⁸ Cic. *Planc.* 75f.

⁸⁷⁹ Cic. *Planc.* 83.

⁸⁸⁰ Cic. *Planc.* 84.

⁸⁸¹ Cic. *Planc.* 85.

⁸⁸² Cf. Liv. 4, 25.

⁸⁸³ Cic. *Sulla* 67.

instead of undertaking fight—attributing all this to Cicero’s cowardice.⁸⁸⁴ He does not omit to emphasise that Cicero is not acting by free will at the time when the speech is delivered either—suggesting dependence on Pompey.⁸⁸⁵ All this, although has nothing to do with the facts of the case, served to undermine the authority of the defending counsel and thereby the authority of his defendant.⁸⁸⁶

The personal motivation of the prosecution is clear since in Rome a prosecutor did not have to be objective and unbiased at all.⁸⁸⁷ In the charge of *ambitus* the accusers who had lost the elections might have been driven by the motive that if the accused elected for the given office were convicted, they could take their place⁸⁸⁸ as it did happen in 65 in the case of L. Aurelius Cotta and T. Manilius Torquatus after P. Cornelius Sulla and P. Autronius Paetus elected consul had been convicted. There were good chances for Servius Sulpicius Rufus and Marcus Iuventius Laterensis hoping for the same in the event that Murena and Plancius were convicted. Anyone who decided to bring a charge, as a matter of fact, exposed himself to personal attack by the defending counsel.⁸⁸⁹ It was not by chance that Torquatus referred to Cicero’s tyranny and autocracy (*regnum*) in court of justice in the lawsuit against Sulla⁸⁹⁰ as Cicero was not sparing with attacks against the prosecutor, tribune L. Labienus in *Pro Rabirio perduellionis*.⁸⁹¹

The attacks against Cicero were of great weight in the Plancius lawsuit and in several cases hit Cicero in sensitive points: Cassius brought up Cicero’s attempt at entering into alliance with Pompey, which, however, failed,⁸⁹² Iuventius reproached Cicero for undertaking Cispius’s defence, and in connection with that he parodied the famous “*quo usquem tandem*” passage⁸⁹³ of the first *Catilinarian oration*;⁸⁹⁴ similarly, they ridiculed his pathetic perorations.⁸⁹⁵ All this, however, was dwarfed by their suspecting him of leaving Rome in 58 and going into exile out of cowardice and sacrificing his freedom to flatter the triumvirs—the orator responded to it in natural and deep indignation.⁸⁹⁶ Briefly but resolutely, he attacked his enemies at the time, Clodius, Gabinius and Piso.⁸⁹⁷

Furthermore, in both lawsuits against Murena and Plancius, Cicero had to cope with the difficulty that the adverse parties in the lawsuit, that is, the prosecutors, were his good friends. He supported Sulpicius in his election struggles, and maintained relations with Labienus’s family since his exile, however, Murena’s acquittal was definitely in the interest of the State because that was the only way to ensure that at the beginning of the year two dynamic consuls could take over control over the state organisation undermined by the conspiracy, and it is an undeniable fact that Plancius did much greater service to Cicero by providing him with shelter in Thessaloniki than Labienus’s family. Therefore, the orator could not use the well-trying strategy of stressing his defendant’s merits by dealing the opponent a devastating blow; instead, he had to find some middle-of-the-road solution by which he could both clear the

⁸⁸⁴ Cic. *Planc.* 86–90.

⁸⁸⁵ Cic. *Planc.* 91–94.

⁸⁸⁶ Adamietz 1986. 105.

⁸⁸⁷ See Mommsen 1899. 366ff.; Kunkel 1962. 11. 131f.; 136f.

⁸⁸⁸ Jones 1972. 62.

⁸⁸⁹ Adamietz 1986. 106f.

⁸⁹⁰ Cic. *Sulla* 21ff.

⁸⁹¹ Cic. *Rab. perd.* 6. 9. 11. 20ff.; 25. 29ff.; 35.

⁸⁹² Cic. *Planc.* 85.

⁸⁹³ Cf. Cic. *Cat.* 1, 1.

⁸⁹⁴ Cic. *Planc.* 75.

⁸⁹⁵ Cic. *Planc.* 76. 83.

⁸⁹⁶ Cic. *Planc.* 90f.

⁸⁹⁷ Cic. *Planc.* 86f. Cf. Kroll 1937. 131.

accused and was not compelled to start a serious attack against the prosecutor.⁸⁹⁸ It was not by chance that Quintilian noted that in *Pro Murena* Cicero acknowledged Sulpicius's all virtues and although he praised him, he advised him not to apply for consulate.⁸⁹⁹ The *fundamentum ac robur totius accusationis*,⁹⁰⁰ that is, the attack against Cato was justified just by the unquestionableness of his motifs and singular authority. It was just this authority that made the senators at the session of the senate held a few days after *Pro Murena* was delivered, on 5 December 63, in the Concordia temple⁹⁰¹ join what Cicero summed up in the fourth *Catilinarian oration*, in opposition to Caesar, who proposed life imprisonment of the conspirators,⁹⁰² after Cato had also demanded death penalty for the traitors,⁹⁰³ which was executed that evening in Tullianum. It was just this that Cicero tries to defend against in his ironic attack against Cato's cold stoicism so that the statesman's unbelievable authority, that is, purely his name should not be detrimental to the accused.⁹⁰⁴ Acknowledging Cato's moral greatness, he endeavours to present his standpoint taken in the particular matter as a trait alien to life, alien to the spirit of Roman people in order to take the edge of the charge and ruin the image in the judges that anyone Cato has resolved to bring a charge against must be by all means guilty.⁹⁰⁵ It is not by chance that the edited version of *Pro Murena* left to us does not contain detailed refutation of the charges made by Servius Sulpicius junior and Postumus—as the arguments brought up by them were not backed by moral authority similar to that of Cato, Cicero was not compelled to take the sting out of their argument by delicate shading.⁹⁰⁶ In legal terms, it does not belong to the charge and its refutation either to compare the life and activity of the competitors, having lost in the election struggle, acting as accusers in the *ambitus* lawsuit, to that of the winners of the election, the accused parties of the lawsuit. Cicero, however, in response to the allegations of the prosecution, touches on the conduct of life of the accused parties (*reprehensio vitae*),⁹⁰⁷ the comparison of the eligibility, authority and worthiness of the office of the accused parties having won and the accusers having lost in the elections (*contentio dignitatis*).⁹⁰⁸ Only after that does he deal with the crime of election bribery/fraud rather briefly and try to refute the relevant charges (*crimina ambitus*)—in the case of *Pro Murena*, also by inserting, before the fact-based, yet rather taciturn and not really convincing refutation,⁹⁰⁹ the response to the motifs of the charges brought up by Cato.⁹¹⁰ The examination of the conduct of life of the accused parties (*vita anteacta*) is of a highly critical tone in the statement of the prosecution in both cases. Cato reproached Murena for his stay in Asia and the presumption that he took pleasure in eastern luxury,⁹¹¹ his sympathy for dancing, which was not worthy of a free Roman citizen in the eyes of the Romans⁹¹²—however, none of these criticisms was connected with the crime of *ambitus*. The prosecutors reproached Plancius for the charge of bigamy, ravishing an actress, Atinia,⁹¹³ releasing a

⁸⁹⁸ Adamietz 1986. 107.

⁸⁹⁹ Quint. *inst.* 11, 1, 68.

⁹⁰⁰ Cic. *Mur.* 58.

⁹⁰¹ Cf. Plut. *Cic.* 21.

⁹⁰² Cf. Sall. *Cat.* 51, 1–43.

⁹⁰³ Cf. Sall. *Cat.* 52, 2–36.

⁹⁰⁴ Cic. *Mur.* 67.

⁹⁰⁵ Cic. *Mur.* 60–66.

⁹⁰⁶ Adamietz 1986. 108.

⁹⁰⁷ Cic. *Mur.* 11–14; *Planc.* 30–35.

⁹⁰⁸ Cic. *Mur.* 15–53; *Planc.* 5. 58–67.

⁹⁰⁹ Cic. *Mur.* 66–77.

⁹¹⁰ Cic. *Mur.* 54–77; *Planc.* 53–57.

⁹¹¹ Cic. *Mur.* 12.

⁹¹² Cic. *Mur.* 13.

⁹¹³ Cic. *Planc.* 30.

prisoner from prison unlawfully⁹¹⁴ and the too resolute action taken by his father, Plancius senior for the sake of publicans (*publicani*).⁹¹⁵ These allegations were not connected either directly or indirectly with the actual charge, *ambitus*. However, accumulation of charges not supported by facts—more exactly, as Cicero often stressed it: abusive language and defamation—was general practice in any lawsuit, not just *ambitus* lawsuits, as a tool of influencing the climate of opinion against the accused.⁹¹⁶

In *ambitus* lawsuits it was traditional to compare the competitors' dignity, eligibility for office (*contentio dignitatis*) both by the prosecution and the defence. In *Pro Murena* this constitutes a rather lengthy, independent part;⁹¹⁷ in *Pro Plancio*—referring to the sensitivity of just the accuser, Laterensis⁹¹⁸—Cicero rejects the use of this tool;⁹¹⁹ later on, however, albeit, emphatically in response to Crassus's counts of the indictment, he uses them anyway.⁹²⁰ By all that, the defending counsel tries to achieve a double result: on the one hand, he wants to prove his defendant's high eligibility for the office to be filled; on the other hand, he explains the causes of his election victory. Simultaneously, he gives explanation for the accuser's election defeat, arguing that it was due to the defeated party's fault and not to his defendant's acts, even less to possible bribe.⁹²¹ Accordingly, in the part of *Pro Murena* that can be called *contentio dignitatis*, discussion of Sulpicius's defeat was given an important place too,⁹²² and in *Pro Plancio* it is after the seeming rejection of the opportunity of *contentio*⁹²³ that the orator comes to Laterensis's election defeat on two occasions.⁹²⁴ The structure of *contentio* is identical in both speeches: Cicero discusses the career of the competitors in chronological order.⁹²⁵

In *Pro Murena*, in response to Sulpicius's argument that he outdoes Murena in social background, the orator underlines the significance of individual achievements,⁹²⁶ and to the fact that he was announced first in the election of the quaestor he opposes the point that what must and can be investigated on the merits is nothing else than the achievements attained in office filled in the same year—and in this respect none of them excelled.⁹²⁷ In response to Sulpicius's argument that he would have been more worthy of consul's office because he stayed in Rome from first to last, while Murena stayed in the east as commander, Cicero points out that it is not presence but merits that count.⁹²⁸ At this point, in *studiorum atque artium contentio*, the orator opposes soldier's activity to lawyer's activity and involves the art of rhetoric as a third element in the comparison, and this way jurisprudence as a profession dealing with unnecessarily overcomplicated, insignificant matters is given the third place only.⁹²⁹ Praise of *res militaris* is a response to Cato's criticism that Murena's merits as commander are insignificant, if for no other reason, because the war in Asia was fought against women and not men.⁹³⁰ Cicero beats off the argument of victory obtained in the first

⁹¹⁴ Cic. *Planc.* 31.

⁹¹⁵ Cic. *Planc.* 32.

⁹¹⁶ Cf. Cic. *Cael.* 3–25; *Sest.* 6–14; *Sulla* 69–75; *Rab. Post.* 7–9; *Font.* 41.

⁹¹⁷ Cic. *Mur.* 15–53.

⁹¹⁸ Cf. Kroll 1937. 129.

⁹¹⁹ Cic. *Planc.* 6. 16. 17.

⁹²⁰ Cic. *Planc.* 58–67.

⁹²¹ Cf. Adamietz 1986. 109.

⁹²² Cic. *Mur.* 43–53.

⁹²³ Cic. *Planc.* 6.

⁹²⁴ Cic. *Planc.* 7–30. 49–53.

⁹²⁵ Adamietz 1986. 110.

⁹²⁶ Cic. *Mur.* 15.

⁹²⁷ Cic. *Mur.* 18.

⁹²⁸ Cic. *Mur.* 19ff.

⁹²⁹ Cic. *Mur.* 22–30.

⁹³⁰ Cic. *Mur.* 31.

place in the election of praetors by the topos of the unpredictableness of public opinion,⁹³¹ and underlines the magnificence of the games arranged by Murena, and opposes it to the fact that Sulpicius had not arranged any.⁹³²

Furthermore, Cicero emphasises that the electors appreciated Murena's role fulfilled in administration of justice, contrary to the severity engaged by Sulpicius in this respect, which arose from the nature of the field he controlled, and that the commander's activity in the provinces also provided him with great support, whereas the jurist was not willing to assume any task outside Rome.⁹³³ After discussing the causes of Murena's victory, he comes to the direct causes of Sulpicius's defeat. Electors clearly noticed that Sulpicius did not strive for winning the elections in the first place, instead, he dealt with the opportunity of bringing a charge in case he would lose and collecting evidence against his rivals, which suggested that he did not see many chances for victory.⁹³⁴ Furthermore, he fought for making *lex Calpurnia*, which sanctioned *ambitus*, stricter, and in this effort he was supported by Cicero as consul and friend by creating *lex Tullia de ambitu*—yet, this had not made him sympathetic to electors either.⁹³⁵ Finally, the critical political situation, i.e., general fear of Catilina's possible victory, favoured Murena, whom citizens considered a firm support against threatening danger, while they did not presume that the anxious and hesitating Sulpicius would take such a firm action.⁹³⁶ To sum it up: Cicero took the position that Murena's victory arose from his own excellence and the faults made by his rival, Sulpicius but by no means from unlawful practices and bribery.⁹³⁷

In the Plancius lawsuit Cassius criticised and condemned Cicero's defendant,⁹³⁸ while he appreciated Laterensis's merits and competencies.⁹³⁹ Whereas the opponent underlined Laterensis's *nobilitas* and deemed him worthy of the aedil's office owing to his social background, Cicero (just as Plancius in Murena's lawsuit) emphasised individual *virtus*, merits, aptitude in the case of *homo novus*.⁹⁴⁰ A *homo novus*, in other words, a person whose ancestors did not get higher offices (*cursus honorum*), was in certain respects in a disadvantageous position in the struggle for winning given offices compared to the members of the nobility because the latter could proudly refer to their ancestors' deeds carried out for the benefit and greatness of the people of Rome. The *homines novi* who achieved the highest degree of public dignity, in several cases—as it can be observed in the example of Cato the Elder or Cicero—followed ancient ideals more consistently and, one should say, with neophyte enthusiasm. Prior to Cicero, it was in 94 when a *homo novus*, more specifically, C. Coelius Caldus, was elected consul. At the same time, Cicero—in order to win the people's support and make advantage out of disadvantage—voiced the rather populist view that members of the nobility handled the consul's office as their own privilege, and proudly emphasised his own merits, by which he was able to get the highest dignity of the State even against the nobility.⁹⁴¹

Anyway, regarding Laterensis he used the tools of *humanitas* and *urbanitas* as the accuser did not belong to his personal enemies.⁹⁴² In the case of Plancius, Cassius challenged lack of

⁹³¹ Cic. *Mur.* 35f. Cic. *Planc.* 7f.

⁹³² Cic. *Mur.* 37–42.

⁹³³ Cic. *Mur.* 42.

⁹³⁴ Cic. *Mur.* 43ff.

⁹³⁵ Cic. *Mur.* 46ff.

⁹³⁶ Cic. *Mur.* 48ff.

⁹³⁷ Adamietz 1986. 110f.

⁹³⁸ Cf. Cic. *Planc.* 58ff.

⁹³⁹ Cf. Cic. *Planc.* 63.

⁹⁴⁰ Cic. *Planc.* 59f.

⁹⁴¹ Cic. *leg. agr.* 2, 3.

⁹⁴² Kroll 1937, 129.

triumphuses, military achievements, rhetorical and jurist competencies—that is, there are good chances that he used the arguments that Cicero formulated in *Pro Murena* with regard to various professions. In response, Cicero as defending counsel expounded that the opportunity of triumphs would become available, for that matter, through holding given offices, and that by his activity on Crete and in Macedonia he did prove his military aptitude, and that he had never claimed to have knowledge obtained in rhetoric and jurisprudence, instead, he could show prominence in character, which was much more appreciated by the people of Rome than professional knowledge.⁹⁴³ At the same time, Cicero lessens the weight of Laterensis's merits obtained in Cyrene also to his detriment by an ironical dialogue narrated in relation to his activity as proquaestor in Sicily, with the morals that Laterensis would believe in vain that he had carried out significant deeds in remote provinces, the public might have not even heard of his being away from Rome.⁹⁴⁴

To take care of the sensitivity of the opponent who otherwise maintained good relations with him, Cicero discusses the reasons for Laterensis's election defeat separately from *contentio dignitatis*,⁹⁴⁵ and gets down with it primarily by the topos of the unpredictableness of public opinion and unreliability of public judgment.⁹⁴⁶ The tricks of winning mercy of the people were discussed in details by his brother, Quintus in *Commentariolum petitionis* where he expounded that applicants should formulate what they have got to say in accordance with electors' desires and needs rather than their own conviction, and pointed out that promises made kindly are more important than keeping such promises.⁹⁴⁷ Apparently, it was just this that Plancius forgot about, and before the court of justice consisting of senators and knights Cicero could safely refer to the shaky and unreliable value judgment of the people,⁹⁴⁸ and, to completely reduce the edge of the attack against Laterensis, he declared that if the people had had firm conviction, had orientated themselves in terms of merits and values in forming their opinion, then they would have elected Laterensis aedil.⁹⁴⁹

The people blamed Laterensis for not making efforts to win their favour and for relying on the advantages provided by his social background only in winning the election.⁹⁵⁰ Similarly, giving up the fight for tribune's office already commenced in 59 was to his detriment because the public considered it indifference,⁹⁵¹ and asserting his high-born origin might have evoked antipathy instead of sympathy in the *plebs*.⁹⁵² Later on, Cicero returns again to the thought that Laterensis's defeat was caused by lack of humbleness to be engaged to the mercy of the people (*supplicare, se submittere*).⁹⁵³ The consequences of Laterensis's faults were increased by the circumstances that supported Plancius: the support of his home town,⁹⁵⁴ the commitment of publicans ranged on his side by his father, the leader of the publicans,⁹⁵⁵ and Cicero's help, who thereby thanked Plancius for the favours he had done to him during his exile.⁹⁵⁶ Furthermore, his activity in Africa, on Crete and in Macedonia,⁹⁵⁷ and his successful tribune's activity was in favour of Plancius.⁹⁵⁸

⁹⁴³ Cf. Cic. *Planc.* 61ff.

⁹⁴⁴ Cic. *Planc.* 65.

⁹⁴⁵ Cic. *Planc.* 7–30.

⁹⁴⁶ Cic. *Planc.* 8ff.

⁹⁴⁷ Cf. *Comm. pet.* 45.

⁹⁴⁸ Cf. Cic. *Planc.* 9.

⁹⁴⁹ Cic. *Planc.* 7.

⁹⁵⁰ Cic. *Planc.* 13ff.

⁹⁵¹ Cic. *Planc.* 13.

⁹⁵² Cic. *Planc.* 16ff.

⁹⁵³ Cic. *Planc.* 49–53.

⁹⁵⁴ Cic. *Planc.* 19ff.

⁹⁵⁵ Cic. *Planc.* 23.

⁹⁵⁶ Cic. *Planc.* 24ff.

It should be noted with regard to publicans that they made it possible that state administration with a low headcount had to be maintained in Rome because well-to-do *publicani*, most often from the order of knights, constituted a company for the economic implementation of important goals in the life of the State (for example, construction of water pipes, providing the army with arms). The late age of the Republic used the terms knights and publicans often as synonyms; however, overlapping between the two categories by no means meant identity: some publicans had assets between forty thousand and one hundred thousand *sestertii*, while the extent of knights' *census* was set as four hundred thousand *sestertii*. In the company of publicans the members assumed burdens and shared benefits in proportion to their share; the most propertied were accountable to the State for implementing the enterprise usually by their landed estate; on behalf of the State the magistrate entered into a contract with them. The key task of publicans was their role assumed in taxation in the provinces: they paid the amount of tax determined for the given province to the state treasury in advance, and on the leased territory during the lease period they could freely collect the amount they had paid in advance. The governors, as a matter of fact, often abused their position and imposed unlawful burdens on provinces; so, inhabitants were compelled to take out loans from publicans, who usually disbursed the amount demanded at usurious interest rates. Accordingly, judgement of publicans was disputed; in his letter to his brother—as a matter of fact, in a statement not addressed to the general public—Cicero himself called them the greatest burden of provincial administration.⁹⁵⁹ In several cases publicans supported the election of persons favourable to them by covering a major part of their campaign costs—it was not by chance that Cicero's brother, Quintus tried to convince him that he should win publicans' benevolence to support his own consul campaign.⁹⁶⁰ Cicero called publicans the flower of the order of knights of Rome,⁹⁶¹ the knights themselves strong support of the rest of the orders.⁹⁶² C. Gracchus already relied on knights actually as an order, and entrusted Asia province to them as publicans.

In *Pro Plancio* a peculiar element of *contentio dignitatis* is the projection of the personality of the two candidates to their hometown, Tusculum in the case of Laterensis and Atina in the case of Plancius. Tusculum was a distinguished settlement south-east of Rome, where several consuls' families came from. Therefore, it is understandable that the inhabitants of Tusculum—as numerous men who had held consulship lived in the town—did not attribute special significance to Laterensis's aedil's office; consequently, they did not make many efforts to help him to win the desired office. Atina, lying not far from Cicero's hometown, Arpinum, was far from being so respectful and notable; so, its inhabitants made more efforts to help one of the citizens born at their settlement to win the aedil's office since thus glory fell on them too, which the inhabitants of Tusculum had plenty of.⁹⁶³

Therefore, by *contentio dignitatis* Cicero tried to shed light primarily on the fact in both speeches—by analysing both the virtues and strengths of the winner/accused and the faults and failures of the loser/accuser—that his defendants had not been in need at all of trying to influence the outcome of the election by bribery as there were sufficient arguments that made them sure of their victory. Thereby he indirectly proved that the charge of *ambitus* was unfounded. Secondly, however, *contentio dignitatis* served to enable him to prove to the judges, as public opinion representing electors, that the winner of the election was by all

⁹⁵⁷ Cic. *Planc.* 27ff.

⁹⁵⁸ Cic. *Planc.* 28. 61.

⁹⁵⁹ Cic. *Q. fr.* 1, 1, 32.

⁹⁶⁰ *Comm. pet.* 3.

⁹⁶¹ Cic. *Planc.* 23.

⁹⁶² Cic. *Verr.* 2, 2, 7.

⁹⁶³ Cic. *Planc.* 19ff.

means more suitable for the given office than his opponent—the enumeration of faults and failures committed during the election campaign was also meant to support the above as reasons for the train of thoughts that a person who controls his election campaign with more aptitude will hold the office more efficiently. Based on all that it can be inferred that the orator wanted to convince the judges also of the point that not only should the winner be acquitted for lack of crime but the results of the elections should not be invalidated due to the person's eligibility and the accuser's ineligibility either.⁹⁶⁴

Refutation of the charge of *ambitus* on the merits is very short, almost insufficiently concise in both speeches.⁹⁶⁵ The reason for that can be looked for, on the one hand, in the fact that from both lawsuits only Cicero's speeches have been left to us, so neither the statements of the prosecution, nor the rest of defence speeches are known to us, and as in both lawsuits Cicero rose to speak as the last one as was his custom, we could presume that the defending counsels taking the floor before him had already refuted the legally relevant counts of the indictment on the merits of the case, point by point. At the same time, it can be presumed that Cicero would have somehow referred or alluded to these refutations—however, no traces of that can be found. It is highly probable that both the prosecution and the defence set out from arguments related to person, and counts of the indictment that could be specifically supported and refuted did not play any considerable part—if for nothing else, due to the low number of proofs arising from the character of the cases. Defending counsels much rather tried to prove—all the more because the dividing line between *ambitus* sanctioned by law and morally contestable and legally acceptable *ambitio* could not be sharply drawn—that in the course of winning the electors' favours no scandalous, exaggerating steps contrary to traditions and customs were taken.⁹⁶⁶ Due to the indistinct dividing line between *ambitus* and *ambitio* we can possibly accept Wilhelm Kroll's statement that these Ciceronian speeches can be considered, for that matter, praise of properly and moderately exercised *ambitus* too.⁹⁶⁷

In *Pro Murena* Cicero argued that whereas Cato disapproved any kind of search for electors' favours, that is, entourage, hospitality and distribution of free tickets to circus and theatre performances, Murena, in the course of all these steps, took care of complying with and respecting generally accepted customs to sufficient extent: he recruited entourage not for money and theatre seats and feasts were made possible by his friends' generosity, which was not prohibited by law or unwritten law either.⁹⁶⁸ In *Pro Plancio* he could simply respond to the charge that Plancius entered into *coitio*, that is, alliance allowed by law with the other winning candidate, Plotius: originally it was Laterensis who wanted to enter into alliance with Plancius, however, it failed. At this point, it is possible to presume the cause behind the argument of the prosecution: it was not Laterensis that the agreement set out in the *coitio* favoured.⁹⁶⁹ The circumstances of distributing money in Circus Flaminius, the origin and function of the money could not be determined exactly and could not be proved, so this charge seemed to be weightless too⁹⁷⁰—at least in Cicero's narrative. And for lack of proper evidence, Cicero could easily consider all the other statements gossip and defamation.⁹⁷¹

Thus, based on all that, Plancius did not amount to the state of facts of *lex Licinia*, and demanding the application of this law was nothing else than a bad faith manoeuvre from the

⁹⁶⁴ Adamietz 1986. 113.

⁹⁶⁵ Kroll 1937. 132.

⁹⁶⁶ Adamietz 1986. 114.

⁹⁶⁷ Kroll 1937. 132.

⁹⁶⁸ Cic. *Mur.* 68–77.

⁹⁶⁹ Kroll 1937. 133.

⁹⁷⁰ Cic. *Planc.* 55.

⁹⁷¹ Cic. *Planc.* 53–57.

first by the prosecution to make the situation of the accused more difficult.⁹⁷² The provision of *lex Licinia* that set forth that the prosecution could designate four *tribus*, of which the judges were selected, was used by Laterensis contrary to the spirit of the law,⁹⁷³ since he left out just the Voltinia district where bribes had purportedly taken place, and whose judges for this reason could have judged the case with greater overview—Cicero’s above opinion was obviously shared by Hortensius too, who expounded it in his own defence speech on the day before Cicero’s oration was delivered.⁹⁷⁴ It was undoubtedly impossible to prove Plancius guilty of *communis ambitus* because this would have required to certify that distribution of money was carried out in an organised form, directly launched by the candidate—in other words, *gratia* and *observantia* of allowed extent only helped Plancius on the side of his friends and supporters.⁹⁷⁵

Basically, *Pro Murena* and *Pro Plancio* are made of identical elements, although the elements are arranged somewhat differently. Both the prosecution criticises the defending counsel, Cicero and Cicero resolutely criticises and attacks the accusers, Cato, Sulpicius and Laterensis, not sparing sarcasm. On the one hand, the prosecution endeavours to make the person of the accused, having won the elections, inauthentic during *reprehensio vitae*, and thereby support the necessity of *ambitus*. On the other hand, the defence tries to prove ineligibility of the defeated accuser through *contentio dignitatis* to convince the judges thereby that the losing party can reproach nobody else than himself for his defeat, and for this reason the winner had not only not committed any fraud or bribery during the election campaign, but he was not in need of it either. It clearly explains this tactics when we consider that in case the winner was convicted, then the loser placed behind obtained the office that constituted the subject of the dispute; that is, if the counts of the indictment proved true, it guaranteed, in addition to conviction and punishment of the accused, that the accuser, having lost the elections, could win the office not obtained by votes. The fact-based refutation of *crimina ambitus* crowned this argument only but had no exclusive value for the outcome of the lawsuit, all the less as the judgment in the action-at-law unambiguously contained a political decision too. The jurors voted not only on guilt and innocence but on the fate of the office to be fulfilled; therefore, their vote was influenced, in addition to the case of *ambitus*, by their conviction developed of the eligibility of the accuser and the accused, that is, the parties opposed as competitors in the election struggle.⁹⁷⁶

In both cases the orator builds his statement by combining these elements in accordance with the circumstances. In the *prooemium* of *Pro Murena* he immediately responds to the objections of the prosecution that are aimed at Cicero undertaking the defending counsel’s tasks as a consul in office and thereby betraying his friendship maintained with Sulpicius,⁹⁷⁷ and in the *peroratio* he uses the dignity of his office as a weapon that can be used for the sake of his defendant.⁹⁷⁸ Before addressing specific charges, he believes it is useful to convince the judges that Murena’s conduct of life is irreproachable and he is eligible for the office,⁹⁷⁹ which he emphasises in a lengthy *contentio dignitatis* in an enlarged form by stressing Murena’s merits and questioning Sulpicius’s aptitude, and by underlining the faults and failures made by him during the election campaign.⁹⁸⁰ The attack against Cato, cast in

⁹⁷² Kroll 1937. 134.

⁹⁷³ Cic. *Planc.* 42.

⁹⁷⁴ Cic. *Planc.* 37.

⁹⁷⁵ Cic. *Planc.* 44f.

⁹⁷⁶ Adamietz 1986. 115.

⁹⁷⁷ Cic. *Mur.* 1–10.

⁹⁷⁸ Cic. *Mur.* 86. 90.

⁹⁷⁹ Cic. *Mur.* 11–15.

⁹⁸⁰ Cic. *Mur.* 15–53.

humorous form, takes the edge of the charges, by which he presents the objections brought up against Murena as the outcome of the philosopher-statesman's too anxious conscience and approach alien to life.⁹⁸¹ Emphasis of the imminence by Catilina—which Sulpicius, otherwise having excellent traits and values deserving acknowledgement by all means from a human viewpoint, would not be able to efficiently oppose—reinforces Murena's position. So, Cicero as a consul defends his elected successor in office—as the verdict of acquittal shows—successfully, and the defence rests on three pillars: Murena's aptitude, Sulpicius's ineligibility and failures, and realistic recognition of the dangers of the situation in current politics.

In Plancius's lawsuit the prosecution also started a co-ordinated attack against the counsel for the defence and former consul, Cicero because the accusers believed that they could achieve their goal against Plancius only by weakening Cicero. Accordingly, Cicero highlights Plancius's merits and services by which he supported him during his exile, in the *prooemium* already, and builds the entire third part of the speech: the refutation of the charges made by Cassius⁹⁸² and Laterensis⁹⁸³ and the *peroratio*⁹⁸⁴ on them. Thus, the significance of the identity of the defending counsel far surpasses that of his defendant in this case too, and it can be stated that Plancius's acquittal was owing almost exclusively to Cicero's moral weight, independently of the acts and failures of the accused. From among *contentio dignitatis* and exploration of the causes of Laterensis's election defeat, first, the second element appears,⁹⁸⁵ on the one hand, to take care of Laterensis's sensitivity, and, on the other hand, to reduce his accuser's drive by enumerating the faults committed. Only after that comes Cicero to clearing his defendant's conduct of life,⁹⁸⁶ as it were forcing the accuser into defence position, because he—according to Cicero's argument—attacked Plancius by distorting the provisions of *lex Licinia de sodaliciis*, that is, in unfair manner.⁹⁸⁷ This tactics highly reminds one of the criticism against Cato—Cicero strives to convince the judges that the prosecutors' action, although it might seem to be lawful, is by all means seriously unfair. Laterensis's accuser's position could have been by no means strengthened by the somewhat condescending, patronising encouragement by which Cicero urged him not to give up hope: successes in public life will certainly not keep him waiting in the future if he learns a lesson from his faults and takes the advice he has just received.⁹⁸⁸ After having properly prepared the field, the orator refutes the actual charge of *ambitus* by lapidary conciseness, all the more because—as Cicero argues henceforth in the *contentio dignitatis*—Plancius's favourable opportunities and aptitude, and the support provided by him, among others, to him as exiled former consul,⁹⁸⁹ made it unjustified from the first for his defendant to use unlawful tools.⁹⁹⁰

From the Ciceronian practice of *ambitus* lawsuits it can be unambiguously ascertained that the judgment and, as its antecedents, the role of the prosecution and the defence orientated itself primarily in terms of political aspects. The party who brought the charge was often a competitor beaten in the elections, who could not only expect the proceedings to impose sanctions on unlawful practices through the conviction of his one-time competitor, the accused in the lawsuit, but, based on Roman practice, could certainly count also on obtaining the office that he had not been able to obtain by winning the electors over, as a benefit of the

⁹⁸¹ Cic. *Mur.* 60–66.

⁹⁸² Cic. *Planc.* 68–71.

⁹⁸³ Cic. *Planc.* 72–100.

⁹⁸⁴ Cic. *Planc.* 101–104.

⁹⁸⁵ Cic. *Planc.* 5–30.

⁹⁸⁶ Cic. *Planc.* 30–35.

⁹⁸⁷ Cic. *Planc.* 36–48.

⁹⁸⁸ Cic. *Planc.* 49–53.

⁹⁸⁹ Cic. *Planc.* 68–71.

⁹⁹⁰ Cic. *Planc.* 58–67.

lawsuit. Consequently, when deciding the issue of guilt or innocence, the judges deliberated the past, conduct of life of the accuser and the accused, i.e., the winner and loser of the elections, the necessities demanded by the situation of current politics, the eligibility of the parties concerned and—as *Pro Murena* and *Pro Plancio* convincingly proves it—the political weight of the patron who took action for the sake of the accused.⁹⁹¹

⁹⁹¹ Adamietz 1986. 117.

IV. Crimes of violence (*Pro Caelio*, *Pro Sestio*, *Pro Milone*)

IV. 1. Lawsuit of Marcus Caelius Rufus

Cicero delivered his speech in defence of Marcus Caelius Rufus charged *de vi*, on 4 April 56, on the first day of the *Ludi Megalenses*. *Pro Caelio* represents a highly important stage in Cicero's fight with Clodius (and his clan), which fight produced significant, sometimes fatal impact on the great orator's life and thereby on the political events of the end of the Republic. The first stage of the hostile relation can be dated to 73 when Clodius dealt a heavy blow on Terentia, Cicero's wife through accusing the Vesta priestess, Fabia, Terentia's half-sister of *incestum*. Among others, this was the injury that Cicero wanted to take revenge for in 61 (partly encouraged by his wife Terentia) by his testimony made against Clodius in the Bona Dea trial, which, however, due to the fact that Clodius was acquitted, ended with a result not meant to be achieved. In return, Clodius responded by urging Cicero's expulsion in 58 and the destruction of his house on the Palatine. In 56, as a result of peculiar coincidence of political and private relations, Cicero was given the opportunity to deal a heavy blow on Clodia, Clodius's elder sister in his *Pro Caelio*, whom he mocked in the trial with murderous humour using the means of Roman theatre, especially of comedy, and, thus, arranged a peculiar theatre performance during the *Megalensia*, which served as the time of the *Ludi scaenici*. Albeit, it does not belong to the history of the *Pro Caelio* to be investigated here, we mention that as the last stage of the hostile relation Cicero defended Milo in 52, who killed Clodius in a street fight.

After outlining the background of the Bona Dea case that sowed the seeds of the conflict between Cicero and the gens Clodia (IV. 1. 1.) and the circumstances and historical background of the lawsuit (IV. 1. 2.), we analyse the rhetoric situation provided by the *Ludi Megalenses* and genially exploited by Cicero (IV. 1. 3.) and the orator's tactics applied in the speech in defence of Caelius (IV. 1. 4.).

IV. 1. 1. A Bona Dea scandal—beginnings of the fight between Cicero and Clodius

The development of the hostile relation between Cicero and P. Clodius as well as his elder sister, Clodia cannot be understood without being aware of Cicero's testimony made in the so-called Bona Dea trial and the causes that made him do that. It was at the beginning of December 62 when highborn women of Rome, including the *virgines Vestales*, celebrated the festival of Bona Dea at the house of the pontifex maximus, Caesar. The name of Bona Dea is direct translation of the Greek Agathē Theos, who became generally known as a healing goddess;⁹⁹² based on the inscription referring to her⁹⁹³ and the representations from Attica we are discussing here a figure of Hygeia.⁹⁹⁴ This ritual was held in Rome at the house of a *magistratus cum imperio*,⁹⁹⁵ and only the *matronae* of the ruling class and Vesta priestesses⁹⁹⁶ were allowed to take part in it.⁹⁹⁷ The festivity was led by the wife of the magistrate, so, Bona Dea did not have a priestess of her own.⁹⁹⁸ With respect to the present case, it is of special

⁹⁹² Macr. *Sat.* 1, 12, 25.

⁹⁹³ CIL VI. 72.

⁹⁹⁴ Latte 1967. 228.

⁹⁹⁵ Cf. Plut. *Cic.* 19; Dio Cass. 37, 35, 4.

⁹⁹⁶ Cic. *Att.* 1, 13, 3; *har. resp.* 37; Plut. *Cic.* 19; Dio Cass. 37, 35, 4; 37, 45, 1.

⁹⁹⁷ Latte 1967. 230.

⁹⁹⁸ Vell. 2, 45, 1; Plut. *Cic.* 28; *Caes.* 9; Suet. *Caes.* 6, 2; App. *civ.* 2, 14, 52; Dio Cass. 37, 45; Liv. *perioch.* 103.

importance that every male being, be it human or animal, was strictly excluded from the ritual.

No exact picture regarding each detail is provided by historical sources⁹⁹⁹ on what happened during this night; the following, however, can be established with acceptable certainty: Clodius somehow found his way into the house (Plutarch claims that he found the door open and that is how he entered). He pretended to be disguised as a woman with a harp¹⁰⁰⁰ but the assertion made by Plutarch and Appian that disguising was greatly facilitated by him not being compelled yet to shave in those days is false; they simply forget about the fact that at the time of the Bona Dea scandal Clodius was already twenty-nine/thirty years old. Dio Cassius claims that his purpose was to seduce Caesar's wife, Pompeia (which did happen as Dio Cassius asserts), but that is not certain at all. Anyway, the ritual was led by Caesar's mother: Aurelia and not by Pompeia.¹⁰⁰¹ The disturbed festivity was later repeated by Vesta priestesses (*instauratio*).¹⁰⁰²

In the senate the Bona Dea scandal was first put forth by Q. Cornificius, and the body referred it to the Vesta priestesses and the pontifices, who held a session under the chairmanship of the pontifex maximus, Caesar.¹⁰⁰³ In addition to Caesar, this body included one more member who played a part in the later trial: L. Cornelius Lentulus Niger, who fulfilled the dignity of flamen Martialis.¹⁰⁰⁴ The senate received a report stating that the disturbance of the Bona Dea ritual was deemed *nefas*. After this report, albeit, before the trial, Caesar divorced his wife and announced that he would not be willing to appear in court as a witness—thereby reassuring Clodius that there had been no break in the friendship they had entertained.¹⁰⁰⁵ The motifs of Caesar's behaviour have remained a mystery; it cannot be cleared up whether he did not want to release Clodius, as a significant tool of his politics, from his hands, or he believed that the dignity of pontifex maximus required that in a situation like that he should divorce his wife, not suspected of any serious acts.

The senate accepted the report, and resolved to set up a special venue of jurisdiction in order for it to investigate the *incestum* committed by Clodius.¹⁰⁰⁶ The members of the court of justice were not elected from *album iudicum* by drawing lots—as it was customary in the *quaestiones*—instead, the chairing praetor selected the participants from specific persons, which enhanced the suspicion that the judges must have been prejudiced against Clodius right from the first.¹⁰⁰⁷ For this reason, tribune Fufius Calenus vetoed the charge submitted by M. Piso.¹⁰⁰⁸ The matter was delivered to the public, from among Clodius's opponents three persons—Cato, Favonius and Hortensius—took firm action quite resolutely. Then, the senate was convened again, and having put down Fufius Calenus's resistance they decided to proceed in the form originally planned—it was this fact on which Cicero informed Atticus on 13 February.¹⁰⁰⁹ At the next session of the senate Fufius made two proposals: first, regarding the point that the trial on Clodius's case should be held; secondly, that the judges should be appointed by drawing lots.¹⁰¹⁰ The first proposal was accepted, the second one was

⁹⁹⁹ Cic. *har. resp.* 44; Plut. *Cic.* 28, 2; *Caes.* 10, 1; Iuv. 6, 337.

¹⁰⁰⁰ Suet. *Caes.* 74, 2; Schol. Bob. 89, 26.

¹⁰⁰¹ Cic. *Att.* 1, 13, 3; Schol. Bob. 89, 23.

¹⁰⁰² Cic. *Att.* 1, 13, 3.

¹⁰⁰³ Cic. *Att.* 1, 13, 13. Macr. *Sat.* 3, 13, 11.

¹⁰⁰⁴ Balsdon 1966. 67.

¹⁰⁰⁵ Cic. *Att.* 1, 13, 3; Plut. *Caes.* 10, 8–10; Suet. *Caes.* 6, 2. 74, 2; App. *civ.* 2, 14, 52; Dio Cass. 37, 45.

¹⁰⁰⁶ Cic. *Att.* 1, 13, 3.

¹⁰⁰⁷ Balsdon 1966. 69.

¹⁰⁰⁸ Cic. *parad.* 4, 32.

¹⁰⁰⁹ Cic. *Att.* 1, 14, 5.

¹⁰¹⁰ Tatum 1990. 206.

dismissed,¹⁰¹¹ the senate entrusted Fufius to submit the charge to the people. According to Cicero this happened because Hortensius and his circle were fully certain that Clodius would be sentenced by any court.¹⁰¹²

Accordingly, the formal accusation was made approximately before 15 March, 61. Of the lawsuit itself rather few facts are known to us; the charge was expounded by three persons, three Corneli Lentuli: L. Cornelius Lentulus Crus, L. Lentulus Cornelius Lentulus Niger (flamen Martialis) and Cn. Cornelius Marcellinus.¹⁰¹³ Against the charge Clodius intended to prove the alibi that on the day of the Bona Dea ritual he had been in Interamna and not in Rome. To refute this alibi several *matronae* participating in the Bona Dea festivity acted as witnesses, including Caesar's mother, Aurelia and Caesar's elder sister, Iulia.¹⁰¹⁴ Similarly, Cicero made a testimony pleading that on the day of the ritual Clodius visited him in Rome—certain sources¹⁰¹⁵ claim this visit was paid three hours before the scandal (i.e., late at night),¹⁰¹⁶ other interpretations¹⁰¹⁷ assert it took place during the *salutatio* in the morning.

Presuming but not admitting the authenticity of Clodius's alibi, confirmed by C. Causinius Schola, his guest-friend from Interamna: he could have made the approximately 140 km trip from Rome on horseback in a day. Eventually, Clodius was acquitted; several causes of this outcome of the lawsuit can be made probable: it cannot be ruled out that the members of the court were bribed, the money presumably was provided by Crassus (each member of the jury must have been given three-four hundred thousand *sestertii*)¹⁰¹⁸—both Catulus,¹⁰¹⁹ and Cicero referred to this possibility.¹⁰²⁰ Besides possible bribery, the jury's fear might have also arisen,¹⁰²¹ and there might have been doubt to what extent Aurelia was able to recognise Clodius exactly.¹⁰²² Since decision in the lawsuit was not adopted as Cicero had desired, and through his testimony he had made Clodius his deathly enemy, which resulted in a tragic turn in his later career—exile, it is worth highlighting the motifs that had made Cicero take such firm action in the lawsuit. (Regarding the defeated parties in the case: in addition to Cicero, Pompeia was the other defeated party in the Bona Dea lawsuit because the scandal served a good excuse for Caesar to get rid of his wife, who otherwise could not be suspected of having an affair with Clodius.) Cicero himself emphasised unselfish and purely moral reasons of his behaviour,¹⁰²³ however, his first account of the disturbance of the ritual written to Atticus was not free from certain cynical overtone.¹⁰²⁴

He describes the action taken against Clodius as one of the (subsequent) steps in the combat against Catilina and alleges to have discovered connections between the Catilina's plot in 63 and the elements that supported Clodius in the Bona Dea trial.¹⁰²⁵ This explanation, however, does not seem satisfactory to the extent that Clodius had been—as we shall see—a long-time personal enemy of Catilina, and he personally had not taken part in the plot.¹⁰²⁶ Plutarch¹⁰²⁷

¹⁰¹¹ Balsdon 1966. 70.

¹⁰¹² Cic. *Att.* 1, 16, 2. 4–5. Vö Spielvogel 1997. 60.

¹⁰¹³ Balsdon 1966. 71.

¹⁰¹⁴ Schol. Bob. 89, 26.

¹⁰¹⁵ Cic. *Att.* 1, 16, 2; 2, 1, 5.

¹⁰¹⁶ In this case Clodius's alibi seems to be quite unpalatable.

¹⁰¹⁷ Schol. Bob. 85, 29; Quint. *inst.* 4, 2, 88.

¹⁰¹⁸ Schol. Bob. 86, 30; 91, 25.

¹⁰¹⁹ Cic. *Att.* 1, 16, 5; Dio Cass. 37, 46, 3.

¹⁰²⁰ Cic. *Att.* 1, 16, 5.

¹⁰²¹ Fronto 22–26.

¹⁰²² Balsdon 1966. 72.

¹⁰²³ Cic. *Att.* 1, 18, 2.

¹⁰²⁴ Cic. *Att.* 1, 12, 3.

¹⁰²⁵ Cic. *Att.* 1, 14, 5.

¹⁰²⁶ Epstein 1986. 230.

identifies the following reasons for Cicero making a testimony incriminating Clodius in the Bona Dea trial. Cicero had been induced by his wife, Terentia to take this step, whose hatred was aimed not so much at Clodius but at his elder sister, Clodia due to the point that Clodia had purportedly wanted Cicero to divorce Terentia, and marry her, Clodia. Through Cicero's testimony Terentia wanted to deteriorate the relation so that this step could not be taken, and Cicero wanted to clear himself of the suspicion. Plutarch mentions this possibility merely as talk of the town, and it is in accordance with that, that researchers of the modern age have mostly refused this version.¹⁰²⁸ In spite of that, it is worth casting an investigating glance at this explanation too. Plutarch dates Clodia's intention regarding Cicero to the year 61. The chronology indicated by Plutarch is sometimes quite uncertain, but the event he gives an account of often constitutes a historical fact in spite of the erroneous determination of the point of time.¹⁰²⁹

The story appears in a more realistic light if we attempt to place it in the year 63 instead of 61. After making a survey of the political marriages entered into and planned around this time,¹⁰³⁰ the marriage entered into between Clodia and Metellus Celer can be dated to the end of 63.¹⁰³¹ Through that Metellus Celer got in the circles of the *optimates*, and became the son-in-law of Pompey's opponent, Lucullus. It cannot be excluded that the party of the *optimates* knowingly attempted to alienate Pompey's key supporters from him. In 63, Cicero having taken steps against the *populares* became a man of political significance in the eyes of the *optimates*—it is possible that it was at that time when they tried to attain that Cicero should divorce Terentia and marry Clodia. And if after that the politically promising marriage to be entered into with Cicero was not accomplished, then they contented themselves with Metellus Celer. Cicero probably did not want to disrupt his marriage for certain temporary political advantages, and did not consider the marriage practice usually accepted in the circles of the notables of Rome a political trump card.¹⁰³² Yet, even if we do not accept this hypothesis, Plutarch's thought that Cicero had been induced by Terentia to stand as witness against Clodius does not seem groundless if a former clash between the two families is taken into consideration.¹⁰³³

The hatred between Terentia and Clodius goes back to 73 when Clodius charged Catilina with *incestum* committed against Fabia. Fabia was a *virgo Vestalis* and Terentia's half-sister. Owing to Catulus's help, Catilina was acquitted; yet, the case highly damaged Fabia, and thereby Terentia's family. There are some loci available to us on the case: so, for example, Sallust mentions *incestum* as a fact,¹⁰³⁴ and a reference to it is also available in Cicero.¹⁰³⁵ Presumably, the Bona Dea ritual held in 63 at the house of the consul at that time, Cicero led by Terentia gave a push to Cicero to take action against Catilina since the participants of the Catilina's plot had already been arrested in Rome but Cicero had not made a decision on their fate yet. The *matronae* celebrating the Bona Dea festival saw the altar bursting into flames, which qualified a *prodigium*,¹⁰³⁶ and it was interpreted by the *virgines Vestales* and Terentia taking part in the festival as a need for Cicero to take firm action against the conspirators in order to restore *pax deorum*.¹⁰³⁷ The priestesses and Terentia must have been inflamed also by

¹⁰²⁷ Plut. *Cic.* 29, 2–3.

¹⁰²⁸ Balsdon 1966. 72; Weinstock 1934. 711.

¹⁰²⁹ Dorey 1958. 179.

¹⁰³⁰ Cf. Plut. *Cato min.* 30; *Pomp.* 44.

¹⁰³¹ Cf. *Cic. fam.* 5, 2, 6.

¹⁰³² Dorey 1958. 179.

¹⁰³³ Epstein 1986. 232.

¹⁰³⁴ Sall. *Cat.* 15, 1.

¹⁰³⁵ *Cic. tog.* 82.

¹⁰³⁶ Cf. Zinten 1979. 1151ff.

¹⁰³⁷ Plut. *Cic.* 20, 1–3.

Fabia having been put to shame through Catilina making mockery of her reputation.¹⁰³⁸ The attempt at providing the interpretation claiming that disgracing the Bona Dea festival in 62 might have been Clodius's political response to using the festival in 63 in order to influence Cicero¹⁰³⁹ does not seem well-founded.¹⁰⁴⁰ First, because Clodius did not belong to Catilina's adherents; secondly, because it is hard to presume that he had had such a conscious political concept. Both the hypothesis of the jealousy due to the presumed plan of the marriage to be entered into with Clodia and the fact of the hatred felt because of Fabia having been shamed by Catilina and Clodius clearly indicates that Terentia produced highly great influence on Cicero with respect to the testimony to be made against Clodius.¹⁰⁴¹ Clodius also wanted to shift the responsibility of Cicero's action to Terentia; at least, in 58 as tribune he deluded Cicero¹⁰⁴² that he should not flee from Rome—just to enjoy his revenge all the more.¹⁰⁴³

Albeit, Caesar offered Cicero the position of a *legatus* so that he could leave Rome; it has not been clarified whether this had happened before or after Clodius was elected tribune. However, although being aware of the danger, he did not leave. The consequences not foreseen either by Cicero or Terentia are widely known. In 58, Clodius was elected tribune; to this end, he had had to be adopted by a plebeian family, which was implemented with the consent of Caesar as pontifex maximus, and he submitted the following bill: anyone who had caused any Roman citizen to be executed without court proceedings should be outlawed. This law (which was enacted with retroactive force!) was targeted at Cicero personally, who had had Catilina's five accomplices executed in Tullianum during the Catilina's plot without court proceedings but with the approval of the senate.¹⁰⁴⁴ Cicero went into exile and on the site of his villa on the Palatine ravaged to dust Clodius had a temple erected for goddess Libertas.¹⁰⁴⁵

As Imre Trencsényi-Waldapfel remarks: "In the history of the world, it was not the first and not the last act of abusing the name of liberty but certainly it was one of the most repulsive ones."¹⁰⁴⁶ Since neither Cicero nor Terentia¹⁰⁴⁷ were able to foresee the fatal consequences of the testimony made in the Bona Dea trial that occurred in 58, it cannot be considered inconsistent for them to proceed in the action at law in 61 by making an attempt at obtaining redress through Fabia for the injury suffered by the whole family in 73.

IV. 1. 2. Historical background of *Pro Caelio*

In April 56 BC, the then twenty-five year old¹⁰⁴⁸ M. Caelius was charged by L. Sempronius Atratinus as main prosecutor, and L. Herennius Balbus and P. Clodius as *subscriptores* before the *quaestio de vi*. The defendant himself made a statement of the defence.¹⁰⁴⁹ Furthermore, M. Licinius Crassus Dives and—taking the floor as the last one as was his custom¹⁰⁵⁰—Cicero acted as counsel for the defence. The charge was made presumably on the grounds of *lex*

¹⁰³⁸ Weinstock 1934. 711.

¹⁰³⁹ Benner 1987. 37; Will 1991. 48; Moreau 1982. 15.

¹⁰⁴⁰ Spielvogel 1997. 59.

¹⁰⁴¹ Cic. *Att.* 1, 18, 1; *fam.* 9, 20, 3. Cf. Epstein 1986. 234.

¹⁰⁴² Plut. *Cic.* 30, 1–3.

¹⁰⁴³ Epstein 1986. 234.

¹⁰⁴⁴ Uttschenko 1978. 121; Trencsényi-Waldapfel 1959. 43.

¹⁰⁴⁵ Köves-Zulauf 1995. 65.

¹⁰⁴⁶ Trencsényi-Waldapfel 1959. 43.

¹⁰⁴⁷ Cf. Cic. *Cael.* 50; *Att.* 14, 2, 2.

¹⁰⁴⁸ Cf. Plin. *nat.* 7, 165; Heinze 1925. 194; Stroh 1975. 243.

¹⁰⁴⁹ Cf. Quint. *inst.* 4, 1, 46.

¹⁰⁵⁰ Cic. *Brut* 190; *Or.* 130; Quint. *inst.* 4, 2, 27.

Plautia de vi (65/4),¹⁰⁵¹ which was created, according to Cicero's account, against infamous citizens who raised riot, and who besieged the senate with weapons, used violence against magistrates and attacked the State.¹⁰⁵²

At the same time, it cannot be ruled out that it was not *lex Plautia*, made on praetor's or tribune's motion, but *lex Lutatia de vi* that provided grounds for the charge; however, the interrelation of these two statutes—and possibly the fact whether in this case it is possible to speak about two separate statutes *de facto*—is very problematic.¹⁰⁵³ Tradition links *lex Lutatia* with the name of consul Q. Lutatius Catulus and dates its making to 78/77. Regarding *lex Plautia*, in the literature it arises as an unclarified circumstance—which for this reason provides grounds for misunderstanding—that, in addition to *lex Plautia de vi* made most probably in 65, we are aware of a *lex Plautia de reditu Lepidanorum* from 89, linked with the name of tribune Marcus Plautius Silvanus too.¹⁰⁵⁴ Furthermore, the determination of the legal grounds of the proceedings against Caelius is not made easier by the fact that in the *peroratio* Cicero refers to *lex Lutatia* as grounds for the charge or at least he connects the relevant statute with Lutatius Catulus,¹⁰⁵⁵ however, there might be another way to interpret this reference: Catulus as consul made a proposal on making the statute, which was later carried through by tribune Plautius.¹⁰⁵⁶ There are good chances that Andrew Lintott's view might be valid when he states that *lex Plautia de vi* repeated the provisions of *lex Lutatia de vi* that applied to acts against the State (*crimen maiestatis, vis publica*); however, it supplemented it by stipulations penalising violence against private persons (*vis privata*) too.¹⁰⁵⁷ As a matter of fact, it is not possible to reject the hypothesis completely that in his argument Cicero referred not necessarily to one statute that sanctioned *vis* but by mentioning *lex Plautia* and *lex Lutatia* within the same speech he, for that matter, summed up the states of facts of the *leges de vi*, not shrinking back from some generalisation and, for the sake of convincing, some distortion either.¹⁰⁵⁸

From among the acts Caelius was charged with, the first three, which were expounded in more details in the statement of the defence made by Caelius and Crassus, are known to us only from Cicero's summary.¹⁰⁵⁹ Cicero kept for himself the expounding of the assassination against the Alexandrine philosopher Dio.¹⁰⁶⁰ The counts of the indictment are connected in some form with the legates of Alexandria who intended to protest before the senate against Ptolemaios XII having been put back to the throne of Egypt by Rome (concerning the second and fourth counts of the indictment this can be established at first glance). The legates led by Dio arrived to Rome in 57, but King Ptolemaios supported by Pompey made every effort to thwart the audience before the senate.¹⁰⁶¹ The charge claimed that Caelius had been involved in these acts of Ptolemaios and Pompey from the outset. The *pulsatio Puteolana* was probably an attack made against the legates of Alexandria immediately after they had arrived to Puteoli; it cannot be ruled out that the *seditiones Neapolitanae* are connected with that in some form or other.¹⁰⁶² If the legates heading from Naples on Via Appia to Rome used

¹⁰⁵¹ See Rotondi 1966. 377; Costa 1927. II. 91; Kunkel 1962. 123; Münzer 1920. 200; Classen 1973. 63; Stroh 1975. 246; Mommsen 1899. 564.

¹⁰⁵² Cic. *Cael.* 1.

¹⁰⁵³ Kiselewich 2004. 31.

¹⁰⁵⁴ Hough 1930. 137ff.; 142ff.

¹⁰⁵⁵ Cic. *Cael.* 70.

¹⁰⁵⁶ Kiselewich 2004. 33.

¹⁰⁵⁷ Lintott 1968. 116; Robinson 1995. 29.

¹⁰⁵⁸ Kiselewich 2004. 45f.

¹⁰⁵⁹ Cic. *Cael.* 23.

¹⁰⁶⁰ Cic. *Cael.* 23. 51–55.

¹⁰⁶¹ Cf. Dio Cassius 39, 13; Cic. *har. resp.* 34; Strab. 17, 7, 96.

¹⁰⁶² Heinze 1925. 201; Stroh 1975. 245.

protection by a magistrate, then it can be deservedly called *seditio* using the proper Roman technical term since it denotes defiance against the power of the state.¹⁰⁶³ We cannot either prove or disclaim the relation of the *bona Pallae*¹⁰⁶⁴ with the legates of Alexandria.¹⁰⁶⁵ In this respect, it is necessary to refer to the view that asserts that the present lawsuit can be considered a dispute at law of primarily political nature; so, it was meant to attack Pompey, Ptolemaios's patron, and Cicero's task was to deprive the case of any implication of current politics.¹⁰⁶⁶ Contrary to this, the following points can be offered for deliberation: the prosecutors were motivated basically by private rather than political motifs.¹⁰⁶⁷ In particular, the fact that in February 56, Caelius brought a charge of *ambitus*¹⁰⁶⁸ against the, at the time of the lawsuit, seventeen year old L. Sempronius Atratinus's blood father, L. Calpurnius Bestia, who—being defended by Cicero—was acquitted from the charge of election bribery; and he wanted to summon him before the court due to *ambitus* again.¹⁰⁶⁹ This second accusation was prevented by Atratinus by bringing a charge of *vis*;¹⁰⁷⁰ consequently, Richard Heinze claims that political considerations in this lawsuit constituted the means rather than the aim.¹⁰⁷¹ Pompey's popularity reached its bottom,¹⁰⁷² thus, for the prosecutors it was actually advantageous to be able to attack Caelius as Pompey's adherent. In this respect, Cicero himself, as a matter of fact, tried to mitigate the political edge of the dispute at law. Pompey's name does not occur on a single occasion in the *Pro Caelio*.¹⁰⁷³ In addition to specific counts of the indictment Cicero touches several issues that do not actually belong to the scope of the charge: specifically, the alleged attempt by Caelius to murder Clodia, Metellus Celer's widow.¹⁰⁷⁴ He handles the attempt to poison Clodia in a somewhat separated form, but from a remark¹⁰⁷⁵ it comes out clearly that this element plays a material part in the chain of the demonstration of evidence. Consequently, Caelius had obtained money from Clodia to be able to hire Dio's murderers,¹⁰⁷⁶ and if later on he wanted to poison Clodia, from whom the money came from, then, its aim was to get rid of the woman who later on learned of the assassination.¹⁰⁷⁷

IV. 1. 3. *Ludi Megalenses* as theatrical background of the lawsuit

After having given a brief account of the historical/political situation and the stages of the hostile relation between Cicero and the gens Clodia, we should turn our attention to the rhetoric situation developed by the circumstances and to the point how Cicero handles it. De Saint-Denis calls *Pro Caelio* the wittiest of Cicero's orations,¹⁰⁷⁸ which results to a great extent from the date when the speech was delivered (on 4 April), from the maximum

¹⁰⁶³ Mommsen 1899. 532.

¹⁰⁶⁴ Cf. Quint. *inst.* 4, 2, 27.

¹⁰⁶⁵ Stroh 1975. 245.

¹⁰⁶⁶ Pacitti 1961. 67.

¹⁰⁶⁷ Cf. Cic. *Cael.* 56.

¹⁰⁶⁸ Cic. *Cael.* 16. 56. 78. Cf. Heinze 1925. 195.

¹⁰⁶⁹ Cic. *Cael.* 16. 56. 78.

¹⁰⁷⁰ The trial against Caelius was held before he could charge Bestia of *ambitus* again.

¹⁰⁷¹ Heinze 1925. 197; Classen 1973. 67. 93.

¹⁰⁷² Cf. Cic. *Cael.* 78. *Quintum fratrem* 2, 6, 6.

¹⁰⁷³ Stroh 1975. 246.

¹⁰⁷⁴ Costa 1927. II. 93.

¹⁰⁷⁵ Cic. *Cael.* 56.

¹⁰⁷⁶ Cic. *Cael.* 52.

¹⁰⁷⁷ Stroh 1975. 249.

¹⁰⁷⁸ Saint Denis 1965. 129.

exploitation of the somewhat contradictory situation provided by the first day of the *Ludi Megalenses* through the tools of humour.¹⁰⁷⁹ *Ludi Megalenses* (4–10 April) was the festivity of Magna Mater (Kybelē), whose cult was borrowed and introduced in Rome in 205/4 immediately before the end of the second Punic war on the grounds of the instruction of the Sibylline Books.¹⁰⁸⁰ At that time, they turned to the seat of the cult,¹⁰⁸¹ in the present case, to Attalos, King of Pergamon, who handed over the black stone representing the goddess, and equipped a ship for carrying it to Rome.¹⁰⁸² Another tradition has it that the stone was taken to Rome directly from Pessinus.¹⁰⁸³ The goddess was brought to Rome with ritual ceremony, the senate entrusted Scipio Nasica to receive the Magna Mater. Certain sources assert that in order to prove her innocence the Vesta priestess Quinta Claudia set the boat stuck on the sand bank of the Tiber, which transported the stone, to sail again alone.¹⁰⁸⁴ In her temple on the Palatine Claudia also had a statue;¹⁰⁸⁵ this temple was completed in 191, and it was at that time when the *Megalensia* and the staged plays (*ludi scaenici*) held on this occasion were introduced. In the ritual of the *Ludi Megalenses*—just like in the entire Roman cult of Kybelē—no part was given to the raging dance of the *galli* recalling Attis's self-mutilation.¹⁰⁸⁶ On the other hand, archaeological find proves the appearance of the Attis cult simultaneously with the cult of Magna Mater for during the archaeological excavations on the Palatine Hill in the last century small statues representing Attis were found in the cell of the Kybelē temple from the layer from the 2nd century. This unambiguously refutes the standpoint which claims that Kybelē's cult had been borrowed and introduced in Rome without Attis's cult¹⁰⁸⁷ as this seemed doubtful merely on the grounds of philological findings.¹⁰⁸⁸ As it has already been mentioned, theatre performances were held on the *Megalensia* right from the outset.¹⁰⁸⁹ Apart from stressing the two members of the gens Claudia being directly affected in the trial and the contrast between Clodia and Quinta Claudia,¹⁰⁹⁰ there was another link between the *Megalensia* and the history of the family. Clodius disturbed the festival of Magna Mater on several occasions. He caused the second scandal on 8, 9 or 10 April, 56,¹⁰⁹¹ when accompanied by armed slaves he attacked and occupied the theatre where the performance was being held.¹⁰⁹² Thus, this happened a few days after *Pro Caelio* was delivered. However, those who listened to the oration might have thought and most certainly did think of the first incident since in 58 Clodius was involved in an action against the Kybelē sanctuary in Pessinus¹⁰⁹³ when Brogitarus, who supported Clodius's gang with money, obtained the Kybelē priest dignity (accompanied by royal title) in Pessinus with Clodius's assistance, after having expelled the legitimate fulfiller of this office and broken up the cult.¹⁰⁹⁴ This way, the gens Clodia was closely linked to the *Megalensia* both in terms of history and current political issues.

¹⁰⁷⁹ Salzman 1982. 301.

¹⁰⁸⁰ Latte 1967. 258.

¹⁰⁸¹ Schmidt 1909. 1ff.

¹⁰⁸² Arnob. 7, 49; Liv. 29, 10, 4. 14, 5; Ov. *fast.* 4, 255; Sil. 17, 1; App. *Hann.* 233.

¹⁰⁸³ Cic. *har. resp.* 27; Liv. 29, 10, 7; Strab. 12, 567; Arnob. 7, 49; Amm. 22, 9, 5.

¹⁰⁸⁴ Suet. *Tib.* 2, 3; Lact. *inst.* 2, 7, 12.

¹⁰⁸⁵ Tac. *ann.* 4, 64.

¹⁰⁸⁶ Latte 1967. 260.

¹⁰⁸⁷ Altheim 1951–1953. II. 51.

¹⁰⁸⁸ Graillot 1912. 101.

¹⁰⁸⁹ Adamik 1993. 10.

¹⁰⁹⁰ Cic. *Cael.* 34.

¹⁰⁹¹ Salzman 1982. 303.

¹⁰⁹² Cic. *har. resp.* 21–29.

¹⁰⁹³ Cic. *har. resp.* 27.

¹⁰⁹⁴ Cic. *har. resp.* 28; Köves-Zulauf 1995. 7.

IV. 1. 4. The “improvised” comedy as rhetorical strategy

At the beginning of the speech Cicero as it were expresses his regret that it is a pity that judges are not granted any rest even on holidays¹⁰⁹⁵ and cannot watch the theatre performance just being held. So, the orator stages his own theatre performance, comedy for them,¹⁰⁹⁶ and puts Clodia¹⁰⁹⁷ defined as the source of the charge in the centre. By doing that he is not trying to make the defendant appear a nice person to the judges, instead, he drives the attention to the opponent’s motive force, *opes meretriciae*,¹⁰⁹⁸ and it is absolutely not doubtful to those listening to the speech whom the term *meretrix* covers: the chief witness of the charge of attempted murder against Dio, the Roman merry widow, Clodia Metelli known from her licentious way of life. Before responding to the actual charges (*de vi*), he deems it is important to reply to the invented defamation made to the detriment of Caelius.¹⁰⁹⁹ From the part regarding *vita ante acta*¹¹⁰⁰ the following key charges can be discerned: Caelius had violated *pietas* and *fides*, had not paid due respect to his father,¹¹⁰¹ and had not acted properly concerning Calpurnius Bestia either when he had caused him to be summoned;¹¹⁰² *luxuria*,¹¹⁰³ which both Herennius and Clodius reproached Caelius with;¹¹⁰⁴ dissolute life in young age;¹¹⁰⁵ remarks of political nature: friendly relation with Sergius Catilina;¹¹⁰⁶ alleged participation in the conspiracy;¹¹⁰⁷ crime of *ambitus*,¹¹⁰⁸ and attack against a *senator* in the election of the pontifex.¹¹⁰⁹ The grouping of the charges may be discretionary but their order mostly follows Caelius’s course of life.¹¹¹⁰

The third part¹¹¹¹ discusses the assassination against Dio; the prosecution supports this by Clodia’s statement claiming that Caelius had obtained money from her in order to bribe Luceius’s slaves, and then tried to get rid of her as an incriminating witness.¹¹¹² Cicero expounds these two statements made by Clodia as independent charges;¹¹¹³ he refutes the charges of *aurum*¹¹¹⁴ and *venenum*¹¹¹⁵ separately.¹¹¹⁶ It is one of Cicero’s clearly perceptible objectives to alleviate the political overtones of the trial as much as possible; among others it is for this reason that he does not focus on the attack against Dio. *Crimen veneni* is properly known, presumably other persons’ testimonies were available to support Clodia on the issue

¹⁰⁹⁵ Cic. *Cael.* 1.

¹⁰⁹⁶ Gotoff 1993. 123.

¹⁰⁹⁷ Cic. *Cael.* 2.

¹⁰⁹⁸ Cic. *Cael.* 1.

¹⁰⁹⁹ Cic. *Cael.* 3.

¹¹⁰⁰ Cic. *Cael.* 3–22.

¹¹⁰¹ Cic. *Cael.* 4. 18.

¹¹⁰² Cic. *Cael.* 26.

¹¹⁰³ Cic. *Cael.* 4. 17.

¹¹⁰⁴ Cic. *Cael.* 27.

¹¹⁰⁵ Cic. *Cael.* 6–14.

¹¹⁰⁶ Cic. *Cael.* 10–14.

¹¹⁰⁷ Cic. *Cael.* 15.

¹¹⁰⁸ Cic. *Cael.* 16.

¹¹⁰⁹ Cic. *Cael.* 19.

¹¹¹⁰ Heinze 1925. 214.

¹¹¹¹ Cic. *Cael.* 51. 69.

¹¹¹² Cic. *Cael.* 63.

¹¹¹³ Cic. *Cael.* 51.

¹¹¹⁴ Cic. *Cael.* 51.

¹¹¹⁵ Cic. *Cael.* 56.

¹¹¹⁶ Stroh 1975. 260.

that Caelius had attempted to hand over poison to Clodia's slaves. Quite interestingly, during the entire oration Cicero does not provide any other version instead of this story; he contents himself with making the inconsistencies in the opponent's pleading ridiculous, and emphasising that *corpus delicti* is not available to them. Although thereby he does not fully dispel suspicion regarding Caelius but at least he can take this detail out of its original context.¹¹¹⁷

Several material questions arise in the middle part of the speech.¹¹¹⁸ After having covered the *de vita*, or *de moribus*, paragraphs, the orator drives the attention to the actual counts of the indictment. With a few sentences he briefly presents the assassination against Dio. He refers to the point that King Ptolemaios was the author of the murder, who used Asicius, having been acquitted in the meantime, as a tool—for this reason, even the shadow of suspicion could not be cast on Caelius.¹¹¹⁹ After that, he suddenly returns to the objections made against Caelius's conduct of life (*deliciarum obiurgatio*).¹¹²⁰ With respect to minor licentiousness he takes a liberal position believing that youth has the right to sow their wild oats as long as they do not cause any serious harm by that,¹¹²¹ and in more serious cases he asks the judges to distinguish the subject (*res*) from the defendant (*reus*); that is, to notice that the objections raised concern young people of the period in general and not specifically Caelius.¹¹²² Then, he passes on to a definite *crimen luxuriae*: the money obtained from Clodia allows to infer a quite intimate relationship, which ended with a bitter split.¹¹²³ Instead of the continuation, logical at first sight (on the one hand, he could deny the existence of this love affair; on the other hand, he could fully doubt the authenticity of the two *crimina* due to its sudden break), Cicero chooses to take another track: in what follows¹¹²⁴ he doubts the authenticity of Clodia's testimony on the grounds that as a left and jealous mistress she is not able to judge Caelius without bias. Thereby he anticipates the subject, *de vi*, that belongs to the *argumentatio*;¹¹²⁵ through that *vis* and *luxuria* change turning into each other in paragraphs 23—50:¹¹²⁶ *vis*,¹¹²⁷ *luxuria*,¹¹²⁸ *vis*,¹¹²⁹ *luxuria*,¹¹³⁰ *vis*.¹¹³¹

This point is highlighted by an excellent observation made by Richard Heinze when he asserts that the construction of the prosecution is primarily and exclusively based on Clodia's testimony; so, it could not ruin its authenticity by presenting Clodia as Caelius's left mistress; consequently, it was only Cicero who could bring up this relation in the lawsuit.¹¹³² Thus, he defended Caelius against an accusation (since the liaison with Clodia is far from being so general as *amores* and *libidines* referred to) that had not been made against him.¹¹³³ The whole thing seems all the more appropriate as there is no single point in the entire *Pro Caelio* where Cicero presumed that the love relation between Clodia and Caelius is a fact known to the general public listening to the case. At several places he keeps mentioning certain

¹¹¹⁷ Stroh 1975. 261.

¹¹¹⁸ Cic. *Cael.* 23–50.

¹¹¹⁹ Cic. *Cael.* 24.

¹¹²⁰ Cic. *Cael.* 27.

¹¹²¹ Cic. *Cael.* 28.

¹¹²² Cic. *Cael.* 29–30.

¹¹²³ Cic. *Cael.* 31.

¹¹²⁴ Cic. *Cael.* 32–36.

¹¹²⁵ Cic. *Cael.* 51–69.

¹¹²⁶ Stroh 1975. 266.

¹¹²⁷ Cic. *Cael.* 23–24.

¹¹²⁸ Cic. *Cael.* 25–31.

¹¹²⁹ Cic. *Cael.* 32–36.

¹¹³⁰ Cic. *Cael.* 37–50.

¹¹³¹ Cic. *Cael.* 51.

¹¹³² Heinze 1925. 228.

¹¹³³ Heinze 1925. 245.

generally spread rumours regarding the sexual life of each of the persons separately but never concerning the affair between them. So, it is Cicero who reduces Clodia's and Caelius's licentious conduct of life engaged by both of them individually to a common denominator and invents connection between them.¹¹³⁴

The situation would have been exploited by a counsel for the defence less genial than Cicero as follows. First, he would decrease the significance of *crimen luxuriae*, and would point out the highly general nature of the charges and the right of youth to engage in free and easy way of life. Secondly, he would cast doubt on Clodia's authenticity—which is perhaps not so difficult since in 56 satirical poems on incestuous relation maintained with her brother Clodius had been rather widespread among the people¹¹³⁵—and thereby he would question whether the Roman court could grant great authenticity to the testimony of the *meretrix*. This orator, as we have said, less genial than Cicero would face the following difficulties. How can he measure by two measures; that is: why is he so forbearing regarding Caelius's lascivious conduct of life and why so strict regarding the same in case of Clodia? (It is a fact that whereas Caelius is merely a young man, Clodia is a consul's widow but the oration could possibly become inauthentic through this duality.) Even if Clodia—exactly due to her conduct of life—were not a witness considered too authentic, this would by no means give reason for her to lie. And on the whole why would she have been up to making a false testimony against Caelius?¹¹³⁶

It is a brilliant construction by which Cicero takes the sting out of possible objections. How would the case look like if Clodia had been Caelius's lover? The edge of moral aversions against Caelius is actually eliminated by the fact that it is not possible to commit *adulterium* with a kind of woman like Clodia since she is ranked among *amores meretricii*. And thereby the question regarding the reason for Clodia's testimony is solved at one blow: the left lover is thirsting for revenge, and it is for this reason that she makes a false testimony; subsequently, it cannot be evaluated. On the other hand, at first sight, Cicero does not have too extensive background at his disposal to build the love relation between Caelius and Clodia: both of them live on the Palatine, and it is not really their ascetic conduct of life that they are notable for. Cicero, however, finds one more point: the prosecution claims that Clodia had given money to Caelius, who later wanted to poison Clodia (*aurum et venenum*). According to Cicero's construction, which seems quite obvious, all this had taken place because of a highly intimate relationship and a quite stormy break. However, it is still hard to solve the dilemma: the claims made by the prosecution are either true and then Caelius is guilty in the assassination against Dio; or, if they are not true, then the Caelius—Clodia *liaison* cannot be developed. Thus, Cicero must acquit the defendant (*luxuria*), and must make Clodia's testimony inauthentic (*vis*). If the relation between the two of them had been widely known, then Cicero would have had to place the point on *luxuria* in the part of *de vita ac moribus* and the attack against Clodia in the part of *crimen de vi*. This way, however, he deals with Clodia's authenticity under the points of *crimina auri et veneni*, and builds and manipulates the Clodia—Caelius relation.¹¹³⁷

Now, let us look at how Cicero creates this relation. At the beginning of the speech¹¹³⁸ he does not name Clodia yet, he refers to *opes meretriciae* only, which properly and excitingly rhymes with *intolerabilis libido* and *nimis acerbum odium*.¹¹³⁹ When he mentions Caelius's

¹¹³⁴ Stroh 1975. 272.

¹¹³⁵ Cic. *Q. fr.* 2, 3, 2.

¹¹³⁶ Stroh 1975. 274.

¹¹³⁷ Stroh 1975. 275.

¹¹³⁸ Cic. *Cael.* 1ff.

¹¹³⁹ Cic. *Cael.* 2.

moving to the Palatinus he formulates more clearly.¹¹⁴⁰ Here, Cicero uses the well-known Medea motif, which has already arisen a few times during the lawsuit since Atratinus called Caelius *pulchellus Iason*, and referred to the story of the golden fleece regarding the hired gold, and Caelius called Atratinus *Pelia cincinnatus*.¹¹⁴¹ And he continues to develop the thought.¹¹⁴² He refers the motif of money and poison (*duo sunt autem crimina, auri et veneni*) to the scope of subject of *luxuria*, and intends to draw conclusions from that regarding the relation between Clodia and Caelius. Yet, if he uttered this *expressis verbis*, then he would acknowledge that the charges are true.¹¹⁴³

Cicero repeats the opponent's charges with an "*ut dicitur*" phrase but he lets them appear real and true—more properly he suspends the response to be given to them—as long as they fit in with his aims.¹¹⁴⁴ It is here where he conjures up Appius Claudius Caecus (*prosopopoiia*) from the underworld—which is no way a tool that belongs to *genus grande*¹¹⁴⁵ in the present case¹¹⁴⁶ but a trick full of comic circumstances¹¹⁴⁷—in order to be able to compare ancient Roman virtues to Clodia's conduct of life. Seemingly, this does not serve defence since the ancestor conjured up is convinced of the justice of the charge of *aurum et venenum*.¹¹⁴⁸ However, the old censor's speech now unambiguously feeds the fact of the relation between Clodia and Caelius and Clodia's corruptness into the judges' head.¹¹⁴⁹

It is after this that the *reprehensio testis* may be implemented with respect to Clodia, which presents Clodia as a jealous, left lover mistress, and proves that Caelius is not an *adulter*, that is, adulterer, but only an *amator*, that is, a lover. In accordance with the above cast (first, Cicero and then Appius Claudius Caecus spoke), here again the orator himself and then Clodius Pulcher pleads; thereby Cicero shifts the burden of proof mostly to the two persons summoned. Cicero's tactics here becomes much clearer: if the charge of poison and gold is true, then Clodia was Caelius's lover; if she was his lover, then her testimony is useless, so the charge of poison and gold is not proved.¹¹⁵⁰ Thus, the charge of poison and gold, which has been so summed up by Cicero in order for him to create a liaison, now becomes needless; therefore, it should be concealed, and that without being noticed, so that the judges should not remember what premises their conclusions were based on.¹¹⁵¹ The *crimina auri et veneni* are merged with *crimen luxuriae*, and in the rest of the speech they are referred to as such. In the speech put into Clodius's mouth it is now considered a fact that Clodia is Caelius's mistress—whereas Appius Claudius deduced this only from various signs of suspicion.¹¹⁵² The level the two actors are informed corresponds to the listeners' seeming level of knowledge. Clodius details the love affair rather licentiously—and thereby Cicero dealt a deathly blow on Clodia's confession.¹¹⁵³

¹¹⁴⁰ Cic. *Cael.* 18. *Quo loco possum dicere id quod vir clarissimus, M. Crassus, cum de adventu regis Ptolemaei quereretur, paulo aute dixit: 'utinam ne in nemore Pelio ...' ac longius mihi quidem contextere hoc carmen liceret: 'nam numquam era errans' hanc molestiam nobis exhiberet 'Medea animo aegro, amore saevo saucia'.*

¹¹⁴¹ Quint. *inst.* 1, 5, 61.

¹¹⁴² Cic. *Cael.* 18.

¹¹⁴³ Stroh 1975. 278.

¹¹⁴⁴ Cic. *Cael.* 30–32.

¹¹⁴⁵ Quint. *inst.* 12, 10, 61.

¹¹⁴⁶ Geffcken 1973. 18.

¹¹⁴⁷ Cf. Cic. *Cael.* 33.

¹¹⁴⁸ Cic. *Cael.* 33–34.

¹¹⁴⁹ Stroh 1975. 282.

¹¹⁵⁰ Stroh 1975. 282.

¹¹⁵¹ Cic. *Cael.* 35.

¹¹⁵² Cic. *Cael.* 36.

¹¹⁵³ Stroh 1975. 284.

In the editing of paragraphs 30—36 of the *Pro Caelio* we can see several threads running side by side. In terms of content:¹¹⁵⁴ hypothetical deduction of the affair and split from gold and poison (here the speaker is Cicero),¹¹⁵⁵ the actual (now not hypothetical) conclusion (Appius Claudius Caecus is the speaker),¹¹⁵⁶ hypothetical conclusion of the inauthenticity of Clodia's testimony from the affair and from the split (here the speaker is Cicero again),¹¹⁵⁷ actual conclusion drawn by Clodius.¹¹⁵⁸ In terms of the real aim of the demonstration of evidence:¹¹⁵⁹ proving the existence of the affair,¹¹⁶⁰ ruining Clodia's authenticity.¹¹⁶¹ In terms of the facts to be seemingly proved: acquitting Caelius of *crimen luxuriae*,¹¹⁶² ruining Clodia's authenticity.¹¹⁶³ After that he frees Caelius from characterisation as an *adulter* since he has proved that Clodia is living a life not worthy of a Roman *matrona*; accordingly, it is not possible to commit *adulterium* with such a woman, a *meretrix*. Although in the points concerning the above¹¹⁶⁴ Cicero does not mention Clodia by name, and the formulation of the evaluation is somewhat hypothetical, later he states that Clodia is living *meretricio more*.¹¹⁶⁵ By this response the orator replies to the thoughts of the two types of fathers involved in the proceedings. However, both fathers agree¹¹⁶⁶ that young people have always been permitted to engage in a certain libidinous conduct, and this libertine conduct might include affairs maintained with the kind of women like Clodia, which belongs to the scope of *amores meretricii*.¹¹⁶⁷

In presenting the liaison with Clodia Cicero uses the rhetoric tools of humour and irony on several occasions. So it seems to be appropriate to review what role humour and irony as orator's tool played in the theory of Antique elocution, in particular, especially in the *Corpus Ciceronianum*. The usefulness of fun, *geloion* was first discussed by Gorgias, who claimed that the opponent's seriousness should be contrasted by fun and his mock by seriousness in order to destroy its impact,¹¹⁶⁸ as it is quoted by Aristotle too.¹¹⁶⁹ It is at this point where Aristotle refers to the fact that in the *Poetics* he has already expounded how many types of *geloion* there are; but the part of the *Poetics* where he discussed comedy has been lost. He adds that a part of that suits free men, and another part does not; therefore, the orator should use the former ones.¹¹⁷⁰ The fact that several Greek authors have dealt with the issue of humour is mentioned in Cicero's works.¹¹⁷¹ These Greek writings, however, have not been preserved to us. Quintilian can see fundamental difference between the two greatest figures of Antique eloquence, Demosthenes and Cicero in terms of wit and humour: whereas Demosthenes lacked high spirits, Cicero could not keep within bounds in witticism.¹¹⁷² In the

¹¹⁵⁴ Cic. *Cael.* 30–36.

¹¹⁵⁵ Cic. *Cael.* 30–32.

¹¹⁵⁶ Cic. *Cael.* 33–34.

¹¹⁵⁷ Cic. *Cael.* 35.

¹¹⁵⁸ Cic. *Cael.* 36.

¹¹⁵⁹ Stroh 1975. 286.

¹¹⁶⁰ Cic. *Cael.* 30–34.

¹¹⁶¹ Cic. *Cael.* 35–36.

¹¹⁶² Cic. *Cael.* 30–31.

¹¹⁶³ Cic. *Cael.* 32–36.

¹¹⁶⁴ Cic. *Cael.* 38. 49.

¹¹⁶⁵ Cic. *Cael.* 57.

¹¹⁶⁶ Cic. *Cael.* 37.

¹¹⁶⁷ Stroh 1975. 289.

¹¹⁶⁸ Gorg. *frg.* 82b; 12d–k

¹¹⁶⁹ Arist. *rhet.* 3, 1419b

¹¹⁷⁰ Arist. *rhet.* 3, 1419b

¹¹⁷¹ Cic. *De orat.* 2, 217; Quint. *inst.* 6, 3, 5; Barwick 1963: 73.

¹¹⁷² Quint. *inst.* 6, 3, 1–3; Cic. *Or.* 26. 90.

*Orator*¹¹⁷³ Cicero touches, in his work *De oratore* gives and exhaustive exposition¹¹⁷⁴ on the issues of wit, jokes and humour. As sources he used his own practice, collections of Roman jokes and peripatetic writings. His scrivener, Tiro published a thesaurus of examples summed up in three books on this subject.

Cicero starts the treatise by making the statement that jokes and humour are quite often very useful,¹¹⁷⁵ then, he goes on by saying that he himself has seen that in lawsuits lots of things can be achieved through witticism.¹¹⁷⁶ Cicero looks for answers to five questions regarding laughing. What is laughter? Where does it come from? Should the orator want to create jollity? How far may he go? What types of *ridiculum* are there?¹¹⁷⁷ One of the actors of the dialogue, C. Iulius Caesar Strabo claims that the first question does not belong to the subject;¹¹⁷⁸ he answers the second one by citing Aristotle that *ridiculum* should be applied in the field determined by the attributes: ugly and grotesque.¹¹⁷⁹ To the third question the answer is clearly yes.¹¹⁸⁰ To the fourth question he replies as follows: the orator shall not make fun of either special turpitude or grave misfortune¹¹⁸¹; similarly, a person favoured and respected by the public shall not become the target of scorn.¹¹⁸² The prime law is thus moderation.¹¹⁸³ From the answer given to the fifth question we learn that one of the types of jokes is created by the thing itself, the other one by the formulation.¹¹⁸⁴ After that, he identifies the sources of *ridiculum* the orator may draw on¹¹⁸⁵ and those he shall not.¹¹⁸⁶ Laughter is most often evoked, for example in jokes, by the orator saying something that nobody expects; in this case we are laughing at our own error.¹¹⁸⁷ In defining the idea of the *perfectus orator*¹¹⁸⁸ Cicero identifies three kinds of style—simple, medium and sublime—and he notes that, albeit, some persons are excellent in specific types of style, very few have mastered all of them.¹¹⁸⁹ In *Orator* Cicero provides theoretical foundations for all the three kinds of style, however, he points out that, in addition to its other attributes (avoiding prose rhythm and complex sentence, dropping *hiatus*, *munditia* and *elegantia*, moderation in applying both ornament and word and thought figures), the most characteristic trait of simple style is witticism and sharp tongue. When using them the orator is to make sure that he should not cause irreparable harms, should thrust stings only into his enemies, and should do that with moderation and not ceaselessly, and should not hurt all of them and not in any way. He calls this the purest Atticism, although in this respect none of the recent Atticists have reached any special elegance.¹¹⁹⁰

Several essential elements of Roman comedy have been highlighted by Segal, who claims that as a perfect opposition to Roman everyday life ruled by *negotium* and *industria* appears the

¹¹⁷³ Cic. *Or.* 87.

¹¹⁷⁴ Cic. *De orat.* 2, 216–289.

¹¹⁷⁵ Cic. *De orat.* 2, 216.

¹¹⁷⁶ Cic. *De orat.* 2, 219.

¹¹⁷⁷ Cic. *De orat.* 2, 235.

¹¹⁷⁸ Cic. *De orat.* 2, 235.

¹¹⁷⁹ Cic. *De orat.* 2, 236. On the Aristotelian theory of comedy see Cooper 1922. *passim*

¹¹⁸⁰ Cic. *De orat.* 2, 236.

¹¹⁸¹ Cic. *De orat.* 2, 237.

¹¹⁸² Cic. *De orat.* 2, 237.

¹¹⁸³ Cic. *De orat.* 2, 238; Quint. *inst.* 6, 3, 28–31.

¹¹⁸⁴ Cic. *De orat.* 2, 240.

¹¹⁸⁵ Cic. *De orat.* 2, 269. 280. 289.

¹¹⁸⁶ Cic. *De orat.* 2, 251.

¹¹⁸⁷ Cic. *De orat.* 2, 255.

¹¹⁸⁸ Adamik 1998. 121.

¹¹⁸⁹ Cic. *Or.* 20.

¹¹⁹⁰ Cic. *Or.* 89.

so-called Plautian day where the key attributes are *ludus* and *voluptas*.¹¹⁹¹ During the period when theatre plays were performed, activity on the *forum* discontinued (*Ludi Romani*, *Ludi Apollinares*, *Ludi plebei*, *Ludi Megalenses*),¹¹⁹² so, a kind of exemption from *gravitas* that permeated the entire Roman life entered into force. In comedies, each player step out of the world of their everyday life: young people do not obey their father, *matronae* do not follow their husband's will, and slaves brief their masters without being punished. Education is sometimes aimed at the outsider, who will be integrated in society if he accepts criticism, whereas he will be definitely cast out as the hindrance of the play if he continues to be an outsider.¹¹⁹³ The persons injured by Plautus's humour are often the *militēs gloriosi* and the Cato censorious kind conservatives, puritan figures. In the works of Terence the opposition between strict fathers and jolly sons is a highly favoured motif (fathers mostly "improve" and start to tolerate their son's conduct of life).¹¹⁹⁴ In *Pro Caelio*,¹¹⁹⁵ in the *syncretis* of the two father types Cicero quotes the words of two fathers from the comedies of Caecilius and Terence. The former one is severe and tough, the latter one is well-intentioned and forbearing, it is not by chance that the quotation comes from Micio's speech in *Adelphoe*.¹¹⁹⁶ The words of the two fathers can be to some extent linked to the two actors conjured up in the previous paragraphs, Appius Claudius Caecus and P. Clodius Pulcher, and create an impressive parallel with the relation between Cicero and his intellectual/spiritual son, Caelius, which is a definite opposite of the relation between Clodia and her younger brother/husband, Clodius.¹¹⁹⁷ In Clodia's characterisation the orator quotes Ennius's tragedy entitled *Medea exul*, and uses the lines with tragic tone for producing the comic impact. (Besides Medea, Clodia was compared to another, not really positive mythical female figure too, more specifically to Clytaemnestra, although it is not uttered in the speech; so, the nickname *quadrantaria Clytaemnestra* from Cicero's mouth came from Caelius.¹¹⁹⁸) That is how Caelius becomes Iason, his move to the neighbourhood of Clodia-Medea a mythical journey, and the left merry widow a sorceress.¹¹⁹⁹ Later he presents the adventure of handing over the jar,¹²⁰⁰ not so much in the spirit of comedy, more as a kind of *mimus*.¹²⁰¹ In this kind of plays (and this is highly significant in the characterisation of Clodia as *meretrix*) prostitutes entered the stage.¹²⁰² The *comedia dell' arte* kind of *mimus* not having a definite story was far from being a form of entertainment to improve morals; it often produced the impact expressed in *risus mimicus* through its obscenity. Adultery and attempted poisoning constituted the cornerstone of its subject matter; accordingly, Cicero describes what has happened in the bath as *obscenissima fabula*.¹²⁰³ He presents the events aimed at handing over and obtaining the *pyxis* as *muliebre bellum*, in the course of which Clodia becomes *imperatrix* and her men *provincia* hiding in the wooden horse of Troy.¹²⁰⁴ Clodia's characterisation as a *meretrix*¹²⁰⁵ constitutes a perfect contrast with the image of the obedient and ethical *matrona* who safeguards the purity of

¹¹⁹¹ Segal 1968. 42.

¹¹⁹² Adamik 1993. 103.

¹¹⁹³ Frye 1969. 163.

¹¹⁹⁴ Segal 1968. 70.

¹¹⁹⁵ Cic. *Cael.* 37–38.

¹¹⁹⁶ Ter. *Ad.* 120–121.

¹¹⁹⁷ Geffcken 1973. 23.

¹¹⁹⁸ Cf. Quint. *inst.* 8, 6, 53.

¹¹⁹⁹ Geffcken 1973. 15.

¹²⁰⁰ Cic. *Cael.* 61–69.

¹²⁰¹ Lact. *inst.*

¹²⁰² Cic. *Cael.* 69.

¹²⁰³ Geffcken: *op. cit.* 25.

¹²⁰⁴ Cic. *Cael.* 49.

¹²⁰⁵ CIL 1.1007.

home. Clodia's whole appearance and behaviour fits in with a *meretrix*, and not with a *mater familias*,¹²⁰⁶ but her *familiaris* are her slaves and the bath master,¹²⁰⁷ and regarding this point Cicero refers to the nickname *quadrantaria* twice.¹²⁰⁸ Plutarch claims that this title has been stuck to her because she would be given one *quadrans* by her lovers as payment,¹²⁰⁹ and he calls Caelius by the name *Quadrantaria Clytaemnestra*.¹²¹⁰ Caelius is attacked by *opibus meretriciis*¹²¹¹ assisted by prostitutes; so, Clodia leads her army as a kind of *miles gloriosa*.¹²¹²

In Cicero's career there were several more triumphant points and ones that formed history to a greater extent, yet—as it might have become apparent from some of the references made here—there were few moments when as an orator he was able to present such a gleaming theatre play and genially constructed composition to the judges as he did at the *Megalensia* in the year 56. The speech did not fail to reach its result: Caelius was, as a matter of fact, acquitted; and the lawsuit offered a great occasion for Cicero to take revenge—even if just in part and merely verbally—for the roguery committed repeatedly by Clodius and Clodia against him.

IV. 2. Lawsuit of Publius Sestius

Cicero delivered his speech in March 56 in defence of Publius Sestius, who was charged on the grounds of *lex Plautia de vi* with acts of violence offending public order/public tranquillity, of which his defender convincingly proved that they were measures required by the situation of lawful defence. We need to make it clear: the speech can be considered primarily a brilliantly executed statement of one of the important fundamental postulates of Cicero's philosophy of the state rather than a lawyer's or orator's achievement. *Pro Sestio* is the first occasion when Cicero, having returned from exile, can formulate his program of rethinking the idea of *res publica* harrowed by civil strife and the preserving-renewing reorganisation of the State. In this speech Cicero clearly takes a stand for Sulla's "constitution", that is, for what he interpreted as *Sulla's constitution*: arguing for strengthening the position of the senate meant to govern the State. His defendant was acquitted: owing not only to the brilliant handling of the facts of the case but most probably to the political program presented in the speech with exhaustive details, yet captivating pathos that won his audience's approval.

Below, first, we analyse the historical-legal background of the speech, which provides an insight into the events that evoked and followed Cicero's exile and calling him home. (IV. 2. 1.) After that, it is worth paying attention to the thought of philosophy of the state articulated in *Pro Sestio* as Cicero determines the notion of *optimates* destined to govern the State by taking an individual approach—adjusting to the rhetorical situation but being true to his political conviction. In this respect, he defines the goal that guides decent citizens (*optimus quisque*) in public life: (*cum dignitate otium*), which crystallises in two key words: *dignitas* expressing moral values, firmness of mind, strength of character and dignity, and *otium*, the interest in material well-being, security (in law) and public tranquillity. (IV. 2. 2.) Finally, we examine briefly how and possibly with what modifications the thought of philosophy of the

¹²⁰⁶ Cic. *Cael.* 32. 57.

¹²⁰⁷ Cic. *Cael.* 62.

¹²⁰⁸ Cic. *Cael.* 62. 69.

¹²⁰⁹ Plut. *Cic.* 29.

¹²¹⁰ Quint. *inst.* 8, 6, 53.

¹²¹¹ Cic. *Cael.* 1.

¹²¹² Geffcken 1973. 38.

state voiced in *Pro Sestio*, the extended *optimates* definition and the key words *dignitas* and *otium* appear in a fully developed form in one of Cicero's most important works on the philosophy of the state—the most important one beside *De legibus* and *De officiis*—in *De re publica*. (IV. 2. 3.)

IV. 2. 1. Historical background of *Pro Sestio*

Cicero reached the zenith of his career, indisputably, in the year of his consulate, 63; it was at that time when the *homo novus*, the man from the order of knights, whose ancestors did not hold *magistratus curules*,¹²¹³ ascended to the row of the leaders of the state, *principes civitatis*, and having created the desired *concordia ordinum*¹²¹⁴ while exposing and suppressing Catilina's plot he was confident that by his deed he had ensured for ever that his fellow citizens would be grateful to him and he would have permanent and authoritative influence on public life.¹²¹⁵ Cicero was disappointed in his hope sooner than he could have expected: two of the tribunes who entered office on 10 December 63, L. Calpurnius Bestia and Q. Caecilius Metellus immediately started fierce agitation against Cicero under the pretext that merely on the grounds of *senatus consultum ultimum* awarded to him as a consul,¹²¹⁶ without judgment at law he had five conspirators executed¹²¹⁷—which, for that matter, met with the approval of both the senate and the public—and vetoed his wish to address a speech to the people on the last day of his office, 29 December. (The *senatus consultum ultimum* and the *senatus consultum de re publica defendenda* cannot be identified with today's concept of state of emergency as this would presume a closed constitutional order that Rome did not have. By *senatus consultum ultimum*, which provided for declaring a person public enemy (*hostis rei publicae*, *hostis publicus*), the senate provided opportunity and guarantee for the magistrats to protect the State.¹²¹⁸) So, Cicero could merely take a public oath that by his measures he had saved the State.¹²¹⁹ Soon, on 5 December 61, he wrote to Atticus that the *concordia* created by him and the merits he had obtained would not provide him with proper protection.¹²²⁰

He hoped to find this protection at Pompey who, having significantly extended the territory of the empire and excellently arranged for administration of the territories conquered, as the hero of great deeds¹²²¹ returned home at the end of 62, after six years to Italy. Although the senate acknowledged his claim for triumph,¹²²² it did not satisfy his other claims (approval of his measures taken in the east; giving land to his veterans). Dissatisfaction of Pompey, who reconciled with Crassus, and Caesar's initiative created the so-called first triumvirate with the aim, to put it shortly, that no event, changes or measures could take place in public life that might violate any interests of the three of them.¹²²³ Pompey, who maintained a friendly relationship with Cicero, tried to win him over to this triple alliance. Cicero—although it was clear to him that accession to the triumvirate would provide protection against attacks against

¹²¹³ Meier 1968. 62.

¹²¹⁴ Materiale 2004. 147.

¹²¹⁵ Krüger 1991. 187.

¹²¹⁶ See Bleicken 1975. 92f.

¹²¹⁷ Uttschenko 1978. 121; Trencsényi-Waldapfel 1959. 43. On the Catilinarian conspiracy see Drummond 1995. passim; Vogt 1938. passim

¹²¹⁸ Hamza 1995a 12f.

¹²¹⁹ Cic. *fam.* 5, 2, 7.

¹²²⁰ Cic. *Att.* 1, 17, 10.

¹²²¹ Cic. *Sest.* 67.

¹²²² Cic. *Sest.* 129.

¹²²³ Suet. *Caes.* 20, 1.

him due to his actions taken against Catilina's adherents—distanced himself from the triple alliance with little political vision and great moral conviction because he was not willing to make a common cause with Caesar, whom he considered the manifestation of people's party/populist politician in the first place. To produce greater pressure on Cicero, Caesar used P. Clodius Pulcher as a tool¹²²⁴, who passionately hated Cicero.¹²²⁵

Clodius,¹²²⁶ to take revenge on Cicero for the lawful injury he suffered from him, decided to have himself elected a tribune. In 59, with the approval of *comitia curiata* through *arrogatio*,¹²²⁷ changing his name from the patrician Claudius to Clodius, he had himself adopted by a plebeian, and so he could be elected a tribune with the support of the triumvirs.¹²²⁸ After commencing his activity as a tribune on 10 December 59, he carried through four bills, by which he could provide grounds for his subversive activity. He made the grain to be distributed to the people free of charge;¹²²⁹ by abrogating *lex Aelia et Fufia* he terminated the institute of *obnuntiatio*, that is, the opportunity that holding of the popular assembly and voting on bills could be adjourned in case of unfavourable *auspicia*;¹²³⁰ he again permitted to set up *collegia*, founded with political purposes, suitable for giving rise to public disturbances, which were banned by law in 64,¹²³¹ and deprived censors of the opportunity that under moral adjudication¹²³²—except when formal accusation was made and the accused was found guilty by both censors—they should impose reprimand, *infamia* on anybody or exclude anybody from their order.¹²³³

Clodius concluded a bargain with the two consuls in office in 58, Gabinius and Piso (Caesar's father-in-law), that after their year in office, under proper military and financial conditions they would get the provinces they wanted.¹²³⁴ At the end of 58, he submitted *lex Clodia de capite civium*, which set forth that everybody who had Roman citizens executed without court proceedings should be outlawed. This law enacted with retroactive force (!) did not mention Cicero by name, yet the aim of the legislation crushing the law became unambiguously clear to everybody. Cicero put on mourning toga, and appeared before the popular assembly begging. Clodius and his gang instigated rioting. Thereupon, thousands of citizens—primarily members of the order of knights—went into mourning. A delegation appeared before the senate. Piso was absent from this meeting of the senate, and Gabinius refused to do anything in favour of Cicero. On the proposal of tribune L. Ninius, the senate resolved to go into mourning in a body.¹²³⁵ Gabinius summoned common people (*contio plebis*) and declared that the senate had lost all of its political significance, and threatened the order of knights with bloody revenge because of the events on 5 December 63, i.e., having Catilina's accomplices executed by Cicero; to give greater emphasis to what he said, by edict he exiled L. Aelius Lamia, who was working for Cicero, to two hundred miles from Rome.¹²³⁶ Soon, the consuls gave a command to the senators to take off mourning and wear their usual clothing.¹²³⁷ At

¹²²⁴ On the animosity between Clodius and Cicero see Rundell 1979. 301ff.; Heinze 1925. 194ff.; Pacitti 1961. 67ff.; Spielvogel 1997. 60ff.; Epstein 1986. 230ff.

¹²²⁵ Krüger 1991. 188f.

¹²²⁶ Cf. Gruen 1966. 120–130; Moreau 1982. 45–50. 175–182.

¹²²⁷ On *arrogatio* see Földi–Hamza 2009. 246f.

¹²²⁸ Cic. *Sest.* 16.

¹²²⁹ Cic. *Sest.* 55.

¹²³⁰ Cic. *Sest.* 33. 56.

¹²³¹ Cic. *Sest.* 55.

¹²³² Cf. Földi–Hamza 2009. 21.

¹²³³ Cic. *Sest.* 55.

¹²³⁴ Cic. *Sest.* 24. 33.

¹²³⁵ Cic. *Sest.* 25ff.

¹²³⁶ Cic. *Sest.* 28ff.

¹²³⁷ Cic. *Sest.* 32.

contiones Clodius again and again repeated that he acted with the agreement of Caesar, Pompey and Crassus,¹²³⁸ and although none of the three expressed their opinion *coram publico*, Cicero hoped that Pompey would keep his promise made earlier with the intention to help.¹²³⁹

Pompey, however, to flee from the embarrassing need to take a stand, withdrew to his estate in the countryside, all the more—as the speech implies—because his enemies suggested to him that Cicero’s adherents wanted to take his life.¹²⁴⁰ Clodius, to legitimate his acts, convened a popular assembly where he addressed a question to the consuls and Caesar regarding the executions that took place on 5 December 63.¹²⁴¹ Gabinius and Piso disapproved Cicero’s action in terms of legality since Cicero as a consul had some participants in Catilina’s plot executed without judgment and the opportunity of *provocatio ad populum* Roman citizens were entitled to indeed¹²⁴²—at the same time, they “forgot about” *senatus consultum ultimum* that vested consuls with additional rights. Caesar referred to it that he had been against the death penalty when it was passed already,¹²⁴³ yet he would consider it improper to apply the law with retroactive force. (Caesar offered Cicero a legate’s position to be able to leave Rome; it has not been clarified whether this happened before¹²⁴⁴ or after Clodius was elected tribune¹²⁴⁵ but Cicero did not leave.)¹²⁴⁶

Thereupon, Cicero went into voluntary exile;¹²⁴⁷ later on he certified his act by asserting that by staying he would have triggered a civil war—as all decent citizens would have sided with him—but he could not assume liability for that.¹²⁴⁸ Exile was not punishment but escape from punishment, which Roman citizens were entitled to (*ius exulandi*) before or after conclusion of the lawsuit.¹²⁴⁹ So, early March 58, Cicero went into exile, his house was robbed; the loot was shared by Clodius and the consuls, who sacrificed the good of the State for the provinces they longed for.¹²⁵⁰ By another law Clodius attained that Cicero’s full property was confiscated, and the exile was banned from choosing a place of living closer than five hundred miles from Rome.¹²⁵¹ (Following Cicero, another strong man of politics in the senate, Cato was also sent away from Rome—however, in his case they took care of the appearance of fairness.¹²⁵²)

Clodius now could feel he had Rome under his control indeed, and with his armed hordes he strove to quash every opposition to him.¹²⁵³ Not only did he provoke Pompey¹²⁵⁴—he helped Tigranes to escape, who had been brought to Rome as prisoner by Pompey,¹²⁵⁵ and he sold the sanctuary that belonged in accordance with Pompey’s orders to King Deiotarus’s territory for a huge sum to Brogitarus, to whom he arbitrarily granted royal title too¹²⁵⁶—who did not

¹²³⁸ Cic. *Sest.* 39f.

¹²³⁹ Cic. *Sest.* 15.

¹²⁴⁰ Cic. *Sest.* 41.

¹²⁴¹ Cf. Drexler 1976. 124ff.; Giebel 1977. 45; Trencsényi-Waldapfel 40.

¹²⁴² Cf. Bleicken 1959. 324ff.; Lintott 1972. 226ff.; Martin 1970. 72ff.

¹²⁴³ Cf. Sall. *Cat.* 51, 1–43.

¹²⁴⁴ Cic. *Att.* 2, 18, 3. 19, 5.

¹²⁴⁵ Dio Cass. 38, 15, 2.

¹²⁴⁶ Cic. *prov. cons.* 41–42.

¹²⁴⁷ *Materiale* 2004. 147.

¹²⁴⁸ Cic. *Sest.* 43ff. Cf. Fuhrmann 1960. 481ff.; 496.

¹²⁴⁹ Zlinszky 1991. 78.

¹²⁵⁰ Cic. *Sest.* 53f.

¹²⁵¹ Cic. *Sest.* 65. 69.

¹²⁵² Cic. *Sest.* 56. 60ff. Cf. Meyer 2005. 10.

¹²⁵³ Krüger 1991. 192; Fuhrmann 2000. 281.

¹²⁵⁴ *Materiale* 2004. 147.

¹²⁵⁵ Cic. *Att.* 3, 8, 3.

¹²⁵⁶ Cic. *Sest.* 56.

appear in public for he no longer felt secure,¹²⁵⁷ he also turned against Caesar who helped him to power and to such an extent that at end of his activity as tribune he questioned the validity of Caesar's laws and regulations. It was at that time that those who had helped Clodius to power definitely realised what fatal error they had made by supporting their defendant. Clodius was unsuitable for acting as a political ally and at this point the *optimates* would have had the opportunity to forge political unity and get Pompey threatened by terror side with them through separating him from Caesar, who brought Clodius to tribune's office. The *optimates*, however, worn out their force in petty-minded civil strifes,¹²⁵⁸ and one-time allies, Pompey and Crassus could not come to an agreement either; so, cliques of *optimates*, Pompey, Crassus, Cicero's adherents, Clodius and the mob all brooded over their own way to find solution, not knowing that long term political trends were determined in Caesar's camp in Gaul.¹²⁵⁹

Nevertheless, Clodius's "politics" brought it along as natural consequence that recalling/rehabilitation of Cicero was actually put on the agenda, which happened indeed on 1 January 57 at the senate session led by consul P. Lentulus Spinther. The other consul, Metellus Nepos, who otherwise entertained hostile emotions against Cicero, putting aside his private injuries, voiced his agreement with the agenda; and the one-time consul, L. Aurelius Cotta believed that such a senate decree (*senatus consultum*) was sufficient for Cicero's returning home since the applicable *lex Clodia* was invalid from the first.¹²⁶⁰ Pompey demanded resolution of the popular assembly, reckoning that otherwise the people's party would organise rioting, and the senate agreed with this view. Only and solely tribune Sex. Atilius Serranus requested one day for thinking, and at the January sessions through his continuous *intercessio* he prevented decision-making.¹²⁶¹ Then, eight tribunes loyal to Cicero led by Q. Fabricius seized initiative and submitted a motion for calling the exile home, to be put to the vote on 23 January. Under cover of the night, however, Clodius, with armed slaves and gladiators of his brother, praetor App. Claudius Pulcher, occupied the Forum and scattered the popular assembly. In the course of that, among others, Cicero's younger brother, Quintus was assaulted, and for the following days Clodius and his horde subjected the streets of Rome to their rule—the senate and the consuls were powerless.¹²⁶²

Milo, after he had made an unsuccessful attempt as a tribune to bring a charge *de vi* against Clodius, decided to render Clodius's gangs harmless by his own troops.¹²⁶³ Milo's example was followed by Sestius also as a tribune, after Milo had almost fell victim to a fatal attack.¹²⁶⁴ The "*militia*" set up by Milo and Sestius—as it were in response to Clodius's gangs—soon gained ascendancy over them, and public order was relatively restored in Rome.¹²⁶⁵ At the beginning of July 57, Lentulus again put the issue of calling Cicero home on the agenda of the senate, and Pompey read out his relevant proposal—now the senate was not willing to postpone the case any more and resolved that if no decision was made on the issue in the popular assembly, then Cicero should by all means, albeit, without the resolution of the popular assembly, return to Rome.¹²⁶⁶ At the *contio* held on the Mars field, Lentulus and Pompey resolutely stood up for Cicero, and on 4 August the *comitia centuriata* accepted the

¹²⁵⁷ Cic. *Sest.* 15; 69.

¹²⁵⁸ Materiale 2004. 147.

¹²⁵⁹ Fuhrmann 2000. 282f.

¹²⁶⁰ Krüger 1991. 193.

¹²⁶¹ Cic. *Sest.* 72ff.

¹²⁶² Cic. *Sest.* 76ff.; 85.

¹²⁶³ Cic. *Sest.* 86ff.

¹²⁶⁴ Cic. *Sest.* 79f.; 90ff.

¹²⁶⁵ Fuhrmann 2000. 282.

¹²⁶⁶ Cic. *Sest.* 129.

proposal.¹²⁶⁷ Cicero did not simply return to but marched in Rome in a triumphal procession never seen before.¹²⁶⁸

Even then Clodius did not give it up; he blamed Cicero for the inflation that emerged in those days—thereby trying to instigate public disturbances—and chased away the labourers hired for rebuilding his house.¹²⁶⁹ (Cicero attained invalidity of the irregular *consecratio* of the plot on the Palatine executed by Clodius and its declaration by his speech registered under the title *De domo sua*.) Milo tried again to take action against Clodius by using the *quaestio de vi publica* but on the proposal of the senate he abandoned his intention to bring a charge.¹²⁷⁰ Simultaneously, Clodius made an attack on P. Sestius too, who had resolutely fought for calling Cicero home, and on 10 February 56 he brought a charge of *ambitus* (election bribe) and *vis publica*¹²⁷¹ on the grounds of *lex Plautia de vi*¹²⁷² against him at the same time—the latter case was concluded on 14 March with the acquittal of Sestius.¹²⁷³ (The state of facts set forth in *lex Plautia de vi* was sanctioned later on by *lex Pompeia de vi* adopted in 52. Around 46, Caesar probably also sanctioned acts of violence by *lex Iulia de vi*; later on, the most detailed laws, which now clearly distinguished *vis publica* from *vis privata*, were caused to be enacted by Augustus in 17.¹²⁷⁴) The charge brought *de vi*—more precisely, the prosecutor, P. Albinovanus¹²⁷⁵—reproached Sestius for recruiting and arming gladiators to achieve his political goals.¹²⁷⁶ Clodius lined up L. Aemilius Paulus, Gellius Publicola¹²⁷⁷ and, among others, P. Vatinius as witnesses.¹²⁷⁸ The *quaestio* was chaired by *praetor* M. Aemilius Scaurus, the defence was provided by Q. Hortensius, M. Crassus, L. Licinius Calvus and—rising to speak as the last one as was his custom—by Cicero.¹²⁷⁹

The orators who took part in the lawsuit constituted a politically quite heterogeneous company since they included one of the members of the triumvirate, Crassus, the conservative Hortensius, the people's party Calvus and as a person standing in the middle, creating unity, Cicero. Among others, this composition of persons might have encouraged Cicero to define the role of those destined to govern the State of Rome and the fundamental principles of governance, in a train of thoughts of great breadth.¹²⁸⁰

IV. 2. 2. *Cum dignitate otium* – definition of fundamental political values

Cicero's argument in the lawsuit is completely logical and clear. How could be Sestius convicted *de vi* for he had tolerated the raging of Clodius and his gang for so long in tranquillity, and only after he had been attacked by Clodius's gang on the Forum while he was exercising his office—and it was thanks to pure luck only that he stayed alive—did he set up guards to protect himself?!¹²⁸¹ Sestius used the tool of lawful defence only when law did not

¹²⁶⁷ Cic. *Sest.* 109ff.

¹²⁶⁸ Cic. *Sest.* 131.

¹²⁶⁹ Krüger 1991. 194.

¹²⁷⁰ Cic. *Sest.* 95.

¹²⁷¹ Cf. Boyancé 1941. 172ff.; 174. On *vis (publica)* see Zlinszky 1991. 114ff.

¹²⁷² Fuhrmann 2000. 281.

¹²⁷³ Cic. *Q. fr.* 2, 4, 1. Cf. Fuhrmann 2000. 281.

¹²⁷⁴ Sáry 2002. 167.

¹²⁷⁵ Krüger 1991. 194.

¹²⁷⁶ Cic. *Sest.* 78. 84. 90. 92.

¹²⁷⁷ Cic. *Sest.* 110ff.

¹²⁷⁸ Cic. *Sest.* 132ff.

¹²⁷⁹ Cic. *Sest.* 3. Cf. Fuhrmann 2000. 281.

¹²⁸⁰ Materiale 2004. 148.

¹²⁸¹ Krüger 1991. 195.

provide him with proper protection.¹²⁸² Based on all that, Sestius did not commit crime, much rather he used the principle of “*vim vi*” and “*arma armis repellere cuique licet*”.¹²⁸³

The speech seems *prima facie* somewhat confused and “jam-packed”, and only a few passages of the speech deal with the person of the accused on the merits.¹²⁸⁴ Much more room is occupied by the narrative of the orator’s own vicissitudes and triumph, that is, exile and home coming.¹²⁸⁵ Cicero dwells on his notions on the State and the role of statesman, which he commends to the attention of especially young people.¹²⁸⁶ This is accompanied by the *prooemium*¹²⁸⁷ and the invective against the incriminating witness, Vatinius, who spoke about the *optimates* in contemptuous voice, calling them *natio (natio optimatum)*¹²⁸⁸ with insulting words.¹²⁸⁹ Based thereon, the superficial spectator might agree with the opinions, voiced in the Antiquity already, that Cicero far too much deviated from the original subject of his speech, and might give credence to the presumption that *Pro Sestio* in the form it has been left to us has nothing to do with the speech actually delivered.¹²⁹⁰ When studying the *oratio* more carefully, we can agree with Manfred Fuhrmann’s opinion that the speech constitutes a closed, well edited, logical whole. As the orator expounds that the charges affecting Sestius had been refuted point by point by those who spoke before him, so he has nothing else to do than praise Sestius’s conduct of life and activity as tribune, in a widely drawn mirror of the historical-political background.¹²⁹¹ Accordingly, the speech after the *prooemium* can be divided into historical¹²⁹² and program setting¹²⁹³ parts,¹²⁹⁴ which are concluded by the *peroratio* turning into pathetic fortissimo, which states that if Sestius is to go into exile, then the orator will not hesitate to follow him there since he can thank his return from his own exile to Sestius.¹²⁹⁵

It is worth analysing the part of the speech, which can be considered mere *excursus* having an end in itself, that contains Cicero’s political creed and the most precise definition of *optimates*’ role taken and obligations assumed in public life in *Corpus Ciceronianum*.¹²⁹⁶ The paradigmatic nature of Sestius’s case enabled the orator to frame guidelines in the philosophy of the state that could get to more people through the statement of the defence as means of mediation than in theoretical reasoning, philosophical works.¹²⁹⁷ What might be superficially considered mere *excursus* is a carefully thought-over and efficiently built argument: the definition of the concept of *optimates* is followed by enumeration of the most important tasks of the State, and then, by determining the goals of persons who shape public life, the significance of *otium* and *dignitas*, the orator connects the seemingly extended theoretical train of thoughts again with the stream of the oration.

To respond to the disparaging remark made by the prosecutor on *optimates*, he develops his own *optimata* definition by *interpretatio extensiva* setting out from the *optimates*—*populares*

¹²⁸² Cic. *Sest.* 79ff.

¹²⁸³ Ulp. D. 43, 16, 1, 27. Cf. Zlinszky 1991. 114f.; Molnár 1996. 167f.; Nótári 2003. 97ff.

¹²⁸⁴ Cic. *Sest.* 6–14. 75–95. 144–147.

¹²⁸⁵ Cic. *Sest.* 15–74. 127–131.

¹²⁸⁶ Cic. *Sest.* 96–126. 136–143.

¹²⁸⁷ Cic. *Sest.* 1–5.

¹²⁸⁸ Cic. *Sest.* 132–135.

¹²⁸⁹ Wirszubski 1954. 7.

¹²⁹⁰ Meyer 1922. 135².

¹²⁹¹ Fuhrmann 2000. 283; Materiale 2004. 149.

¹²⁹² Cic. *Sest.* 6–95.

¹²⁹³ Cic. *Sest.* 96–143.

¹²⁹⁴ Fuhrmann 2000. 283.

¹²⁹⁵ Cic. *Sest.* 144–147.

¹²⁹⁶ Cic. *Sest.* 96ff.

¹²⁹⁷ Fuhrmann 1960. 494.

opposition. The *optimates* and *populares*, as a matter of fact, did not mean party affiliations, not even groups orienting themselves in terms of some sort of political/public life principles/slogans but primarily groups of given politicians who achieved their goals relying on the senate (*optimates*) and the popular assembly (*populares*) respectively—in many cases the distinction covered difference in political style rather than content.¹²⁹⁸ According to Cicero, *optimates* are those who—contrary to *populares*—do not seek applause and approval of the masses but try to earn acknowledgement of all decent citizens (*optimus quisque*).¹²⁹⁹ The community of decent citizens comprises thoughtful, sober people living under balanced financial circumstances, irrespective of their class status—that is, even “well-meaning” liberated slaves. Consequently, the *optimus quisque* are all decent Roman citizens, people belonging to the highest orders, inhabitants of Roman cities and agricultural workers, traders, liberated slaves who are by nature not depraved, not insane, not taking pleasure in civil strife. Thus, *optimates* are opposed by depraved adventurers, people who upset public life.¹³⁰⁰ And what is the common goal of these so various people? The objective that unites all sober, honest citizens with orderly conduct of life: preservation of tranquility by maintaining dignity.¹³⁰¹

And the political philosophy of *optimates* is nothing else than “*cum dignitate otium*”.¹³⁰² *Dignitas* is appreciation, dignity obtained by individual merit or social background—that is, it is not a “civic right”. *Dignitas* is in every case a kind of award for an office fulfilled in public life, a service carried out for public good, efforts and peril undertaken for the sake of *maiestas imperii/rei publicae*, which raises the person who has become worthy out of the grey mass of average people.¹³⁰³ This award, however, is not identical with the contents covered by *honor* and *laus* because they can be attained by exemplary handling of a particular, given historical and political situation too. *Dignitas* is a greater and, first of all, more permanent value: to a certain extent it can be related to the concept of nobility since it far extends beyond the glory of a year in office or a military expedition, it can be passed from generation to generation, and might legitimise the influence, power in public life of late descendants too. It is just stormy periods of the State when this inherited *dignitas* can be attacked by subversive elements; so, the task of *optimatas* is to protect this value—not primarily for their own sake but to serve public good, stability.¹³⁰⁴

Otium is, in a certain sense, the opposite of *negotium*, that is, every activity that can be carried out outside the field of public life. The phrase “*otium*” often goes together with the terms “*pax*”, “*concordia*”, “*salus*”, “*quies*” and “*tranquillitas*”, as it were as the opposite of “*novae res*”, “*seditio*”, “*discordia*” and “*tumultus*”. Thus, both *dignitas* and *otium* can be a

¹²⁹⁸ Krüger 1991. 196.

¹²⁹⁹ Cic. *Sest.* 96; Boyancé 1941. 179ff.; Fuhrmann 1960. 484; Meyer 2005. 27ff.

¹³⁰⁰ Cic. *Sest.* 97. *Quis ergo iste optimus quisque? Numero, si quaeris, innumerabiles, neque enim aliter stare possemus; sunt principes consili publici, sunt qui eorum sectam sequuntur, sunt maximorum ordinum homines, quibus patet curia, sunt municipales rustique Romani, sunt negoti gerentes, sunt etiam libertini optimates. Numerus, ut dixi, huius generis late et varie diffusus est; sed genus universum, ut tollatur error, brevi circumscribi et definiri potest. Omnes optimates sunt qui neque nocentes sunt nec natura improbi nec furiosi nec malis domesticis impediti. esto igitur ut ii sint, quam tu 'nationem' appellasti, qui et integri sunt et sani et bene de rebus domesticis constituti. Horum qui voluntati, commodis, opinionibus in gubernanda re publica serviunt, defensores optimatium ipsique optimates gravissimi et clarissimi cives numerantur et principes civitatis.*

¹³⁰¹ Cic. *Sest.* 98. *Quid est igitur propositum his rei publicae gubernatoribus quod intueri et quo cursum suum dirigere debeant? Id quod est praestantissimum maximeque optabile omnibus sanis et bonis et beatis, cum dignitate otium.*

¹³⁰² Cf. Wirszubski 1954. 1–13; Rémy 1928. 113–127. See also Pérez 1995. 57ff.

¹³⁰³ Fuhrmann 1960. 486; Wirszubski 1954. 12. Cf. Büchner 1957. 322ff.

¹³⁰⁴ Fuhrmann 1960. 487f.

trait of a single person,¹³⁰⁵ a group¹³⁰⁶ or a whole institution—for example, the empire or the State,¹³⁰⁷ and can denote public tranquillity and public safety.¹³⁰⁸

It arises as a natural question whether the concepts *otium* and *dignitas* cover contents that refer to public or private conditions.¹³⁰⁹ Rémy gives the answer that the use of these concepts taken to refer to the collective and the individual must be strictly separated from each other,¹³¹⁰ and that these two keywords in *Pro Sestio* are meant to reflect idealised and desirable conditions of public life, in which *dignitas* denotes enforcement of the rule of *ordo senatorius* considered “traditional”, i.e., ordered to exercise power in Sulla’s constitution, and *otium* denotes public tranquillity arising from this *status quo*.¹³¹¹ In other cases Cicero used the concept of *dignitas* often to name the influence of the individual, more specifically, the senator and his power exercised in the senate, and *otium* to describe the deservedly earned tranquillity enjoyed after leaving office.¹³¹² The strict distinction set up by Rémy was replaced by a somewhat subtler interpretation in others’ works. Pierre Boyancé, for example, increasingly emphasised that in Cicero’s works *dignitas* lies both in private sphere and public life; he wanted to deduce this Ciceronian concept from Greek, primarily peripatetic philosophy.¹³¹³ Literature—e.g. Chaim Wirszubski—considered excessive nearing of *dignitas* to private sphere exaggerated and demonstration of Greek philosophical roots problematic,¹³¹⁴ yet, Chaim Wirszubski somewhat overshot the mark too, and interpreted the idea of *dignitas* as a category that excludes political, philosophical and ethical deliberations.¹³¹⁵

With his habitual ability to see the essence in synthesis, Manfred Fuhrmann declared that both Pierre Boyancé’s approach of taking only Greek philosophical bases into account and Chaim Wirszubski’s approach of ignoring other factors outside Roman realpolitik are one-sided and therefore wrong. Fuhrmann integrates the two contradicting theories by claiming that the results of Greek philosophy served as tools for Cicero to formulate individual thoughts regarding Roman public life.¹³¹⁶

Thus, in *Pro Sestio* Cicero applies the phrase *cum dignitate otium* both to the entirety of public life and the leaders of the State; yet, in this respect, due to fundamental characteristics of Roman public thinking we cannot charge the orator-statesman with mala fide mingling of in rem and personal components, which are to be strictly separated nowadays, as it is done by Chaim Wirszubski.¹³¹⁷ It is just Cicero’s *res publica* definition that makes it justified and self-explanatory to mention “in rem” and “personal” elements of the State, i.e., abstract power and the elite exercising it in a particular form, together and forge them into a harmonious unity.¹³¹⁸

The state of *otium* can be realised only if the State is governed by the *optimates*, and the people of Rome acknowledges their *dignitas*, by which they can guarantee *otium* and *dignitas* of the *res publica*, that is, the stability of religion, state organisation, administration of justice,

¹³⁰⁵ Cic. *Sest.* 125; 128f.; *off.* 3, 1.

¹³⁰⁶ Cic. *Sest.* 104; *fam.* 1, 8, 4.

¹³⁰⁷ Cic. *Sest.* 1.

¹³⁰⁸ Cic. *Sest.* 15. 46. 104. Cf. Fuhrmann 1960. 488f.; Wirszubski 1954. 4ff.

¹³⁰⁹ Cf. Cic. *fam.* 1, 7, 7ff.

¹³¹⁰ Rémy 1928. 113ff.

¹³¹¹ See also Heinze 1924. 73ff.

¹³¹² Fuhrmann 1960. 482.

¹³¹³ Boyancé 1941. 172ff.; 186ff.

¹³¹⁴ Wirszubski 1954. 1ff.

¹³¹⁵ Wirszubski 1950. 91ff.; Wirszubski 1954. 3ff.

¹³¹⁶ Fuhrmann 1960. 483.

¹³¹⁷ Wirszubski 1954. 7ff.

¹³¹⁸ Fuhrmann 1960. 483.

foreign relations and military administration.¹³¹⁹ This fragile balance is threatened by danger from two sides. On the one hand, by subversive elements, anarchists, depraved political adventurers similar to Clodius,¹³²⁰ on the other hand, by the citizens who keep only one of the two basic values in view: who either strive for *dignitas* without protecting *otium* or are willing to give up *dignitas* for the sake of *otium*—the latter assume especially high risk because while chasing the false illusion of safety they fail to notice that, by giving up *dignitas*, *otium* will be endangered too.¹³²¹

After that, he enumerates examples from the rows of *propugnatores rei publicae*, who protected the State, undertaking trouble and danger, against subversive activity of the *populares*, which formerly involved significant peril as in those days the politics of the *populares* pleased the people.¹³²² Taking it to refer to the time when the speech was delivered, the orator, however, makes it clear that the ambitions of the *populares* evoke aversion also in *verus populus*,¹³²³ the people who approve the politics of the *optimates* and long for *otium*, and that people like Clodius can only expect applause from the hired, heckled mob.¹³²⁴ He resolutely calls citizens of Rome—who, except for hostile elements, all enrich the rows of the *optimates*, according to this extended definition—to follow the example of the enumerated men who long for and indeed attain authority, acknowledgement and glory, who will be remembered for ever; at the same time, he does not deny that the task to be undertaken is hard and involves troubles and perils.¹³²⁵

The leaders of the *optimates*, the *principes civitatis*, who follow the senate, which guarantees the good of the State, freedom, tranquillity and dignity of the people, must face their enemies (*audaces, improbi*), who sometimes come from influential circles (*potentes*), however, examples of history show that these subversive elements, who tried to impress the mob, were, in most of the cases, badly defeated.¹³²⁶ At this point, Cicero warns the youth—for, as he said, the definition of the concept of the *optimates* also served this¹³²⁷—to keep *dignitas* and *gloria* attainable through activity carried out for the sake of *res publica* in view¹³²⁸ because he is afraid that, threatened by recent events and calamities suffered by them, there will be no citizens who are willing to undertake duties and obligations in public life.¹³²⁹ Therefore, he

¹³¹⁹ Cic. *Sest.* 98. *Huius autem otiosae dignitatis haec fundamenta sunt, haec membra, quae tuenda principibus et vel capitis periculo defendenda sunt: religiones, auspicia, potestates magistratuum, senatus auctoritas, leges, mos maiorum, iudicia, iuris dictio, fides, provinciae, socii, imperi laus, res militaris, aerarium.* Cf. Krüger 1991. 197f.; Fuhrmann 2000. 285; Materiale 2004. 151; Meyer 2005. 38. skk

¹³²⁰ Cf. Alföldi 1985. 128.

¹³²¹ Cic. *Sest.* 100. *Maioribus praesidiis et copiis oppugnatur res publica quam defenditur, propterea quod audaces homines et perditu nutu impelluntur et ipsi etiam sponte sua contra rem publicam incitantur, boni nescio quo modo tardiores sunt et principibus rerum neglectis ad extremum ipsa denique necessitate excitantur, ita ut non numquam cunctatione ac tarditate, dum otium volunt etiam sine dignitate retinere, ipsi utrumque amittant.* Cf. Fuhrmann 1960. 485f.; Boyancé 1941. 184ff.

¹³²² Cic. *Sest.* 101ff. Cf. Fuhrmann 1960. 485; Fuhrmann 2000. 286.

¹³²³ Cic. *Sest.* 108. 114.

¹³²⁴ Cic. *Sest.* 104. *Nunc iam nihil est quod populus a delectis principibusque dissentiat: nec flagitat rem ullam neque novarum rerum est cupidus et otio suo et dignitate optimi cuiusque et universae rei publicae gloria delectatur. Itaque homines seditiosi ac turbulenti, quia nulla iam largitione populum Romanum concitare possunt, quod plebes perfuncta gravissimis seditionibus ac discordiis otium amplexatur, conductas habent contiones, neque id agunt ut ea dicant aut ferant quae illi velint audire qui in contione sunt, sed pretio ac mercede perficiunt ut, quicquid dicant, id illi velle audire videantur.*

¹³²⁵ Cic. *Sest.* 102. *Haec imitamini, per deos immortalis, qui dignitatem, qui laudem, qui gloriam quaeritis! Haec ampla sunt, haec divina, haec immortalia; haec fama celebrantur, monumentis annalium mandantur, posteritati propagantur. Est labor, non nego; pericula magna, fateor.* Cf. Materiale 2004. 152.

¹³²⁶ Cic. *Sest.* 136–143. Cf. Krüger 1991. 198f.; Meyer. 2005. 33ff.

¹³²⁷ Materiale 2004. 149.

¹³²⁸ Cic. *Sest.* 51. 96. 102. 119. 136.

¹³²⁹ Cic. *Sest.* 1. 49. 93. 95.

does not omit to stress that—just as vanguards of the politics of the *optimates* are quite often—he was exiled; yet, he was soon called to return home and was reinstated in his former *dignitas*.¹³³⁰

The analysis of *optimates*' situation and role in public life far exceeded the extent required by the success of Sestius's case, however, it is organically connected with other elements of the speech, as the orator points it out too.¹³³¹ In spite of rhetorical exaggerations we can agree with Cicero.¹³³² Sestius takes the part of *optimates*, that is, every decent citizen (*quisque optimus*), as it is proved by his entire conduct of life and political activity¹³³³ since he has not only stood up for Cicero, who has done so much for saving the State, but has represented the interests of the senate, of entire Italy and in general of *res publica*¹³³⁴ against fanatic, subversive and traitorous political adventurers, who are deservedly referred to with scathing irony by the orator.¹³³⁵ (If we put the portrait of Gabinius and Piso in the scales of history, then Cicero undoubtedly drew a grotesque caricature of them; if, however, we want to judge the description in terms of its literary value, then we should qualify the images masterpieces of Ciceronian irony.¹³³⁶) What was at stake in the fight of Milo, Sestius and the citizens who allied with them (the senate, the citizens and entire Italy)¹³³⁷ against Clodius, Gabinius, Piso and the heckled-hired scum of society¹³³⁸ out for the destruction of the State was not calling Cicero home but primarily *otiosa dignitas*,¹³³⁹ the basic values and institutions of the community, which villains brought undeservedly to office, uninhibitedly abusing laws and their power strove to ruin by violence¹³⁴⁰ and cunning, foolishly.¹³⁴¹

In the formulation of the pair of opposites of *ius* and *vis*¹³⁴² Cicero could look back on prefigurations like, among others, Ennius.¹³⁴³ For the poet the figures of the soldier who uses violence and the orator who uses the weapon of convincing represent two entirely different spheres: the key characteristic of the *orator* is *bonus*, his tools are *sapientia* and *ius*; opposed to him stands the *horridus miles*, whose main tools are *vis* and *ferrum*. Both figures grow beyond themselves through their symbolism as they set us two possible archetypes of settling disputed issues, representing the order of procedure of peace and war. Cicero uses the pair of opposites of *vis*—*ius* emphatically elsewhere too,¹³⁴⁴ that is, it can be established that by that time this duality as a literary topos had been deeply rooted in Roman thinking.¹³⁴⁵

The basic principle “*cum dignitate otium*”, which, beside creating *consensus/concordia ordinum*—i.e., unity of the order of senators and the order of knights¹³⁴⁶—and *onmium bonorum*,¹³⁴⁷ was one of the fundamental goals of Cicero's activity as consul too, did not fail

¹³³⁰ Cic. *Sest.* 51. 140.

¹³³¹ Cic. *Sest.* 96.

¹³³² Materiale 2004. 150.

¹³³³ Cic. *Sest.* 6–14.

¹³³⁴ Cic. *Sest.* 15. 83. 87ff.

¹³³⁵ Cic. *Sest.* 18ff.

¹³³⁶ Fuhrmann 2000. 284.

¹³³⁷ Cic. *Sest.* 32. 36. 53. 72.

¹³³⁸ Cic. *Sest.* 25.

¹³³⁹ Cic. *Sest.* 98.

¹³⁴⁰ Fuhrmann 2000. 285.

¹³⁴¹ Cic. *Sest.* 25ff.; 32ff.; 42ff.; 55f.; 66. 75ff.; 89ff.; 93ff.

¹³⁴² Fuhrmann 1960. 495.

¹³⁴³ Enn. *ann.* 8, 269–274. *Pellitur e medio sapientia, vi geritur res, / spernitur orator bonus, horridus miles amatur, / haut doctis dictis certantes nec maledictis / miscent inter sese inimicitiam agitantes, / non ex iure manum consortum, sed magis ferro / rem repetunt regnumque petunt, vadunt solida vi.*

¹³⁴⁴ Cic. *Mur.* 30.

¹³⁴⁵ Schulte 1935. 40f.

¹³⁴⁶ See also Bleicken 1995. *passim*

¹³⁴⁷ Materiale 2004. 147; Wirszubski 1954. 8. See also Strasburger 1931. *passim*

to produce its impact during delivery of the speech either since the judges acquitted Sestius without any votes against it, which was, according to Cicero, a result hard to underestimate politically either.¹³⁴⁸ *Pro Sestio* was delivered just at the right time and gave the opportunity to Cicero to expound his program of the theory of the state embedded in a rhetorical situation as for this brief moment a relative balance of forces developed in Rome between interest groups working against each other, and Caesar, who was able to turn the scales in his favour, was far away and did not directly intervene in the course of events.¹³⁴⁹

Unfortunately, as it is well-known, in the long run Cicero did not have proper instruments available to him either to enforce the goals and basic principles articulated here since the Rome of the age could be no longer the place of making political decisions, only the place of legitimising them—as it is proved by Caesar’s example. Caesar soon met Crassus, then Pompey, and they renewed the triumvirate of 60. On the “proposal” of the senate, Cicero had to give up the debate of the law on settling Caesar’s soldiers, which was put on the agenda for 15 May 56. Thus, *otium* had been preserved but *dignitas* had been lost; and the politics of the *populares*, which was again headed by Caesar, was, according to indications, followed not only by the mob of the city but also by poorer layers, presented as *optimates* in *Pro Sestio* by Cicero.¹³⁵⁰

Nevertheless, in *Pro Sestio* Cicero gives a brilliant model how an orator-statesman can in a crisis situation threatening the fundamental institutions of human co-existence make the community suddenly aware of the danger of chaos and how he can try to induce hesitating people to dare to act in the present in line with guiding principles re-thought after having returned to basic values of the State and public life in the past.¹³⁵¹ The fortunate harmony of *dignitas*¹³⁵² and *otium*, that is, idealistic basic values and material interests, and the formulation of the requirement to realise it even at the expense of sacrifices deservedly raises *Pro Sestio* among Cicero’s most excellent speeches and makes it one of the important prefigurations of the theory of the state framed in *De re publica*.

IV. 2. 3. The basic values defined in *Pro Sestio* in *De re publica*

Cicero, after he was compelled to realise that he could not continue his career in public life where he had finished it before his exile, from then on devoted most of his energy to theoretical works. In his first work relevant also in terms of the philosophy of the state, *De oratore* published in 55, he dealt with the issue of training, educating *optimus civis Romanus*; in his last work of such nature, *De officiis* written in 44, he analysed the issues of the ethics of “the best citizen” again.¹³⁵³ *De re publica* written between 54 and 51 and published in 51¹³⁵⁴ is a survey of the peculiar features of the State, more specifically, the ideal State, *optimus status civitatis* or *optimus status rei publicae*.¹³⁵⁵

For Cicero, the ideal state, as a matter of fact, means Roman *res publica* since it was built on the talent of not one man but many people, and it was created not for one generation but a long series of centuries and generations.¹³⁵⁶ For Cicero, the basic pillar of the Roman state

¹³⁴⁸ Cic. *Q. fr.* 2, 4, 1.

¹³⁴⁹ Fuhrmann 1960. 497.

¹³⁵⁰ Fuhrmann 2000. 288.

¹³⁵¹ Fuhrmann 2000. 283.

¹³⁵² Cf. Caes. *civ.* 1, 9, 2.

¹³⁵³ Cf. Süß 1965. 144ff.

¹³⁵⁴ Cic. *Att.* 5, 10, 2.

¹³⁵⁵ Hamza 1981. 139ff.; Hamza 2006. 1455ff.; Berti 1963; Perelli 1990; Pöschl 1974; Valditara 2004. 83ff.

¹³⁵⁶ Cic. *rep.* 2, 2.

structure built on the triple of *ius—fas—mos*¹³⁵⁷ was social consensus, i.e., *concordia ordinum*: understanding between the order of knights and the senate; thus, the operation of the ideal state requires permanent and reasonable harmony between certain social classes, layers and groups too.¹³⁵⁸

In Cicero's work, the phrase *res publica* comprises three elements: gathering of people; legal unity/legal security providing grounds for this grouping; and community of interest that makes co-existence justified.¹³⁵⁹ Therefore, *res publica* can be, irrespective of form of state, a kingdom, rule of the aristocracy or as well of the people—however, wherever power is concentrated in the hands of a single person, a tyrant who keeps, instead of public interest, solely his own interests in view, we cannot speak about a state.¹³⁶⁰ The Roman constitution, that is, *miktē politeia* described by Polybios is ideal—and this thought is borrowed, with some modification, also by Cicero¹³⁶¹—because it fortunately combines specific features of various forms of state and so ensures both stability of the state organisation and freedom of the individual and the community without one impairing the other. The role of consuls fulfilled in state governance is the manifestation of the monarchic principle; the weight of the senate is the manifestation of the aristocratic principle; and the role of popular assemblies is the manifestation of the democratic principle.¹³⁶²

Let us see whether the extensively interpreted concept of “*optimates*” created in *Pro Sestio* can be followed in *De re publica*. *Concordia ordinum*—i.e., the thought of integrating *ratio* and *res*, the idea and social reality¹³⁶³—which is formulated in *De re publica* too, does not only mean the unity of the order of senators and the order of knights but contains other social classes, layers and groups.¹³⁶⁴ *Concordia ordinum* is supplemented by *consensus omnium bonorum*, which clearly shows that in *De re publica* Cicero did not want to give up the idea that he had already voiced in *Pro Sestio*, i.e., that all decent citizens—irrespective of their social and financial standing—are at the same time *optimates*, which means nothing else than that they want and serve the good of the state and public good.¹³⁶⁵ As Gábor Hamza declares it too, the phrase *concordia ordinum* in *De re publica* most probably refers to the more narrowly interpreted *plebs* too, as that is how *res publica* becomes *res populi*.¹³⁶⁶ The ideas of *concordia ordinum* and *consensus omnium bonorum* announced against members of Catilina's plot and later Clodius's adherents ensure the opportunity for maintenance or possible modification of constitutional order, if it is based on social agreement. The thought of equality of rights everybody is entitled to declared in *De re publica* served also as a moral foundation for Roman expansion.¹³⁶⁷ This idea, however, was first announced by Cicero in *Pro Sestio*, extending the right and obligation of collaboration to every decent citizen (*quisquis optimus*)!

How does the principle of “*cum dignitate otium*”¹³⁶⁸ appear in *De re publica*? Further bases of Cicero's ideal state are *consensus iuris* and *communio utilitatis*. Here, *ius* does not mean positive law only but also natural law, *ius naturale*. Among others in *De legibus* he articulated

¹³⁵⁷ Földi–Hamza 2009. 26ff. See also Pólay 1964. passim

¹³⁵⁸ Hamza 1995a 36.

¹³⁵⁹ Cic. *rep.* 1, 39. *Est igitur ... res publica res populi, populus autem non omnis hominum coetus quoquo modo congregatus, sed coetus multitudinis iuris consensu et utilitatis communione sociatus.*

¹³⁶⁰ Cic. *rep.* 3, 43ff.

¹³⁶¹ Hamza 1995a 14ff.; 30.

¹³⁶² Polyb. 6, 15.

¹³⁶³ Hamza 1995a 38.

¹³⁶⁴ Cohen 1984. 23ff.

¹³⁶⁵ Cic. *Sest.* 97ff.

¹³⁶⁶ Cic. *rep.* 1, 39.

¹³⁶⁷ Hamza 1995a 38f.

¹³⁶⁸ Cic. *Sest.* 98.

the requirement that positive law shall be in harmony with natural law since that is the only way the law of Rome may lay claim to being the common law of the entire world. Exemption from *ius naturale* shall not be given either by the popular assembly or the senate; it is eternal and unalterable; it is fundamental obligation of the lawmaker and the judge to proceed in accordance with it,¹³⁶⁹ and the task of the law is to separate the lawful from the unlawful.¹³⁷⁰

Law and *ratio* are inseparably interconnected, what is more, synonyms of each other in a certain sense; accordingly, law must come not from *praetor's edictum* or the Twelve Table Law but from philosophy itself; so, it can never lose its force.¹³⁷¹ Consequently, he could frame his demand also in strict *imperativus*: *Lex iusta esto!* The other pillar, *communio utilitatis* is nothing else than the economic motivation of various social classes, layers and groups, which is an indispensable basic condition of social co-existence.

The requirement of combining *dignitas* and *otium*, i.e., idealistic basic values and material interests, in a fortunate harmony and creating social collaboration in line with that was articulated urgently by Cicero in *Pro Sestio* already. In our view, *consensus iuris* made a guiding principle in *De re publica* is directly parallel with *dignitas* taking a prominent position in *Pro Sestio*, thus, with the idealistic idea, basic value that makes Roman citizens *optimates*, and, as a successor concept to it, synthesises what is contained therein to a higher level, and sums up these elements in the collective definition of *iustitia*. Similarly, *communio utilitatis* can be clearly related to *otium*, i.e., material, everyday interests that, beyond ideas, urge citizens to act.¹³⁷²

Rhetoric virtuosity, current politics and philosophy of the state—all these are exemplarily combined in *Pro Sestio*. It is guidance for the responsibly thinking elite and citizens of Rome on preserving and restoring the stability of *res publica*. Guidance for redefining classical values; an alternative to the value-destroying irresponsibility of people like Clodius. At that moment the orator-statesman could not know but might have wanted what occurred two years later: Clodius, who wanted to bring about the downfall of Cicero, died in a street fight provoked by him; and Milo, who killed Clodius and thereby did a great service to the public, would be defended by Cicero—unfortunately, with no success.

IV. 3. Lawsuit of Titus Annius Milo

On 18 January 52, in Bovillae two emblematic figures of the *optimates* and the *populares*, Milo and Clodius clashed, and members of Milo's followers killed Clodius. Milo's defence was undertaken by Cicero; the final hearing was held on 8 April, which was perhaps the weakest performance in Cicero's career: both *Clodiana multitudo* and Pompey's soldiers embarrassed him, clamour and shouting in stopped him short, made him irresolute, what is more, frightened him; he could not deliver the prepared speech with the planned *constantia*, he spoke flustered unable to collect his thoughts. His delivered speech was taken down in shorthand as usual; and Pedianus Asconius, who gives us a highly accurate account of the events, could still read the minutes that contained the speech and shouting in; it is, therefore, an indisputable fact that *Pro Milone* published later—as a matter of fact, apart from certain overlapping thoughts—is not identical with the *oratio* made on 8 April 52.

First, we outline the historical situation that provides the background of the lawsuit (IV. 3. 1.); then, after clarifying the events around killing of Clodius, we attempt to reconstruct the course

¹³⁶⁹ Cic. *rep.* 3, 22.

¹³⁷⁰ Cic. *leg.* 2, 13.

¹³⁷¹ Cf. Cic. *leg.* 1, 18; 2, 14.

¹³⁷² Fuhrmann 1960. 497ff.

of the lawsuit (IV. 3. 2.); later, we outline the structure and legal background of the argument (IV. 3. 3.). After that, we make an attempt at outlining the reasons, in more details, for publishing the revised version of *Pro Milone*, i.e., a speech delivered in an undoubtedly lost case. (IV. 3. 4.) Finally, we sum up the elements of philosophy of the state that appear in *Pro Milone*, and place them in the entirety of Cicero's state concept, paying special regard to the fact that *Pro Milone* is the first Ciceronian work in which the motif of killing the tyrant, which afterwards returns as a fully developed thought in *De re publica* and *De officiis*, appears as a right and obligation a responsibly thinking Roman citizen is entitled to and bound by. In the course of that, we point out the parallels drawn by Cicero between Catilina and Clodius. (IV. 3. 5.)

IV. 3. 1. Historical background of *Pro Milone*

Milo was born as a member of gens Papia in Lanuvium; then, he was adopted by his maternal grandfather, T. Annius—who as the inhabitant of the same *municipium* maintained relation with Oppianicus and his wife, Sassia, depicted by Cicero in *Pro Cluentio* by rather dark colours—and from then on he bore the name T. Annius Milo, however, he inherited rich estate from his father too.¹³⁷³ (Cicero's several friends, senator C. Velleius and senator L. Thorius Balbus, Q. Roscius the actor and grammarian L. Aelius Stilo came from Lanuvium.¹³⁷⁴ In 49, Cicero himself wanted to buy an estate there; however, it could be carried out most probably only in 45.¹³⁷⁵) Nothing is known of Milo's political career before he was elected a tribune in 57; however, historical records reveal that he took action as one of the eight tribunes who—led by tribune Q. Fabricius—drafted a petition for the sake of calling Cicero home.¹³⁷⁶ When on 23 January 57 at the *concilium plebis* they would have voted on the motion, Clodius's gang—including several gladiators borrowed from his brother *praetor* Appius Claudius Pulcher—disturbed the assembly by violence and prevented voting.¹³⁷⁷ Milo detained the gladiators; later, however, Serranus released them.¹³⁷⁸ After that, Milo tried to bring a charge against Clodius before the *quaestio de vi*, however, the edicts suspending administration of justice prevented him from doing so.¹³⁷⁹ After their attempts at settling the crisis by lawful means had failed one after another, Milo and Sestius also set up a private army from gladiators and professional boxers,¹³⁸⁰ however, it cannot be known whether it was this fact or the pressure exercised by Pompey that removed the obstacles of the final voting on 4 August at the *comitia centuriata* on the bill on calling Cicero home.¹³⁸¹ Pompey, on the one hand, managed to bring down rising grain prices, which highly furthered improvement of public feeling, and, on the other hand, he lined up a considerable number of voters from *municipia* at the popular assembly.¹³⁸² It must be made clear, however, that in 57 Milo did not undertake any part in personal defence of Cicero who returned home in 57 because Clodius's horde was able to disturb the reconstruction of the house of Cicero and his brother without any trouble, and when Cicero was attacked on Via Sacra, he was defended by his own

¹³⁷³ Cic. *Cluent.* 78. 182; *Mil.* 64. Wiseman 1971. 195.

¹³⁷⁴ Lintott 1974. 62.

¹³⁷⁵ Cic. *Att.* 9, 9, 4; 13, 6; 12, 41, 1.

¹³⁷⁶ Cic. *Sest.* 72.

¹³⁷⁷ Cic. *Sest.* 75ff.; 85.

¹³⁷⁸ Cic. *Sest.* 85.

¹³⁷⁹ Cic. *Sest.* 89. 95; *red. in sen.* 19.

¹³⁸⁰ Cic. *Sest.* 84ff.; 127f.; *Vat.* 40; *off.* 2, 58.

¹³⁸¹ Dio Cass. 39, 8, 2–3; Plut. *Pomp.* 49, 3.

¹³⁸² Cic. *dom.* 11–14; *red. in sen.* 26. 29; *Sest.* 129; *Mil.* 39.

guard.¹³⁸³ Several people suspected that Cicero was in the background that Milo prevented Clodius from being elected aedil, however, there are good chances that this was part of Milo's personal revenge, and Cicero could only hope in silence that the conflict would end with Clodius's death,¹³⁸⁴ which did not happen for the time being.¹³⁸⁵

In the second half of December 57, aediles for the next year were elected, including Clodius, who used his position to bring a charge before the popular assembly against Milo—so, it was at that time when Cicero defended Milo as an orator first.¹³⁸⁶ The atmosphere must have been similar to that in 52; the orator had to speak in the midst of continuous murmur, shouting in and disturbance.¹³⁸⁷ After the trials held on 2, 7 and 17 February 56, final voting was set for 7 March; however, it is not known whether it took place at all.¹³⁸⁸ By then, the force of Milo's private army had reached and exceeded that of Clodius, and Cicero, who had formerly been rigidly against use of violence in public life, this time gave his now tacit, now *expressis verbis* consent to armed fight as long as it served the goals that he also wanted to achieve.¹³⁸⁹ Milo already gave resolute help to Cicero when in April 56 Clodius's gang attacked him again,¹³⁹⁰ and the relation between Cicero and Milo was hammered into a personal friendship and close political alliance.¹³⁹¹

Milo's praetorship can be most probably dated to 55, i.e., to the third year before his consulship as in accordance with the provisions of *lex annalis* at least two years shall have been passed between holding two magistrates. In the fight for praetorship he was resolutely supported by Pompey.¹³⁹² Milo soon married Fausta, Sulla's cousin, who divorced C. Memmius before that,¹³⁹³ which was a serious step towards his consulate resolutely supported by Cicero too. In 54, four persons applied for the consul's offices of the year 53: C. Memmius, supported by Caesar and originally by Pompey too, Cn. Domitius Calvinus, M. Valerius Messala and M. Aemilius Scaurus.¹³⁹⁴ Scaurus—as half-brother of Fausta and Faustus Sulla, that is, now as Milo's brother-in-law—hoped to have the support of his former brother-in-law, Pompey, whose divorced wife, Mucia Tertia he married. Furthermore, he believed that through Faustus Sulla's wife, Pompeia (Pompey's daughter) he could also strengthen their relation, however, in August and September 54 in the lawsuit due to *crimen repetundarum*, in which he was defended by Cicero, Pompey did not side with him, and later completely backed out from behind him.¹³⁹⁵

The election campaign involved not only bribe but violent and armed competition. Milo also hoped that his marriage would make his relation with Pompey closer; actually, it meant danger to him. Milo resolutely sided with Scaurus in the hope that as consul he would provide him with efficient help to fulfil the consulate of the year 52.¹³⁹⁶ Cicero supported Messala,¹³⁹⁷ however, he was worried about the tension between Milo and Pompey, which became

¹³⁸³ Cic. *Att.* 4, 3, 2–3.

¹³⁸⁴ Cic. *Att.* 4, 3, 5.

¹³⁸⁵ Lintott 1974. 63.

¹³⁸⁶ Cic. *Q. fr.* 2, 3, 1.

¹³⁸⁷ Cic. *Q. fr.* 2, 3, 2.

¹³⁸⁸ Cic. *Q. fr.* 2, 6, 4.

¹³⁸⁹ Cf. Cic. *Q. fr.* 2, 3, 4; *Att.* 4, 3, 3; *Sest.* 86f.; 90f.

¹³⁹⁰ Cic. *Att.* 4, 7, 3; *har. resp.* 17.

¹³⁹¹ Lintott 1974. 64.

¹³⁹² Cic. *Mil.* 68.

¹³⁹³ Cic. *Att.* 4, 13, 1; 5, 8, 2.

¹³⁹⁴ Cic. *Att.* 4, 16, 6; 4, 15, 7; 4, 17, 2f.

¹³⁹⁵ Cic. *Q. fr.* 3, 6, 3; Ios. Flav. *Ant. Iud.* 14, 29ff.

¹³⁹⁶ Lintott 1974. 64f.

¹³⁹⁷ Cic. *Att.* 4, 16, 5; 4, 17, 3; *Q. fr.* 3, 3, 2; 3, 6, 3.

increasingly apparent since Pompey tried to turn Caesar too against Milo.¹³⁹⁸ In the meantime, referring to ill omen the election was postponed, and Scaurus tried to catch his rivals in the act of bribe; and some people was hoping that the elections could be held later on under the supervision of an interrex or dictator, specifically Pompey.¹³⁹⁹ Milo was pondering over intervening in the course of the event by arms,¹⁴⁰⁰ Cicero, putting his moral concerns aside, would have supported him in theory; yet, he was alarmed by the danger of open conflict with Pompey as it was just that for which he had not undertaken formal accusation against Gabinius either. Undoubtedly, Cicero hoped that the efforts to increase Milo's influence and support his plans for consulship would restore his own weight in public life.¹⁴⁰¹

Imperfect information is available on the events of the year 53, yet, it is a fact that the election of the *magistratus curules* had not happened before the summer,¹⁴⁰² and Pompey used all his forces to have dictator's authorisation voted for himself;¹⁴⁰³ however, the senate gave him authorisation only for ensuring orderly and lawful conduct of the election as proconsul.¹⁴⁰⁴

During the campaign of the election of magistrates in 52, violence definitely grew: Clodius's gang attacked consuls Messala and Domitius Calvinus, according to Cicero's narrative M. Antonius wanted to have Clodius assassinated,¹⁴⁰⁵ and Clodius, who wanted to become *praetor* originally in 53, postponed his plan to the following year, due to holding the elections late, and so he inevitably conflicted both with Milo and the two candidates for consul, Hypsaeus and Metellus Scipio, supported by Pompey.¹⁴⁰⁶

In the meantime, Cicero vehemently tried to win Curio, who had returned from Asia, over to ensuring Milo's campaign,¹⁴⁰⁷ he expounded that all his thoughts were filled with Milo's consulate since that is what both *officium* and *pietas* demanded from him. He invited Curio to take over management of the campaign, and briefly summed up everything for him that Quintus had summed up for him in 64 in *Commentariolum petitionis*. It is not probable that Curio undertook the task because later on no reference to this sort of activity or to gratitude felt by Cicero towards him for that can be found in any of the letters. Also, interesting light is shed on Cicero's efforts by Gabinius's defence in the lawsuit due to *crimen repetundarum*, which is quite difficult to date as the only reliable source in this respect is *Pro Rabirio Postumo*.¹⁴⁰⁸ Rabirius Postumus was also charged of *crimen repetundarum*, and, for that matter, due to the amount given to him by Gabinius, arising from blackmail and abuse of authority, and Cicero, overcoming his personal aversion, undertook defence of the accused (accused parties) so that he should not get confronted with Pompey. Several valid arguments against dating Gabinius's lawsuit to the end of 54¹⁴⁰⁹ are formulated by Andrew Lintott.¹⁴¹⁰ Gabinius returned to Rome on 27 September 54 where he was charged of *crimen maiestatis*;¹⁴¹¹ on 11 October a debate was in progress on who should bring a charge of

¹³⁹⁸ Cic. *Q. fr.* 3, 2, 2; 3, 6, 6; 3, 7, 2.

¹³⁹⁹ Cic. *Att.* 4, 17, 4; *Att.* 3, 2, 3; 3, 3, 2.

¹⁴⁰⁰ Cic. *Q. fr.* 3, 6, 4; 3, 7, 3; *Att.* 4, 18, 3; 4, 19, 1.

¹⁴⁰¹ Lintott 1974. 65.

¹⁴⁰² Dio Cass. 40, 45, 1; App. *civ.* 2, 19.

¹⁴⁰³ Plut. *Pomp.* 54, 2f.; *Cato min.* 45, 7; Dio Cass. 40, 45, 5.

¹⁴⁰⁴ Dio Cass. 40, 45, 2.

¹⁴⁰⁵ Cic. *Phil.* 2, 49; *Mil.* 40.

¹⁴⁰⁶ Cic. *Mil.* 24.

¹⁴⁰⁷ Cic. *fam.* 2, 6, 3ff.

¹⁴⁰⁸ Cf. Cic. *Rab. Post.* 19. 32. 41.

¹⁴⁰⁹ Cf. Meyer 1922. 206f.

¹⁴¹⁰ Lintott 1974. 67.

¹⁴¹¹ Cic. *Q. fr.* 3, 1, 15.

repetundae against him; on 21 October a charge of *ambitus* was brought against him too. On 24 October, at a rate of thirty-eight/thirty-two he was acquitted of the charge of *maiestas*.¹⁴¹² Regarding the issue whether the lawsuit could be commenced and conducted in the rest of the year, it is necessary to take the order of holidays of the following months unsuitable for legal proceedings into consideration too: from 26 October to 1 November *Ludi victoriae Sullae*, between 4 and 17 November *Ludi plebei* were arranged, and in the remaining period there were several other festivities, which made it almost impossible to conduct a longer lawsuit. Furthermore, lack of magistrates made it difficult to conclude a lawsuit commenced at the end of 54 in the beginning of 53 as praetor's offices were not filled, so, the function of *iudex quaestionis* (*quaesitor*) could have been fulfilled maximum by the interrex.¹⁴¹³ It is also hard to imagine that the lawsuit due to *crimen repetundarum* had been concluded by the end of 54 if we take into account the duration allowed for the accuser to search for evidence (*inquisitio*) in this sort of cases—in this respect it is enough to think of the lawsuit against Verres: with respect to Sardinia Cicero was allowed thirty days, in the case of Sicily he had to be satisfied with fifty days, although originally he asked for one hundred and ten days as the side competing for formal accusation, acting in collusion with Verres won one hundred and eight days for Achaia.¹⁴¹⁴ Paying regard to all that, even cautious estimates would claim that at least one hundred and fifty days must have been required for collecting evidence of Egypt and Syria, in other words, the lawsuit could scarcely commence before March 53, which seems to be supported by the fact that no reference to the lawsuit against Gabinius can be found in Cicero's correspondence in 54.¹⁴¹⁵ At the same time, Cicero—although his conviction would have demanded and several of his friends urged him to—did not join the charge of *maiestas* lest he should incur the hatred of Pompey, and he excused Quintus by claiming that the charge was weakly founded and poorly built from the first, so it would have been a fault to lend his name to it.¹⁴¹⁶

So, Cicero, putting his personal antipathy aside, and to ensure Pompey's support to Milo, undertook the defence of both Gabinius and Rabirius Postumus against the charge of *repetundae*; yet, even by that he did not achieve his desired goal. In 53, no election was held for the *magistratus curules* of the year 52, and Pompey prevented tribune T. Munatius Plancus from appointing an interrex for conducting the election of consuls because he was afraid that the election of his future father-in-law, Metellus Scipio would be unfavourable to him. Milo, however, supported by Cicero, was not willing to surrender to Pompey's plans, and electing Milo consul was a great threat to Clodius too for as the consul of the year 52 he would have supervised the nomination, campaign and election of the praetors to be elected for the year 51.¹⁴¹⁷

IV. 3. 2. Lawsuit of Milo – Cicero's narrative and Asconius's description

Below it is worth surveying the chronology of the Milo lawsuit and its precedents in short—primarily on the basis of Asconius, who had (when he wrote the history of the lawsuit approximately one hundred years later) several sources of the period, Cicero's delivered speech and the *Acta* of the given period available to him. When setting up the chronology, as a matter of fact, supplementary sources can be and should be taken into consideration, such

¹⁴¹² Cic. *Q. fr.* 3, 2, 1; 3, 3, 2; 3, 4, 1f.

¹⁴¹³ Cf. Cic. *fam.* 7, 11, 1.

¹⁴¹⁴ Cic. *Verr.* 1, 6; 2, 1, 30.

¹⁴¹⁵ Lintott 1974. 67f.

¹⁴¹⁶ Cic. *Q. fr.* 3, 2, 2; 3, 4, 1f.; 3, 5, 5; 3, 7, 1.

¹⁴¹⁷ Lintott 1974. 68.

as, for example, Cicero's letters, Plutarch's and Dio Cassius's accounts, although the latter state facts as appropriate in a condensed form in several cases, and sometimes merge events for the sake of dramatic effect. Asconius very rarely contradicts himself, so, in the rarest cases and with the greatest caution can it be alleged that his narrative is inaccurate, tendentious or intentionally fictitious.¹⁴¹⁸ Relevant dates always reflect the condition prior to Caesar's calendar reform, in this respect it is necessary to pay regard to the fact that the year 52 contained an Intercalarius; accordingly, the order of months was as follows: January consisted of twenty-nine, February twenty-four, Intercalarius twenty-seven, March thirty-one and April twenty-nine days.¹⁴¹⁹

On 18 January 52, Q. Pompeius Rufus and C. Sallustius Crispus delivered a hostile speech against Milo at the *contio plebis*,¹⁴²⁰ even before the conclusion of the *contio* Milo left for Lanuvium on Via Appia, namely, as dictator of the settlement he had to inaugurate the flamen of the local cult into his priestly office—according to Cicero the same day,¹⁴²¹ according to Asconius the following day.¹⁴²² Already on the previous day, Clodius had gone to one of the stations of his election campaign, Aricia, and on 18, on the way home he stopped at a small village in Alba, Bovillae, and most probably visited Pompey's villa in Alba too.¹⁴²³ Milo interrupted his journey in Bovillae at around the ninth hour (three in the afternoon), that is, three hours before dusk.¹⁴²⁴ Later on—according to Asconius in the ninth, according to Cicero in the eleventh hour (i.e., five in the afternoon)¹⁴²⁵—Milo, who travelled on carriage with his wife and followers, armed slaves and gladiators (presumably three hundred of them), rode northward with three of his followers and about thirty armed slaves.¹⁴²⁶ The clash took place in front of the Bona Dea sanctuary, near Clodius's estate;¹⁴²⁷ according to Asconius's narrative, the last member of Milo's followers had words with Clodius's followers, Clodius, hearing the clamour, turned back and in response to his threatening gestures one of Milo's men threw his spear, which hit Clodius in the shoulder. Clodius was taken to a nearby inn, however, Milo's men attacked the inn and killed Clodius.¹⁴²⁸ They threw Clodius's corpse to the road, which was found and taken to Rome by senator Sextus Teidius.¹⁴²⁹ As a result of the clash, eleven of Clodius's slaves were killed, two of Milo's slaves were wounded, and his coachman was most probably killed.¹⁴³⁰

Here, it is necessary to highlight a few points that make the authenticity of Cicero's narrative somewhat improbable, especially with regard to the character and time of the clash. The clash probably began not in the eleventh hour of the day, i.e., around five in the afternoon since—as Bovillae was located thirteen miles from Rome—then the senator could have scarcely arrived in Rome with Clodius's corpse in the first hour of the night, and if Milo had to inaugurate the flamen on that day indeed, then it is not probable either that he arrived at Bovillae so late. In the presentation of the clash Cicero strives to give the impression as if Milo had been attacked by Clodius's men both from the side and from behind, and that numerous of Milo's slaves

¹⁴¹⁸ Cf. Büchner 1964. 250.

¹⁴¹⁹ See Michels 1967. *passim*

¹⁴²⁰ Cic. *Mil.* 45; Asc. 3.

¹⁴²¹ Cic. *Mil.* 27f.

¹⁴²² Asc. 3.

¹⁴²³ Cic. *Mil.* 51. 54.

¹⁴²⁴ Quint. *inst.* 6, 3, 49.

¹⁴²⁵ Cic. *Mil.* 29; Asc. 4.

¹⁴²⁶ Cic. *Mil.* 28f.; Asc. 4. 12.

¹⁴²⁷ Cic. *Mil.* 53. 86; Asc. 4.

¹⁴²⁸ Asc. 5–6.

¹⁴²⁹ Asc. 6.

¹⁴³⁰ Cic. *Mil.* 29; Asc. 7.

were killed, and he tries to make Clodius's gang appear as big as possible.¹⁴³¹ Asconius did not say a word about the death of Milo's men, and the fact that Clodius was taken not to his villa but an inn allows to make it probable that Milo's troop cut off connection between the scene of the clash and the villa. Asconius's account, which was written on the basis of delivered pleadings, evidence and the account of *Acta Diurna*, allows it to suggest that the accidentally occurring clash was concluded by the intentional assassination of the wounded Clodius.¹⁴³²

At the murdered Clodius's house on the Palatine, the mob of the city gathered in huge numbers; the same evening, Clodius's wife, Fulvia exhibited Clodius's corpse in public.¹⁴³³ The next day, on tribune Titus Munatius Plancus's proposal the corpse was taken down to the Forum and was placed on *rostra*.¹⁴³⁴ Plancus and Pompey, who strove to prevent Milo from being elected consul, began to heckle the crowd against Milo; the mob took the corpse to the Curia to burn it, however, in the course of that the Curia and the Basilica Porcia caught fire and burned down.¹⁴³⁵ In the meantime, the patricians held an assembly on the Palatine where M. Aemilius Lepidus was elected interrex, who was demanded by the adherents of Scipio and Hypsaeus supported by Pompey to hold the elections immediately, which he refused as a completely unlawful step. The crowd at once attacked both the house of the interrex and the house of Milo, who was away, however, they were driven back; thereupon, with torches robbed from the grove of Libitina they marched to the house of Scipio and Hypsaeus and the gardens of Pompey,¹⁴³⁶ whom they proclaimed now consul, now dictator.¹⁴³⁷

Marcus Caelius, Cicero's one-time disciple and defendant, as a tribune convened a popular assembly where Milo and Cicero could expound that Clodius set a trap for Milo, who used the tool of lawful defence only when he killed Clodius.¹⁴³⁸ As no elections could be held due to armed disturbances of peace, *senatus consultum ultimum* was adopted with the content that the interrex, the tribunes and Pompey as proconsul should make arrangements to ensure the safety of the State and Pompey should recruit an army from Italy to restore public order.¹⁴³⁹

Approximately thirty days after Clodius's death, Q. Metellus Scipio lodged a complaint with the senate claiming that reference to situation of defence was unlawful and untrue, and demanded to conduct investigation and proceedings.¹⁴⁴⁰ In the meantime, although a part of the people demanded that Pompey should be appointed dictator, on the grounds of the resolution of the senate Pompey was granted the office of *consul sine collega*—hard to define in terms of public law.¹⁴⁴¹ Now Cicero could not see good chances for the election of Milo, who got between two fires due to the raging of Clodius's adherents and the fact of holding out the prospect of and later on ordering investigation. Undoubtedly, Clodius's assassination did not appear to be a politically wise step by Milo; however, it probably imbued Cicero with the feeling of personal satisfaction.¹⁴⁴² He considered Milo's act, who had now turned from a political ally into a friend, morally fully approvable, and placed him in one row with Servilius

¹⁴³¹ Cic. *Mil.* 29. 53f.

¹⁴³² Cf. Lintott 1974. 69.

¹⁴³³ Asc. 7.

¹⁴³⁴ Asc. 7.

¹⁴³⁵ Asc. 8; App. *civ.* 2, 21; Dio Cass. 40, 49.

¹⁴³⁶ On *horti Pompeiani* see Plut. *Pomp.* 44, 3; Cic. *Phil.* 2, 109; Vell. 2, 60, 3; App. *civ.* 3, 14.

¹⁴³⁷ Asc. 8.

¹⁴³⁸ Cic. *Mil.* 91; Asc. 9.

¹⁴³⁹ Asc. 10.

¹⁴⁴⁰ Asc. 12.

¹⁴⁴¹ Asc. 14.

¹⁴⁴² Cf. Asc. 22.

Ahala and Scipio Nasica, who were compelled to commit homicide in order to save the State.¹⁴⁴³

Clodius's two cousins started to demand that Milo's and Fausta's slaves who had taken part in the clash at Bovillae should be interrogated, and by *actio ad exhibendum* claimed extradition of the slaves,¹⁴⁴⁴ Hortensius, however, argued that—in view of the fact that Milo had already liberated the slaves who protected the life of their master—as freemen they could not be extradited for interrogation.¹⁴⁴⁵ In the case, the most influential and venerable representatives of the *optimates*, Cicero, Hortensius, Cato, Faustus Sulla and Marcus Marcellus resolutely sided with Milo.¹⁴⁴⁶ At the same time, Pompey behaved with Milo by preserving the appearance of fairness; so, for example, when he received the message that Milo's slaves wanted to murder him, he investigated the matter under *consilium amicorum*, and invited Cicero too to be a member of it,¹⁴⁴⁷ and when Milo sent him the message that he was ready to withdraw from applying for the consul's office, he replied that he did not want to directly intervene in filling offices in such fashion, so, he did not desire to persuade anybody to apply or dissuade anybody from applying.¹⁴⁴⁸ Presumably, the reason for that might have been that Pompey was sure of the success of the candidates supported by him, and did not want that an election without opposing candidates should make the legitimacy of the elected consuls questionable.¹⁴⁴⁹ At the same time, Pompey tried to give the impression that he was really afraid of an assassination purportedly threatening him from the side of Milo and his adherents;¹⁴⁵⁰ however, the issue of the assassination attempts cannot be clarified, and it cannot be decided whether Milo's men were preparing for such an act indeed or the news spread about it served nothing else than increasing antipathy against Milo.

On 22 January, Milo asked Pompey to grant him an audience and offered him to waive his application for the consul's office, Pompey, however, declared that he did not want to intervene in such fashion in public affairs—yet, he refused to give Milo the opportunity to meet him personally.¹⁴⁵¹ On 23 January, Q. Pompeius Rufus accused Milo before the *contio* of preparing for an assassination against Pompey.¹⁴⁵² Around 27 January, tribune M. Caelius Rufus and Milo stepped before the *contio* with the argument that Clodius had prepared for assassination against Milo.

It might have been in early February, between 3 and 10 that they issued the resolution of the senate that authorised Pompey to hold conscription all over Italy and recruit an army;¹⁴⁵³ it might have been at the same time that they adopted the *senatus consultum ultimum* that ordered “state of emergency”.¹⁴⁵⁴ Although Dio Cassius dates the *senatus consultum ultimum* to the days immediately following Clodius's death¹⁴⁵⁵ and conscription by Pompey to a time somewhat later;¹⁴⁵⁶ yet, even at this point no weighty arguments support that Asconius's precise description and the chronology based on it should be questioned.¹⁴⁵⁷ Around 18

¹⁴⁴³ Cic. *Mil.* 8.

¹⁴⁴⁴ Asc. 24.

¹⁴⁴⁵ Asc. 13.

¹⁴⁴⁶ Asc. 11.

¹⁴⁴⁷ Cic. *Mil.* 65.

¹⁴⁴⁸ Asc. 13.

¹⁴⁴⁹ Cf. 1974. 72.

¹⁴⁵⁰ Asc. 16. 21.

¹⁴⁵¹ Asc. 13.

¹⁴⁵² Asc. 21.

¹⁴⁵³ Ruebel 1979. 236ff.

¹⁴⁵⁴ Asc. 10.

¹⁴⁵⁵ Dio Cass. 40, 49, 5.

¹⁴⁵⁶ Dio Cass. 40, 50, 1.

¹⁴⁵⁷ Ruebel 1979. 238.

February, in the senate Q. Metellus Scipio heavily attacked Milo's defence referring to self-defence¹⁴⁵⁸ and declared that Milo's arguing was unfounded due to all the circumstances of the case, the number of the slaves as well as the number of injuries and deaths suffered on the sides of the opposing parties. At the end of February, Pompey returned to Rome, however, he set up his accommodation in his villa outside the *pomerium*, claiming that there he felt more secure of Milo.¹⁴⁵⁹

At the end of February or at the beginning of Intercalarius, Clodius's two cousins, with the support of Valeius Nepos and Valerius Leo, put forth the claim under *actio ad exhibendum* that Milo and his wife, Fausta should extradite their slaves so that they could be interrogated in Pompey's presence; for the same purpose Herennius Balbus announced their claim for Clodius's slaves, and Caelius Rufus demanded extradition of Quintus Pompeius's and Hypsaeus's slaves. Hortensius argued that Milo's slaves could not be extradited as now they were freemen since their master had liberated them for saving his life. At that time, the six most important and most venerable representatives of the *optimates*, Quintus Hortensius, Cicero, Marcus Marcellus, Marcus Calidius, Fautus Sulla and Marcus Porcius Cato clearly stood up for Milo already.¹⁴⁶⁰ Simultaneously, rumours started to spread about electing Pompey¹⁴⁶¹ or Caesar dictator.¹⁴⁶² The office of the thirteenth interrex after Clodius's death, Servius Sulpicius Rufus, which commenced on the twenty-first day of Intercalarius, was interrupted on the 24 by electing Pompey—rather doubtfully in terms of public law—*consul sine collega*, that is, his one-person consulship,¹⁴⁶³ which took place (with quite a propaganda value) one day after the *Regifugium*, i.e., the holiday celebrating the chasing away of kings.¹⁴⁶⁴ The senate granted Pompey the right to choose a *collega* beside him, however, only after two months later.¹⁴⁶⁵

On the twenty-sixth day of Intercalarius, Pompey—with express reference to the events at Bovillae and setting the Curia on fire—put forward a proposal to the senate to make the sanction of *vis* and *ambitus* stricter and to reform the order of procedure of both crimes in such form that, first, hearing of the witnesses would be implemented, then, the prosecution would have two and the defence three hours to plead their arguments.¹⁴⁶⁶ Milo and his adherents, as a matter of fact, felt the danger implied by setting up the *quaestio extraordinaria*, and on the following days made an attempt at thwarting the enactment of the law, so, for example, tribune Caelius Rufus was compelled to back out only upon being threatened by Pompey by armed forces.¹⁴⁶⁷ On the twenty-seventh day of Intercalarius, Q. Hortensius, supported by Cicero, put forward a proposal that Clodius's assassination, setting the Curia on fire and attacking Aemilius Lepidus's house should be qualified *contra rem publicam* acts¹⁴⁶⁸ so that thereby he could take the edge of Pompey's laws directed against Milo and his act could be judged under *quaestio ordinaria*.¹⁴⁶⁹ Q. Fufius Calenus demanded that Clodius's death should be treated separately from other events,¹⁴⁷⁰ however, this proposal

¹⁴⁵⁸ Asc. 12.

¹⁴⁵⁹ Dio Cass. 40, 50, 2; Asc. 16.

¹⁴⁶⁰ Asc. 10–11.

¹⁴⁶¹ Asc. 14.

¹⁴⁶² Dio Cass. 40, 50, 3.

¹⁴⁶³ Asc. 14; Dio Cass. 40, 50, 4.

¹⁴⁶⁴ Ruebel 1979. 239.

¹⁴⁶⁵ Plut. *Pomp.* 54.

¹⁴⁶⁶ Asc. 15.

¹⁴⁶⁷ Asc. 16.

¹⁴⁶⁸ Cic. *Mil.* 14.

¹⁴⁶⁹ Lintott 1974. 72.

¹⁴⁷⁰ Cic. *Mil.* 14.

was vetoed by T. Mutatius Plancius and C. Sallustius Crispus.¹⁴⁷¹ On 1 March, Pompey's laws were enacted,¹⁴⁷² their ratification must have taken place after 26 March, once the popular assembly had accepted them. In the meantime, Cicero went to Ravenna to try to persuade Caesar—in order to counterbalance Pompey's political overweight—to apply *in absentia* for consulate.¹⁴⁷³

On 15 March, Pompey postponed the session of the senate claiming that he was afraid of Milo's armed attack.¹⁴⁷⁴ At the next session, P. Cornificus charged Milo of having come to the senate with arms; thereupon, Milo lifted his *tunica* so that they could see that he had come without arms. In response, Cicero declared that all charges against Milo were fabrications.¹⁴⁷⁵ At a *contio*, T. Mutatius Planus summoned one of Marcus Lepidus's libertines, M. Aemilius Philemon, who alleged that as he witnessed Clodius's assassination Milo took him captive and kept him in custody for two months. According to Asconius, this allegation—whether it was true or not—seemed to be suitable for turning public feeling against Milo.¹⁴⁷⁶ Plancus and Q. Pompeius Rufus also summoned a *triumvir capitalis*, and questioned him if he had detained Galata, one of Milo's slaves, who took part in killing Clodius. The *triumvir capitalis* said only that the slave was caught as *fugitivus* at a *taberna*, and that the tribunes did not let him taken back to Milo. The next day, M. Caelius Rufus and another tribune took the slave back to Milo.¹⁴⁷⁷ Cicero was under increasing pressure to leave Milo to his fate; yet, he resolutely stood by him.¹⁴⁷⁸

On 26 March, the popular assembly passed the two *leges Pompeiae*—this interval was necessary because *lex Caecilia Didia* of 98 stipulated that between *rogatio* and *promulgatio* a *trium nundinum* should elapse, which expired by then.¹⁴⁷⁹ L. Domitius Ahenobarbus was elected *quaesitor* of the court of justice set up on the grounds of Pompey's laws.¹⁴⁸⁰ Clodius's two cousins, who had earlier brought a charge of *de vi* against Milo, brought a charge of *ambitus* now based on the new laws against Milo, the prosecution was joined by C. Ateius and L. Cornificius; P. Fulvius Neratus brought a charge of *de socaliciis* against Milo.¹⁴⁸¹

Between 27 March and 3 April, A. Manlius Torquatus held *divinatio* to choose from among the four applicants who wanted to represent the charge of *ambitus*, and Appius Claudius senior, one of Clodius's cousins, who brought a charge of *vis* too, was chosen; P. Valerius Leo and Cn. Domitius acted as co-prosecutors.¹⁴⁸² On 4 April, Milo's representatives appeared before the court of justice chaired by M. Marcellus and attained that the lawsuit due to *ambitus* would be postponed to a date after the proceedings to be conducted due to *vis*.¹⁴⁸³ Appius Claudius demanded extradition of Milo's fifty-four slaves for interrogation, whereupon Milo replied that they were no longer under his control; Domitius as *quaesitor* ordered that Claudius should select the slaves to be interrogated.¹⁴⁸⁴ C. Causinius Schola testified that he was present when Clodius was assassinated, M. Marcellus wanted to put questions to him but the Clodiani made so much clamour and disturbance that Marcellus

¹⁴⁷¹ Asc. 20.

¹⁴⁷² Asc. 23.

¹⁴⁷³ Cic. *Att.* 7, 1, 4.

¹⁴⁷⁴ Asc. 16.

¹⁴⁷⁵ Asc. 17.

¹⁴⁷⁶ Asc. 18.

¹⁴⁷⁷ Asc. 19.

¹⁴⁷⁸ Asc. 20–22.

¹⁴⁷⁹ Ruebel 1979. 243.

¹⁴⁸⁰ Asc. 23.

¹⁴⁸¹ Asc. 24.

¹⁴⁸² Asc. 25.

¹⁴⁸³ Asc. 25.

¹⁴⁸⁴ Asc. 25.

Domitius was compelled to seek protection on the judge's pulpit. All this induced Pompey to promise to safeguard the trials thereafter with arms.¹⁴⁸⁵

Pompey managed to bring Clodius's adherents under control to a certain extent for the time of hearing the witnesses. In the course of that the attack against the inn, killing the innkeeper and throwing Clodius's corpse on the road were revealed.¹⁴⁸⁶ M. Porcius Cato confessed that M. Favonius had said to him: Clodius declared on 15 January that Milo would be dead in three days.¹⁴⁸⁷ On 6 April, Clodius's mother-in-law, Sempronia and his wife, Fulvia testified, which considerably made the public feeling side with them.¹⁴⁸⁸ After that, T. Munatius Plancus held a *contio* where he fired the crowd up so that they should not let Milo escape.¹⁴⁸⁹

Perhaps the weakest performance in Cicero's career took place in this lawsuit: both the *Clodiana multitudo* and Pompey's soldiers embarrassed him, clamours and shouting in stopped him short, made him irresolute, what is more, frightened him; he could not deliver the prepared speech with the planned *constantia*, he spoke flustered unable to collect his thoughts.¹⁴⁹⁰ His delivered speech was taken down in shorthand as usual; and Asconius could still read the minutes that contained the speech and shouting in; it is, therefore, an indisputable fact that *Pro Milone* published later—as a matter of fact, apart from certain overlapping thoughts—is not fully identical with the *oratio* made on 8 April 52.¹⁴⁹¹ Afterwards, Cicero recalled this unsuccessful performance with indifference—whether pretended or real indifference it cannot be decided.¹⁴⁹² According to Dio Cassius's narrative, it was on this day that Milo tried to persuade Cicero to get out of his *lectica* only after the court of justice had appeared so that the soldiers and the heckled crowd should not increase his tension since he usually struggled with strong stage fright when he started his speeches as it is generally known.¹⁴⁹³

Shops were closed on the day of the trial, the Forum was secured by Pompey's army; first, the accusers, Appius Claudius, M. Antonius and P. Valerius Nepos spoke, then, as the only defender, Cicero. Milo was convicted at a rate of thirty-eight/thirteen.¹⁴⁹⁴ On 8 or 9 April, Milo was convicted due to *ambitus* too in his absence.¹⁴⁹⁵ On 11 or 12 April, Milo was again convicted due to *vis* based on *lex Plautia* in his absence.¹⁴⁹⁶ After 12 April, M. Saufeius, who took part in the clash at Bovillae and against whom a charge of *vis* was brought and was defended by Cicero and Caelius Rufus, was acquitted by one vote.¹⁴⁹⁷ Approximately on 13 April, Milo went into exile to Massilia.¹⁴⁹⁸ After 18 April, a charge was brought again against Saufeius on the grounds of *lex Plautia*—he was defended, beside M. Terentius Varro Gibba, by Cicero again—but he was acquitted at a rate of thirty-two/nineteen.¹⁴⁹⁹ Against Sextus Cloelius, who had Clodius's corpse taken to the Curia and was thereby indirectly considered instigator of setting the Curia on fire, a charge was brought after 22 April, and he was

¹⁴⁸⁵ Asc. 27.

¹⁴⁸⁶ Asc. 28.

¹⁴⁸⁷ Asc. 32.

¹⁴⁸⁸ Asc. 28.

¹⁴⁸⁹ Asc. 28.

¹⁴⁹⁰ Plut. *Cic.* 35, 2–5.

¹⁴⁹¹ Asc. 31.

¹⁴⁹² Cic. *opt. gen.* 10.

¹⁴⁹³ Dio Cass. 40, 54, 2; 46, 7, 2f.

¹⁴⁹⁴ Asc. 29–32.

¹⁴⁹⁵ Asc. 33.

¹⁴⁹⁶ Asc. 33.

¹⁴⁹⁷ Asc. 34.

¹⁴⁹⁸ Asc. 33.

¹⁴⁹⁹ Asc. 34.

convicted with a huge majority of the votes cast as public feeling turned against the Clodian mob again.¹⁵⁰⁰

IV. 3. 3. Handling of the facts of the case in *Pro Milone*

M. Iunius Brutus—one of Caesar’s later assassins, addressee of Cicero’s history of eloquence entitled *Brutus*—voicing the conviction of several people, represented the view in his fictitious speech written in defence of Milo and published later that the assassination of Clodius constituted huge gain for the State.¹⁵⁰¹ According to Asconius, in his delivered speech Cicero took up the position that though a person might be convicted for the sake of the public but in the absence of lawful judgment or other statutory authorisation nobody should be killed by referring to the interest of the state¹⁵⁰²—so, it is unambiguously clear that it was only the version of the speech left to us, i.e., the not only extensively re-edited but re-written version representing a completely new argument at certain points (which was published for legitimisation purposes and was in circulation as a political pamphlet), into which Cicero built the train of thoughts that acknowledgement rather than punishment would be due to Milo for killing Clodius as thereby he had done immense service to *res publica*.¹⁵⁰³ At the same time, it is possible to accept Andrew Lintott’s view that, compared to Asconius’s account, the rest of the arguments of the published speech and the delivered oration might have mostly overlapped.¹⁵⁰⁴

Obviously, Cicero could not argue differently—as it was an undeniable fact that Milo’s slaves had killed Clodius—than by claiming that they acted in a situation of lawful defence as decent slaves ought to, that is, they protected their master.¹⁵⁰⁵ As a key legal argument he uses the “*vim vi*” and “*arma armis repellere cuique licet*” principle.¹⁵⁰⁶ Right at the beginning of his speech he makes it clear that he would base his argument on it as follows. The end of the *prooemium/exordium* contains the description of the legal question of the case (*stasis, status, quaestio, constitutio*). The possible forms of handling the case in accordance with Antique rhetorical theory are as follows: in the case of *status coniecturalis* it had to be clarified whether the suspect had committed the act, i.e., the question is aimed at the person of the perpetrator; *status definitivus* applied to the legal classification of the admitted act; in the case of *status generalis* or *qualitativus* they investigated if the committed act was subject to the scope of the given punitive statute; and in the case of *status translativus* they examined which law was to be applied and which court of justice was competent in the case. *Status generalis* can be taken more or less as the equivalent of the present-day reasons for excluding unlawfulness—for example, lawful defence, state of emergency, etc. Others argued that the case should be judged in terms of *status generalis*; more specifically, that killing of Clodius was not a crime because it served the interest of the state, thus, it occurred completely rightly. Cicero did not choose this path since he did not want to use either the tool of *deprecatio* (by which the accused admits his guilt and asks for pardon referring to his earlier merits) or the opportunity of *comparatio*, which presents the act as a deed performed for the sake of the state. In his argument he used the tool of *relatio criminis*¹⁵⁰⁷ and wanted to prove that Clodius

¹⁵⁰⁰ Asc. 35. Cf. Ruebel 1979. 246ff.

¹⁵⁰¹ Asc. 30.

¹⁵⁰² Asc. 30.

¹⁵⁰³ Cic. *Mil.* 72–83. Cf. Lintott 1974. 74.

¹⁵⁰⁴ Lintott 1974. 74¹⁴¹.

¹⁵⁰⁵ Cic. *Mil.* 8–11. 29–31.

¹⁵⁰⁶ Cf. Ulp. D. 43, 16, 1, 27. Földi–Hamza 2009. 152f.; Zlinszky 1991. 114f.

¹⁵⁰⁷ Cf. Cic. *inv.* 2, 78ff.

had intended to murder Milo, and Milo had acted in self-defence only. At the same time, it can be established that setting out from the stable legal and political grounds of reference to the situation of lawful defence he does not lay smaller emphasis on emotional impact and uses the tool of *comparatio*, that is, he presents Milo's act committed in self-defence as a deed beneficial to the State—the latter assessment was most probably not voiced in the delivered speech and was inserted in the published version only.¹⁵⁰⁸

The argument of the prosecution somewhat helped Cicero as the Appii Claudii argued that Milo set a trap for Clodius with premeditated malice to be able to murder him, which Cicero could easily refute.¹⁵⁰⁹ The primary aim of the court of justice set up by Pompey must have been to punish the abettors—in this case Milo, who did not kill Clodius with his own hands—rather than the slaves and freemen belonging to the people of the house of Milo and Clodius who clashed on Via Appia. In accordance with that, the phrase “*dolo malo*” well-known from the praetor's edict¹⁵¹⁰ was in several cases adopted in the usage of *quaestiones de vi* too.¹⁵¹¹ On the other hand, to distinguish voluntary homicide from involuntary homicide, the phrase “*dolo*” was used already in the *par(r)icida* definition attributed to King Numa.¹⁵¹² *Lex Cornelia de sicariis et veneficis* ordered to punish bearing of arms suitable for manslaughter and bearing of arms with intent to kill.¹⁵¹³ Taking all this into consideration, there are good chances for presuming that *lex Pompeia de vi* providing grounds for the proceedings against Milo also contained the phrase “*dolo (malo)*” and, accordingly, the accusers might have also wanted to prove that the act had been premeditated, prepared, which Cicero could easily refute.¹⁵¹⁴

Accordingly, Cicero, responding to the usage of the prosecution, uses the phrases “*insidiae*” and “*insidiator*” several times;¹⁵¹⁵ however, he strives to refute that the point would have been that both Milo and Clodius had planned in advance to kill the other, and emphasises that the plan of the murder was formulated and became determination unilaterally in Clodius.¹⁵¹⁶ He convincingly refers to the opportunity provided by *ius naturale* that killing of the aggressor *insidiator* does not qualify an unlawful act.¹⁵¹⁷ Cicero endeavours to turn it to his and his defendant's advantage that the senate qualified the events taken place on Via Appia treason when he tries to prove regarding the clash that it was seemingly condemned but practically approved by the senate.¹⁵¹⁸ In the *narratio* the orator touches on lawful defence as well as stresses that the slaves killed Clodius *not* upon Milos's instructions.¹⁵¹⁹ Presentation of the situation of lawful defence bears a clear resemblance to the relevant locus in *Pro Sestio* where the orator describes Sestius's act as the only possible form of defence against Clodius.¹⁵²⁰ Cicero, at least in the version of the speech left to us, elegantly disregards the point of the case most critical to Milo: the attacking of the inn, that is, the circumstance that even the most brilliant orator could not have presented as direct outcome or manifestation of lawful defence.

¹⁵⁰⁸ Lintott 1968. 23.

¹⁵⁰⁹ Cic. *Mil.* 46ff.

¹⁵¹⁰ Cf. Cic. *Tull.* 7. 24.

¹⁵¹¹ Ulp. D. 48, 6. 10 pr.–1.

¹⁵¹² Fest. 247. *si qui hominem liberum sciens morti duit, paricidas esto.*

¹⁵¹³ Cloud 1971. 1ff.; Kunkel 1962. 65ff.

¹⁵¹⁴ Lintott 1974. 75.

¹⁵¹⁵ Cic. *Mil.* 10. 11. 14. 23. 28. 30. 31.

¹⁵¹⁶ Cic. *Mil.* 23. 31ff.

¹⁵¹⁷ Cic. *Mil.* 7–11. On the concept of *ius naturale* in *Corpus Ciceronianum* see Hamza 1995b 523ff.

¹⁵¹⁸ Cic. *Mil.* 12–14.

¹⁵¹⁹ Cic. *Mil.* 28–29.

¹⁵²⁰ Cic. *Sest.* 88ff.

After the speeches had been delivered, both the prosecution and the defence repudiated and demanded expulsion of five senators, five knights and five aerar tribunes from the members of the *quaestio*,¹⁵²¹ so, a total of fifty-one jurors voted. According to Asconius, twelve senators, thirteen knights and thirteen aerar tribunes voted for Milo's guilt, and six senators, four knights and three aerar tribunes voted for his innocence; furthermore, Asconius describes that according to certain people Marcus Porcius Cato most certainly took a stand for acquitting the accused as he declared several times that Clodius's death was a great relief to *res publica*.¹⁵²² During the following days Milo went into voluntary exile to Massilia.

Milo's property was sold by auction for the twenty-fourth of the real value, which either meant the real ratio or was indicated merely in the sense of a very low amount,¹⁵²³ but in this respect it is not possible to answer the question with full certainty whether this took place as second punishment of the judgment, i.e., through state *sectores*, or merely due to accumulated debts under usual bankruptcy proceedings on creditors' initiative paying regard to the fact that the debtor went into *exilium*.¹⁵²⁴ Yet, the following arguments are in favour of the above. *Publicatio bonorum* was connected with traditional exile as punishment (*aquae et igni interdictio*) in accordance with Sulla's laws, and this state most probably existed until Caesar's legislation, which increased punishment for homicide by forfeiture of property as second punishment.¹⁵²⁵ In this respect *perduellio* was considered an exception because in most of the cases forfeiture of full property was imposed as second punishment.¹⁵²⁶ *Lex Plautia de vi* held out the prospect of exile,¹⁵²⁷ however, *lex Pompeia de vi*, which provided grounds for the proceedings against Milo, framed a not specifically known but stricter sanction, which might have meant forfeiture of property too, and the circumstances of the case and Cicero's correspondence¹⁵²⁸ allow to make it possible that the sale of Milo's property by auction did not serve satisfaction of private law claims but was implemented as second punishment of exile.¹⁵²⁹

IV. 3. 4. The published version of *Pro Milone* – reasons for publication

It is worth paying some attention to the question why Cicero published *Pro Milone* in a re-written and re-edited version. It is all the more noteworthy because Cicero usually did not publish his speeches delivered in lost lawsuits.¹⁵³⁰ Perhaps it is not needless to survey the series of the most important, winning defence speeches left to us: on the basis of *Pro Roscio Amerino* (in 80), *Pro Cluentio* (in 66), *Pro Murena* (in 63), *Pro Sulla* (in 62), *Pro Archia poeta* (in 62), *Pro Flacco* (in 59), *Pro Sestio* (in 56), *Pro Caelio* (in 56), *Pro Balbo* (in 56), *Pro Plancio* (in 54), *Pro Scauro* (in 54), *Pro Rabirio Postumo* (in 53) and *Pro Ligario* (in 46), to the best of our knowledge, Cicero's defendants were acquitted. The outcome of *Pro Roscio comoedo* (presumably in 76), *Pro Fonteio* (in 69) is not known; the trial of *Pro Rabirio perduellionis* (in 63) was interrupted.¹⁵³¹ In this respect, *Pro Milone* is an exception: the accused was convicted, Cicero, however, published the revised version of the speech. From

¹⁵²¹ Cf. the regulation of *lex Aurelia de iudiciis*.

¹⁵²² Asc. 32.

¹⁵²³ Asc. 33.

¹⁵²⁴ Cf. Cic. *Quinct.* 60.

¹⁵²⁵ Cf. Suet. *Caes.* 42, 3. See Mommsen 1899. 1005ff.; Cloud 1971. 60ff.

¹⁵²⁶ Liv. 25, 4, 9; 29, 19, 5; Cic. *Rab. perd.* 16; *Cat.* 4, 8, 10; *dom.* 44; *Planc.* 97; Plut. *C. Gr.* 17.

¹⁵²⁷ Cic. *Sulla* 89; *Sest.* 146.

¹⁵²⁸ Cic. *Att.* 5, 8, 2; 6, 4, 3; 6, 5, 2.

¹⁵²⁹ Lintott 1974. 77f.

¹⁵³⁰ Crawford 1984. 15.

¹⁵³¹ Melchior 2008. 283.

among defeated oral pleadings, in addition to *Pro Milone*, *Pro Valero*, delivered between 80 and 70 and lost in the meantime, was published; Cicero did not publish the unsuccessful speeches delivered in defence of Scamander (in 74), Antonius (in 59), Cispus (in 56), L. Caninius Gallus (in 55), Gabinius (in 54) and Scaurus (in 52); accordingly, they have not been left to us. The speech delivered in defence of Manilius in 65, with an outcome not known to us, has not been left to us either. During the ten years preceding the Milo lawsuit, Cicero managed winning cases only, in this respect and with regard to the fact of publishing, *Pro Milone* constitutes an exception.¹⁵³²

Wilfried Stroh explains the publication of *Pro Milone* by pedagogical reasons, that is, Cicero's intention was to set an *exemplum* to young orators.¹⁵³³ On the other hand, there must have been not much sense in Cicero setting the speech of a lost lawsuit as an example to students; at most it can be conceived on the basis of the explanation that he might have wanted to demonstrate by the revised version what speech he should have delivered in order to win the lawsuit. However, even the revised *Pro Milone*—which might have satisfied the orator-artist Cicero's demands in vain—would have demonstrated the politician Cicero's defeat to the general public. Taking all this into consideration, just as in the case of the second *Philippic*, there must have been primarily political reasons for publishing *Pro Milone*.¹⁵³⁴

IV. 3. 5. The motif of killing the tyrant as further development of lawful defence

Below it is worth investigating how the motif of killing the tyrant appears in the speech delivered in defence of Milo, more precisely, in the published speech left to us, and how it is reflected and more elaborately worked out in Cicero's later philosophical works. As a starting point it must be made clear that harmonisation of the defence of *dignitas* and legitimised application of *vis*—i.e., killing the tyrant as a category of public law/philosophy of the state—was integrated in Cicero's philosophy only after Milo's unsuccessful defence and publication of the re-written/re-edited version of the speech.¹⁵³⁵

There is a completely striking connection between the portrait of the tyrant in *De re publica*¹⁵³⁶ and the formulation of the demand to eliminate the tyrant from public life¹⁵³⁷ and the image of "Milo as *tyrannoktonos*".¹⁵³⁸ Accordingly, tyranny is created not through filling some office, position or dignity; the tyrant carries the core of tyranny in his personality, being, which is aimed at a single goal: *dominatio* over his fellow-citizens, and, eventually, at seizing *regnum*.¹⁵³⁹ Thus, the *civis* who frees the State from the plague of tyranny is nothing else than *tutor et procurator rei publicae*, that is, healer of the community. In *Pro Milone* the contrast becomes sharp and clear: Clodius appears as *tyrannus*,¹⁵⁴⁰ his death as killing the tyrant,¹⁵⁴¹ Milo as *conservator populi*, and through killing Clodius as *tutor et procurator rei publicae*.¹⁵⁴² As a historical example for tyrant Cicero very often mentions Tarquinius

¹⁵³² Melchior 2008. 284.

¹⁵³³ Stroh 1975. 51ff.

¹⁵³⁴ Melchior 2008. 284.

¹⁵³⁵ Clark-Ruebel 1985. 72; Melchior 2008. 283.

¹⁵³⁶ Cic. *rep.* 2, 47.

¹⁵³⁷ Cic. *rep.* 2, 51.

¹⁵³⁸ See also Büchner 1962. 116–147; Heinze 1924. 73ff.; 98.

¹⁵³⁹ Büchner 1962. 121; Meyer 1964. 345.

¹⁵⁴⁰ Cic. *Mil.* 35.

¹⁵⁴¹ Cic. *Mil.* 80. 83. 89.

¹⁵⁴² Cic. *Mil.* 80. Cf. Büchner 1962. 138f.

Superbus, Sp. Maelius and Ti. Gracchus,¹⁵⁴³ and refers to Verres from the recent past.¹⁵⁴⁴ Cicero himself was several times called tyrant by his political opponents and enemies.¹⁵⁴⁵ Cicero's theory of killing the tyrant is primarily based on stoic philosophy;¹⁵⁴⁶ at the same time, it is important to underline that this theory is not a direct philosophical transformation of the "*vim vi repellere licet*" principle that serves the legal postulate of defence in *Pro Sestio* and *Pro Milone*.¹⁵⁴⁷ The stoic element of the motif of killing the tyrant can be demonstrated most clearly, what is more, in a form uttered by Cicero, in the third book of *De officiis* written in 44.¹⁵⁴⁸ He declares that the element of killing the tyrant¹⁵⁴⁹ is fully in harmony with stoic philosophy,¹⁵⁵⁰ which also complies with *naturalis ratio*,¹⁵⁵¹ i.e., it is the ultimate conclusion of ethical consideration.¹⁵⁵² In view of the fact that the tyrant ruins human community and places himself outside the rules of coexistence,¹⁵⁵³ accordingly, these rules are not binding him either.¹⁵⁵⁴ Cicero extends this principle to a wider scope, more specifically, he harmonises it with the norms of *ius naturale*, *ius gentium*, *ius divinum* and *ius humanum*.¹⁵⁵⁵ The stoic sage acts in harmony with the laws of nature when he eliminates the tyrant from society, imitates the efforts of Hercules made for the sake of mankind.¹⁵⁵⁶ Cicero transforms the thesis of stoic moral philosophy into the legal thinking and concepts of the Romans.¹⁵⁵⁷ His reasoning culminates in turning the right of killing the tyrant into the ethical/legal command of killing the tyrant: making common cause with the tyrant is excluded, he must be barred and removed from human community since he is nothing else than a beast having assumed human form.¹⁵⁵⁸ Phalaris's case is Cicero's most favourite example, and by that he demonstrates that assassination is not only ethically fair but it is definitely a moral obligation (*honestum necare*), elimination of the tyrant from the community (*feritas et immanitas beluae segreganda est*). This again is in line with the identification of the *tyrannus* with *belua* also present in stoic philosophy, which is clearly formulated in *De re publica* too¹⁵⁵⁹ in such form that the tyrant is the most harmful species of animals, which is the most hateful subhuman being both to gods and humans, that is, it lives merely *in figura hominis*.¹⁵⁶⁰ Thus, the key attributes of the tyrant can be described by the following concepts: *nulla societas, belua, genus pestiferum, exul, contra leges, contra naturam*; i.e., a being close to a subhuman form of existence, whose assassination cannot constitute moral offence just as killing any harmful beast.¹⁵⁶¹ In *Pro Milone* this train of thoughts and images can be clearly followed. Cicero devotes two paragraphs to Clodius's sexual debaucheries,¹⁵⁶² three to his religious offences,¹⁵⁶³ and

¹⁵⁴³ Cf. Clark–Ruebel 1985. 59; Lintott 1968. 55ff.

¹⁵⁴⁴ Cic. *Verr.* 2, 3, 20.

¹⁵⁴⁵ Cic. *Vat.* 23; *Sest.* 109.

¹⁵⁴⁶ Pohlenz 1964. 139. 185. 313.

¹⁵⁴⁷ Clark–Ruebel 1985. 59.

¹⁵⁴⁸ Cic. *off.* 3, 19–32.

¹⁵⁴⁹ Cic. *off.* 3, 32.

¹⁵⁵⁰ Cic. *off.* 3, 20.

¹⁵⁵¹ Cic. *off.* 3, 23.

¹⁵⁵² Cic. *off.* 3, 14. 19.

¹⁵⁵³ Cic. *off.* 3, 21.

¹⁵⁵⁴ Cic. *off.* 3, 32.

¹⁵⁵⁵ Cic. *off.* 3, 23.

¹⁵⁵⁶ Cic. *off.* 3, 23. 25.

¹⁵⁵⁷ Clark–Ruebel 1985. 61.

¹⁵⁵⁸ Cic. *off.* 3, 32.

¹⁵⁵⁹ Cic. *rep.* 2, 48.

¹⁵⁶⁰ Clark–Ruebel 1985. 61.

¹⁵⁶¹ Clark–Ruebel 1985. 62.

¹⁵⁶² Cic. *Mil.* 55–56.

underlines his crimes committed against natural law and positive law.¹⁵⁶⁴ All this properly substantiates the image depicted of Clodius's beastly nature: the net of laws, which served to catch Clodius, the beast, who wants to seize *regnum*,¹⁵⁶⁵ and of which he slipped out several times, and the representation of the wild beast hiding in darkness creates the image of beastly existence.¹⁵⁶⁶ The wild animal topos occurs several times in Cicero's *corpus* in the characterisation of both Clodius¹⁵⁶⁷ and Antonius.¹⁵⁶⁸ So, Clodius was nothing else than a *belua* upsetting the order of Roman *societas*, terrorising decent citizens, among others Cicero and Pompey,¹⁵⁶⁹ who tried to carry through the seizing of *dominatio* by undermining laws (*legibus Clodianis*) too, as it is an immanent feature of every tyrant,¹⁵⁷⁰ and in 58 Cicero himself almost fell victim to this legislation crushing the law, more precisely *lex Clodia de capite civium*.

When Cicero refers to the circumstance of the situation of lawful defence excluding unlawfulness with regard to Milo's defence,¹⁵⁷¹ on the one hand, he supports his argument by the terminology of the relevant passage of *lex Cornelia de sicariis*,¹⁵⁷² on the other hand, he does not refer to written law but to man's innate right derived from nature in order to prove Milo's act, for if an assassin, aggressor, robber or enemy attacks somebody by arms, then he can use every means to protect his life.¹⁵⁷³ Consequently, in killing the *insidiator*, that is, Clodius, Milo followed the law of nature as the force of positive law does not prevail in such cases, for in war law is silent, and the assassin can be killed rightly.¹⁵⁷⁴ With the aid of the basic principles of stoic philosophy, among others, Cicero extends the scope of lawful defence to a wide domain: educated persons were allowed by common sense, barbaric tribes by necessity, peoples by unwritten law and wild beasts by nature to drive back every attack of violence every time by every means.¹⁵⁷⁵

The orator, however, does not confine himself to prove lawfulness of Milo's act: it is not punishment at all but praise that he would deserve for killing Clodius since he did a great service to State so to say unselfishly because all of his acts were motivated—as Cicero asserts—by his commitment to public good.¹⁵⁷⁶ It is in this spirit that he makes Milo speak: he makes him wish citizens and the State tranquil and undisturbed life even at the expense of his own exile.¹⁵⁷⁷ He raises this train of thoughts and greatness of Milo's act to a divine-cosmic sphere and strikes a tone that he uses later in *Somnium Scipionis* when praising the merits of men who work for the public.¹⁵⁷⁸ By that he opens a new dimension for the interpretation of the "*vim vi repellere*" principle as he distinguishes between two kinds of *vis*: baleful violence used by Clodius and the force that guarantees survival of Rome by which providence, i.e., *providentia* itself intervened as saviour through Milo in the fate of the State.¹⁵⁷⁹ Therefore, in this sense, his defendant is no longer an independent doer but an agent who fulfils the

¹⁵⁶³ Cic. *Mil.* 85–87.

¹⁵⁶⁴ Cic. *Mil.* 44. 73f.

¹⁵⁶⁵ Cic. *Mil.* 43. 76–78.

¹⁵⁶⁶ Cic. *Mil.* 40–41.

¹⁵⁶⁷ Cic. *Sest.* 16; *Mil.* 40. 85; *har. resp.* 5.

¹⁵⁶⁸ Cic. *Phil.* 3, 28; 4, 12; 7, 27.

¹⁵⁶⁹ Cic. *Mil.* 37–39.

¹⁵⁷⁰ Cic. *Mil.* 89. Cf. Cic. *dom.* 43ff.; *Pis.* 58.

¹⁵⁷¹ Cic. *Mil.* 10–11.

¹⁵⁷² Cahen 1923. 122ff.

¹⁵⁷³ Cic. *Mil.* 10. *haec ... non scripta, sed nata lex, quam ... ex natura ipsa adripuimus*

¹⁵⁷⁴ Cic. *Mil.* 11. *silent enim leges inter arma*; cf. Cic. *Sest.* 86; *leg.* 1, 19; 2, 8. 11; *fin.* 4, 25.

¹⁵⁷⁵ Cic. *Mil.* 30.

¹⁵⁷⁶ Cic. *Mil.* 6.

¹⁵⁷⁷ Cic. *Mil.* 93.

¹⁵⁷⁸ Cic. *rep.* 6, 13ff.

¹⁵⁷⁹ Cic. *Mil.* 83–84. Cf. Büchner 1964. 276; Clark–Ruebel 1985. 67.

prediction made by Cicero in 57 that Milo would kill Clodius,¹⁵⁸⁰ that is, a means of *providentia* because divine providence, destiny had let Clodius stay alive so that it could fulfil his punishment at a given place, given time and under given circumstances by Milo's hands.¹⁵⁸¹

All this is unambiguously reverberated in the relevant paragraphs of *De officiis*. *Providentia*, which is the form of appearance of stoic *fatum*,¹⁵⁸² that is, *heimarmenē*, is manifested through the *sapiens*, who is, on the basis of *naturae ratio*, not only entitled but obliged to kill the *tyrannus* that annihilates *coniunctio civium*.¹⁵⁸³ So, in this respect, Milo is nothing else than a manifestation of the archetype of stoic *sapiens*, who, having realised *naturae ratio*, fulfilled the order of *heimarmenē* and freed the State from the contagion poisoning the community. Law and statutes, i.e., state authority was not and would not have been able to bring the peril embodied by Clodius under control,¹⁵⁸⁴ law and order of the State could not put proper tools into Milo's hands to act as avenger.¹⁵⁸⁵

It is known from Asconius that there are significant differences between the speech delivered in defence of Milo and the speech published, and before delivering the speech Cicero had rejected Brutus's proposal to refer to lawfulness of killing the tyrant in Milo's defence.¹⁵⁸⁶ The fact that he did not achieve his goal, that is, he did not attain Milo's acquittal most probably made the orator change his tactics of argument in the re-written *Pro Milone* disseminated also as a political pamphlet.¹⁵⁸⁷ Presumably, before making the speech, it was not for theoretical reasons that Cicero refused to accept Brutus's argument as in 63 he himself had several conspirators executed without judgment and undertook the defence of Rabirius charged with *perduellio*—the difference between these cases and Milo's case was that the latter was not backed by *senatus consultum ultimum*.¹⁵⁸⁸ In 57, Cicero cherished hopes regarding Clodius's assassination by recalling the example of Scipio Nasica who killed Ti. Gracchus as tyrant, but at that time he had not placed himself beyond the limits of positive law yet.¹⁵⁸⁹ In the speech delivered he endeavoured to use the system of argument of positive law and was reluctant to resort to the tools of legitimisation of stoic philosophy—his efforts were not crowned by success. Afterwards, in the published version he used the system of argument of stoic philosophy, which he later on shaped into a structure of profound thoughts with respect to the idea of killing the tyrant in *De re publica*, *De finibus bonorum et malorum*, *Tusculanae disputationes*—in which he defined the time of the dialogue as the period of Milo's lawsuit—and in *De officiis*. He might have meant the oral pleadings, stylised into a paper on the philosophy of the state, which highlights Milo's unselfishness and self-sacrifice and which sets Milo as an example of the stoic sage, to provide *consolatio* for Milo.¹⁵⁹⁰

In what follows it is worth following Aislinn Melchior's train of thoughts that convincingly proves that in the version of *Pro Milone* left to us Cicero consequently enforces the tendency in Milo's representation that he compares his defendant and his acts performed for the sake of *res publica* to his own merits obtained during suppression of Catilina's plot and identifies him with himself. All this might have primarily served a given political goal: as his own fate exemplifies the opportunity of returning/being called back from unlawful exile, he is hoping

¹⁵⁸⁰ Cic. *Att.* 4, 5.

¹⁵⁸¹ Cic. *Mil.* 86.

¹⁵⁸² On the other aspects of *fatum* see Pötscher 1978. 393ff.

¹⁵⁸³ Cic. *off.* 3, 23.

¹⁵⁸⁴ Cic. *Mil.* 77.

¹⁵⁸⁵ Cic. *Mil.* 88.

¹⁵⁸⁶ Asc. 30.

¹⁵⁸⁷ Clark–Ruebel 1985. 69.

¹⁵⁸⁸ Cf. Ungern-Sternberg 1970. 12ff.

¹⁵⁸⁹ Cic. *dom.* 91; *Att.* 4, 3.

¹⁵⁹⁰ Clark–Ruebel 1985. 72.

that Milo will be called back too, and that is what he wanted to advance by publishing the *oratio*.¹⁵⁹¹

The key points of identifying the two persons, Cicero and Milo are as follows: both did noble service to the State as they freed the community of the tyrant, however, the ungrateful crowd forced both of them into exile. These similarities should bring along the following as logical consequences: if Cicero was able to return home from exile triumphantly, then Milo should return home too. The enemies of Cicero and Milo embody an identical principium: in the identification Cicero represents Clodius as second Catilina, however, it is not *Pro Milone* where this image occurs for the first time—this identification emerges several times after his return from exile; for example, in *De domo sua* Clodius appears as *felix Catilina*.¹⁵⁹² In *Pro Milone*, identification of Clodius with Catilina is carried out by applying certain appositions rather than by name. In this respect it is worth comparing the usage of *Pro Milone* with that of the speeches against Catilina. The key characteristics of both Catilina and the conspirators are *furor*¹⁵⁹³ and *audacia*;¹⁵⁹⁴ they appear as *latro*,¹⁵⁹⁵ *insidiator*¹⁵⁹⁶ and *parricida*.¹⁵⁹⁷ Clodius and his adherents are also characterised by *furor*¹⁵⁹⁸ and *audacia*¹⁵⁹⁹ just as by the classifications *latro*,¹⁶⁰⁰ *insidiator*¹⁶⁰¹ and *parricida*.¹⁶⁰² The identification of Catilina with Clodius develops most clearly at the point where the orator speaks about the causes of his own exile,¹⁶⁰³ and in relation to it characterises Clodius as it were as the “legal successor” of Catilina who undermined the State.

Accordingly, Cicero identifies Milo’s role with his own, representing both of them as archetypal manifestations of real patriotism, who qualified the State for this role by undertaking the sublime task of killing the tyrant, that is, Clodius—in the case of Milo—and chasing away Catilina and having the conspirators executed—in the case of Cicero; just as the great and the good of past times, C. Servilius Ahala who killed Spurius Maelius, Publius Scipio Nasica who did away with Tiberius Gracchus, Lucius Opimius who used the opportunities provided by *senatus consultum ultimum* and did away with Caius Gracchus, and Caius Marius who rendered L. Saturninus harmless.¹⁶⁰⁴ In the first speech against Catilina the orator calls the example of exactly the same men to his audience’s mind when he urges that Catilina should be rendered harmless.¹⁶⁰⁵ In view of the fact that at the time of publishing *Pro Milone* the speeches against Catilina constituted *exempla* of Roman rhetorical training to be learned by heart, Cicero could certainly expect the readers of the oral pleadings to recognise the reminiscences implied by the enumeration without doubt and draw necessary conclusions from them with respect to the parallels between the roles of Milo and Cicero.¹⁶⁰⁶

The characters of Spurius Maelius and Tiberius Gracchus return in the second *sermocinatio* of *Pro Milone*, i.e., in the passage where the orator calls Milo as it were as a fictitious

¹⁵⁹¹ Melchior 2008. 285f.

¹⁵⁹² Cic. *dom.* 72.

¹⁵⁹³ Cic. *Cat.* 1, 1. 2. 15. 23. 31; 2, 19. 25; 3, 4; 4, 12.

¹⁵⁹⁴ Cic. *Cat.* 1, 1. 4. 7; 2, 3. 10; 3, 27.

¹⁵⁹⁵ Cic. *Cat.* 1, 23. 31. 33; 2, 7. 16. 22.

¹⁵⁹⁶ Cic. *Cat.* 1, 11. 32; 2, 6. 10.

¹⁵⁹⁷ Cic. *Cat.* 1, 17. 29. 33; 2, 7. 22.

¹⁵⁹⁸ Cic. *Mil.* 3. 27. 32. 34. 35. 77.

¹⁵⁹⁹ Cic. *Mil.* 6. 30. 32.

¹⁶⁰⁰ Cic. *Mil.* 17. 18. 55.

¹⁶⁰¹ Cic. *Mil.* 6. 10. 11. 14. 19. 27. 30. 54.

¹⁶⁰² Cic. *Mil.* 18. 86.

¹⁶⁰³ Cic. *Mil.* 36–37.

¹⁶⁰⁴ Cic. *Mil.* 82.

¹⁶⁰⁵ Cic. *Cat.* 1, 3–4.

¹⁶⁰⁶ Melchior 2008. 290.

speaker,¹⁶⁰⁷ which can be considered as a kind of reminiscence of the given locus of the fourth *Catilinarian oration* again where Cicero expounds that Catilina represents a danger to the State greater than any of the former subversive elements, the Gracchuses and L. Saturninus.¹⁶⁰⁸ Thereby the orator clearly demonstrates that Clodius, rendered harmless by Milo, also carried danger to State greater than former subversive elements, measurable only to the peril caused by Catilina. Just as Cicero mentions himself as *conservator civium*, Milo also becomes *conservator populi*.¹⁶⁰⁹ When he puts the statement into Milo's mouth that he fended off Clodius's dagger that he drove at citizens' throat,¹⁶¹⁰ it is a clear allusion to the passage of the third *Catilinarian oration* where Cicero tells the same about himself regarding Catilina's weapons.¹⁶¹¹ It appears also as a parallel between Cicero and Milo that both of them saved the State and peace of citizens at the expense of risking their own life and safety.¹⁶¹² (At the same time, the orator makes use of the identification properly in other respects too: he opposes Milo's courage to his own fear,¹⁶¹³ and Milo's face and glance turned rigid as marble to his own tears.¹⁶¹⁴)

The identification of Milo with himself has further tempting opportunities in store: in the person of Milo who kills Clodius he can triumph over the dead primordial enemy.¹⁶¹⁵ In spite of the fact that no direct evidence is available to us that by publishing the speech Cicero wanted to attain that Milo should be called home from exile, all these parallels and identifications give us a good chance of presuming it.¹⁶¹⁶

When Cicero forwarded a copy of the published speech—which is one of the masterpieces of both rhetoric and political pamphlets indeed—to Milo too, allegedly he made the only remark that if earlier Cicero had spoken before court like that too, then now he could not eat the superb fish that can be caught solely in Massilia.¹⁶¹⁷ Cicero was not wrong—this statement makes us discern: in a certain sense Milo was a stoic sage indeed.

¹⁶⁰⁷ Cic. *Mil.* 72–73.

¹⁶⁰⁸ Cic. *Cat.* 4, 4.

¹⁶⁰⁹ Cic. *Mil.* 73. 80.

¹⁶¹⁰ Cic. *Mil.* 77.

¹⁶¹¹ Cic. *Cat.* 3, 2.

¹⁶¹² Cic. *Mil.* 30. Cf. Cic. *Cat.* 4, 18.

¹⁶¹³ Cic. *Mil.* 1.

¹⁶¹⁴ Cic. *Mil.* 101. 105.

¹⁶¹⁵ Melchior 2008. 293.

¹⁶¹⁶ Melchior 2008. 295.

¹⁶¹⁷ Dio Cass. 40, 54, 2.

V. Caesar as judge and the injured party (*Pro Marcello*, *Pro Ligario*, *Pro rege Deiotaro*)

V. 1. Marcus Claudius Marcellus's case

The oration in defence of Marcus Claudius Marcellus was delivered in September 46 at a session of the senate, that is, its title (which suggests a statement of the defence before court of justice) does not cover its real genre or the rhetoric situation as it was produced as a political speech. The speech is actually a vote of thanks addressed to Caesar for granting pardon to M. Claudius Marcellus, one of the leading figures of the defeated anti-Caesarian party. Thus, *Pro Marcello*, one of the significant works of the late phase of Cicero's oeuvre, and the first item of the so-called *orationes Caesarianae*, was created seemingly as a statement of the defence, actually as a political oration: it seems to be a statement of the defence, however, it is a highly important element of the *corpus* of Cicero's theory of the state and politics.

First, we intend to give a brief account of the changes in the relation between Cicero and Caesar in the mirror of *Corpus Ciceronianum*, primarily speeches, which is indispensable for the in-depth analysis of the oration. (V. 1. 1.); then, we outline the historical background of the speech, determining its place in Cicero's philosophy of the state. (V. 1. 2.) After that, we analyse the orator's tactic used in *Pro Marcello*, although the orator's tactic will have a different meaning in this context as this speech is not an oral pleading (V. 1. 3.), and we examine the role of the political virtue *sapientia* attributed to the dictator in the oration and with respect to the warnings and wishes formulated in political life by Cicero towards Caesar. (V. 1. 4.) Finally, we compare the image of Caesar outlined in the speech with the reality of politics of the period, the image of Caesar entertained by contemporaries, highlighting the role of *clementia*, which produces effect to a direction contrary to *sapientia*, and pointing out the impacts arising from lack of leader's/ruler's virtues, formulated by Cicero at this point, produced on public life of Rome. (V. 1. 5.)

V. 1. 1. Changes in the relation between Cicero and Caesar in the mirror of *Corpus Ciceronianum*

In the analysis of the background of the speech it is expedient to look into the details of the relation between Cicero and Caesar in the mirror of their political careers running side by side for several decades. Regarding *amicitia* between them, it occurs as a basic question if their friendship can be considered personal or political. Friedrich Lossmann emphasises the personal aspects of this friendship, underlining that within the elite of Rome it was only Caesar who turned honestly to Cicero, who hoped to receive such attention from among others Pompey in vain.¹⁶¹⁸ Cicero stressed the personal motivations of their friendship at several points;¹⁶¹⁹ on the other hand, he did not conceal the dark sides and problematic aspects of *amicitia*.¹⁶²⁰ Contrary to that, Jörg Spielvogel places emphasis on the political aspects of the friendship.¹⁶²¹

¹⁶¹⁸ Lossmann 1962. 149.

¹⁶¹⁹ Cic. *prov. cons.* 40; *Att.* 13, 52, 2.

¹⁶²⁰ Cic. *fam.* 11, 27f.

¹⁶²¹ See also Spielvogel 1993. *passim*

Although Cicero calls his friendship with Caesar *vetus amicitia*,¹⁶²² it would be pure speculation to date this friendship back to their early youth.¹⁶²³ The first documented political conflict between them evolved regarding Catilina's plot when Cicero wanted to threaten Catilina with strict punishment and force him to go into voluntary exile.¹⁶²⁴ D. Iunius Silanus *consul designatus* asked for capital punishment for the Catilinarii, whereas Caesar referred to *lex Sempronia*, which prohibited to execute any citizen of Rome without the approval of the popular assembly.¹⁶²⁵ In this respect Cicero calls Caesar *popularis*, yet he distinguishes him from demagogues.¹⁶²⁶ More specifically he refers to Caesar with some irony as *homo mitissimus atque lenissimus*,¹⁶²⁷ and points out his origin from notable circles¹⁶²⁸ and his popularity.¹⁶²⁹ In this situation it is by no means possible to speak about a personal conflict since Caesar could call also Cicero, who had full knowledge of the situation and exposed the plot, as witness against those who charged him with taking part in the plot.¹⁶³⁰

A problem greater than Catilina's plot was caused to the orator by the fluctuating relationship between Caesar and Pompey and the recurring conflict between them, which Cicero usually tried to settle. He did that by tacit diplomacy and not by rigour and sternness typical of Cato the Younger, who behaved as if he had lived in Plato's ideal state and not in Romulus's pigsty.¹⁶³¹ In 59 Caesar offered Cicero to go with him to Gallia as a legate but Cicero refused the invitation—by which Caesar would have made it possible for Cicero to leave Rome with dignity and avoid Clodius's ambushes, however, the orator was confident in the help of Pompey and the *optimates*,¹⁶³² eventually he was disappointed in his hope.¹⁶³³ Later, in 49, he still made an effort to mediate between Caesar and Pompey as he was sure of the *amicitia* of both of them.¹⁶³⁴

Interrogatio in Vatinius testem, the invective made and published in 56 in relation to the Sestius lawsuit provides interesting data on the relationship between Cicero and Caesar. To achieve his political aims, Caesar several times used forcible prevention of the acts of violence committed or moved by Vatinius, so, for example, of Bibulus's *obnuntiatio*.¹⁶³⁵ Caesar could thank also to Vatinius that *lex Vatinia de Caesaris provincia* was enacted, which guaranteed him several extraordinary titles of power on the territory of Gallia Cisalpina and Illyicum. Likewise, he achieved that *lex de alternis consiliis reiciendis* was adopted, which—contrary to earlier practice in criminal procedure—made it possible to exclude not only certain judges but also *decuriae* or orders in trials by jury.¹⁶³⁶ The latest after he was elected tribune in 59, P. Vatinius acted as Caesar's committed adherent, and in the year of his tribune's office he participated in two rather dark cases. Yet Caesar was aware that Vatinius lacked moral firmness since in Aquileia he presumably declared that during his tribune's office Vatinius did everything for payment.¹⁶³⁷ In those days Vatinius wanted to be elected

¹⁶²² Cic. *fam.* 1, 9, 12.

¹⁶²³ Riemer 2001. 37.

¹⁶²⁴ Cic. *Cat.* 2, 11.

¹⁶²⁵ Cic. *Cat.* 4, 7.

¹⁶²⁶ Cic. *Cat.* 4, 9.

¹⁶²⁷ Cic. *Cat.* 4, 10.

¹⁶²⁸ Cic. *Cat.* 4, 9.

¹⁶²⁹ Cic. *Cat.* 4, 11.

¹⁶³⁰ Suet. *Caes.* 17, 2.

¹⁶³¹ Cic. *Att.* 2, 1, 8.

¹⁶³² Cic. *Att.* 2, 19, 4ff.

¹⁶³³ Cic. *fam.* 14, 3, 1.

¹⁶³⁴ Cic. *Att.* 9, 11, 2.

¹⁶³⁵ Cic. *Vat.* 22f.

¹⁶³⁶ Cic. *Vat.* 27.

¹⁶³⁷ Cic. *Vat.* 38.

augur,¹⁶³⁸ however, he won this office in 48 only. At the beginning of 58, Vatinius stayed in Rome in order to support Clodius's intrigues ultimately aimed at sending Cicero into exile; and later as legate he joined Caesar who acted as governor in Gallia.

Cicero directly points out Vatinius's relationship with Caesar and calls his audience's or readers' attention to the point that whenever Vatinius refers to Caesar's example, his self-justification does not stand because he cannot do what his influential patron can. In the attacks against Vatinius, Cicero consistently tries to separate Vatinius from Caesar and emphasises that in some of his foul deeds he acted contrary to Caesar's command,¹⁶³⁹ and that he opposed Caesar's laws,¹⁶⁴⁰ and in certain cases, e.g., regarding Vettius's denunciation, he simply conceals that Caesar is privy to the case.¹⁶⁴¹ The orator speaks with scathing irony about Vatinius's failed candidacy as aedil,¹⁶⁴² and regarding his opponent's tribune's activity¹⁶⁴³ he makes a concealed attack against Caesar without mentioning him by name.¹⁶⁴⁴ Most probably when creating his invective he was driven not only by his personal disposition and the belief that he could separate Vatinius from Caesar but by his conviction that he could reinforce the situation of the *optimates* and Pompey somewhat alienated from Caesar; at the same time, by concealing delicate points, he made a gesture to Caesar too as it were proving his intention to approach.¹⁶⁴⁵

To decide the proconsulate to be elected for the year 55, in the summer of 56 a trial was held on the two provinces in Gallia and Syria and Macedonia, and it was regarding this matter that *De provinciis consularibus* was delivered.¹⁶⁴⁶ In this case Cicero tried to achieve that Caesar should be able to retain both Gallias and that Syria and Macedonia should be allocated by drawing of lots, which were led by the consuls of 58, A. Gabinius and L. Calpurnius Piso having played a shameful role during Cicero's exile, whom Cicero could thereby remove from the leadership of their provinces. Regarding this issue Cicero openly speaks about his—past¹⁶⁴⁷ and present¹⁶⁴⁸—political aversion to Caesar, however, this hostile relation was motivated by causes of public life rather than personal reasons: as a senator faithful to *res publica* Cicero felt obliged to take firm action against those who in his belief acted against its interests,¹⁶⁴⁹ that is, to offer Caesar the choice that if Caesar takes hostile acts against the state, then he should count Cicero among his resolute enemies too, if however he acts in line with the interests of the state, then he can consider Cicero as one of his friends.¹⁶⁵⁰

By that the five-year period began for Cicero when he acted as a forced ally of the triumvirs until he left for Cilicia.¹⁶⁵¹ In this period he tried to maintain friendly relations both with Caesar and Pompey,¹⁶⁵² and in this he was willing to go as far as—although he did not accept various offices offered by Caesar—looking for and finding excuses for Caesar for the collaboration with Clodius.¹⁶⁵³ Regarding Pompey he did not omit to underline that he had

¹⁶³⁸ Cic. Att. 2, 9, 2; Vat. 19. 20.

¹⁶³⁹ Cic. Vat. 22.

¹⁶⁴⁰ Cic. Vat. 29.

¹⁶⁴¹ Cic. Vat. 24–26.

¹⁶⁴² Cic. Vat. 38f.

¹⁶⁴³ Cic. Vat. 33–39.

¹⁶⁴⁴ Cic. Vat. 35f.

¹⁶⁴⁵ Borzsák 1975. 25; Meier 1980. 185ff.

¹⁶⁴⁶ Giovannini 1983. 107–114.

¹⁶⁴⁷ Cic. prov. cons. 25. *ego me a C. Caesare in re publica dissensisse fateor*

¹⁶⁴⁸ Cic. prov. cons. 19. *inimicus ... homini*

¹⁶⁴⁹ Cic. prov. cons. 19. *Ergo ego senator—inimicus, si ita vultis, homini—amicus esse, sicut semper fui, rei publicae debeo.*

¹⁶⁵⁰ Riemer 2001. 49.

¹⁶⁵¹ Fuhrmann 1991. 148; Habicht 1990. 67.

¹⁶⁵² Cic. prov. cons. 41.

¹⁶⁵³ Cic. prov. cons. 42f.

highly advanced and supported his return from the exile.¹⁶⁵⁴ At the end of the oration he sums up his relation to Caesar: if there were any hostility between them, it would be high time to do away with it keeping the interest of public in view, or at least postpone it to other times, however, there is no such conflict, the edge of presumed injuries have been removed by *beneficia*.¹⁶⁵⁵ This way Cicero clearly declares that he fully subordinates his private sympathy and antipathy to public interest.¹⁶⁵⁶

In Pisonem was delivered in 55 in the senate¹⁶⁵⁷ as Piso declared that the orator had long made Caesar and Pompey his enemies, who actively helped Clodius to force him into exile and cast it in Cicero's teeth that he addressed his attacks solely to those whom he believed to be in a position weaker than his, and spared, what is more, flattered those whom he should actually feel anger against.¹⁶⁵⁸ At the same time, he formulates cautious criticism against Pompey since he let himself be influenced by Cicero's enemies and did not give him sufficient support against Clodius's ambushes,¹⁶⁵⁹ however, Caesar, in spite of the political tension between them, offered him his help and the opportunity of collaboration,¹⁶⁶⁰ which Cicero did not use, so he Caesar acted in line with his own interests definitely contrary to Cicero's interests.¹⁶⁶¹ All this the orator is willing to forget and strive to act in close co-operation with them for the sake of the public.¹⁶⁶²

The letters written to Quintus also reveal friendly relation with Caesar,¹⁶⁶³ which might arise from the fact that among the aristocrats of Rome it was almost only Caesar, being also a man of intellect, who fully acknowledged Cicero's talent, not showing either open or implied haughtiness to the *homo novus*, and driven by practical consideration motivated by his own and public interests.¹⁶⁶⁴ On the other hand, he resolutely refuses the charge of opportunism, that is, the reproaches claiming that he had given up his former political principles, he explains the approach to Caesar by commitment to sober politics adjusted to circumstances, desire to keep the peace of the state and wish to avoid civil war and violence.¹⁶⁶⁵ However, the letters from this period, written to Atticus clearly reveal bitterness and disappointment: the *optimates* had left him in the lurch,¹⁶⁶⁶ he acted like a fool,¹⁶⁶⁷ he is looked down on and despised,¹⁶⁶⁸ it is no longer possible to speak about state regarding Rome,¹⁶⁶⁹ they are facing the age of dictatorship,¹⁶⁷⁰ in this shipwreck Caesar can be the only firm support.¹⁶⁷¹ The latter statement could be considered an ironic remark, yet, the letters dated in 54 make it clear: Cicero wanted to rely on Caesar as a secure point indeed,¹⁶⁷² or at least he considered him an opportunity for the implementation of the least wrong.

¹⁶⁵⁴ Cic. *prov. cons.* 43.

¹⁶⁵⁵ Cic. *prov. cons.* 47.

¹⁶⁵⁶ Cf. Epstein 1987. 15.

¹⁶⁵⁷ Cf. Nisbet 1961. 139.

¹⁶⁵⁸ Cic. *Pis.* 72–82.

¹⁶⁵⁹ Cic. *Pis.* 77.

¹⁶⁶⁰ Cic. *Pis.* 79.

¹⁶⁶¹ Riemer 2001. 51f.

¹⁶⁶² Cic. *Pis.* 80.

¹⁶⁶³ Cic. *Q. fr.* 2, 13, 1.

¹⁶⁶⁴ Riemer 2001. 54.

¹⁶⁶⁵ Cic. *Q. fr.* 1, 9, 17f. Cf. Fuhrmann 1991. 155f.

¹⁶⁶⁶ Cic. *Att.* 4, 5, 1.

¹⁶⁶⁷ Cic. *Att.* 4, 5, 3.

¹⁶⁶⁸ Cic. *Att.* 4, 6, 2.

¹⁶⁶⁹ Cic. *Att.* 4, 18, 2.

¹⁶⁷⁰ Cic. *Att.* 4, 18, 3.

¹⁶⁷¹ Cic. *Att.* 4, 19, 2.

¹⁶⁷² Lossmann 1962. 129.

In the situation threatening with civil war in 50 Cicero unambiguously feels that both Pompey and Caesar want to see him on his side.¹⁶⁷³ Although he makes Caesar liable for the outbreak of the civil war in the first place, he does not consider Pompey innocent in the evolution of the situation either since both of them aimed for exclusive *dominatio*, and placed their own interest over the interest of the state.¹⁶⁷⁴ He compares Caesar crossing the Rubicon to Hannibal,¹⁶⁷⁵ and excludes the opportunity of making concessions to him.¹⁶⁷⁶ At the outbreak of the armed conflict he felt deeply desperate over Pompey's willingness to wage a bloody war too,¹⁶⁷⁷ and points out: as long as two men are alive, there is no hope for restoring *res publica*¹⁶⁷⁸ since no matter which one of them wins, the result would be tyranny, so the only aim could be to preserve or create peace,¹⁶⁷⁹ and for him the only path to follow is not to take sides with any of them and try to stay far from their competition.¹⁶⁸⁰ Although Caesar tries to win him over,¹⁶⁸¹ he does not undertake the condition set by Cicero, to restore peace and enter into compromise with Pompey.¹⁶⁸² He deems Pompey's reasons lawful, his war cruel, both his victory and defeat dangerous;¹⁶⁸³ in case Pompey wins, he is afraid of *proscriptiones*, however, he presumes that Caesar would spare his former enemies.¹⁶⁸⁴ He feels he knows whom he should keep away from but does not know whom he should approach.¹⁶⁸⁵ In spite of Caesar's express request to refrain from taking a position,¹⁶⁸⁶ in June 49 Cicero joins the position of the senate, i.e., Pompey, which he justified by the pressure produced by the *optimates* on him,¹⁶⁸⁷ and his old commitment to Pompey,¹⁶⁸⁸ so his decision can be attributed to personal rather than political motivation;¹⁶⁸⁹ yet, having left Italy he does not stay longer at Pompey's camp, after the battle at Pharsalus in the summer of 48 he goes to Brundisium and waits to see how events take place until he is granted mercy by Caesar in September 47 when he can at last return to Rome.¹⁶⁹⁰

V. 1. 2. The historical background of *Pro Marcello* and its place in Cicero's philosophy of the state

Pro Marcello—which seems to be a statement of the defence but actually is an oration addressed by Cicero to the dictator expressing gratefulness over the pardon granted by Caesar to Marcus Claudius Marcellus—was delivered by Cicero most probably in September 46, i.e. before the *Ludi Caesaris*, in the senate, breaking his silence after a long while.¹⁶⁹¹ After the series of festivities arranged in honour of Caesar the relation between them significantly

¹⁶⁷³ Cic. *Att.* 7, 1, 3.

¹⁶⁷⁴ Cic. *Att.* 8, 11, 2; 10, 4, 4.

¹⁶⁷⁵ Cic. *Att.* 7, 11, 1.

¹⁶⁷⁶ Cic. *Att.* 7, 11, 4.

¹⁶⁷⁷ Cic. *Att.* 9, 6, 6.

¹⁶⁷⁸ Cic. *Att.* 9, 7, 1.

¹⁶⁷⁹ Cic. *Att.* 7, 5, 4.

¹⁶⁸⁰ Riemer 2001. 72.

¹⁶⁸¹ Cic. *Att.* 9, 6a; 9, 7a–c; 9, 13a; 9, 16.

¹⁶⁸² Cic. *Att.* 9, 18.

¹⁶⁸³ Cic. *Att.* 10, 4, 3.

¹⁶⁸⁴ Cic. *fam.* 7, 3, 2; *Att.* 9, 10, 6.

¹⁶⁸⁵ Cic. *Att.* 8, 7, 2.

¹⁶⁸⁶ Cic. *Att.* 10, 8b.

¹⁶⁸⁷ Cic. *Att.* 8, 16, 1.

¹⁶⁸⁸ Cic. *Att.* 9, 19, 2.

¹⁶⁸⁹ Bruhns 1978. 104f.

¹⁶⁹⁰ Riemer 2001. 75.

¹⁶⁹¹ McDermott 1970. 317.

deteriorated, so it is hard to imagine that the orator praised the dictator in *Pro Marcello*.¹⁶⁹² After the victory at Thapsus on 6 April 46 the senate showered Caesar, who came home on 25 July from his campaign in Africa, with several honours—a fourteen day festivity, seventy-two *lictors* ordered to the triumphs, censor's and *praefectus morum*'s office for three years and erecting a statue representing half-gods attributes, including the dictator's power voted for ten years.¹⁶⁹³ The weeks following homecoming were spent with preparing the series of festivities, and by Caesar working out an overall reform package, among others, on settling the veterans.¹⁶⁹⁴ The dictator resolutely stood up for his peace politics and made efforts to win over his former enemies, including Cicero, as after Pharsalus he granted most of his enemies pardon,¹⁶⁹⁵ and assigned prioritised tasks to some of them—Ser. Sulpicius Rufus, M. Iunius Brutus,¹⁶⁹⁶ Dolabella and C. Cassius Longinus.¹⁶⁹⁷ Based thereon in his letters Cicero could report good news to his friends still in exile, so for example, to Ligarius,¹⁶⁹⁸ Trebianus¹⁶⁹⁹ and Nigidius Figulus.¹⁷⁰⁰

At this time Cicero could feel safe in Rome as he received proper security from Caesar and owing to the good offices of his friends A. Hirtius and L. Cornelius Balbus who were given positions in the new administration and C. Cassius Longinus, M. Iunius Brutus and P. Cornelius Dolabella who received pardon.¹⁷⁰¹ At the request of and addressed to Brutus he wrote the work on the history of rhetoric named after the addressee (entitled *Brutus*) and he began *Cato maior de senectute*.¹⁷⁰² Cassius, Dolabella and Hirtius stayed long at their master's villa in Tusculum, who sent them to Caesar.¹⁷⁰³ In his letters addressed to his friends he notes that his influence in Rome has significantly decreased,¹⁷⁰⁴ he follows Epicure not liked by him,¹⁷⁰⁵ he waives to produce effect on Caesar's administration,¹⁷⁰⁶ and he desires to live solely for his theoretical work.¹⁷⁰⁷ These works, as a matter of fact, were aimed at praising and restoring the state of form of the republic.¹⁷⁰⁸

Although Caesar generously approached Cicero,¹⁷⁰⁹ the orator could not be certain if the dictator indeed wanted to restore the constitutional order of the republic.¹⁷¹⁰ This is supported by his rather pessimistic letter written to Paetus shortly before calling Marcellus home, in which he expounds that even if he wants to restore *res publica* Caesar has committed himself to too many people so that he could be able to implement his possible plans, and that whereas the community is at the mercy of Caesar, Caesar is at the mercy of circumstances.¹⁷¹¹ In his letters he mourns over the defeat of *res publica*¹⁷¹² as he subordinated all his life and activity

¹⁶⁹² Schmidt 1893. 252ff.; Rochlitz 1993. 74.

¹⁶⁹³ Dio Cass. 43, 14. 3–7; 43, 19, 3. Cf. Meyer 1922. 384; Gelzer 1960. 257.

¹⁶⁹⁴ Dio Cass. 43, 25f.; Suet. *Caes.* 40–44. Cf. Gelzer 1960. 261ff.; Meyer 1922. 410ff.

¹⁶⁹⁵ Dio Cass. 41, 62f.; 42, 13. 32f.

¹⁶⁹⁶ Plut. *Brut.* 5ff.

¹⁶⁹⁷ Rochlitz 1993. 74⁵.

¹⁶⁹⁸ Cic. *fam.* 6, 13, 2.

¹⁶⁹⁹ Cic. *fam.* 6, 10.

¹⁷⁰⁰ Cic. *fam.* 4, 13.

¹⁷⁰¹ Dyer 1990. 17–30.

¹⁷⁰² Cic. *Att.* 12, 5, 2.

¹⁷⁰³ Cic. *fam.* 9, 18, 1.

¹⁷⁰⁴ Cic. *fam.* 6, 12, 1.

¹⁷⁰⁵ Cic. *fam.* 9, 20, 1.

¹⁷⁰⁶ Cic. *fam.* 6, 12, 2.

¹⁷⁰⁷ Cic. *fam.* 7, 28, 2.

¹⁷⁰⁸ Cic. *Brut.* 21. 22. 328ff. Cf. Dyer 1990. 17.

¹⁷⁰⁹ Cic. *fam.* 4, 13, 2.

¹⁷¹⁰ Cic. *fam.* 12, 18, 2; 4, 4, 2.

¹⁷¹¹ Cic. *fam.* 9, 17, 2f.

¹⁷¹² Cic. *fam.* 4, 3, 2. 4.

to realising this idea; he looks at autocracy—although in *De re publica* he himself expected a dictator to save *res publica*¹⁷¹³—and lack of security in law with anxiety;¹⁷¹⁴ he is aware that he and his friends are partly also responsible for the situation evolved;¹⁷¹⁵ and he cannot console himself with the thought that general conditions would have been different if Pompey had won.¹⁷¹⁶ On the other hand, towards his adherents and his own friends living in exile Caesar tries to keep the appearance of optimism,¹⁷¹⁷ and voices his hope in the revival of *res publica* and *aequitas* gaining ground day after day.¹⁷¹⁸ The conditions of public life, as it is described in Cicero's letters too, are illuminated solely by Caesar's personality and the trust in it.¹⁷¹⁹ The one-time *pater patriae* is aware of the fact that his political influence has become next to none and therefore he is present at the sessions of the senate—not to trigger the dictator's anger—but remains silent.¹⁷²⁰

It was in this political environment that amnesty was given to the former consul, M. Claudius Marcellus, the only one of Caesar's enemies having stayed alive,¹⁷²¹ whom Caesar's most resolute opponent, Brutus himself acknowledged as early as in his work entitled *De virtute* published in the beginning of 46.¹⁷²² Being one of the consuls of the year 51, Marcus Claudius Marcellus as the colleague of the famous jurist, Servius Sulpicius Rufus made efforts in vain to order Caesar back from his governor's office in Gallia, tried to prevent Caesar from applying for consulate while being absent and made several attempts at formal accusation against Caesar.¹⁷²³ At the same time, in 49, quite wisely, referring to lack of proper preparedness he took a position against starting civil war.¹⁷²⁴ Having retired to Mytilene on Lesbos after Caesar's victory at Pharsalus, he devoted his life to intellectual activity,¹⁷²⁵ yet, he was not willing to ask for mercy from the dictator.¹⁷²⁶ In his letters written in August 46 Cicero tried to convince him stating that by refusing Caesar's pardon he endangers both his property and life.¹⁷²⁷

To Cicero, the prime fighter for the rights of the senate, Marcellus was equal to the values and traditions of the old *res publica*,¹⁷²⁸ and if he accepts the pardon granted by Caesar, this might bring along two things for Cicero. On the one hand, this fact might legitimise reconciliation between Caesar and Cicero after the battle at Pharsalus, which was considered treason by many adherents of Pompey,¹⁷²⁹ on the other hand, the more influential adherents of the order of the republic returned to Rome, the greater chances there were for restoring the former order of the state.¹⁷³⁰ Before Marcellus himself had taken any steps, his case was discussed at a session of the senate where—on the initiative of Cicero's father-in-law, L. Piso—the body took the position almost unanimously to grant pardon.¹⁷³¹ To the question whether the

¹⁷¹³ Cic. *rep.* 6, 12.

¹⁷¹⁴ Cic. *fam.* 9, 16, 3.

¹⁷¹⁵ Cic. *fam.* 7, 28, 3; 9, 6, 2.

¹⁷¹⁶ Cic. *fam.* 4, 9, 2.

¹⁷¹⁷ Strasburger 1968. 58.

¹⁷¹⁸ Cic. *fam.* 6, 10b, 2; 12, 17, 1; 13, 68, 2.

¹⁷¹⁹ Cic. *fam.* 7, 28, 3; 9, 6, 2; 9, 13, 3.

¹⁷²⁰ Cic. *fam.* 4, 4, 3–4; 4, 9, 2; *Marc.* 1.

¹⁷²¹ Cic. *Phil.* 13, 29; Gelzer 1983. 278ff.

¹⁷²² Meyer 1922. 383.

¹⁷²³ Cic. *Att.* 5, 2, 3; *fam.* 12, 15, 2; Sall. *hist.* 1, 9; Dio Cass. 40, 59; Plut. *Caes.* 29; Suet. *Caes.* 28.

¹⁷²⁴ *Caes. civ.* 1, 2; Cic. *fam.* 4, 7, 2.

¹⁷²⁵ Cic. *Brut.* 249f.

¹⁷²⁶ Cic. *fam.* 4, 11, 2.

¹⁷²⁷ Cic. *fam.* 4, 7. 8. 9.

¹⁷²⁸ Cic. *Marc.* 3; Rochlitz 1993. 77.

¹⁷²⁹ Cic. *Marc.* 13; *fam.* 7, 3, 6; Seel 1967. 340.

¹⁷³⁰ Cic. *fam.* 4, 8, 2; 4, 9, 1. 3; 6, 6, 11; Büchner 1964. 353; Gelzer 1983. 278; Seel 1967. 338.

¹⁷³¹ Cic. *Marc.* 3. 13. 33; *fam.* 4, 4, 3.

initiation arose from spontaneous motivation or it should be considered the play of Caesar's propaganda—as it is presumed by Kazimierz Kumaniecki,¹⁷³² Pierre Grimal¹⁷³³ and Arthur Kahn¹⁷³⁴—it is hard to give a clear answer.¹⁷³⁵ At this session, which gave Cicero hope that the senate could regain its old authority, and provided slight confidence that Caesar might be also willing to restore *res publica*¹⁷³⁶—which confidence is reflected in his letter to Sulpicius Rufus too¹⁷³⁷—he broke his voluntary silence by expressing his thanks to Caesar.¹⁷³⁸ To his friend he emphasised that the revival of *res publica* called for his *studia* and Caesar's *voluntas*.¹⁷³⁹ In his letter to Paetus he justified both his silence and expression of opinion by stating that it was a wise man's trait to do nothing hurried by which he could incur the hatred of the possessors of *potentia*.¹⁷⁴⁰

At the same time, Cicero was tormented by inner doubts whether by waiving his silence he had lost *honestum otium* that enabled him to refrain from taking a position regarding public affairs¹⁷⁴¹ and devote his life fully to his philosophical works, reflecting on conditions of current political affairs and formulating criticism against Caesar, which in 46 produced *Brutus* and *Paradoxa Stoicorum* as well as some parts of *De legibus*, *Cato maior de senectute* and *Orator*. Marcellus could not enjoy the benefits of Caesar's pardon: on the way home on 27 May 45 his friend, P. Magius Cilo murdered him, and Cicero shared the view that Caesar was not responsible for this murder.¹⁷⁴² *Pro Marcello* was published in May 45, nine months after it was delivered as Caesar could read it in Hispania.¹⁷⁴³ Based on this, we can presume that Cicero re-edited the delivered oration at some points and voiced his feelings entertained after September 46.¹⁷⁴⁴

V. 1. 3. Rhetorical tactic in *Pro Marcello*

It is worth paying attention to Sabine Rochlitz's train of thought asserting that *Pro Marcello* is a kind of ruler's mirror (*Fürstenspiegel*), that is, it presents the requirements an ideal ruler is to meet under the given circumstances rather than the actual traits of Caesar as a historical person. Accordingly, the speech is not only gratitude for the pardon granted to Marcellus but also a policy-making speech that makes the conditions of the period the subject of constructive and educative criticism.¹⁷⁴⁵ Ruler's mirror as a genre is to meet the criteria of description of the ideal ruler, instructive aim and, in case of a specific addressee, form of mediation, however, it can take the form of a letter, speech, philosophical treatise, historical novel, funeral address or fictitious dialogue.¹⁷⁴⁶ If the ruler is addressed directly by the orator—as for example in *Pro Marcello*—then the oration providing advice (*suasio, genus deliberativum*) serves the aims of the ruler's mirror the best, yet, quite often the orator

¹⁷³² Kumaniecki 1967. 440f.

¹⁷³³ Grimal 1988. 425.

¹⁷³⁴ Kahn 1986. 408f.

¹⁷³⁵ Rochlitz 1993. 78.

¹⁷³⁶ Cic. *Marc.* 2; Meyer 1922. 406f.; Gelzer 1983. 281; Gelzer 1960. 293.

¹⁷³⁷ Cic. *fam.* 4, 9, 2.

¹⁷³⁸ Cic. *fam.* 4, 4, 3f.

¹⁷³⁹ Dyer 1990. 19.

¹⁷⁴⁰ Cic. *fam.* 9, 16, 5.

¹⁷⁴¹ Cic. *fam.* 4, 9, 2.

¹⁷⁴² Cic. *Att.* 13, 10, 3; *fam.* 4, 12.

¹⁷⁴³ Cic. *Att.* 13, 12, 2.

¹⁷⁴⁴ Dyer 1990. 19.

¹⁷⁴⁵ Rochlitz 1993. 79ff.; Dyer 1990. 20.

¹⁷⁴⁶ See also Hadot 1972. 555ff.

chooses the form of epideictic speech of praise sometimes containing elements of *panegyrics* (*genus demonstrativum*) so that excessively pedantic information should not infringe the ruler.¹⁷⁴⁷ In certain cases the orator uses the tool of mere description, which, however, contains a kind of encouragement in its spirit; yet, sometimes praise and warning are separated by the mood of the verb only.¹⁷⁴⁸

As it has been demonstrated by Albrecht in details, *Pro Marcello* unites the elements of both *genus deliberativum* and *genus demonstrativum*.¹⁷⁴⁹ The aim of *genus deliberativum* is harmonisation of morally right action that belongs to the scope of notion of *fas, iustum, pium, aequum* and *mansuetum*¹⁷⁵⁰ and practically useful action that belongs to the category of *facile, magnum, iucundum* and *sine periculo*,¹⁷⁵¹ that is, productive harmonisation of *honestas* and *utilitas* for the future¹⁷⁵² and for the sake of the community.¹⁷⁵³ The efficiency of persuasion can be increased by holding out the prospect of some positive consequence and threatening with the occurrence of some negative result—Quintilian claims that the latter represents a stronger factor of motivation.¹⁷⁵⁴ The pattern used in *Pro Marcello* is set accordingly. Caesar's results attained so far are more than enough if evaluated by the measure of average person but far from being enough when measured by the dictator's personality,¹⁷⁵⁵ however, his contradictory conduct might endanger the judgement of both his contemporaries and later ages and might cast shadow on his deeds performed so far,¹⁷⁵⁶ thereby it addresses Caesar sensitive of his *dignitas*—it was due to its injury that he triggered civil war—at his weak point.¹⁷⁵⁷ Based on that *genus deliberativum* not only tries to affect the audience by objective arguments but also attempts to grasp their emotions, hopes (*spes*) and fears (*metus*).¹⁷⁵⁸ Furthermore, *exemplum* is an important tool, which gives greater weight to arguments made,¹⁷⁵⁹ just as the orator's, i.e., the advisor's personality, conduct of life, moral example.¹⁷⁶⁰ In Roman elocution the scope of epideictic oration,¹⁷⁶¹ which contained praising oration (*laudatio*) and blasphemous oration (*vituperatio*), was restricted to testimonies before court and funeral addresses.¹⁷⁶² The key tools of epideictic oration are amplification (*amplificatio*) and comparison (*comparatio*).¹⁷⁶³ Accordingly, in *Pro Marcello* regarding the given action Cicero underlines its individual,¹⁷⁶⁴ first accomplished¹⁷⁶⁵ implementation under severe circumstances,¹⁷⁶⁶ more perfectly than by others,¹⁷⁶⁷ surpassing even itself,¹⁷⁶⁸ and its

¹⁷⁴⁷ Cf. Cic. *part. or.* 90–92; *Q. fr.* 1, 1, 8; Quint. *inst.* 3, 8, 39; Sen. *clem.* 1, 1; Plin. *epist.* 3, 18, 3.

¹⁷⁴⁸ Cic. *De orat.* 2, 333.

¹⁷⁴⁹ See also Albrecht 1988. 7ff.

¹⁷⁵⁰ Quint. *inst.* 3, 8, 22.

¹⁷⁵¹ Cic. *De orat.* 2, 334ff.

¹⁷⁵² Cic. *inv.* 2, 156.

¹⁷⁵³ Cic. *inv.* 1, 7; *part. or.* 95; *De orat.* 2, 333–340; Quint. *inst.* 3, 8, 14.

¹⁷⁵⁴ Quint. *inst.* 3, 8, 40.

¹⁷⁵⁵ Cic. *Marc.* 26f.

¹⁷⁵⁶ Cic. *Marc.* 26. 30.

¹⁷⁵⁷ Rochlitz 1993. 81¹⁹.

¹⁷⁵⁸ Cic. *part. or.* 9, 6; *De orat.* 2, 337; Quint. *inst.* 3, 8, 12; Isid. *etym.* 2, 4, 4.

¹⁷⁵⁹ Cic. *part. or.* 90. 96; *De orat.* 2, 335; Auct. ad Her. 3, 9; Quint. *inst.* 3, 8, 66.

¹⁷⁶⁰ Cic. *De orat.* 2, 333; Quint. *inst.* 3, 8, 48.

¹⁷⁶¹ Auct. ad Her. 3, 10–15; Cic. *inv.* 2, 177f.; *De orat.* 2, 44ff.; 2, 341–349; *part. or.* 70–82; *Or.* 37–42; 63–65; 91–96; Quint. *inst.* 3, 7.

¹⁷⁶² Cic. *De orat.* 2, 341; Quint. *inst.* 3, 7, 6–22. Cf. Rochlitz 1993. 82.

¹⁷⁶³ Auct. ad Her. 3, 15; Cic. *De orat.* 2, 347ff.

¹⁷⁶⁴ Cic. *Marc.* 7. 11f.

¹⁷⁶⁵ Cic. *Marc.* 12.

¹⁷⁶⁶ Cic. *Marc.* 9.

¹⁷⁶⁷ Cic. *Marc.* 5.

¹⁷⁶⁸ Cic. *Marc.* 4–6. 8f.; 11f.; 19.

consequences of great significance,¹⁷⁶⁹ well-thought-outness¹⁷⁷⁰ and the possible opposite thereof.¹⁷⁷¹ In contrast with *genus deliberativum*, *laudatio* is aimed at the past,¹⁷⁷² and virtues can be listed in a chronological or thematic order,¹⁷⁷³ or according to external circumstances and internal capacities.¹⁷⁷⁴

With full knowledge of Greek ruler's mirrors, apart from *Pro Marcello*, Cicero provided some kind of prince's or ruler's mirror in several of his works, among others in one of his letters written to Quintus, in *De imperio Cnaei Pompei* and *De re publica*. In the letter to Quintus, at the time of his proconsulate in Asia he compiled a governor's mirror enumerating traditional ruler's virtues, which are directly connected with Plato's ideal of exercising power and wisdom,¹⁷⁷⁵ and recommends Xenophon's work entitled *Kyrou paideia* to his brother, which Scipio Aemilianus Africanus always brought along too.¹⁷⁷⁶ In *De imperio Cnaei Pompeii* he presents a stylised figure of Pompey as an ideal commander,¹⁷⁷⁷ and in his *laudatio* in chronological order of virtues he discusses the commander's childhood, youth and manhood,¹⁷⁷⁸ and depicts specific commander's merits (*scientia rei militaris*,¹⁷⁷⁹ *virtutes imperatoriae*,¹⁷⁸⁰ *auctoritas*,¹⁷⁸¹ *felicitas*¹⁷⁸²).¹⁷⁸³ In *De re publica*, in addition to the ideal form of state he searches for the type of ideal statesman. Accordingly, in addition to moral perfection, the Greek *basileus* and the Roman *princeps* shall have full-scope political and military information, yet, a material difference between them is that the unlimited power of Greek rulers is restricted by *caritas*, that is, *philanthrōpia*, Roman statesmen are meant to be lead by *consilium*.¹⁷⁸⁴ It should not be ignored that Cicero modelled the ideal statesman in *De re publica* after himself, his career and values to a great extent.¹⁷⁸⁵

In this respect special attention is to be paid to Cicero's letters written to Caesar between 49 and 45, in which he made an attempt at influencing the winning commander in some form by his advice.¹⁷⁸⁶ In his letter written in March 49 Cicero praised Caesar's unique *sapientia*, which—in the letter writer's real view or the view he meant to mediate—was aimed at *otium*, *pax* and *concordia* prevailing in the state.¹⁷⁸⁷ As most of his contemporaries classified the above unprincipled flattery, he was forced to give explanation asserting that he did not want to flatter Caesar, instead he intended to give advice and warning to the winning commander.¹⁷⁸⁸ In the spring of 45 Cicero made an awkward attempt—following the example of Aristotle, Theopompos and Antisthenes¹⁷⁸⁹—at reminding Caesar now having achieved autocracy in a lengthy letter of his obligations, however, he was compelled to arrive at the

¹⁷⁶⁹ Cic. *Marc.* 13.

¹⁷⁷⁰ Cic. *Marc.* 7.

¹⁷⁷¹ Cic. *Marc.* 16–18.

¹⁷⁷² Cic. *part. or.* 71; *De orat.* 2, 46, 345.

¹⁷⁷³ Cic. *part. or.* 75; *Quint. inst.* 3, 7, 15.

¹⁷⁷⁴ Cic. *De orat.* 2, 342; *inv.* 2, 177; *part. or.* 74; *Auct. ad Her.* 3, 10ff.

¹⁷⁷⁵ Cic. *Q. fr.* 1, 1, 29.

¹⁷⁷⁶ Cic. *Q. fr.* 1, 1, 23.

¹⁷⁷⁷ Cic. *imp. Cn. Pomp.* 27–48.

¹⁷⁷⁸ Cic. *imp. Cn. Pomp.* 28.

¹⁷⁷⁹ Cic. *imp. Cn. Pomp.* 28.

¹⁷⁸⁰ Cic. *imp. Cn. Pomp.* 29–42.

¹⁷⁸¹ Cic. *imp. Cn. Pomp.* 43–46.

¹⁷⁸² Cic. *imp. Cn. Pomp.* 47f.

¹⁷⁸³ Cf Classen 1988. 289ff.

¹⁷⁸⁴ Cic. *rep.* 1, 55.

¹⁷⁸⁵ Cf. Cic. *rep.* 1, 1–13; *Att.* 7, 3, 2; Gelzer 1983. 231ff.

¹⁷⁸⁶ Rochlitz 1993. 90.

¹⁷⁸⁷ Cic. *Att.* 9, 11a, 1.

¹⁷⁸⁸ Cic. *Att.* 8, 9, 1.

¹⁷⁸⁹ Cic. *Att.* 12, 38a, 2; 12, 40, 2; 13, 28, 2; 13, 31, 2.

conviction that he could not voice his real message due to political conditions.¹⁷⁹⁰ When at last he managed to write his letter, in which he was compelled to mask his critical opinion as flattery,¹⁷⁹¹ he was relieved to learn that his writing had not been allowed by Caesar's confidants, Oppius and Balbus as "censors" to be delivered to the dictator.¹⁷⁹²

Research has demonstrated close connection between *Pro Marcello* and Greek ruler's mirrors as prefigurations¹⁷⁹³—especially because the date of creating *Pro Marcello*, more specifically Caesar's ascendance to dictator's office especially favoured the creation of a ruler's mirror kind of work—and turned the attention to the stoic and peripatetic topoi of the *oratio*.¹⁷⁹⁴ *Pro Marcello* can be divided into two main parts, both of them can be linked to one of the two ruler's mirror types, and the third short part, *peroratio* is a vote of thanks addressed to Caesar.¹⁷⁹⁵

The first part contains primarily epideictic elements.¹⁷⁹⁶ *Prooemium* begins with the topos of the subject of exceptionally great significance,¹⁷⁹⁷ in particular outstanding actions in the past portraying Caesar's character, which right at the beginning of the oration drive the orator to enumerate ruler's virtues—*mansuetudo*, *clementia*, *in summa potestate modus*, *sapientia*¹⁷⁹⁸ by which he intends to describe not only the present situation but by outlining the ideal state he wants to urge the addressee of the oration to implement such state.¹⁷⁹⁹ After announcing his objective *narratio*, Cicero continues his speech by the pathetic praising of Caesar's actions, which surpass any human measure that has ever been achieved,¹⁸⁰⁰ on the other hand, he underlines that forgiving moderation engaged towards fellow beings based on inner greatness is the highest value,¹⁸⁰¹ which is able to vest humans with some kind of divine virtues.¹⁸⁰² Cicero tends to raise political/statesman's activity to a divine sphere in other writings too,¹⁸⁰³ and it cannot be ruled out that it was specifically granting and acknowledgement of this divine nature that represented an important stage—in addition to the relevant passage in *Pro Ligario*¹⁸⁰⁴—towards Caesar's cult in Rome.¹⁸⁰⁵

This train of thoughts includes the topos of confronting *fortuna* and *virtus*, that is, the deeds that the commander performs with other people's help and those that he carries out relying solely on himself, and beyond any doubt the latter are of a higher order.¹⁸⁰⁶ Yet, emphasising *fortuna* is a kind of masked criticism since it shades the commander's image of Caesar's *commentarii*.¹⁸⁰⁷ If the person who exercises power is able to overcome his own passions too, then he can be sure of *benevolentia* shown by the community towards him,¹⁸⁰⁸ which a good

¹⁷⁹⁰ Cic. *Att.* 13, 28, 2.

¹⁷⁹¹ Cic. *Att.* 13, 31, 3; 13, 7, 1. Cf. Cic. *fin.* 3, 75; Strasburger 1990. 56.

¹⁷⁹² Cic. *Att.* 13, 27, 1; 12, 51, 2; Quint. *inst.* 3, 8, 41. Cf. Rochlitz 1993. 91.

¹⁷⁹³ Cf. Ziegler 1949. 579.

¹⁷⁹⁴ Büchner 1964. 359; Michel 1960. 375; Lepore 1954. 360.

¹⁷⁹⁵ Cic. *Marc.* 33f.

¹⁷⁹⁶ Cic. *Marc.* 1–19.

¹⁷⁹⁷ Cf. Cic. *part. or.* 73; *De orat.* 2, 347.

¹⁷⁹⁸ Cic. *Marc.* 1.

¹⁷⁹⁹ Rochlitz 1993. 95.

¹⁸⁰⁰ Cic. *Marc.* 5.

¹⁸⁰¹ Cic. *Marc.* 6–12. Cf. Cic. *off.* 1, 74.

¹⁸⁰² Cic. *Marc.* 1. 8.

¹⁸⁰³ Cic. *red. in sen.* 8. 30; *Q. fr.* 1, 1, 7. 19. 31. 33; *Att.* 14, 14, 3; 14, 17a, 1; *imp. Cn. Pomp.* 10. 33. 36. 42; *Mil.* 21; *Sest. rep.* 6, 13ff.

¹⁸⁰⁴ Cic. *Lig.* 38.

¹⁸⁰⁵ Büchner 1964. 355.

¹⁸⁰⁶ Cic. *De orat.* 2, 45.

¹⁸⁰⁷ Rochlitz 1993. 96.

¹⁸⁰⁸ Cic. *Marc.* 9.

ruler shall strive for—again a topos of the ruler’s mirror¹⁸⁰⁹ since only this can ensure his lasting rule.¹⁸¹⁰ The discussion of morally right action is closed by the comparison of transitory earthly things and eternal perennial glory.¹⁸¹¹ The statement that Caesar had surpassed all winners in terms of justness, i.e., he had overcome victory itself, introduces two further topoi: the image of the ruler merciful to defeated enemies and the image of the unconquerable ruler—it is not by chance that in 45 they erect a statue with inscription “*Deo Invicto*” to Caesar.¹⁸¹² The epideictic part of the oration concludes with reference to divine intervention in favour of Caesar.¹⁸¹³

The second part of the oration can be ranked in the scope of *genus deliberativum* and enumerates the tasks to be fulfilled by Caesar in the future.¹⁸¹⁴ The amplifications, comparisons and oppositions of the first part are replaced by a series of fictitious dialogues and rhetoric questions. In the first place Cicero deals with the issue of Caesar’s safety, especially because recently the dictator raised the alleged plan of assassination against him in the senate. Here the orator uses the usual topos of ruler’s mirrors that asserts that the ruler’s safety is based on the subjects’ safety, on the one hand,¹⁸¹⁵ and good rulers should not be afraid of their subjects since it is them who provide him with the safest protection, on the other.¹⁸¹⁶ So, after he has done away with Caesar’s worries, he presents a series of measures to be taken for common good to the dictator¹⁸¹⁷ since, again using one of the usual topoi, he can be the only one who as a good physician can cure the wounds made by civil war.¹⁸¹⁸

By that Cicero reminds Caesar of his major responsibility and criticises his statement that he has already accomplished his earthly mission¹⁸¹⁹ as he still owes *res publica* thrust into civil war the most important thing: the work of restoration, renovation¹⁸²⁰—as without that his war successes will seem to have a dubious colour in the eyes of later ages.¹⁸²¹ All that he owes not only to the state but his own nature growing beyond human boundaries too.¹⁸²² At this point he tries to urge the dictator to act by the well-known topos of antique ruler’s mirrors, reputation after death.¹⁸²³ After he has repeated the fact of the division and inner uncertainty of the people of Rome, he acknowledges Caesar as the person who is able to create unity¹⁸²⁴ again using a well-known topos,¹⁸²⁵ and addresses a single general call both to Caesar and the community to create unity and co-operation.¹⁸²⁶ Again, at a highly emphatic point he uses the topos of the community depending on the ruler and the person and safety of the ruler, governing public affairs with responsibility (*bonitate, aequitate*) depending on the community.¹⁸²⁷ Then he makes a pathetic promise to Caesar—as the issue of the guards to be

¹⁸⁰⁹ Cic. *Q. fr.* 1, 1, 22; *off.* 2, 77; *leg.* 1, 35.

¹⁸¹⁰ Cic. *off.* 2, 23; 3, 84.

¹⁸¹¹ Cf. Cic. *off.* 3, 88; *rep.* 6, 8; *Deiot.* 37; Plin. *paneg.* 54, 7; 55, 6. 9f.

¹⁸¹² Cic. *Att.* 12, 45, 3; 13, 28, 3; Dio Cass. 43, 45, 3.

¹⁸¹³ Cic. *Marc.* 18. Cf. Cic. *part. or.* 73; *De orat.* 2, 347; *imp. Cn. Pomp.* 48; *Mil.* 83ff.

¹⁸¹⁴ Cic. *Marc.* 20–32.

¹⁸¹⁵ Cic. *Marc.* 21f. Cf. Cic. *Phil.* 12, 25.

¹⁸¹⁶ Cic. *Marc.* 21. Cf. Cic. *off.* 2, 23; *Phil.* 2, 112; Sall. *epist.* 1, 3, 3.

¹⁸¹⁷ Cic. *Marc.* 23.

¹⁸¹⁸ Cic. *Marc.* 18. 22. 29. 32. Cf. Sall. *epist.* 1, 6, 4; Cic. *Q. fr.* 1, 1, 31; *rep.* 1, 54. 64; 5, 8; *Lig.* 30. *Sen. clem.* 1, 17, 1.

¹⁸¹⁹ Cic. *Marc.* 25.

¹⁸²⁰ Cic. *Marc.* 25.

¹⁸²¹ Cic. *Marc.* 25–29.

¹⁸²² Cic. *Marc.* 27.

¹⁸²³ Cf. Quint. *inst.* 3, 17; Cic. *Q. fr.* 1, 1, 43.

¹⁸²⁴ Cf. Cic. *Q. fr.* 1, 1, 25; Sall. *epist.* 1, 5, 1. 3; 1, 6, 5; 2, 7, 2.

¹⁸²⁵ Cic. *Marc.* 31–33.

¹⁸²⁶ Cic. *Marc.* 32.

¹⁸²⁷ Cic. *Marc.* 31.

set up for him has been raised in the senate these days¹⁸²⁸—that if he remains faithful to his conduct engaged and consistently enforces his principles represented so far, they will protect his life and safety by their own body.¹⁸²⁹

It is worth paying some attention to this closing train of thoughts by which Cicero enforces Caesar into a logical trap. The starting point is that a tyrant deserves death. He divides this into two premises: first, a virtuous ruler must not/need not to be killed, so he should not be afraid; secondly, Caesar has proved virtue recently. The conclusion drawn from the premises is: as long as he exercises his power virtuously, Caesar does not have to worry about his life. Dividing the above further: on the one hand, if Caesar continues to give room to his *clementia*, then he should not be afraid; on the other hand, if in exercising *clementia* he acts as a tyrant against those who were once equal with him, then as a despot he will deserve death.¹⁸³⁰ Cicero calls this form of argument *complexio*, and means the alternative type by it where the questioned person who chooses any of them will not leave the situation morally clean, that is, he creates a kind of catch twenty-two for the person addressed.¹⁸³¹ He uses the same tactic successfully in *Pro Caelio* asserting that if the charge made by Clodia is true, then she was Caelius's mistress, that is, she is an immoral woman and thereby she has lost her authenticity as a witness; yet, if she waives the charge, she will regain her dignity worthy of a *matrona*, however, she will lose the lawsuit.

The promise that the notables of Rome will defend Caesar by their own body if he acts adjusted to requirements is also a masked threat. Other—sometimes ironic, sometimes apparently flattering—threats are as a matter of fact also masked: the single nature of Caesar's glory, i.e., his glory without *socius*¹⁸³² and reference to the settlement of what he owes to the home country.¹⁸³³ How can Caesar settle what he owes to the home country whose laws he has violated?¹⁸³⁴ If Caesar did not acknowledge his moral obligations arising from his situation, if he did not act in accordance with them, and if he were indeed lead by the statement that he no longer expects life to bring him anything,¹⁸³⁵ so he cannot be expected to do anything, then as Cicero later formulated in *De officiis*¹⁸³⁶ he will exclude himself from human community, and as a tyrant placing himself beyond and outside the community, generating fear and living in fear he will deserve death.¹⁸³⁷

V. 1. 4. *Sapientia Caesaris*

The antiquity saw criticism rather than praise in *Pro Marcello*, however, this conviction was not shared by everybody; instead, they discovered praise of Caesar's *clementia* in the oration and a kind of urging to continue to exercise it.¹⁸³⁸ One part of modern literature sees the significance of *Pro Marcello* in that too,¹⁸³⁹ and some consider Cicero as the ideologist of

¹⁸²⁸ Plut. *Caes.* 57, 2; *Cic.* 40, 4.

¹⁸²⁹ *Cic. Marc.* 32. Cf. *Cic. Mil.* 32; *Sen. clem.* 1, 3, 3.

¹⁸³⁰ Dyer 1990. 23.

¹⁸³¹ Cf. *Cic. inv.* 1, 45.

¹⁸³² *Cic. Marc.* 7.

¹⁸³³ *Cic. Marc.* 27.

¹⁸³⁴ Dyer 1990. 28.

¹⁸³⁵ *Cic. Marc.* 21–22.

¹⁸³⁶ *Cic. off.* 3, 32.

¹⁸³⁷ Dyer 1990. 26.

¹⁸³⁸ Rochlitz 1993. 103.

¹⁸³⁹ Dahlmann 1970. 197; Dahlmann 1968. 342; Klass 1939. 182ff.; Schanz–Honsius 1959. 438; Fuhrmann 1963. 509f.

Caesar's dictatorship.¹⁸⁴⁰ Others evaluate praise of *clementia Caesaris* by Cicero as a doubtful praise, what is more, as condemning criticism by the orator.¹⁸⁴¹ Yet, almost all researches share the view that they underline *clementia* as the key concept of elementary importance of the oration.¹⁸⁴²

At the same time, it is worth deliberating the train of thoughts that claims that *Pro Marcello* is the hymn of Caesar's *sapientia* rather than of Caesar's *clementia*, and that earlier literature projected the primacy of *clementia* back to *Pro Marcello* based on *Pro Ligario* and *Pro rege Deiotaro*. Accordingly, here it is not the image of *Caesar clemens* who looks down on his fellow-citizens, granting them pardon from above but the image of *Caesar sapiens* who works towards the restoration of *res publica* and is able to integrate various political concepts in an organic unity that is presented.¹⁸⁴³ The question arises whether *clementia* appears in *Pro Marcello* in the meaning of mercy or *temperantia animi*. In view of the fact that the terms *poena* or *ignoscere* do not occur in the oration, *clementia* most probably does not cover the meaning of *forgiveness* as Cicero exempts both himself and his friends from the guilt or sense of guilt that Caesar's adherents—but not Caesar himself¹⁸⁴⁴—tried to hammer into them.¹⁸⁴⁵ The conduct engaged by Pompey's adherents was motivated by *officium*, *error* and *fatum*,¹⁸⁴⁶ but by no means by *scelus*; therefore, calling Marcellus back to Rome—whose several merits: *nobilitas*, *probitas*, *optimarum artium studium* and *innocentia* cannot be doubted—must take place deservedly and righteously (*merito atque optimo iure*) as it were based on objective need.¹⁸⁴⁷

At several points of the oration *clementia* appears as the synonym of *temperantia animi*¹⁸⁴⁸ as it were as the opposite of *iracundia*.¹⁸⁴⁹ So the right of victory does not authorise the winner to treat defeated adherents of Pompey as if they were external enemies (*hostes*), subdued peoples.¹⁸⁵⁰ Consequently, *clementia* is nothing else than Caesar's self-command, waiving of the opportunity to revenge himself on his defeated opponents who stand on the other side merely by error and not due to depravity and are therefore "not guilty".¹⁸⁵¹ Caesar's *clementia*—linked to the virtues of *mansuetudo*, *modus* and *sapientia*¹⁸⁵²—extremely contrasts with the terrible experience of civil war and the cruelty of Pompey's adherents announced in advance in case they should win,¹⁸⁵³ although it cannot be ruled out that in this statement Cicero was led by the intention to flatter the winner.¹⁸⁵⁴ It gains special emphasis that Caesar had not confiscated the goods of the defeated, what is more, he returned them to them,¹⁸⁵⁵ and that he did not made amnesty subject to humiliating conditions and procedures.¹⁸⁵⁶ Saving the state is also organically linked to Caesar's *sapientia* and *clementia*

¹⁸⁴⁰ Ewert 1969. 416. 447.

¹⁸⁴¹ Giebel 1977. 99; Grimal 1988. 427.

¹⁸⁴² Laurand 1939. 63; Meier 1980. 210; Büchner 1964. 363;

¹⁸⁴³ Rochlitz 1993. 104.

¹⁸⁴⁴ Cic. *fam.* 6, 6, 10; *Lig.* 18.

¹⁸⁴⁵ Cic. *Marc.* 13. Cf. Cic. *Att.* 9, 5, 1.

¹⁸⁴⁶ Cic. *Marc.* 13. 14. 18. 20. 29. 31.

¹⁸⁴⁷ Cic. *Marc.* 4. Cf. Rochlitz 1993. 105.

¹⁸⁴⁸ Cic. *Marc.* 8. 9.

¹⁸⁴⁹ Cic. *Marc.* 15. 31.

¹⁸⁵⁰ Cic. *Marc.* 12. 13.

¹⁸⁵¹ Rochlitz 1993. 105.

¹⁸⁵² Cic. *Marc.* 1.

¹⁸⁵³ Cic. *Marc.* 16. 17.

¹⁸⁵⁴ Cic. *fam.* 4, 4, 4.

¹⁸⁵⁵ Cic. *Marc.* 12; *fam.* 4, 13, 2; 9, 10, 3; 15, 17, 2; *Att.* 12, 2, 3; 13, 33, 2; *Phil.* 2, 64; 8, 9.

¹⁸⁵⁶ Cic. *Marc.* 8. 34; *Lig.* 7; *Att.* 11, 6, 3; *fam.* 6, 6, 10.

since it was gods who vested the dictator with these virtues to enable restoration of *res publica*.¹⁸⁵⁷

The attributes of Caesar's *clementia* at the very beginning of the oration—that is at the point which is meant to raise the audience's attention—are the participles *inusitata* and *inaudita*,¹⁸⁵⁸ however, their content is just seemingly uncontradictedly positive: at any other similarly emphatic points in Cicero's writings the attributes *singular* and *incredible* occur clearly in a negative sense, that is, they indicate breaking with and violence against traditional values.¹⁸⁵⁹ So, it is not out of the question that the use of these attributes contains masked criticism against the situation that it has at all become possible for Caesar to give pardon to citizens as it were to subjects.¹⁸⁶⁰ On the contrary, Cicero can bravely and unconditionally praise the virtues of *lenitas* and *iustitia*, i.e., the values that do not contrast with the fundamentals of the republic, and he can underline that Caesar has far outdone the winners of earlier civil wars in terms of *aequitas* and *misericordia*.¹⁸⁶¹ Also, he does not refuse to vest Caesar with the virtues of *magnitudo animi*,¹⁸⁶² *mansuetudo*¹⁸⁶³ and *bonitas*,¹⁸⁶⁴ but first of all of *temperantia*.¹⁸⁶⁵ The series of Caesar's *beneficia*¹⁸⁶⁶—which Cicero later contests after the dictator's death¹⁸⁶⁷—fits in with the order of social relations of the republic,¹⁸⁶⁸ that is, he does not raise Caesar beyond the citizens of Rome. By stressing Caesar's *liberalitas*—one of the key virtues beside *sapientia*¹⁸⁶⁹—Cicero reflects to the dictator's self-image as he has always possessed *liberalitas* whereas *lenitas*, *aequitas*, *misericordia* and *clementia* became relevant only after the civil war, once his autocracy has become firm. At the same time, unwillingly he must acknowledge Caesar's *clementia* too, which has slowly ascended to a state cult as in 45 the senate adopted a resolution on erecting the temple of *Clementia Caesaris*.¹⁸⁷⁰ So, *clementia* is made somewhat relative as it is defined in the meaning of *self-command* rather than *mercy*, and by the attributes *inusitata* and *inaudita* it obtains a kind of special, new character, alien to Roman thinking; furthermore, it is pushed into the shadow of the virtue of *sapientia*.¹⁸⁷¹ Cicero emphatically attributes the act of giving pardon to Caesar's *sapientia*, political insight and not to his *clementia*, and the term *sapientia* and *sapienter* occurs four times in the oration mentioned together with other value concepts,¹⁸⁷² and five times independently,¹⁸⁷³ that is, nine times in total, contrary to the notions *clementia* and *clementer* used four times in total, which unambiguously proves the subordinated nature of the latter concept.¹⁸⁷⁴ The attributes of *sapientia* are the neutral and positive *incredibilis*,¹⁸⁷⁵ *singularis*¹⁸⁷⁶ and the clearly

¹⁸⁵⁷ Cic. *Marc.* 18.

¹⁸⁵⁸ Cf. Cic. *De orat.* 2, 347.

¹⁸⁵⁹ Cf. Cic. *Mil.* 1; *Lig.* 1; *Deiot.* 1; *Phil.* 11, 2; *Arch.* 3; *Att.* 3, 24, 2.

¹⁸⁶⁰ Dyer 1990. 20ff.

¹⁸⁶¹ Cic. *Marc.* 12.

¹⁸⁶² Cic. *Marc.* 19.

¹⁸⁶³ Cic. *Marc.* 9.

¹⁸⁶⁴ Cic. *Marc.* 31.

¹⁸⁶⁵ Cic. *Marc.* 8.

¹⁸⁶⁶ Cic. *Marc.* 19.

¹⁸⁶⁷ Cic. *Phil.* 2, 5.

¹⁸⁶⁸ Cic. *off.* 1, 56; 2, 65ff.

¹⁸⁶⁹ Cic. *Marc.* 16. 19.

¹⁸⁷⁰ Rochlitz 1993. 55.

¹⁸⁷¹ Rochlitz 1993. 110.

¹⁸⁷² Cic. *Marc.* 1. (*mansuetudo, clementia, modus, sapientia*); 9. (*clementer, mansuete, iuste, moderate, sapienter*); 18. (*clementia, sapientia*); 19. (*beneficia, liberalitas, sapientia*)

¹⁸⁷³ Cic. *Marc.* 7. 19. 25.

¹⁸⁷⁴ Rochlitz 1993. 111.

¹⁸⁷⁵ Cic. *Marc.* 1.

¹⁸⁷⁶ Cic. *Marc.* 9.

acknowledging *paene divina*,¹⁸⁷⁷ and the virtue of *sapientia* itself takes the highest position on the scale beside *liberalitas*.¹⁸⁷⁸ Calling Marcellus home is not *clementia* but the result of *sapientia* and *iudicium*.¹⁸⁷⁹ By that Cicero places emphasis on Caesar's intellect, which appears as a significant element in his writings too,¹⁸⁸⁰ at the same time, as their concepts of *sapientia* and *consilium* do not fully overlap, he modifies Caesar's portrait by certain traits. On the one hand, in the dictator's military successes he pushes the role of *consilium* in the background in favour of *fortuna, casus*, what is more *temeritas*,¹⁸⁸¹ and, on the other hand, he extends the scope of enforcing his intellect to his statesman's acts, by which he does not want to flatter Caesar's self-image but wants to force him to implement an ideal type for the sake of the public as he has done that earlier¹⁸⁸²—at the same time, he was the first who presented a stylised figure of Caesar as *sapiens*.¹⁸⁸³

Sapientia and *consilium* are the motives that in Cicero's view must govern Caesar's politics in the future as he expounds this point at length in the oration.¹⁸⁸⁴ It is worth mentioning that whereas *clementia* occurs only in the first part of the *oratio*,¹⁸⁸⁵ which deals with civil war and the past, *sapientia* occurs also in the second part, which turns to the future.¹⁸⁸⁶ The future and required field of manifestation of Caesar's *sapientia* is the restoration of *res publica*¹⁸⁸⁷ since real glory can be obtained by the dictator only through that,¹⁸⁸⁸ and he points out that Caesar is far from such glory.¹⁸⁸⁹ At this point it is the arm of criticism and irony by which Cicero tries to urge Caesar to carry out the acts for the sake of the public since he has already protected his own *dignitas* by triggering the civil war,¹⁸⁹⁰ and it is just due to this that he does not have the right to withdraw from public affairs¹⁸⁹¹ because he has not settled what he owes to the State and his own greatness.¹⁸⁹² By turning the *Caesar clemens* image into the *Caesar sapiens* image raised to philosophical heights, Cicero replaces the ideal of the autocrat giving pardon by the ideal of the statesman rising above senators as *primus inter pares*, vested with higher responsibility.¹⁸⁹³ As Caesar's *dignitas* has now been restored, the dictator must use his *sapientia* to serve the *dignitas* and *auctoritas* of Marcellus and his clan, Cicero, the senators and the State.¹⁸⁹⁴

V. 1. 5. *Clementia* and *sapientia*—alternatives of the Caesar image and Caesar's self-image

¹⁸⁷⁷ Cic. *Marc.* 1.

¹⁸⁷⁸ Cic. *Marc.* 19.

¹⁸⁷⁹ Cic. *Marc.* 7.

¹⁸⁸⁰ Cf. *Caes. civ.* 1, 72, 1; 1, 74, 7; 3, 41, 4; 3, 66, 4; 3, 73, 1; 3, 78, 3; *Gall.* 1, 40, 1; 6, 5, 6; 7, 7, 3; 7, 43, 5; 7, 72, 7.

¹⁸⁸¹ Cic. *Marc.* 7.

¹⁸⁸² Cic. *Att.* 9, 11a, 1.

¹⁸⁸³ Rochlitz 1993. 112.

¹⁸⁸⁴ Cic. *Marc.* 23–32.

¹⁸⁸⁵ Cic. *Marc.* 1–19.

¹⁸⁸⁶ Cic. *Marc.* 20–32.

¹⁸⁸⁷ Cic. *Marc.* 23ff.

¹⁸⁸⁸ Cic. *Marc.* 26.

¹⁸⁸⁹ Cic. *Marc.* 25.

¹⁸⁹⁰ Cf. *Caes. civ.* 1, 9.

¹⁸⁹¹ Cf. Cic. *fn.* 3, 64.

¹⁸⁹² Cic. *Marc.* 27.

¹⁸⁹³ Cic. *Marc.* 32; Meier 1982. 521.

¹⁸⁹⁴ Cic. *Marc.* 2. 3. 8. 10. 13. 24.

It is worth giving in-depth analysis to what extent the Caesar image created by Cicero in the so-called *orationes Caesarianae* reflects on or corresponds with the image and features outlined by contemporaries, created by Caesar in his works about himself and presented in Cicero's other works, primarily with the concepts of *clementia* and *sapientia*.¹⁸⁹⁵

Influenced by Greek authors, Cicero defines *clementia* as *temperantia animi*,¹⁸⁹⁶ i.e., the reaction of the intellect to temper,¹⁸⁹⁷ which is in a certain respect the collective virtue of the Roman people,¹⁸⁹⁸ and is close to the concepts of *humanitas* and *mansuetudo*,¹⁸⁹⁹ and *placabilitas*, *facilitas* and *altitudo amini*.¹⁹⁰⁰ In public life it has a place, among others, in the patterns of conduct of governors of the provinces, who are obliged to engage self-restraint against life and property of those subjected to them.¹⁹⁰¹ This sense leads to the *mercy* meaning of the concept of *clementia*, which is nothing else than dispensing with punishment that may be lawfully imposed due to the unlawfulness committed.¹⁹⁰² On a collective level the people of Rome can exercise *clementia* in this sense against their defeated enemies,¹⁹⁰³ as they considered all wars declared in accordance with the rules of *ius fetiale* lawful revenge against other peoples. In this respect sub- and superordination are prerequisites for *clementia* as the party exercising pardon has power over the party that is given pardon.¹⁹⁰⁴ In *De oratore* Cicero also points out what ardent hatred can be elicited by persons who were once equal to us suddenly rising above us and acting in the role of the party giving pardon.¹⁹⁰⁵ Accordingly, *clementia* is originally a part of relations within the family and between states, yet, it is alien to the field of home affairs and public life of Rome since it presumes relation between unequal parties, it is a concept outside law and in spite of its value content it carries some kind of despotism.¹⁹⁰⁶

In foreign policy of Rome *clementia* is primarily a virtue engaged towards defeated peoples, which appears in the administration of subdued people as it were as a collective feature of *populus Romanus*.¹⁹⁰⁷ Actually, it is through Caesar's civil war victories that *clementia* becomes an individual characteristic in political terms.¹⁹⁰⁸ In *De bello Gallico* it is no longer *clementia populi Romani* but *clementia Caesaris* and the forms of its manifestation (*ignoscere*, *conservare*) and its synonyms (*mansuetudo*, *misericordia*, *liberalis*) that appear.¹⁹⁰⁹ *Clementia* as an emphatic characteristic, sometimes expressed by being reinforced by a possessive pronoun, occurs at several points, however, always as uttered by the defeated Gauls to praise the commander.¹⁹¹⁰ Hirtius, the author of the eighth book of the work proceeds similarly after

¹⁸⁹⁵ See Collins 1972. 922.

¹⁸⁹⁶ Cic. *inv.* 2, 164.

¹⁸⁹⁷ Sen. *clem.* 1, 20, 3.

¹⁸⁹⁸ Cic. *Tull.* 49.

¹⁸⁹⁹ Cic. *rep.* 2, 27.

¹⁹⁰⁰ Cic. *Q. fr.* 1, 88; 1, 1, 25; *Att.* 6, 2, 5.

¹⁹⁰¹ Cf. Cic. *Att.* 5, 16, 3; 5, 21, 5; 6, 2, 5; 7, 2, 7; *fam.* 2, 18, 1; 13, 55, 2; *Q. fr.* 1, 1, 25.

¹⁹⁰² Cf. Sen. *clem.* 2, 3, 1. Cf. Plaut. *Mil.* 1252; Cic. *Lig.* 30; Sen. *clem.* 1, 2, 2; 1, 24, 1; 1, 9, 6; 1, 10, 1; 1, 10, 4.

¹⁹⁰³ Cic. *off.* 1, 34; Liv. 30, 16, 9.

¹⁹⁰⁴ Cf. Cic. *fam.* 5, 4, 2.

¹⁹⁰⁵ Cic. *De orat.* 2, 209.

¹⁹⁰⁶ Dyer 1990. 18ff.; Rochlitz 1993. 18ff.

¹⁹⁰⁷ Cic. *leg. agr.* 1, 19; *Q. fr.* 1, 1; *fam.* 2, 18, 1; 5, 1, 2; 13, 55, 2; 15, 4, 1; 15, 5, 2; *Att.* 5, 16, 3; 5, 18, 2; 5, 19, 5; 5, 20, 2; 5, 21, 5; 6, 1, 13; 6, 2, 5; 7, 2, 7; *imp. Cn. Pomp.* 41; *off.* 1, 34; 2, 26; Sall. *Jug.* 33, 4; Polyb. 18, 37, 2f.; Liv. 33, 12, 7; Gell. 6, 3, 52. Cf. Bux 1948. 201–231; Fuhrmann 1963. 508; Gelzer 1983. 232; Strasburger 1968. 25.

¹⁹⁰⁸ Cf. Coulter 1930/31. 513ff.; Leggewie 1958. 17ff.; Lossau 1975. 496ff.

¹⁹⁰⁹ Cf. Caes. *Gall.* 2, 14, 5; 2, 31, 4. *mansuetudo*; 4, 27, 5; 7, 12, 3. *ignoscere*; 2, 12, 5; 2, 32, 1; 7, 41, 1. *conservare*; 2, 28, 3. *misericordia*; 2, 5, 1; 4, 18, 3; 4, 21, 6. *liberalis*

¹⁹¹⁰ Caes. *Gall.* 2, 14, 5; 2, 31, 4; 2, 32.

Caesar's death.¹⁹¹¹ At the same time, *clementia* just as its opposite *crudelitas* are manifested for specific causes as a result of conscious decision: the former in order to win over allies and break down opposition,¹⁹¹² the latter for the sake of deterrence.¹⁹¹³

Nor before the civil war does Cicero refuse to vest Caesar with the virtue of *clementia* and deny his attempts at this virtue in outlining the motivation of his steps in internal politics as he formulates this in *Pro Rabirio perduellionis* delivered in 63—as it were casting it in the teeth of the prosecutor, Labienus that he took steps contrary to often voiced values of people's party politics (*lenitas legum, libertas, mansuetudo, lenis ac popularis, clemens ac popularis*).¹⁹¹⁴ It is in this spirit that as early as in the 60's Caesar tried to cause to hold the persons who enjoyed the benefits of Sulla's *proscriptiones* responsible.¹⁹¹⁵ Caesar, whose relation to the plot has actually never been revealed, tried to save the life of Catilina's adherents in the oration held in the senate by referring to *clementia*,¹⁹¹⁶ it is due to this that Cicero was compelled to interpret the concept of *clementia* in the given situation that it should be manifested to victims and not to perpetrators.¹⁹¹⁷

At the beginning of the civil war Caesar announced the political program of *clementia*, which links him to his people's party past,¹⁹¹⁸ and in this respect he is confirmed by his environment, primarily by Oppius and Balbus.¹⁹¹⁹ Yet, in his writings he carefully avoids to use the concept of *clementia* in terms of internal politics, instead he uses the terms: *lenitas*,¹⁹²⁰ *miseriordia* mentioned also in the case of the Galls¹⁹²¹ and emphasised by Cicero in *Pro Ligario*,¹⁹²² the extensively acknowledged¹⁹²³ or criticised¹⁹²⁴ *liberalitas*,¹⁹²⁵ *aequitas*¹⁹²⁶ and *beneficium*¹⁹²⁷—as he knows well that it would be hard to reconcile *mercy* manifested to his fellow-citizens with the values of the republic.¹⁹²⁸ Cicero does not refuse to acknowledge Caesar's *liberalitas* either,¹⁹²⁹ all the less since several financial transactions, loans disbursed to Cicero have been carried out between them.¹⁹³⁰ It is owing to the pardon granted later to his political opponents, including Cicero himself,¹⁹³¹ that Cicero praises Caesar's *liberalitas* on several occasions,¹⁹³² however, after his assassination he classifies it mere calculation.¹⁹³³ Cicero underlines Caesar's *aequitas* in relation to the pardon granted to Servius Sulpicius Rufus,¹⁹³⁴ Trebatius Testa,¹⁹³⁵ Marcellus¹⁹³⁶ and King Deiotarus¹⁹³⁷ first of all.¹⁹³⁸

¹⁹¹¹ Caes. *Gall.* 8, 3. 21. 38. 44.

¹⁹¹² Caes. *Gall.* 2, 31, 4; 7, 89.

¹⁹¹³ Caes. *Gall.* 8, 39. 44.

¹⁹¹⁴ Cic. *Rab. perd.* 10–17.

¹⁹¹⁵ Plut. *Caes.* 7; *Cato min.* 23; *Cic.* 21; *App. civ.* 6. Cf. Strasburger 1938. 120ff.; Gelzer 1960. 52f.

¹⁹¹⁶ Cic. *fam.* 5, 2, 8; Plut. *Cic.* 23, 1ff.; Dio Cass. 37, 38, 1f.; Suet. *Caes.* 55, 3.

¹⁹¹⁷ Cic. *Cat.* 4, 11ff.

¹⁹¹⁸ Cf. Cic. *Att.* 10, 4, 8.

¹⁹¹⁹ Cic. *Att.* 9, 7c, 1; 8, 15a, 3; 9, 5, 3; 9, 7b, 1; *fam.* 8, 15, 1.

¹⁹²⁰ Caes. *civ.* 1, 5, 5; 1, 74, 7; 3, 98, 2.

¹⁹²¹ Caes. *Gall.* 2, 28, 3.

¹⁹²² Caes. *civ.* 1, 84, 5; 1, 85, 3; 2, 13, 2; *Bell. Afr.* 8, 5.

¹⁹²³ Sall. *Cat.* 54; Dio Cass. 44, 39, 1.

¹⁹²⁴ Cic. *off.* 1, 43; *Phil.* 2, 116; Plut. *Caes.* 5, 8; Suet. *Caes.* 26, 3.

¹⁹²⁵ Cf. Kloft 1970. 58.

¹⁹²⁶ Caes. *civ.* 1, 32, 7. 9.

¹⁹²⁷ Rochlitz 1993. 50.

¹⁹²⁸ Collins 960.

¹⁹²⁹ Cic. *Att.* 2, 18, 1.

¹⁹³⁰ Cic. *fam.* 1, 9, 12. Cf. Strasburger 1990. 19f.

¹⁹³¹ Cic. *fam.* 14, 23.

¹⁹³² Cic. *fam.* 9, 13, 4; 6, 14, 2; *Marc.* 16, 19; *Lig.* 6, 23, 31; *Att.* 9, 11a, 3.

¹⁹³³ Rochlitz 1993. 62ff.

¹⁹³⁴ Cic. *fam.* 4, 4, 3.

¹⁹³⁵ Cic. *fam.* 6, 10b, 2.

His conduct during the civil war—in his own presentation—develops accordingly.¹⁹³⁹ Caesar emphasises that the principle of *crudelitas* is alien to him,¹⁹⁴⁰ at the same time, most probably sober consideration also supported enforcing *clementia* to ensure sympathy of more and more people with him.¹⁹⁴¹ It proves the propagandistic nature of the assertion of *clementia*—as it is supported by the iconography of coins of the period¹⁹⁴²—that in the fights at the end of the civil war, for example in Hispania, he no longer makes efforts to eliminate *crudelias*.¹⁹⁴³ As a matter of fact, to those who knew Caesar's hot temper¹⁹⁴⁴ and cruelty,¹⁹⁴⁵ the propaganda of *clementia* probably did not seem to be authentic¹⁹⁴⁶—it is not by chance that Cicero uses the phrases *insidiosa clementia*¹⁹⁴⁷ and *simulatio mansuetudinis*¹⁹⁴⁸ sometimes with unmasked irony, which were confirmed by his own experience.¹⁹⁴⁹ Yet, not having any other choice, several participants in public life of Rome, including Cicero, let themselves convinced by Caesar's *clementia* although they were aware of its unsteady nature.¹⁹⁵⁰ Others, of course, including Pompey,¹⁹⁵¹ Marcellus¹⁹⁵² and Cato,¹⁹⁵³ refused Caesar's *clementia* and contested that he had the right to exercise it.¹⁹⁵⁴

During his dictatorship Caesar continued his *clementia* propaganda, mostly because he wanted to neutralise his opponents by making them politically obliged.¹⁹⁵⁵ This trick was appreciated by many since they were glad that the civil war had not lead to a Sulla like cruel dictatorship,¹⁹⁵⁶ which must have given hope to exiles too,¹⁹⁵⁷ and most probably several works were created to praise Caesar's *clementia*.¹⁹⁵⁸ Yet, the temple of *Clementia Caesaris* voted for in 45 in the senate¹⁹⁵⁹ was probably never built. Some assert that hatred against Caesar was made increasingly fierce by the autocratic show off of his *clementia*.¹⁹⁶⁰ It should be declared about Caesar's *clementia* propaganda that eventually it failed—it is not by chance that Brutus and Ligarius, who received pardon, were among the assassins of the dictator—since by autocrat's mercy he deprived the senators of the Age of the Republic used to equality of the opportunity of freedom. Cicero deems Caesar's assassination fully legitimate—in spite of the fact that he was not initiated into the plan and the implementation,¹⁹⁶¹ although

¹⁹³⁶ Cic. *Marc.* 12. 32.

¹⁹³⁷ Cic. *Deiot.* 7.

¹⁹³⁸ Rochlitz 1993. 65.

¹⁹³⁹ Caes. *civ.* 1, 13, 5; 1, 18, 4; 1, 23, 3; 2, 13, 3; 2, 22, 6; 3, 11, 4; 3, 27, 2; 3, 98; *Bell. Afr.* 86, 2; 88, 6; 92, 4.

¹⁹⁴⁰ Cic. *Att.* 9, 16.

¹⁹⁴¹ Raaflaub 1974. 302; Wistrand 1978. 44ff.

¹⁹⁴² See Sydenham 1952. 158ff.; 1008ff.

¹⁹⁴³ Cf. Plut. *Caes.* 53.

¹⁹⁴⁴ Cf. Cic. *fam.* 8, 16; 6, 13, 3; *Att.* 2, 19, 3; 10, 4, 8; 10, 9a, 1; Suet. *Caes.* 20, 3f.; 22, 2; Dio Cass. 37, 27, 3; 37, 28, 4.

¹⁹⁴⁵ Cic. *Att.* 10, 8, 6; Plut. *Caes.* 35.

¹⁹⁴⁶ Cic. *Att.* 10, 4, 8; Dio Cass. 38, 11; 43, 12, 3.

¹⁹⁴⁷ Cic. *Att.* 8, 16, 2.

¹⁹⁴⁸ Cic. *Att.* 10, 8, 6.

¹⁹⁴⁹ Cf. Cic. *Att.* 7, 7, 7; 8, 9, 4; 9, 18, 1.

¹⁹⁵⁰ Cf. Cic. *Att.* 8, 13; 8, 16, 1; 9, 5, 3; 9, 11a; 9, 16, 1; 11, 20, 1.

¹⁹⁵¹ Caes. *civ.* 3, 18, 4.

¹⁹⁵² Cic. *fam.* 4, 7, 3; 4, 9, 4.

¹⁹⁵³ Plut. *Cato min.* 64, 7f.; 66, 2.

¹⁹⁵⁴ Rochlitz 1993. 52ff.

¹⁹⁵⁵ Cic. *fam.* 6, 6, 10; 11, 28, 2; Suet. *Caes.* 75; Dio Cass. 43, 15–18; 43, 49, 1; 43, 43, 50.

¹⁹⁵⁶ Cic. *fam.* 15, 19, 4.

¹⁹⁵⁷ Cic. *fam.* 4, 13; 6, 1, 2; 6, 6, 8; 6, 10b, 2; 13, 66, 2.

¹⁹⁵⁸ Rochlitz 1993. 55.

¹⁹⁵⁹ Cf. App. *civ.* 2, 106; Dio Cass. 44, 6, 4; Plut. *Caes.* 57, 4.

¹⁹⁶⁰ Plut. *Caes.* 57.

¹⁹⁶¹ Dyer 1990. 23.

Antonius charged him with instigating the assassins¹⁹⁶²—whose ideological basis was provided among others by his works, and he branded *clementia Caesaris* manifestation of arrogance and expression of political calculation.¹⁹⁶³

Contrary to the ethical categories of *clementia*, *lenitas*, *mansuetudo* and *miser cordia*, *sapientia* is primarily an intellectual feature with strong social and moral affinity.¹⁹⁶⁴ *Sapientia* is a kind of faculty of judgement, the ability to foresee the adoption and consequences of proper decision, which narrows the opportunities of *fortuna*.¹⁹⁶⁵ It can be manifested in the form of *temperantia* and *clementia* too; its opposite is *temeritas*.¹⁹⁶⁶ To Cicero *iustitia* necessarily accompanies *sapientia*,¹⁹⁶⁷ and *sapientia* is the totality of special knowledge like¹⁹⁶⁸ *prudencia*.¹⁹⁶⁹ Although *sapientia* somewhat overlaps with *consilium*, the latter always denotes competence regarding a specific situation, developed into capacity by practice and studying.

From the earliest period of Roman literature, the virtue of *sapientia* appears as one of the most important attributes of a statesman, which is indicated by the *cognomina* and *praedicata* Sophus and Sapiens affixed to the name of certain persons from the early 3rd century. Legal scientist Pomponius asserts that the *cognomen* Sophus was first borne by P. Sempronius Sophus (consul in 304, pontifex maximus in 300, praetor urbanus in 296),¹⁹⁷⁰ and the *cognomen* Sapiens was first borne by P. Atilius *iuris consultus*, Cato the Elder's contemporary.¹⁹⁷¹ Later the name Sapiens was granted to Laelius¹⁹⁷² and Cato the Elder too.¹⁹⁷³ In Pliny *Naturalis historia* one can read the *laudatio funebris* delivered by Q. Caecilius Metellus in 221 upon the death of his father, L. Caecilius Metellus, in which he praises his father as an outstanding warrior, excellent orator, brave commander, a man with several virtues and outstanding talent.¹⁹⁷⁴ The statesman's virtue *sapientia* is included here too as one of the ten most important virtues.¹⁹⁷⁵ On the epitaph of L. Cornelius Scipio Barbatus (consul in 298) from approximately 200, *sapientia* accompanies *fortitudo* worthy of statesmen.¹⁹⁷⁶ The fragment of Ennius's *Annals* on the outbreak of the second Punic war presents the opposites of the orator's and soldier's activity.¹⁹⁷⁷ The figures of the orator and soldier represent two completely different spheres; the key characteristic of the orator who embodies a statesman's capacity is *bonus*, his tools are *sapientia* and *ius*; opposed to him stands the *horridus miles*, whose prime instruments are *vis* and *ferrum*; both figures surpass themselves by their symbols as they set two optional archetypes of settling disputed issues representing the order of procedure of peace and war.¹⁹⁷⁸

In line with this tradition, Cicero emphasises *sapientia* as a feature characteristic of leading figures of the State of Rome—Romulus,¹⁹⁷⁹ Numa,¹⁹⁸⁰ one-time kings in general,¹⁹⁸¹ Cato the

¹⁹⁶² Cic. *Phil.* 2, 28.

¹⁹⁶³ Rochlitz 1993. 56.

¹⁹⁶⁴ Rochlitz 1993. 34. Cf. Klima 1971. 27. 52ff.; 66ff.

¹⁹⁶⁵ Cic. *Phil.* 11, 7; *Tusc.* 3, 30; *nat.* 3, 88; *Sen. clem.* 2, 6, 1.

¹⁹⁶⁶ Cic. *Marc.* 8.

¹⁹⁶⁷ Cic. *off.* 1, 63; 2, 83; *rep.* 1, 42; 2, 43.

¹⁹⁶⁸ Cf. Cic. *rep.* 2, 45. 61; *De orat.* 1, 44. 60.

¹⁹⁶⁹ Klima 1971. 30ff.

¹⁹⁷⁰ Pomp. D. 1, 2, 2, 37.

¹⁹⁷¹ Pomp. D. 1, 2, 2, 38.

¹⁹⁷² Cic. *Lael.* 6.

¹⁹⁷³ Cic. *Lael.* 5; *Cato* 5. 51; *off.* 3, 16; *Tusc.* 1, 30; *in Caecil.* 66; *Plut. Ti. Gracch.* 8.

¹⁹⁷⁴ Plin. *nat.* 7, 140.

¹⁹⁷⁵ Cf. Klima 1971. 56ff.; Kierdorf 1980. 10ff.; Classen 1988. 293f.

¹⁹⁷⁶ CIL I. 7. Cf. Klima 1971. 61ff.; Rochlitz 1993. 68.

¹⁹⁷⁷ Enn. *ann.* 8, 269–274.

¹⁹⁷⁸ Cf. Nótári 2008. 50ff.

¹⁹⁷⁹ Cic. *rep.* 2, 11.

Elder,¹⁹⁸² Pompey,¹⁹⁸³ Lepidus,¹⁹⁸⁴ Dolabella,¹⁹⁸⁵ Pansa,¹⁹⁸⁶ Sevius Sulpicius Rufus¹⁹⁸⁷ and himself,¹⁹⁸⁸ and he attributes indisputable *sapientia* to the senate¹⁹⁸⁹ and to the *maiores* in general¹⁹⁹⁰ as well.¹⁹⁹¹ In *De re publica* the virtues *sapientia* and *iustitia* are given stressed importance¹⁹⁹² since Cicero makes the implementation of *salus*, *aequabilitas* and *otium* subject to them;¹⁹⁹³ in his governor's mirror kind letter to his brother, Quintus he calls the attention to connecting *potestas* with *sapientia*.¹⁹⁹⁴

Once, before *Pro Marcello*, on the eve of the civil war, Cicero already tried to refer to Caesar's *sapientia*, more specifically in his letter written to Corfinium for dissemination,¹⁹⁹⁵ which he addressed to Caesar¹⁹⁹⁶ who was yet trying to enter into compromise.¹⁹⁹⁷ Cicero expounds the reference to Caesar's *sapientia*, which he did not make as a private remark, in more details to Atticus asserting that he had done that for the sake of common good, in order to preserve the values *salus patriae*, *otium*, *pax* and *concordia civium*¹⁹⁹⁸—he wanted to explain this to Atticus all the more as Pompey's adherents considered it shameless flattery.¹⁹⁹⁹ One of the passages written by *Brutus* in early 46²⁰⁰⁰ can be also interpreted as reference to Caesar's *sapientia*.²⁰⁰¹

Apart from these two writings preceding *Pro Marcello*, by which he wanted to achieve political aims in both cases, Cicero has never linked the virtue of *sapientia* to Caesar—who was characterised in his view by *popularis levitas*²⁰⁰² and whose personality has always evoked some kind of ambivalent attraction and repulsion in him²⁰⁰³—most probably Caesar represented to Cicero the opposite of everything that he imagined about a responsible and wise statesman.²⁰⁰⁴ It should be noted that Caesar has never demanded to possess the virtue of *sapientia* too much connected with the values of the republic; instead he described his intellectual capacities by the concepts *ratio* and *consilium*,²⁰⁰⁵ and contemporaries depicted these elements of his personality by the attributes *prudens*, *acutus*, *vigilans* rather than by *sapiens*.²⁰⁰⁶ Based on all that Cicero's letter mentions *sapientia* as the requirement,

¹⁹⁸⁰ Cic. *rep.* 2, 24; *Tusc.* 4, 3.

¹⁹⁸¹ Cic. *rep.* 2, 24. 31. 43.

¹⁹⁸² Cic. *off.* 3, 16; *Cato* 4; *Lael.* 5.

¹⁹⁸³ Cic. *Mil.* 2. 21.

¹⁹⁸⁴ Cic. *Phil.* 5, 39f.

¹⁹⁸⁵ Cic. *Att.* 14, 17a, 7.

¹⁹⁸⁶ Cic. *Phil.* 7, 7; 10, 6. 17; 11, 23; 12, 1.

¹⁹⁸⁷ Cic. *Phil.* 9, 1. 8.

¹⁹⁸⁸ Cic. *Phil.* 6, 9.

¹⁹⁸⁹ Cic. *Phil.* 13, 6; 14, 30; *rep.* 2, 59; *Mil.* 62.

¹⁹⁹⁰ Cic. *rep.* 2, 4. 30; *Mil.* 83; *Tusc.* 1, 2; *inv.* 1, 68.

¹⁹⁹¹ Rochlitz 1993. 69.

¹⁹⁹² Cic. *rep.* 1, 3. 12. 33. 42; 2, 24. 31, 51, 59; 3, 6; 6, 1.

¹⁹⁹³ Cic. *rep.* 2, 43.

¹⁹⁹⁴ Cic. *Q. fr.* 1, 1, 29.

¹⁹⁹⁵ Cf. Cic. *Att.* 8, 9, 1.

¹⁹⁹⁶ Cf. *Caes. civ.* 1, 26, 5.

¹⁹⁹⁷ Cic. *Att.* 9, 11a, 1.

¹⁹⁹⁸ Cf. Cic. *prov. cons.* 39; *Att.* 16, 16c, 12.

¹⁹⁹⁹ Cic. *Att.* 8, 9, 1.

²⁰⁰⁰ Cic. *Brut.* 256.

²⁰⁰¹ Klima 1971. 25; Rochlitz 1993. 71.

²⁰⁰² Cic. *Phil.* 5, 49.

²⁰⁰³ Cf. Cic. *Att.* 8, 9a, 2.

²⁰⁰⁴ Rochlitz 1993. 72.

²⁰⁰⁵ Cf. *Caes. civ.* 1, 72, 2; 1, 74, 4; 3, 41, 4; 3, 66, 4; 3, 73, 1; 3, 78, 3; *Gall.* 1, 40, 1; 6, 5, 6; 7, 7, 3; 7, 43, 5; 7, 72, 2.

²⁰⁰⁶ Cf. Cic. *Att.* 8, 9a, 2; 8, 13, 1; 9, 10, 9; 14, 1, 1; *fam.* 4, 6, 3; 13, 16; *Phil.* 2, 116; 5, 49; *off.* 1, 26; *Sall. Cat.* 54; *Dio Cass.* 44, 38.

statesman's wisdom Caesar was to accomplish, formulated for the sake of *pax* and *concordia*.²⁰⁰⁷

Tom sum up: it can be declared that *Pro Marcello* delivered in 46 focused specifically on the virtue from among Caesar's high merits that had almost never been attributed to Caesar by either Caesar or Cicero or contemporaries: *sapientia*. In all three orations before Caesar, a part of the rest of the virtues, emphatically linked to public life and related to Caesar (*mansuetudo*, *liberalitas*, *lenitas*, *misericordia*, *aequitas*, *humanitas*) are in harmony with the values of the republic; *clementia* placed on the other side, however, is a different case. The meanings *temperantia animi* and *mercy* are alien to the terminology of Roman internal politics as they presume relations of sub- and superordination and carry the opportunity of arbitrary decision, so they cannot be reconciled with systems based on relations of co-ordination. In *Pro Marcello*, seemingly meant to underline Caesar's real traits, actually a catalogue of the requirements he is to meet, Cicero consciously places the emphasis on the virtue of *sapientia*, compared to which *clementia* plays a subordinated part only, and even then it appears in the sense of *temperantia animi*. By that the orator would want to draw Caesar's approach somewhat near to the ideal state of the republic as it were by making it obligatory for him to restore and respect one-time frameworks.

In-depth analysis of the text leads to the conviction that the oration sets requirements rather than formulates praise of Caesar's statesman activity. Yet, it does not lack optimism, asserting that once the civil war is over it will be possible for Caesar to restore the institutions of the republic, which he has ruined by triggering the civil war, and while doing so, rising from among senators merely as *primus inter pares* but not exceeding this limit, he will provide the opportunity for working towards common goals. At the same time, the oration contains a kind of masked threat too. The promise formulated to Caesar—that the notables of Rome will protect him by their own bodies so he should not fear for his life—is rather relative. It is an ignored warning to Caesar that if he ignored the laws of nature, placed himself outside and beyond human community, exercised his *clementia* as an autocrat, then he should indeed fear for his life as killing the tyrant is a natural reaction of the community, nothing else than an attempt at restoring the injured order of the state and the world—which as it is well-known happened on the Ides of March 44 indeed.

V. 2. "Lawsuit" of Quintus Ligarius

After the battle of Thapsus that took place on 6 April 46 Caesar kept delaying his return to Rome for a long while, until 25 July—he stopped to stay on Sardinia—and this cannot be attributed fully to implementing measures and actions necessary in Africa since they could have been carried out by his new proconsul, C. Sallustius Crispus too. The triumph held owing to the victory in Africa—in which they carried around representations of the death of M. Petreius, M. Porcius Cato and Q. Caecilius Metellus Pius Scipio Nasica—must have further grated on the nerves of the aristocracy of Rome, because it was meant to symbolise Caesar's victory both over Iuba and the senate. It was after that that Cicero broke his silence and delivered *Pro Marcello* in the senate, which was both *oratio suasoria* and *gratiarum actio* for the pardon granted to Marcellus, by which Caesar wanted to assure the senate of his benevolence and wanted to show off his power by his autocratic gesture.

Pro Ligario delivered in 46 has been considered a classical example of *deprecatio* by both the antique and modern literature, and in historical terms it is not a less noteworthy work since from the period following the civil war *Pro Marcello*, having been delivered in early autumn

²⁰⁰⁷ Klima 1971. 91; Rochlitz 1993. 73.

of 46 in the senate, is Cicero's first oration made on the Forum, that is, before the general public, in which praising Caesar's *clementia* he seemingly legitimised dictatorship. First, we describe the historical background of the *oratio* and the process of the proceedings (V. 2. 1.); then, we examine the issue if the proceedings against Ligarius can be considered a real criminal trial. (V. 2. 2.) After the analysis of the genre of the speech, *deprecatio* (V. 2. 3.) we analyse the appearance of Caesar's *clementia* in *Pro Ligario*. (V. 2. 4.) Finally, we focus on the means of style of irony, and highlight an interesting element of the Caesar—Cicero relation and how the orator voices his conviction that he considers the dictator's power and *clementia* illegitimate. (V. 2. 5.)

V. 2. 1. Historical background of *Pro Ligario*

Quintus Ligarius—who was born as the offspring of an insignificant Sabine *gens*, his brother, Titus fulfilled the office of quaestor urbanus around 54, his other brother, Quintus obtained quaestorship sometimes in the 50's²⁰⁰⁸—filled the office of legate in 50 beside Considius Longus propraetor in the Africa province.²⁰⁰⁹ After Considius went to Rome at the end of 50 to run as candidate for consul, the administration of the province was left to Ligarius, who—as Cicero asserts—was not pleased to undertake it.²⁰¹⁰ Immediately before the outbreak of the civil war, in 49 the senate appointed Q. Aelius Tubero, Cicero's remote relative, propraetor of Africa, who waited before taking over the province—we do not know whether his illness prevented him from travelling or he wanted to wait and see what direction high politics would take. In Africa Ligarius also took a wait-and-see attitude. That is how it happened that not long after the outbreak of the civil war—after the defeat by Caesar at Auximum—before the propraetor designated by the senate, P. Attius Varus, Pompey's adherent, Africa's one-time governor arrived in Utica,²⁰¹¹ who arbitrarily took over the governance of the province on behalf of the republican side and ordered to set up two legions.²⁰¹² Ligarius was compelled to subordinate himself to Varus's supremacy;²⁰¹³ however, both Cicero and Caesar disputed its validity as Varus's procedure lacked lawful grounds.²⁰¹⁴

Soon, in the spring of 49—the exact date is not known, it might have taken place after Cato's withdrawal from Sicily, i.e., 23 April—Africa's legitimate governor, Q. Aelius Tubero, together with his son appeared at Utica.²⁰¹⁵ Tubero was prohibited by Varus and Ligarius, exercising administration along the coast of Africa, to land and take over the province assigned to him by the senate as well as to take water and get his ill son to enter the province.²⁰¹⁶ In the plea of defence Cicero shifted the responsibility for the above onto Varus.²⁰¹⁷ Regarding these events Caesar did not mention Ligarius's name either, only Varus's.²⁰¹⁸ The exact cause of the hostile conduct engaged by Varus and Ligarius are not known, their distrust was most probably due to the fact that Tubero kept delaying his journey to Africa and they suspected him of belonging to Caesar's adherents. After that, Tubero

²⁰⁰⁸ Broughton 1951–1960. II. 223. 581; III. 35.

²⁰⁰⁹ Cic. *Lig.* 2.

²⁰¹⁰ Cic. *Lig.* 2.

²⁰¹¹ Cic. *Lig.* 3; Caes. *civ.* 1, 31, 2.

²⁰¹² Caes. *civ.* 1, 31, 2.

²⁰¹³ Walser 1959. 90.

²⁰¹⁴ Cic. *Lig.* 3., Caes. *civ.* 1, 31, 2.

²⁰¹⁵ Cic. *Lig.* 27.

²⁰¹⁶ Pomp. D. 1, 2, 2, 46.

²⁰¹⁷ Cic. *Lig.* 22.

²⁰¹⁸ Caes. *civ.* 1, 31, 3.

joined Pompey in Greece, and took part in the battle at Pharsalus on his side; then, we was granted pardon by Caesar.²⁰¹⁹

In the meantime, Caesar's commander, Curio commanded troops to Africa in August 49, and after the victories over Varus and Ligarius he died in the battle against the ruler of Numida, Iuba. Only a few of Curio's army, including Asinius Pollio, were able to escape to Sicily. Iuba considered himself absolute winner and had a part of the Roman soldiers who surrendered to Varus executed. Although Varus did not approve this step, he was not in the situation to oppose it.²⁰²⁰ As Iuba appeared to be the republican forces' most significant support in Africa, the Pompeian senate awarded him the title of king and hospitality, while the Caesarian senate declared him enemy (*hostis populi Romani*). After the battle at Pharsalus Pompey's adherents gathered in Africa to continue the fight against Caesar; the office of the commander-in-chief was given on the grounds of Cato's decision to Pompey's father-in-law, the consul of the year 52, Q. Metellus Scipio. Attius Varus, Labienus and Cato submitted themselves to Metellus Scipio, however, internal hostility mostly worn out the force of opposition and, to a considerable extent, facilitated Caesar's victory in Africa in 46. Cato proudly took his own life and deprived Caesar from the opportunity of exercising power—punishment or pardon—over him, Attius Varus and Labienus moved to Hispania, and continued the fight there up to 45.²⁰²¹

After the battle at Thapsus Ligarius was taken as captive in Hadrimentum, however, Caesar gave him pardon just as to Considius's son.²⁰²² From the fact of captivity in Hadrimentum it is possible to draw the conclusion that Ligarius stayed there during the entire term of the war in Africa and did not assume any part in war actions; yet, he could not have been a really significant person since the author of *Bellum Africanum* does not mention him by name. Caesar's pardon was not rare at all as the dictator gave amnesty to everybody who surrendered without fight in the war in Africa; only a few even of the chiefs were killed, e.g. Afranius and Faustus Sulla captivated during fight—whether it was done on the direct orders of Caesar²⁰²³ or without his knowledge is disputed.²⁰²⁴ This is fully supported by Cicero's statement when he speaks about a victory where only armed persons were killed.²⁰²⁵ However, a granted pardon did not give permit to return to Italy.

Ligarius's relatives turned to Cicero as early as in the summer of 46 asking him to use his influence with Caesar to allow Ligarius to return to Italy, and in letters with highly official tone dated in August and September 46 respectively—which does not certify that they maintained any friendly relation²⁰²⁶—the orator assured Ligarius of his help.²⁰²⁷ It is not known what kind of relationship Cicero maintained with the otherwise not too significant Ligarii known only for their hostile emotions towards Caesar and what role Cicero's ceaseless financial difficulties played in undertaking the case. It is possible that it was Brutus's mediation that made Cicero undertake the case.²⁰²⁸ On the other hand, for a long while Cicero did not have any direct contact with the dictator, only with his environment, e.g., with Pansa, Hirtius and Postumus.²⁰²⁹ In Ligarius's matter, together with Ligarius's brothers he made

²⁰¹⁹ Walser 1959. 91; McDermott 1970. 321.

²⁰²⁰ Caes. *civ.* 2, 44.

²⁰²¹ Walser 1959. 91; McDermott 1970. 321f.

²⁰²² *Bell. Afr.* 89.

²⁰²³ Dio Cass. 43, 12, 3.

²⁰²⁴ *Bell. Afr.* 95.

²⁰²⁵ Cic. *Lig.* 19.

²⁰²⁶ McDermott 1970. 322.

²⁰²⁷ Cic. *fam.* 6, 13, 1., 6, 14, 1.

²⁰²⁸ McDermott 1970. 323.

²⁰²⁹ Cic. *fam.* 7, 7, 6; 6, 12, 2.

efforts to get close to Caesar through mediators and disclose the matter to him.²⁰³⁰ This was not an easy task because, among others, Caesar took a dislike to those who were involved in the war in Africa and wanted to keep them in uncertainty by delaying their return,²⁰³¹ Cicero encouraged Ligarius by asserting that his troubles would be soon solved for Caesar's anger lessened from day to day.²⁰³² His next letter more resolutely voiced the hope in the opportunity of returning home soon²⁰³³ as having undertaken the somewhat humiliating situation to ask for audience as a *senator consularis* from Caesar four years younger than him, not being above him at all in the hierarchy of the Republic,²⁰³⁴ Cicero was granted personal hearing by Caesar where he appeared together with Ligarius's brothers, who threw themselves to the ground at the dictator's feet, and Cicero delivered a speech.²⁰³⁵ To all that Caesar responded generously, which made giving amnesty unquestionable in Cicero's eyes, however, it could not be considered a completed fact.²⁰³⁶

So, Ligarius's case was in a fair way to get solved to satisfy everybody when in the last days of September 46 the son of Lucius Tubero, the former governor, Q. Aelius Tubero²⁰³⁷ brought a charge against Ligarius, which he wanted to support primarily by asserting that Ligarius—and Varus—had not let him land in Africa, in the province assigned to them by the senate. Perhaps the charges included the relation maintained with Iuba as enemy and high treason implemented thereby. At the same time, it should be mentioned at the outset that in *Pro Ligario* delivered in October on the Forum Cicero did not touch on the legally relevant charges, however, by his speech—his speech made before the general public for the first time in the period following the civil war—he seemingly legitimised Caesar's dictatorship.²⁰³⁸

The defence was provided by C. Vibius Pansa, one of Caesar's closest men—governor of Bithynia and Pontus in 47 and 46, governor of Gallia Cisalpina in 45, then, on Caesar's proposal, *consul designatus* of the year 43, together with A. Hirtius—and by Cicero. Regarding the progress of the case it is worth mentioning Plutarch's account.²⁰³⁹ Thus, Plutarch presumed that the outcome of the proceedings had been determined right from the outset, namely, it was a decided fact for Caesar that Ligarius was guilty and would be convicted and it was only the power of Cicero's eloquence that turned the flow of events. Caesar's pardon produced its effect: in March 44 Ligarius was one of Caesar's assassins,²⁰⁴⁰ then he and his family became the victim of the *proscriptiones* ordered by Antonius and Octavianus.²⁰⁴¹

It is a fact that Caesar pardoned Ligarius and let him return to Italy, however, the following doubts arise with regard to Plutarch's version.²⁰⁴² If Caesar—as Cicero's letter asserts—did not entertain hostile emotions against Ligarius, why did he allow the proceedings to take place? There might have been two reasons for that: he either wanted to inflict punishment on Tubero or wanted to provide powerful propaganda for his own *clementia* by forgiveness. The intention to convict Ligarius is highly improbable since Cicero did not put forward any new charges that would not have been known to him at the time of writing his letter dated late

²⁰³⁰ Cic. *fam.* 6, 13, 2.

²⁰³¹ Cic. *fam.* 6, 13, 3.

²⁰³² Cic. *fam.* 6, 13, 4.

²⁰³³ Cic. *fam.* 6, 14.

²⁰³⁴ McDermott 1970. 323.

²⁰³⁵ Cic. *fam.* 6, 14, 2.

²⁰³⁶ Walser 1959. 92.

²⁰³⁷ Cf. Pomp. D. 1, 2, 2, 46., Kunkel 1967. 37.

²⁰³⁸ Walser 1959. 90.

²⁰³⁹ Plut. *Cic.* 39, 5–6.

²⁰⁴⁰ Plut. *Brut.* 11.

²⁰⁴¹ Walser 1959. 93.

²⁰⁴² Walser 1959. 94; Kumaniecki 1967. 440ff.; Loutsch 1984. 98–110; Craig 1984. 193–199.

November, describing Caesar's intentions.²⁰⁴³ Furthermore, Pansa, being the dictator's confidant, would not have undertaken the defence of Ligarius, if it had been decided from the outset that he was guilty, and Caesar would not have assigned defence to Pansa, if he had not wanted to give pardon to Ligarius.²⁰⁴⁴ Caesar was very much aware that Ligarius did not have great influence among Pompey's adherents and that the events in Africa were controlled by Varus, Cato, Matellus and Labieus. By that Caesar wanted to send a message to Attius Varus and Labienus fighting in Hispania: they had not lost all of their chances for settling the conflict with as little blood sacrifice as possible.²⁰⁴⁵

It seems to be more probable that Caesar decided to acquit Ligarius in order to prove his by then proverbial generosity again. Yet, it was just the appearance of this intention that had to be avoided by all means: as Caesar had no other purpose by the proceedings than have his *clementia* celebrated through acquitting Ligarius, for this reason, he put on the mask of the angry judge having been already convinced of Ligarius's depravity who could be moved by Cicero's eloquence only.²⁰⁴⁶ Caesar as a master of political propaganda must have gladly grasped the opportunity offered for playing the role that his *clementia* was brought to the surface and shaped Ligarius's fate favourably owing to the efficient oration of the counsel for the defence only.²⁰⁴⁷ It cannot be ruled out that for Caesar—using Cicero's role taking for his own goals²⁰⁴⁸—the Ligarius case might have also served to enable him to convince those of his adherents who considered the scope of pardon granted by him excessive that both his more moderate and forgiving adherents and his defeated opponents agreed with the main line of his politics.²⁰⁴⁹

Regarding this view Wilhelm Drumann does not qualify Cicero's role specifically, yet, knowing his damning judgement on the orator-statesman he could not have formed a positive picture of it since elsewhere—very much in bad faith—he presents Cicero as an extremely vain figure who overestimates himself, is heated by the desire to be in the public eye, lacks clear political vision, and overtly humbles to *potentes*.²⁰⁵⁰ The question can be estimated with greater subtlety from the works of Matthias Gelzer and Justinus Klass if we presume that Cicero, using Caesar's propaganda, tried to realise his own program: the more supporters of Pompey were granted pardon, the more chances he could see for strengthening the situation of the *optimates*, which in the long run could make (could have made) it possible to restore the order of the state of the Republic. To this end, it was indispensable to force Caesar somehow to implement his announced fundamental principles.²⁰⁵¹ Handling the situation required great sense of tactics, seeming subordination, internal resoluteness and external flexibility from Cicero. Caesar's later acts, the battle at Munda and Ides of March 44 proved that both Cicero and Caesar had wrongly surveyed the efforts of the other party and the political party.²⁰⁵²

Clementia showed towards Ligarius was addressed not only to Pompey's adherents fighting against Caesar in Africa but also to those preparing for another war in Hispania, and Cicero's participation in the proceedings provided sufficient publicity for the case as well as the appearance of objectivity manifested by Caesar.²⁰⁵³ At the same time, *Pro Ligario* made it possible for Cicero—although it might have seemed to be shameless flattery in the eye of the

²⁰⁴³ Cic. *fam.* 6, 14.

²⁰⁴⁴ Rochlitz 1993. 118.

²⁰⁴⁵ Walser 1959. 95.

²⁰⁴⁶ Kumaniecki 1967. 442.

²⁰⁴⁷ Kumaniecki 1967. 439.

²⁰⁴⁸ McDermott 1970. 327.

²⁰⁴⁹ Drumann–Groebe 1899–1929. III. 636ff.; VI. 232ff.; Rochlitz 1993. 1993. 119.

²⁰⁵⁰ Drumann–Groebe 1899–1929. III. 63.

²⁰⁵¹ Klass 1939. 188f.

²⁰⁵² Walser 1959. 96.

²⁰⁵³ McDermott 1970. 325.

adherents of the Republic²⁰⁵⁴—to enforce his own political goals, i.e., to try to make the dictator committed to follow his conciliatory policy, and to find as many causes for exculpation for the supporters of Pompey as possible.²⁰⁵⁵ Cicero, however, presumably—contrary to Gerold Walser’s view, who interprets the Ligarius case as demonstration of Cicero’s vanity and overestimation of his own role²⁰⁵⁶—took part in the play directed by Caesar not because he was driven by political blindness and *hybris*, as it were believing that by his orator’s ingenuity he could deceit and enchant the dictator’s clear political vision. Much rather his concerns formulated in the letter written to Servius Sulpicius Rufus were realised:²⁰⁵⁷ again he was compelled to take a position and as it were became extortable—if we take his promises made to his friends who lost favour, e.g., Ligarius seriously.²⁰⁵⁸ On the other hand, if he did not want to get again into open hostility with Caesar, he could not refuse to legitimise his peace policy by taking position, which policy most probably had some attraction for Cicero too since it was the only thing that could bring some kind of remedy for the empire having been exhausted in the civil war.²⁰⁵⁹ Cicero was also as much of a political realist to size up that it was impossible to avoid public life turning into sheer anarchy without some kind of compromise between the parties. Yet, he did not let Caesar use his talent as unprincipled tool: in *Pro Ligario* he ceaselessly makes an effort to certify excusable errors of Pompey’s adherents and does not omit to criticise the dictator’s status and the general conditions of Rome.²⁰⁶⁰

Regarding the procedure followed by Caesar, there are certain similarities with his conduct engaged when granting pardon to Marcellus. Caesar himself was also interested in calling Marcellus back from exile; on the one hand, he wanted to demonstrate his generosity again; and, on the other hand, he wanted to advance legitimisation of dictatorship by the fact that a firm adherent of the republic such as Marcellus also returned home and acquiesced in the changes in political conditions, and by accepting the pardon granted to him as it were acknowledged it. In spite of the fact that Marcellus’s homecoming was a previously resolved fact, the dictator’s propaganda was meant to create the impression that Caesar bowed to the senate’s request only when he called the republican Marcellus back from exile. Caesar’s father-in-law, Piso mentioned Marcellus’s name seemingly accidentally in his speech delivered in the senate,²⁰⁶¹ upon which Marcellus’s cousin with identical name²⁰⁶² threw himself on the ground at Caesar’s feet to beg for pardon for his kin, then the senators also rose from their seat and asked Caesar to exercise mercy. The dictator, after having complained at length about Marcellus’s faults, seemingly utterly unexpectedly declared that he would not be averse to the wish of the senate. This was followed by noisy applause of the senate and Cicero’s speech, in which Cicero praised his human eminence. Presumably, a similar choreography can be observed in Ligarius’s case too. If Caesar had let Ligarius return home without special proceedings, he would have missed an important occasion to propagate his policy advocating conciliation. As a matter of fact, it is not possible to give an answer to the question whether Tubero had acted against Ligarius upon Caesar’s instruction or the dictator merely made use of the occasion being offered.

²⁰⁵⁴ Cic. *Att.* 13, 20, 4.

²⁰⁵⁵ Kumaniecki 1967. 453; Fuhrmann 1991. 34.

²⁰⁵⁶ Walser 1959. 96.

²⁰⁵⁷ Cic. *fam.* 4, 4, 4.

²⁰⁵⁸ Cf. Cic. *fam.* 6, 13, 14; *Att.* 13, 20, 4; Rochlitz 1993. 119.

²⁰⁵⁹ Drumann–Groebe 1899–1929. III. 637; Kumaniecki 457.

²⁰⁶⁰ Rochlitz 1993. 120.

²⁰⁶¹ Cic. *fam.* 4, 4, 3

²⁰⁶² Marcellus was the husband of Caesar’s granddaughter, Octavia.

V. 2. 2. Procedural issues of the lawsuit

Pro Ligario raises several questions that can be answered with difficulties. Why did Cicero not use the obvious argument in his statement of the defence that Ligarius's independent power of decision was highly restricted in Africa since governance was in the hands of Varus and Cato, so it was not Ligarius on whom the alliance entered into with Iuba turned? Why did Cicero did not strive to refute the charges made by Tubero? Why did Cicero undertake the case although he otherwise maintained good relations with the Tuberos and almost none with the Ligarii?²⁰⁶³ Regarding the Ligarius case further questions arises: does the case under review constitute actual court proceedings, consequently, a real speech in court; did Caesar pass a judgment on Ligarius as a judge or not? Giving answer to these questions can possibly make further questions unimportant or no longer have a cause.

The *communis opinio* gives the answer *yes*; and there are actually certain arguments to support these presumptions. Cicero calls Tubero prosecutor and Ligarius the accused, and in both cases he uses the proper technical term: specifically that Ligarius is an accused who admits his guilt, that is, an accused that each prosecutor would want,²⁰⁶⁴ and that Tubero accuses a man who makes a confession or a man whose case—i.e. political record—is better than or at least the same as his.²⁰⁶⁵ The charge is determined by Bauman as *maiestas imminuta* or as *crimen maiestatis imminutae*. The facts of the case that can be deduced from the described historical situation would have later belonged under *lex Iulia maiestatis*,²⁰⁶⁶ and as this statute of Augustus repeats the elements of earlier legislation,²⁰⁶⁷ it can be made probable that we can qualify Ligarius's act treason. On the other hand, it is important to add that the term *maiestas* does not occur at all in the entire *Pro Ligario*, and Cicero does not determine the legal nature of the charges either.²⁰⁶⁸

Also, it is against the concept of regular criminal action that the proceedings were conducted in the absence of the accused, i.e., Ligarius. Although Roman legal practice did not exclude conviction *in absentia*, however, the accused had to be called to appear before the law before commencement of the lawsuit.²⁰⁶⁹ Ligarius did not get such summons, what is more, it is a cardinal point of his case that Caesar prohibited him to enter the territory of Italy. Furthermore, the lawsuit conducted due to *maiestas imminuta* would have belonged before the *quaestio perpetua de maiestate* set up by Sulla since Sulla's court of justice reforms were not abrogated by Caesar, he changed only the lists that formed the basis of the scope of jurors and the scope of identity of jurors;²⁰⁷⁰ this measure presumably constituted part of the reforms of the year 46. The proceedings, however, were conducted not before the *quaestio de maiestate* as it could be expected but before Caesar personally as judicial forum, in whose hands Ligarius's fate was placed.²⁰⁷¹

Similarly, it is against the validity of *crimen maiestatis* as a charge that the alliance entered into with Iuba, King of Numidia against Caesar would have been its implementation in practice.²⁰⁷² However, the fact of the alliance with Iuba was known to Caesar already at the

²⁰⁶³ Walser 1959. 93; McDermott 1970. 322.

²⁰⁶⁴ Cic. *Lig. 2. Habes igitur, Tubero, quod est accusatori maxime optandum, confitentem reum...*

²⁰⁶⁵ Cic. *Lig. 10. ...arguis fatentem. Non est satis: accusas eum, qui causam habet aut, ut ego dico, meliorem quam tu, aut, ut vis, parem.*

²⁰⁶⁶ Baumann 1967. 142ff.

²⁰⁶⁷ Kunkel 1974b 94f.

²⁰⁶⁸ Bringmann 1986. 73.

²⁰⁶⁹ Mommsen 1899. 332ff.

²⁰⁷⁰ Cic. *Phil. 2, 3*; Dio Cass. 43, 25, 1.

²⁰⁷¹ Bringmann 1986. 75.

²⁰⁷² Quint. *inst. 11, 1, 80*. Cf. Neumeister 1964. 47; Kumaniecki 1967. 439.

time of granting pardon to Ligarius, after the battle at Thapsus, so a charge based thereon would not have brought anything new to the knowledge of the dictator.²⁰⁷³

The interpretation provided by Theodor Mommsen offers a possible solution for these difficulties; he asserts that the imperium of magistrates contains the right of the judge to pass a judgement in criminal proceedings too.²⁰⁷⁴ Although the power of administration of justice of the magistrate was restricted by the legal institution of *provocatio ad populum*, this did not apply to extraordinary *imperia*, that is, the decemvirate of the 5th century, the second triumvirate and the *dictatura rei publicae constituendae* (he ranks both Sulla's and Caesar's dictatorship under the latter).²⁰⁷⁵ This view is fundamentally shaken by Jochen Bleicken²⁰⁷⁶ and Wolfgang Kunkel²⁰⁷⁷ by stating that *provocatio* protected the Roman citizen from the unlawful *coercitio* (disciplinary power) of the magistrate, however, produced no influence at all on *iudicatio* (administration of criminal justice) activity. Caesar's dictatorship does not mean extraordinary imperium in the sense interpreted by Theodor Mommsen since he never took the title *dictator rei publicae constituendae (legibus scribundis)*.²⁰⁷⁸

Even Theodor Mommsen refers to a single example of the application of this extraordinary punitive power only: Ligarius's case.²⁰⁷⁹ He supports his statement by the lines of *Pro Ligario* which assert that the purpose of the prosecution is not to convict but to execute Q. Ligarius,²⁰⁸⁰ and that this could not have been carried out by anybody in this form even under Sulla, who sentenced to death everybody whom he hated: since there the dictator himself gave orders to kill the person without anybody demanding it.²⁰⁸¹ To this Theodor Mommsen ties the following interpretation: the *locus* clearly proves that as a dictator Caesar passed a judgement over Ligarius as a judge and his competence was identical with that of Sulla.²⁰⁸² It is just the *punctum saliens*, however, that the *locus* does not make clear, i.e., that in a criminal case Caesar exercised administration of justice as a magistrate; as Cicero's reference applies to the *proscriptiones* carried out by Sulla and does not mean to state that Sulla would have had his enemies executed after lawful investigation and declaring their guilt. It is public knowledge that Sulla was empowered by *lex Valeria* to have Roman citizens executed arbitrarily, without lawful sentence.²⁰⁸³ So, if Caesar's powers, by which he decided the fate of Ligarius, was identical with that of Sulla, then we must draw the conclusion that he obtained unlimited power over the losers of civil war—this seems to be supported also by the comment made by Cassius Dio.²⁰⁸⁴

Let us again examine the sentence of *Pro Ligario* considered to be of key importance by Theodor Mommsen, by which he wants to prove that the Ligarius case was actually court proceedings, specifically that the purpose of the prosecution was not to convict but to execute Q. Ligarius.²⁰⁸⁵ It is a fact that the purpose of each formal accusation is to convict the accused, in the present case, however, the opponent does not claim this, much rather to kill, execute Ligarius without any sentence. So, just as Sulla, Caesar can proceed against his enemies as he pleases, he is, however, characterised not by cruelty but by *clementia*, and it is

²⁰⁷³ Rochlitz 1993. 117.

²⁰⁷⁴ Mommsen 1899. 35ff.; Mommsen 1887–1888. I. 126; II. 735.

²⁰⁷⁵ Mommsen 1899. 35.

²⁰⁷⁶ Bleicken 1975. 324f.

²⁰⁷⁷ Kunkel 1962. 25ff.

²⁰⁷⁸ See Bringmann 1986. 75.

²⁰⁷⁹ Mommsen 1887–1888. II. 735.

²⁰⁸⁰ Cic. *Lig.* 11.

²⁰⁸¹ Cic. *Lig.* 11–12.

²⁰⁸² Mommsen 1887–1888. II. 735.

²⁰⁸³ Cic. *leg.* 1, 42., Cic. *leg. agr.* 3, 5.

²⁰⁸⁴ Dio Cass. 42, 10, 1.

²⁰⁸⁵ Cic. *Lig.* 11. *Non habet eam vim ista accusatio, ut Q. Ligarius condemnetur, sed necetur...*

just exercising this that Tubero wants to prevent him from. The outcome of the case was probably determined on the grounds of a scenario worked out in advance by Caesar, showing some similarities with the Marcellus case, specifically—in spite of the description provided by Plutarch—in favour of Ligarius. Regarding Plutarch’s description it is worth quoting William C. McDermott’s witty formulation word for word: “*Thus, a sad picture of the orator emerges, no longer king of the courts, but courting a king*”.²⁰⁸⁶ As it is made clear by the events of the coming years: Cicero must have felt the same and did not forgive. The proceedings learned of from *Pro Ligario* cannot be considered a real criminal action because the decision was not in the hands of the *quaestio de maiestate* but in the hands of the dictator Caesar, who did not have any exceptional imperium that would have entitled him to pass a judgment on criminal cases affecting Roman citizens as a magistrate.

V. 2. 3. *Pro Ligario* as *deprecatio*

The above is also supported by the form of the speech; *Pro Ligario* is a so-called *deprecatio*,²⁰⁸⁷ which is a tool of influencing arbitrary decisions of persons exercising power rather than a tool of the defence in court of justice as it is also noted by the author of *Auctor ad Herennium*.²⁰⁸⁸ So, if Cicero chose a form for his speech that could not be used in court proceedings,²⁰⁸⁹ then this also makes it probable that in Ligarius’s case the dictator adopted decision not as a magistrate acting as a judge. The orator himself declares that he turns to Caesar not as a judge.²⁰⁹⁰ Right at the beginning of the oration he emphasises that he considers his task is to raise Caesar’s compassion rather than refute the charges²⁰⁹¹ as most probably Pansa had already dealt with possible forms of refuting the charges.²⁰⁹² The purpose of *deprecatio* is not *defensio facti*, i.e., the defence of a given act but *ignoscendi postulatio*, i.e., praying for remission of punishment to be imposed due to a committed act or error.²⁰⁹³ At the same time, it should be noted that *Pro Ligario* is not purely *deprecatio* but also a statement of the defence, as Cicero presents several fact-based arguments to defend Ligarius.²⁰⁹⁴ The usual elements of *deprecatio* are commonplaces (*loci communes*) meant to evoke *misericordia*,²⁰⁹⁵ so, for example, the audience’s sympathy can be aroused by referring to *humanitas*, *fortuna*, *misericordia* and *rerum commutatio*.²⁰⁹⁶ Accordingly, *deprecatio* is not a genre of the court of justice, its scope of application is the senate and *consilium*—i.e., it must have been clear to the audience of the period that Cicero saw through the play of passing a judgment directed by Caesar and used it for his own benefit.²⁰⁹⁷

²⁰⁸⁶ McDermott 1970. 324.

²⁰⁸⁷ Martin 1974. 28.

²⁰⁸⁸ Auct. ad Her. 1, 14, 24. Cf. Cic. *inv.* 2, 104–108; Quint. *inst.* 5, 13, 5.

²⁰⁸⁹ Cic. *inv.* 2, 104ff.

²⁰⁹⁰ Cic. *Lig.* 30. *Causas, Caesar, egi multas equidem tecum, dum in foro tenuit ratio honorum tuorum, certe numquam hoc modo: 'ignoscite, iudices; erravit, lapsus est, non putavit; si unquam posthac', ad parentem sic agi solet ... sed ego ad parentem loquor: erravit, temere fecit, paenitet; ad clementiam tuam confugio, delicti veniam peto, ut ignoscatur, oro*

²⁰⁹¹ Cic. *Lig.* 1.

²⁰⁹² Kumaniecki 1967. 445.

²⁰⁹³ Auct. ad Her. 2, 25; Cic. *inv.* 1, 104.

²⁰⁹⁴ Cic. *Lig.* 2–5. 20–22.

²⁰⁹⁵ Auct. ad Her. 2, 50; Cic. *inv.* 1, 106–109.

²⁰⁹⁶ Auct. ad Her. 2, 26.

²⁰⁹⁷ Rochlitz 1993. 121.

The logically and psychologically proper arrangement of arguments, as a matter of fact, constitutes a tense structure in *Pro Ligario* too,²⁰⁹⁸ and, accordingly, the *miser cordia*-topoi filled with temper, meant to affect Caesar's *clementia*, were placed in the speech consciously.²⁰⁹⁹ Already in the *prooemium* the orator makes it clear that he builds on Caesar's *miser cordia*,²¹⁰⁰ thus, he makes his audience aware of the fact that his purpose regarding Ligarius is not *liberatio culpa e* since in his opinion his defendant has not committed crime by joining Pompey²¹⁰¹ but *errati venia*, i.e., obtaining forgiveness for taking erroneous position.²¹⁰² In accordance with that, the orator leads the thread of Tubero being a committed adherent of Pompey along the speech in order to reveal the real motivation of the accusation thereby.

The *narratio*, which is emphatically meant to outline the facts without emotions,²¹⁰³ is followed by the *argumantatio*²¹⁰⁴ that—contrary to the orator's promise—nevertheless serves the defence of Ligarius: especially the paragraphs contrasting the *crudelitas* of the Tuberos intending to restrict Caesar in exercising pardon with Ligarius's begging and tears as well as with Caesar's *clementia*, *humanitas*, *miser cordia* and *lenitas*.²¹⁰⁵ By that he turns Caesar's brightly gleaming *clementia* away from the prosecutors and as it were urges him to side with his defendant,²¹⁰⁶ and turns *crudelitas* that the Tuberos reproach Ligarius with around, and lets it fall back on the prosecutors.²¹⁰⁷ He deprives Ligarius's case of its individuality, and contrasts the general *miseria* of the civil war with *miser cordia* showed by Caesar, general *luctus* with his *lenitas*, general *crudelitas* with the dictator's *clementia*.²¹⁰⁸ The virtue of *humanitas* especially comes to the front for *miser cordia* and *clementia* are its most beautiful forms of manifestation—since as Quintilianus expounds, it is just this that *deprecatio* intends to turn the attention of the target audience and the addressee of the speech to.²¹⁰⁹ By underlining Caesar's well-known *humanitas* Cicero as it were obliges the dictator to adhere to enforcing this virtue,²¹¹⁰ and reminds the Tuberos of *studia humanitatis*, which was once not alien to them either.²¹¹¹ By that he again sets Caesar and the wing of his party urging for conciliation against the Tuberos desiring petty-minded revenge.²¹¹²

He makes it as it were obligatory for Caesar to keep to his principles formulated in his own propaganda since *miser cordia* and *lenitas* are virtues frequently voiced during the civil war too; his *humanitas* can be certified by his adherents and his *clementia* by the whole empire. By all that Cicero uses the key features of Caesar's self image as a tool for strengthening *deprecatio*.²¹¹³ The following passages shed light on the purpose of these paragraphs heavily charged with emotions.²¹¹⁴ Here he tries to clear Ligarius of the *scelus* that even after Pompey's death he continued to fight against Caesar in alliance with the ruler of Numidia, Iuba, who was officially declared enemy by the senate by then having sided with the

²⁰⁹⁸ Neumeister 1964. 71ff.

²⁰⁹⁹ Rochlitz 1993. 121.

²¹⁰⁰ Cic. *Lig.* 1.

²¹⁰¹ Cic. *Lig.* 17–19.

²¹⁰² Cic. *Lig.* 30.

²¹⁰³ Cic. *Lig.* 2–5.

²¹⁰⁴ Cic. *Lig.* 6–29.

²¹⁰⁵ Cic. *Lig.* 11–16.

²¹⁰⁶ Neumeister 1964. 51.

²¹⁰⁷ Rochlitz 1993. 122.

²¹⁰⁸ Cic. *Lig.* 14f.

²¹⁰⁹ Quint. *inst.* 5, 13, 7. Cf. Nybakken 1939. 398.

²¹¹⁰ Cic. *Lig.* 16.

²¹¹¹ Cic. *Lig.* 12.

²¹¹² Cic. *Lig.* 15.

²¹¹³ Rochlitz 1993. 123.

²¹¹⁴ Cic. *Lig.* 17–19.

dictator.²¹¹⁵ It was just this difference, i.e., remaining loyal to Pompey even after his death, that the prosecutors wanted to emphasise and thereby to take the most important argument, i.e., that the Tuberos also fought on the side of Pompey, away from the defence.²¹¹⁶ In other words, the function of this part of the *argumentatio* highly charged with emotions is to win the dictator's sympathy for the benefit of Ligarius and at the same time to help the orator to get over the pitfalls of his argumentation expounded regarding the desperate Pompeian position of the accused, while driving the attention of the audience and Caesar away from its logical pitfalls.²¹¹⁷

The heightening of emotions and temper reaches its climax in *peroratio*: Caesar can have no other choice than exercise the virtue of *clementia*.²¹¹⁸ He repeats that his speech had no other goal than to produce effect on the dictator's *humanitas*, *clementia* and *miser cordia*, however within the frameworks of *praeteritio* he does not omit to mention that he tried to refute the charges against Ligarius by fact-based arguments too.²¹¹⁹ The task of *peroratio* is *commovere*, the effect produced on the decision-maker's emotions,²¹²⁰ and in the case of *deprecatio* this aspect is reinforced because the orator underlines several elements from Ligarius's personality and deeds that were to move Caesar's emotions. So, for example, he stresses that his deeds were moved not by hatred against Caesar,²¹²¹ that he badly tolerates being far away from his brothers,²¹²² that he stayed in Africa not upon his own resolution but by being prevented by the storms of danger-fraught times of the civil war,²¹²³ and that Ligarius's family had obtained several merits with regard to Caesar.²¹²⁴ He points out that many people from all over Italy appeared in mourning to beg for Ligarius.²¹²⁵ He refers to the pardon granted earlier by the dictator to others,²¹²⁶ Caesar's *clementia*,²¹²⁷ *miser cordia*,²¹²⁸ *humanitas*,²¹²⁹ *liberalitas*,²¹³⁰ *bonitas*,²¹³¹ and crowns all that by the praise that mortals having mercy on their fellow beings become similar to gods.²¹³² So, the orator used all the available tools of *deprecatio*, not omitting, beside *ignoscendi postulatio*, *defensio facti* either—thereby, albeit, accepting the choreography set up by Caesar, using his *clementia*- and *miser cordia*-propaganda for the benefit of his defendant.²¹³³

V. 2. 4. *Clementia Caesaris*

²¹¹⁵ Kumaniecki 1967. 442ff.

²¹¹⁶ Bringmann 1986. 79.

²¹¹⁷ Rochlitz 1993. 123.

²¹¹⁸ Cic. *Lig.* 29–38.

²¹¹⁹ Cic. *Lig.* 29. Cf. Neumeister 1964. 54.

²¹²⁰ Neumeister 1964. 76. Cf. Cic. *part. or.* 15; *Mil.* 92; *Sulla* 92f.; *Cluent.* 202; *Cael.* 79f.

²¹²¹ Cic. *Lig.* 30.

²¹²² Cic. *Lig.* 33.

²¹²³ Cic. *Lig.* 34.

²¹²⁴ Cic. *Lig.* 35f.

²¹²⁵ Cic. *Lig.* 32f.

²¹²⁶ Cic. *Lig.* 30.

²¹²⁷ Cic. *Lig.* 29–30.

²¹²⁸ Cic. *Lig.* 29. 37.

²¹²⁹ Cic. *Lig.* 29.

²¹³⁰ Cic. *Lig.* 31.

²¹³¹ Cic. *Lig.* 37.

²¹³² Cic. *Lig.* 38.

²¹³³ Rochlitz 1993. 124.

In *Pro Ligario* both the term *clementia*²¹³⁴ and *miser cordia*²¹³⁵ occur six times, and so rise to the most important form of conduct, feature demanded from and attributed in advance to Caesar. Here *clementia* means forgiving for error,²¹³⁶ which Caesar is required to do in his capacity as father²¹³⁷—stressing father’s characteristic is perhaps reference to the *parens patriae* title.²¹³⁸ So, the conduct arising from *clementia* is *ignoscere*,²¹³⁹ that is, contrary to *Pro Marcello*, here *clementia* is shifted from the concept of *temperantia animi* towards the meaning *mercy*.²¹⁴⁰ At the same time, *ignoscere* is suitable for expressing *humanitas*,²¹⁴¹ *miser cordia*²¹⁴² and *clementia*²¹⁴³ and thereby the border between these concepts and virtues fades away, and *miser cordia* and *clementia* become the form of manifestation of *humanitas Caesaris*.²¹⁴⁴ To achieve this goal, i.e., the pardon to be obtained for Ligarius, the orator, acknowledging the dictator’s superiority, praises Caesar’s *clementia* and in his view he deserves praise primarily because after his victory he did not keep this virtue out of the reach of his enemies either,²¹⁴⁵ which is a sufficient cause for his former enemies evaluating and experiencing his victory as benefit too.²¹⁴⁶

By praising Caesar’s *clementia* he introduces the part in which he speaks about his own former hostile emotions towards Caesar²¹⁴⁷ in order to make capital of it for his defendant: Ligarius is more worthy of Caesar’s *clementia* than the orator himself because the former has never been hostile to Caesar, his unpleasant situation can be traced back to the unfortunate interplay of circumstances rather than to his own conviction. By that Cicero dresses his own Pompey supporter past in the cloak of praise of Caesar to overcome the dictator’s antipathy. At the same time he expresses his conviction that if the leaders of the opposition in Hispania accept the opportunity of peace offered by Caesar, they will not become disloyal to their ideas, instead, they follow the command of common sense—it is, of course, a question whether Cicero’s argument, to be more precise, his personality seemed to be authentic in their eyes since they could have possibly considered the orator a traitor.²¹⁴⁸

As a matter of fact, it is undecided how much the praise of Caesar’s *clementia* came from Cicero’s heart as—in spite of the fact that this time to serve the peace of the community he let himself be used as the tool of Caesar’s propaganda—internal reservations and questioning of the superiority of the one-time equal rival could not have vanished without any traces from Cicero’s soul. Reference to Caesar as father²¹⁴⁹ and denial of the effect his own orator’s performance produced on Caesar’s decision²¹⁵⁰ perhaps did not lack ironic overtones.²¹⁵¹ Cicero was not likely to have acknowledged the legitimacy of the situation deep inside as he did not give up his ideal of the republican state,²¹⁵² yet, he did not openly give voice to his

²¹³⁴ Cic. *Lig.* 6. 10. 15. 19. 29. 30.

²¹³⁵ Cic. *Lig.* 1. 14. 15. 16. 29. 37.

²¹³⁶ Cic. *Lig.* 17–19. 30.

²¹³⁷ Cic. *Lig.* 30.

²¹³⁸ Cf. App. *civ.* 2, 106. 144. 442. 602; Dio Cass. 44, 4, 4. Cf. Fuhrmann 1963. 508⁷.

²¹³⁹ Cic. *Lig.* 13. 14. 15. 16. 29. 30.

²¹⁴⁰ Rochlitz 1993. 125.

²¹⁴¹ Cic. *Lig.* 13. 14. 16.

²¹⁴² Cic. *Lig.* 14. 15.

²¹⁴³ Cic. *Lig.* 15. 30.

²¹⁴⁴ Cic. *Lig.* 30.

²¹⁴⁵ Cic. *Lig.* 10.

²¹⁴⁶ Cic. *Lig.* 19.

²¹⁴⁷ Cic. *Lig.* 6.

²¹⁴⁸ Cf. Plut. *Cic.* 39; *Cato min.* 54; Cic. *fam.* 7, 3, 6; *Att.* 11, 7, 3; *Marc.* 18.

²¹⁴⁹ Cic. *Lig.* 30.

²¹⁵⁰ Cic. *Lig.* 31. 38.

²¹⁵¹ Rochlitz 1993. 126. On the other hand see Walser 1959. 96.

²¹⁵² Bringmann 1986. 80.

bitterness and criticism, he dressed his conviction in an ambiguous form.²¹⁵³ If Caesar wanted to disguise the trial of Ligarius as official court proceedings, then it can be considered delicate irony masked as flattery on Cicero's side to refer to the dictator as *pater* thereby depriving him of his capacity as judge.²¹⁵⁴ He must have chosen *deprecatio* as the genre of his speech for similar reasons, which is obviously not a genre of court of justice, and, accordingly, neither *aequitas*, nor *iustitia* are mentioned in the speech. On the other hand, in spite of slight criticism and irony by which he addresses Caesar's public law position, to obtain *clementia* and *miserericordia* he uses the dictator's propagandistic concepts for his own purposes.²¹⁵⁵ The concept of *sapientia* occurs only once in the entire speech and—just as in *Pro Marcello*—is used as the synonym of political consideration and common sense.²¹⁵⁶ The concept of *consilium* also occurs only once in *Pro Ligario* and refers both to Caesar and Pompey, and in a negative sense, specifically, with respect to upsetting public order.²¹⁵⁷ It is due to the different objectives of the two orations that *sapientia* as the central concept of *Pro Marcello* is thrust into the background. An *oratio* every time serves *utile*: the primary objective of *Pro Marcello* is to outline the future of the public under the rule of Caesar as *primus inter pares*, the function of *Pro Ligario* is to acquit his defendant and to obtain pardon for him. While in *Pro Marcello*—as its theme covers general political issues—*clementia Caesaris* is thrust into the background, *Pro Ligario* deals with the fate of a single person, for this reason the virtue of *clementia* comes to the front.²¹⁵⁸ At the same time—as *Pro Ligario* serves to break the opposition in Hispania and to support Caesar's propaganda aimed at conciliation to be made with his enemies fighting there—for this objective the image of *Caesar clemens* is more suitable than the image of *Caesar sapiens*, who is willing to let bygones be bygones and forgive. Compared to Marcellus, Ligarius's political weight is rather low—which cannot be necessarily said of Marcellus—so it is not specially humiliating for Cicero to ask for pardon for an enemy who has been much below Caesar from the outset. The oration made in favour of Marcellus was delivered in the senate; consequently, it was also a warning addressed to the senators of the need of reconciliation for the sake of common good—so, *sapientia* was the key concept that connected the audience, i.e., Caesar and the senators. On the contrary, *Pro Ligario* was delivered on the Forum and the audience was the *populus Romanus*—so, Cicero thought it was more expedient to put this key word of people's party politics in the centre.²¹⁵⁹ Between the orations the political climate in Rome had significantly changed as a result of Caesar's conduct, which left its mark on Cicero's frame of mind sensitive of delicate vibrations.²¹⁶⁰ At the same time, *Pro Ligario* lacks the cautious optimism of *Pro Marcello*—in the meantime Caesar's triumph had taken place—as if Cicero had given up hope that *Caesar sapiens* would restore *res publica*, and trustful tone is replaced by irony.²¹⁶¹

V. 2. 5. The issue of legitimacy of Caesar's power in the mirror of *Pro Ligario*

²¹⁵³ Cf. Cic. *Lig.* 7. 13. 18. 19. 33. See Loutsch 1984. 98ff.

²¹⁵⁴ Bringmann 1986. 80.

²¹⁵⁵ Rochlitz 1993. 126f.

²¹⁵⁶ Cic. *Lig.* 6.

²¹⁵⁷ Cic. *Lig.* 19.

²¹⁵⁸ Rochlitz 1993. 127.

²¹⁵⁹ Cic. *Lig.* 6. 37.

²¹⁶⁰ McDemott 1970. 337.

²¹⁶¹ Gelzer 1960. 265.

William C. McDermott—just as Cicero himself—does not consider *Pro Ligario* a first-rate masterpiece of the orator; yet, he points out that in using irony it has an outstanding place in the orator's lifework.²¹⁶² It is not by chance that it is quoted by Quintilian, who based his textbook on rhetoric mostly on Cicero whom he enthusiastically respected,²¹⁶³ and from among Cicero's fifty-two orations quoted by him, he refers most frequently, after *Pro Cluentio* (sixty-seven quotations) and *Pro Milone* (sixty-seven quotations), to *Pro Ligario* (fifty-three quotations), which is highly noteworthy as contrary to the two hundred and two paragraphs of *Pro Cluentio* and one hundred and five paragraphs of *Pro Milone*, *Pro Ligario* consists of merely thirty-eight paragraphs. They are followed in order of reference by *Pro Murena* (twenty-five quotations), *Pro Caelio* (twenty-two quotations), the second *Philippica* (twenty quotations) and the first speech against Catilina (fourteen quotations). In contrast, the fourth speech against Catilina, *Pro rege Deiotaro*, *De imperio Cnaei Pompei*, the ninth *Philippic*, *Pro Sestio* and the first *Verrine oration* are quoted only once in each case by Quintilian, and he does not refer to *Pro Sulla*, *De provinciis consularibus* and the first *Philippica* at all. Regarding *Pro Ligario* Quintilian calls the attention to masterly handling of the facts of the case and exemplary use of irony.²¹⁶⁴ Thus, Quintilian considered *Pro Ligario*, unique of its kind, a work of outstanding significance in training rhetoric.²¹⁶⁵

In the *peroratio* of *Pro Ligario*, with huge pathos Cicero enumerates the notables of the order of knighthood who appeared in mourning clothes before Caesar, the people of the house of the Brocchi, L. Marcius, C. Caesetius and L. Corfidius.²¹⁶⁶ The latter, for that matter, could not be present when the speech was delivered as by then he was dead²¹⁶⁷—this error also proves that Cicero could not be directly acquainted with Ligarius and his family: most probably he had never seen the person mentioned by him but, as he was unknown, his absence could not be noticed by many people. This pathetic enumeration of the “notables” constitutes powerful contrast with Caesar, L. Tubero and Pansa, and it becomes clear that Ligarius himself was the least important in the lawsuit. The use of pathos in this form, without cause and therefore turning into the opposite must have made Caesar—and deep inside certainly Cicero himself—smile.²¹⁶⁸

Certain sentences of the oration had a clear meaning to the audience, for example, the point where Cicero describes that all of them threw themselves to the ground at Caesar's feet begging for pardon—including the orator himself.²¹⁶⁹ In the account written to Ligarius Cicero depicted that the brothers and relatives of the accused threw themselves to the ground at Caesar's feet and that he spoke in accordance with the case and Ligarius's situation.²¹⁷⁰ The audience might have taken Cicero's words literally; the dictator, however, could remember well that Cicero had not thrown himself to the ground at his feet—to what extent Caesar might have taken this phrase as irony cannot be known. Calling the four years younger Caesar *pater* has again certain troublesome overtones.²¹⁷¹ According to Dio Cassius, Caesar was granted the title *parens patriae* in 44,²¹⁷² and albeit it took place two years after *Pro Ligario* was delivered, the *intitulatio* must have become public knowledge earlier.²¹⁷³ To address

²¹⁶² McDermott 1970. 327ff.; Haury 1955. 185f.; Canter 1936. 457ff.; Drumann–Goebe 1899–1929. III. 637.

²¹⁶³ Cf. Quint. *inst.* 10, 1, 112.

²¹⁶⁴ Quint. *inst.* 4, 1, 38–39; 4, 1, 70; 9, 2, 29. 50.

²¹⁶⁵ McDermott 1970. 336.

²¹⁶⁶ Cic. *Lig.* 33.

²¹⁶⁷ Cic. *Att.* 13, 44, 3.

²¹⁶⁸ McDermott 1970. 337.

²¹⁶⁹ Cic. *Lig.* 13.

²¹⁷⁰ Cic. *fam.* 6, 14, 2.

²¹⁷¹ Cic. *Lig.* 30.

²¹⁷² Dio Cass. 44, 4, 44; 44, 48, 3.

²¹⁷³ McDermott 1970. 338.

Caesar *pater* could not be easy for Cicero as it was him who was given the title *pater patriae* in 63 by the senate, on the initiation of Q. Lutatius Catulus, for exposing and suppressing Catilina's plot; also, it is undecided how much this address sounded authentic or ironic from Cicero's mouth to the ear of either the audience or Caesar.²¹⁷⁴

Two paragraphs of the oration with clearly demonstrable ironic references and overtones deserve more profound analysis. In the seventh paragraph Cicero relates that after the war had begun and had been mostly fought, he, free from any restraint, upon his own decision, joined the army that took up arms against Caesar. He admits that he is saying all that before the man who, although being aware of this, returned him to the state before they ever met; who sent him a letter from Egypt telling him to stay who he was; who, although being the Roman people's only imperator in the whole empire, let him be the other one (and news on that was brought by Pansa); who allowed him to keep the bundle of sticks decorated with laurel as long as he wanted; and who believed that he would save the orator indeed if he did all that without depriving him of any of his titles.²¹⁷⁵ At first hearing or reading, Cicero's words seem flattering effusions, which Caesar was not in want of these days; yet, even if nobody else did, the dictator certainly discovered the irony hidden between the lines. It is worth comparing the content exposed here with Cicero's letters written in the relevant period between November 48 and August 47, primarily to Atticus.

The first sentence of the paragraph seems to be true, however, the five elements following it need to be analysed more profoundly. The statement on pardon granted by Caesar is true as on 17 December 48 Caesar gave instructions to Dolabella to write a letter to Cicero: he may return to Italy. This permit had significance because M. Antonius as *magister equitum* banned Cicero by name from Italy.²¹⁷⁶ When in August 47 Cicero received Caesar's letter, he was unable to decide how much he could rely on what was written in it and how secure returning would be.²¹⁷⁷ Only the meeting at the end of September 47 convinced Cicero that he could leave Brundisium and return home. In other words, only after the meeting did Caesar give him back to the state. In those days Cicero wrote several letters to Caesar's influential men, so, among others, to Balbus and Oppius²¹⁷⁸ and Caesar himself, and in this letter he tried to find excuses for his brother, Quintus for joining Pompey.²¹⁷⁹ Although on 12th August 47 Cicero received a highly generous letter (*litterae satis liberales*) from Caesar, he gave an account of this to Terentia, yet—as it has been already mentioned—this did not dispel his fears.²¹⁸⁰ It is not probable that this writing referred to in a somewhat cold tone is identical with the letter written from Egypt that was mentioned in the letter. Thus, there is a good chance of presuming that the letter from Egypt is mere fiction and Caesar could be very much aware of that too.²¹⁸¹ The bundle of sticks decorated with laurel as badges of power and the person of Pansa are referred to only once but not at the same place in the correspondence from this period,²¹⁸² however, without the additional information provided in *Pro Ligario*. Most probably it was Caesar and Pansa who were surprised the most at the news purportedly brought by Pansa—and disclosed by Cicero.²¹⁸³

²¹⁷⁴ About this title see Alföldi 1953. 103ff.

²¹⁷⁵ Cic. *Lig.* 7.

²¹⁷⁶ Cic. *Att.* 11, 7, 2.

²¹⁷⁷ Cf. Cic. *fam.* 14, 23; *Att.* 11, 20–22.

²¹⁷⁸ Cic. *Att.* 11, 6, 3.

²¹⁷⁹ Cic. *Att.* 11, 12, 1–2.

²¹⁸⁰ Cic. *fam.* 14, 23.

²¹⁸¹ McDermott 1970. 340f.

²¹⁸² Cf. Cic. *Att.* 11, 7, 2; 11, 6, 3.

²¹⁸³ McDermott 1970. 341.

The statement that Caesar offered Cicero imperator's office was probably based on the presumption that even at their meeting in September 47 Caesar made an attempt at winning Cicero over to supporting his politics, Cicero, however, refused to take part actively in public matters.²¹⁸⁴ It was always Caesar's more or less confessed yet never actually realised desire to win the support and acknowledgement of older senators in higher ranks—and Cicero had a special place among those whose sympathy he tried to obtain.²¹⁸⁵ In 60, by the mediation of Balbus, Caesar offered Cicero the opportunity of joining the first triumvirate,²¹⁸⁶ and in July 59 he urged him to accept the office of legate in Gallia offered by him,²¹⁸⁷ which Cicero again refused.²¹⁸⁸ In March 49 Caesar as imperator sent a letter to Cicero, whom he addressed also by the title of *imperator*, in order to win his support but he did not succeed.²¹⁸⁹ All this clearly proves that Caesar judged Cicero's influence in public matters and the moral weight of his political standpoint both more favourably and more realistically than several modern historians.²¹⁹⁰

Taking all the above into consideration, we can presume that Caesar had the meeting with Cicero in Brundisium organised for a definite cause,²¹⁹¹ and for such a cause that he did not want to disclose in a letter. With good sense William C. McDermott makes it probable that he wanted to entrust Cicero as *magister equitum* to administer Italy for the period of time while he was busy with the campaign in Africa; he probably offered him, owing to his activity in Cilicia, the opportunity to retain the triumph that Cicero had longed for,²¹⁹² likewise the status of patrician, which he later granted to several people,²¹⁹³ for example, to Octavianus too,²¹⁹⁴ and, in his absence, the rank of *princeps/primus rogatus* in the senate, which Cicero most probably enjoyed as *senator consularis* in 62 and 60. If Cicero had accepted this invitation, beside the *unus imperator* he would have been *alter imperator* indeed.²¹⁹⁵

Modern historiography has often tried to doubt Cicero's practical skills in public administration/politics, in spite of his successful activity as proquaestor, consul in Sicily and proconsul in Cilicia. That Caesar had much better opinion of Cicero's qualities is proved by his offers repeated several times. In 47 the opportunities offered by Caesar would have raised Cicero again to the forefront of politics, on the one hand, and, would have posed him a worthy challenge that he would have been able to meet properly, on the other—however, he was far from being so uninhibited, opportunist, thirsty of power and glory as his Antique and modern critics would like to present him. Probably listening to his inner conviction, Cicero refused the offered post—which he gave no account of either to Atticus or anybody else—and told his friends no more than Caesar had provided him with the opportunity of returning home.²¹⁹⁶ Although in a negative context, Dio Cassius brings up that Cicero had not become *magister equitum*.²¹⁹⁷ Also, Dio Cassius puts the statement into Q. Fufius Calenus's mouth that Cicero, after having been granted pardon and patrician's rank by Caesar—the latter statement is obviously not true—he ungratefully assassinated him; not himself but by instigating others to

²¹⁸⁴ Cf. Cic. *fam.* 9, 17, 3.

²¹⁸⁵ Drumann–Groebe 1899–1929. 696–701.

²¹⁸⁶ Cic. *Att.* 2, 3, 3f.

²¹⁸⁷ Cic. *Att.* 2, 19, 5.

²¹⁸⁸ Cic. *prov. cons.* 41.

²¹⁸⁹ Cf. Cic. *Att.* 9, 6a, 1.

²¹⁹⁰ McDermott 1970. 342.

²¹⁹¹ Cf. Plut. *Cic.* 39, 3–4.

²¹⁹² Cf. Cic. *Att.* 8, 3, 6.

²¹⁹³ Dio Cass. 43, 47, 4.

²¹⁹⁴ Dio Cass. 45, 2, 7.

²¹⁹⁵ McDermott 1970. 343.

²¹⁹⁶ McDermott 1970. 344.

²¹⁹⁷ Dio Cass. 46, 12, 4.

commit the assassination.²¹⁹⁸ These two loci clearly supports that Caesar might have made an offer with this kind of content to Cicero in order to win his support, and, nevertheless, news about this must have somehow leaked out from their meeting in Brundisium.²¹⁹⁹ Thus, we have to declare that a part of the statements made by Cicero in the seventh paragraph is no more than pure fiction—but the reference to the opportunity that Caesar offered him the office of *alter imperator* can be possibly true.

In summary it is worth paying some attention to the beginning of the *peroratio* of *Pro Ligario*, in which, albeit in hidden form, Cicero throws light upon the illegitimateness of Caesar's power and *clementia*.²²⁰⁰ In the thirty-third paragraph Cicero relates that Caesar declared: the opposing party—that is, Pompey's adherents—considered everybody who was not with them enemy, however, he considers everybody who is not against him his own adherent.²²⁰¹ This clearly reveals the contrast between the characters of Caesar and Pompey of which Cicero already spoke about in *Pro Marcello* too, specifically that in case of Pompey's victory even his own adherents were afraid of the blood bath that Pompey had announced in advance.²²⁰² Caesar (just because of his often praised *clementia*) wanted to implement quite the contrary: as Cicero notes after the dictator's death, he hamstrung/obliged his enemies by the appearance of mercy/temperance.²²⁰³ Yet, from this passage of *Pro Ligario*, even if nobody else did, Caesar could hear irony: Pompey could allow himself to make this statement because with proper legitimisation, on the grounds of the authorisation of the senate he fought for maintaining the lawful order of the state whereas Caesar, who set the aim of overthrowing the order of the state, that is, as an illegitimate imperator was compelled to give evidence of *clementia*.

V. 3. "Lawsuit" of King Diotarus

In November 45, Cicero delivered his statement of the defence before Julius Caesar in favour of King Deiotarus (*Pro rege Deiotaro*), who, just as Q. Ligarius, sided with Pompey in the civil war. By then, in November 45, Caesar had defeated Pompey's sons in the battle at Munda; then, he held a triumphal march over them. The triumph caused huge dissatisfaction²²⁰⁴ as triumphal marches were meant to legitimise victories over external enemies and not compatriots.²²⁰⁵ His grandson, Castor and the one-time royal physician hired by him, Phidippus the slave acted as prosecutors of King Deiotarus; they charged the king with capital offence,²²⁰⁶ assassination attempt against Caesar dated by them to 47²²⁰⁷ and conspiracy,²²⁰⁸ that is,²²⁰⁹ the charge can be described in brief by the facts of the case of

²¹⁹⁸ Dio Cass. 46, 23, 3.

²¹⁹⁹ McDermott 1970. 345.

²²⁰⁰ McDermott 1970. 346f.

²²⁰¹ Cic. *Lig.* 33.

²²⁰² Cic. *Marc.* 17.

²²⁰³ Cic. *Phil.* 2, 116.

²²⁰⁴ Cf. Plut. *Caes.* 56, 7.

²²⁰⁵ Werner 1984. 255.

²²⁰⁶ Cic. *Deiot.* 1.

²²⁰⁷ Cic. *Deiot.* 15. 17–22.

²²⁰⁸ Cic. *Deiot.* 22–25. 33.

²²⁰⁹ On the political role of King Deiotarus see Niese 1901. 2401ff.; Richter–Eberhard 1904. 79ff.; Hoben 1969. 83ff.

perduellio, and *crimen imminutae maiestatis*.²²¹⁰ Cicero, who had maintained good relations with the King since he was proconsul in Cilicia, undertook the defence.²²¹¹

First, we review the charge against King Deiotarus to find out if the proceedings conducted against the King can be considered a criminal action *de iure* at all. (V. 3. 1.) After that, we intend to analyse *Pro rege Deiotaro* as a rhetoric work with respect to the political program that appears in it and Caesar's image drawn by Cicero, which also allows examination of how Caesar's "reforms", that is, the efforts made towards eliminating the form of state of the republic, are treated and commented upon in Cicero's lifework and philosophy of the state. (V. 3. 2.)

V. 3. 1. Historical background and procedural law awkwardnesses of *Pro rege Deiotaro*

Deiotarus's situation vis-à-vis Caesar became rather unpleasant after the battle at Pharsalus, which the prosecutors did not omit to exploit for their own benefit, because in 48 he visited Pompey in his camp. Caesar, who had the integrity of Deiotarus's royal title and empire enforced in the senate as consul, interpreted this gesture as an act of ungratefulness.²²¹²

Although in 47 Deiotarus asked for the opportunity to meet Caesar to exculpate himself for his conduct that Caesar found injurious, Caesar refused the favour of a meeting, bringing it to the King's knowledge that in 48 already he was the repository of legitimacy, therefore, purely on the grounds of Roman public law Deiotarus would have been obliged to be loyal to him.²²¹³ After Pharsalus, Deiotarus sided with Caesar and supported his campaign in Alexandria,²²¹⁴ yet, Caesar decided that although Deiotarus could retain his royal dignity, he should give up a significant part of his empire.²²¹⁵ This dismemberment, which took place after the battle at Zela in Nikaia,²²¹⁶ meant the following: a part of Deiotarus's empire in Armenia was granted to Arzobarzanes, ruler of Cappadocia, and a Galatian territory was allocated to Mithridates, ruler of Pergamum.²²¹⁷ For a while Deiotarus hoped for the victory of Pompey's adherents in Africa, however, after their defeat he definitely distanced himself from them.²²¹⁸ After Mithridates's death not much later, Deiotarus attempted to get Caesar to return him the rule over the Galatian *tetrarchia*, which, however, Castor Saocondarus, *tetrarcha* and Deiotarus's son-in-law wanted to prevent by all means.²²¹⁹

After the battle at Munda that took place in March 45, Caesar received Deiotarus's delegation in Taracco, and in a letter addressed to the King he held out the prospect of adjudging the case favourably.²²²⁰ Anticipating the adoption of this decision, Castor Saocondarus's son, Castor, Deiotarus's grandson brought a double charge against his grandfather, founding it on the testimony of the escaped slave, Phidippus, the King's former physician, claiming that he had prepared assassination attempt against Caesar—on the occasion of the visit he paid to Galatia in 47—and together with C. Caesilius Bassus he secretly plotted against Caesar.²²²¹ The

²²¹⁰ Riemer 2001. 30.

²²¹¹ Cf. Cic. *Att.* 6, 1, 14; *Deiot.* 39.

²²¹² On the topic of *gratia* see Drexler 1988. *passim*

²²¹³ Bringmann 1986. 81.

²²¹⁴ *Bell. Alex.* 34. 39f.; 67–70.

²²¹⁵ Cic. *Deiot.* 8. 22. 35. *skk*; *div.* 1, 27; 2, 29; *Phil.* 2. 94; *Bell. Alex.* 78, 3. On the hand see Dio Cass. 41, 63, 3. Cf. Ritter 1970. 124–128.

²²¹⁶ *Bell. Afr.* 78; Cic. *div.* 2, 79; *Phil.* 2, 94.

²²¹⁷ Cf. Hoben 1969. *passim*

²²¹⁸ Cic. *Deiot.* 25.

²²¹⁹ Ritter 1970. 124ff.

²²²⁰ Cic. *Deiot.* 38. Cf. Bringmann 1986. 82.

²²²¹ Cic. *Deiot.* 38.

prosecutors most probably founded their claim on Caesar's aversion to and bias against Deiotarus.²²²²

By this turn the case constructed an until then unprecedented political and legal situation, namely, prior to that it had never occurred that a *rex iussus* was summoned before a Roman court for being charged with capital offence, to say nothing of the fact that no *foedus iniquum*²²²³ whatsoever entered into with Deiotarus submitted the King to the jurisdiction of Rome. The charge against Deiotarus was based on the testimony of his slave, Phidippus, which, in addition to being morally displeasing, created an impossible legal situation since in Rome a slave was not allowed to testify against his master in a criminal action. Furthermore, it added to these awkwardnesses that in those days Deiotarus did not stay in Rome, and in accordance with the order of Roman criminal procedure no proceedings could be conducted against the accused in his absence.²²²⁴ The case was made more delicate by the fact that the charge due to the assassination planned and attempted against Caesar was brought before the dictator himself, who in accordance with the principle "*nemo iudex in propria causa*"²²²⁵ would have by no means had the right to act as judge in the proceedings – not even in the case if he had been just as Sulla entitled to the title of *dictator rei publicae constituendae (legibus scribundis)*, which in theory vested him with unrestricted punitive power.²²²⁶ Yet, easily rising above all these reservations Caesar himself desired to proceed in King Deiotarus's case as a judge.

Cicero,²²²⁷ as a matter of fact, did not omit to bring up these awkwardnesses,²²²⁸ but being compelled to present these legal abuses as Caesar's merits,²²²⁹ he made capital of this need, declaring that the dictator would guarantee that he should not be afraid of any inequity in the case.²²³⁰ Cicero's words also reveal that Caesar did not take the principle of passing judgment in *consilium*²²³¹ into account either, and the orator, while emphasising the dictator's *clementia*, was compelled to make the absurd charges inauthentic by weighty counter-arguments.²²³² Although the biography written by Suetonius on Caesar asserts that in his administration of justice he proceeded very strictly and justly,²²³³ we can by no means take this statement to refer to Deiotarus's case, at most to the judgments passed by Caesar during the term of his proconsulate, on the one hand, and to those passed in the disputes arising from the *ager publicus* allocated to his veterans after the civil war,²²³⁴ on the other.²²³⁵ Consequently, the proceedings against King Deiotarus can be in no circumstances considered a criminal action; on the contrary, it provides a glaring example of Caesar's arrogance disregarding law and order of the Republic and defiantly showing off his personal power. The outcome of the lawsuit is not known, Caesar presumably adjourned decision.²²³⁶ There are good chances of excluding the opportunity of acquittal since later Cicero noted that Caesar

²²²² Cic. *Deiot.* 8f.; *Phil.* 2, 94f.

²²²³ Cf. Földi–Hamza 2009. 64f.

²²²⁴ See also Nótári 2003. 97ff.

²²²⁵ C. 3, 5.

²²²⁶ Mommsen 1899. 35ff.; Kunkel 1962. 21ff.

²²²⁷ See Gelzer 1968. *passim*

²²²⁸ Cf. Gotoff 1993. *passim*

²²²⁹ Cf. Dahlmann 1967. 32ff.

²²³⁰ Cic. *Deiot.* 4.

²²³¹ On the role of *consilium* see Kunkel 1974a 151ff.

²²³² Cic. *Deiot.* 15ff.

²²³³ Suet. *Caes.* 43, 1. *ius laborosissime ac severissime dixit*

²²³⁴ Val. Max. 6, 2, 11.

²²³⁵ Bringmann 1986. 85.

²²³⁶ Cic. *Att.* 14, 12, 1.

adjudged no issue whatsoever regarding Deiotarus justly.²²³⁷ Nor can it be ascertained that Deiotarus was sentenced as Cicero would have probably used the fact of death sentence as an argument against Antonius, who wanted to have a law from Caesar's purported legacy, which could be reinstated to Deiotarus's earlier reign, adopted as authentic.²²³⁸ Irrespective of the result of the lawsuit, immediately after Caesar's death, Deiotarus took possession of the territories that the dictator had disannexed from him,²²³⁹ and this annexation was acknowledged as lawful by a regulation made public by Antonius—presumably in return for significant valuable consideration.²²⁴⁰

V. 3. 2. Shaping Caesar's image as rhetorical tactics in *Deiotariana*

Cicero begins the *prooemium* of his speech with an enumeration disguised as *captatio benevolentiae*, listing the circumstances in the proceedings that make him uneasy. The accused whose life is at stake is a King, what is more, a highly recognised friend of Rome. The prosecutors are two good-for-nothings—Deiotarus's cruel grandson and Deiotarus's bribed slave, who voluntarily testifies against his master although in Rome even during the tortures compulsory in the interrogation of slaves it was prohibited to put questions to them to which they could have made a confession incriminating their master.²²⁴¹ The accused is not present, Caesar acts as judge in his own case; the trial takes place not before the public of the Forum but in Caesar's palace.²²⁴² The key words of *prooemium/exordium* are *metus*, *timor* and *perturbatio*, however, he expresses his concerns not only due to the specific case but the general danger threatening security in law.²²⁴³ He draws conclusions regarding the entirety of the community from the Diotarus case just as he did concerning the Marcellus and Ligarius case. Yet, he tries to make the impression as if *sapientia*, *praestans singularisque natura* shown by Caesar,²²⁴⁴ his favourable countenance,²²⁴⁵ *aequitas* and *audiendi diligentia* reassured him²²⁴⁶—probably in order to influence his defendant's case towards a favourable direction (*insinuatio*).²²⁴⁷ However, success of Caesar's *natura* and *sapientia* might be overshadowed by public opinion.²²⁴⁸ He expects Caesar to arrive at a just outcome with regard to the proceedings, this, however, does not change his conviction that the lawsuit is *a priori iniquum* and a kind of attack against the fundamentals of law and order.²²⁴⁹ The concept of *clementia* comes up first at the beginning of the *argumentatio*, and appears together with the concept of *fides* and *constantia*.²²⁵⁰ By bringing up that Deiotarus stood by Pompey, the orator tries to take the sting out of Caesar's anger as well as reminds the dictator of his promise made to the King, specifically, that he would adopt a forgiving attitude to him.²²⁵¹ Again, the *metus* theme of the *prooemium* emerges, and in such form that Caesar,

²²³⁷ Cic. *Phil.* 2, 95.

²²³⁸ Cic. *Phil.* 2, 93–96; Olshausen 1975. 123⁴⁰.

²²³⁹ Cic. *Phil.* 2, 95.

²²⁴⁰ Cic. *Att.* 14, 12, 1; *Phil.* 2, 93; Rochlitz 1993. 130f.

²²⁴¹ Schumacher 1982. 38f.; Bringmann 1986. 83.

²²⁴² Rochlitz 1993. 135.

²²⁴³ Cic. *Deiot.* 3.

²²⁴⁴ Cic. *Deiot.* 4.

²²⁴⁵ Cic. *Deiot.* 5.

²²⁴⁶ Cic. *Deiot.* 7.

²²⁴⁷ Cic. *inv.* 1, 20.

²²⁴⁸ Olshausen 1975. 121f.

²²⁴⁹ Cic. *Deiot.* 4.

²²⁵⁰ Cic. *Deiot.* 8.

²²⁵¹ Cic. *Deiot.* 8.

through the political amnesty already granted and having acknowledged his title of King and guest-friend, has brought an end to Deiotarus's desperate fear, re-ranking him from the group of enemies to the category of friends who have forgotten about their obligation.²²⁵² In order to explain why Deiotarus took the position to side with Pompey by "erroneously" sizing up the situation of internal politics in Rome²²⁵³ he extends the arguments to cover all of the adherents of Pompey, and tries to interpret it as loyalty to legitimate institutions, and, first touching on the King's case solely in terms of public law/politics and not criminal law, he draws general conclusions regarding the community.²²⁵⁴ It was *clementia* showed by Caesar earlier that brought an end to the community's *metus* and *timor*, and in the future this virtue is no longer formulated as the consequence of personal mood or decision but as a requirement with binding force that the dictator should meet.²²⁵⁵ The motif of fear is carried through the whole speech as it were as a *Leitmotiv*: if Caesar did not feel that his given word was binding upon him, then he would become a tyrant, who excites fear and dread around him.²²⁵⁶ In *Pro Ligario*²²⁵⁷ and *Pro Marcello*²²⁵⁸—contrary to *Pro rege Deiotaro*—it is just lack of fear that the orator stresses; i.e., that he need not be terrified of speaking honestly before Caesar.

Accordingly, the content of the meaning of *clementia* is modified: the emphasis is shifted from Caesar's personal generosity expressed in *Pro Marcello* and from the inclination to forgive for error underlined in *Pro Ligario* to the requirement of the steadiness of political *clementia* practised earlier.²²⁵⁹ *Fides* and *constantia* to be adopted in exercising *clementia* come to the front, and Cicero—after brief refutation of the assassination attempt, transferring the matter from criminal law to the plane of politics—addresses Caesar not as a judge but as a dictator. So, if Caesar wants to avoid to be looked at as a tyrant, he must consistently keep to his earlier principles. Refuting the arguments of the prosecution, he quotes a letter of Blesamius, a subject of Deiotarus, in which—presenting these statements as gossip in bad faith—he voices his view that Caesar is already considered a tyrant because he had his statue erected beside the statues of kings.²²⁶⁰ The orator himself neither confirms, nor refutes the charge of tyranny,²²⁶¹ instead, he points out that contrary to Deiotarus's subjects he and his fellow-citizens were born as free men in a free Roman state—which implies a bitter contrast with the present, Caesar's dictatorship,²²⁶² especially because Cicero does not conceal the rage and anger manifested by Caesar either.²²⁶³

Reference to Caesar's *clementia* sometimes does not lack ironic overtones since Cicero relates that in 47, owing to Caesar, Deiotarus, having been deprived of the major part of his territories by the resolution adopted in Nicaea, could contemplate with a philosopher's quietude in the evening of his life for he had been relieved of the burdens of ruling.²²⁶⁴ Antiochus paid the same price for *furor* as Deiotarus for an excusable *error*²²⁶⁵—all that highly questions the value of Caesar's *clementia*. Albeit, in the form of a rhetorical question

²²⁵² Rochlitz 1993. 136.

²²⁵³ Cic. *Deiot.* 10.

²²⁵⁴ Cf. Riemer 2001. 31.

²²⁵⁵ Cic. *Deiot.* 39.

²²⁵⁶ Cic. *Deiot.* 8. 10. 11. 15. 39. 41. Cf. Cic. *rep.* 2, 45; *off.* 2, 23ff.; *Phil.* 2, 116.

²²⁵⁷ Cic. *Lig.* 6.

²²⁵⁸ Cic. *Marc.* 1.

²²⁵⁹ Rochlitz 1993. 137.

²²⁶⁰ Cic. *Deiot.* 33–34.

²²⁶¹ Botermann 1992. 339ff.; Werner 1984. 250.

²²⁶² Bringmann 1986. 344.

²²⁶³ Cic. *Deiot.* 8. 9. 40.

²²⁶⁴ Cic. *Deiot.* 38.

²²⁶⁵ Cic. *Deiot.* 36.

he denies that Deiotarus can suffer any further loss and damage through grave *iniuria*²²⁶⁶—but reference to this opportunity in the form of denial indicates the opportunity of grave *inuiria* as real danger: the King being sentenced by Caesar. It is just this *iniuria* that is the most important characteristics of tyranny, and if Caesar withdrew the pardon granted earlier, he would inevitably draw the charge of tyranny against him.²²⁶⁷

So, Cicero formulates a kind of “warning” to Caesar. If Caesar sentenced his one-time guest-friend, Deiotarus, this would remind the people of the bloodshed of Sulla; the erection of his own statue—with the inscription “*Deo Invicto*” in the Quirinus temple²²⁶⁸—is yet accepted by the people of Rome but if Caesar should go beyond that, this would amount to tyranny.²²⁶⁹

Thus, reference to tyranny is actually made, even if only from the mouth of Deiotarus’s delegates and grandson.²²⁷⁰ This raises a question difficult to answer: whether Cicero wants to make a success of his case before Caesar merely in accordance with the situation of the present moment (as Ulrike Riemer assumes²²⁷¹) or (following the proposition of Helga Botermann and Sabine Rochlitz) the warning formulated by the orator is also a threat, which is going to be fulfilled by the Ides of March 44.²²⁷²

At this point Cicero presents a stylised figure of Deiotarus as a kind of philosopher king, which does not correspond with the historical Deiotarus image known to us—since he did not even shrink back in fear of murder committed against his own family members²²⁷³ and so much disagreed with Caesar’s territorial regulations that immediately after Caesar’s death he marched into his earlier provinces.²²⁷⁴ In Cicero’s presentation, however, Deiotarus becomes a King who rises above changes of *fortuna* and lives fully aware of his internal values, which are not only good but are sufficient for a happy life—*virtus, magnitudo animi, gravitas* and *constantia*.²²⁷⁵ The pair of opposites of the “*bonus rex Deiotarus*” and the “*Caesar tyrannus*” becomes a ruler’s mirror, similar to *Pro Marcello*, albeit, it makes *Pro rege Deiotaro* a negative ruler’s mirror. Here the orator, instead of modelling the ideal ruler after Caesar, confronts the dictator with the requirements that he is to meet as reality appearing in the person of Deiotarus. Although the topos of the ruler appreciating internal values more than anything else is in line with the theme of *Pro Marcello*,²²⁷⁶ in the orator’s presentation, however, Deiotarus has already realised and achieved all that Cicero set as a goal to Caesar in *Pro Marcello*.²²⁷⁷ The idealised and, as a matter of fact, unhistorical Deiotarus is in possession of generosity and consistency²²⁷⁸ that Cicero deems doubtful in the case of Caesar.²²⁷⁹

Cicero prepares the stylised Deiotarus image of the *peroratio* well in advance. As refutation of the assassination attempt against Caesar, first of all he brings up Deiotarus’s personality, who is characterised and guided, in addition to *prudentia* and *virtus*, by *fides, religio, probitas, constantia, integritas* and *gravitas*²²⁸⁰—as it were as the opposite of Caesar, whose *fides* and *constantia* can be righteously doubted by the public. To refute that after the battle at

²²⁶⁶ Cic. *Deiot.* 37.

²²⁶⁷ Rochlitz 1993. 138.

²²⁶⁸ Dio Cass. 43, 45, 2–3.

²²⁶⁹ Klass 1939. 212; Hoffmann 2003. 12ff.

²²⁷⁰ Riemer 2001. 34.

²²⁷¹ Riemer 2001. 34.

²²⁷² Botermann 1992. 344; Rochlitz 2003. 134ff.

²²⁷³ Richter–Eberhard 1904. 81f.

²²⁷⁴ Cic. *Phil.* 2, 95.

²²⁷⁵ Cic. *Deiot.* 38.

²²⁷⁶ Cf. Cic. *Marc.* 26–30.

²²⁷⁷ Cic. *Marc.* 25.

²²⁷⁸ Cic. *Deiot.* 38.

²²⁷⁹ Rochlitz 1993. 138f.

²²⁸⁰ Cic. *Deiot.* 16. 20.

Pharsalus the King was only waiting for Caesar being defeated in the war in Africa, Cicero endows Deiotarus with several virtues that belong to the scope of temperance—*mansuetudo*,²²⁸¹ *frugalitas*, *modestia*, *temperantia*,²²⁸² *pudor*, *pudicitia*²²⁸³. It is especially interesting that reference is made to the virtue that is missing from the catalogue of ruler's virtues—*fortitudo*, *iustitia*, *severitas*, *gravitas*, *magnitudo animi*, *largitio*, *beneficentia*, *liberalitas*²²⁸⁴—the ancient Roman *frugalitas*, which is an asset possessed by *optimus pater familias* and *diligentissimus agricola et pecuarius*.²²⁸⁵ Thus, this virtue characterises private persons rather than kings,²²⁸⁶ yet, it is one of the most valuable traits beside *temperantia*, *moderatio* and *modestia* as a synonym of the Greek *sophrosynē*.²²⁸⁷ It is by stressing just this virtue that he criticises Caesar who behaves more and more as a *rex* in Rome and has gone beyond human measure in his power ambitions.²²⁸⁸

In the *peroratio* he as it were compels Caesar to make his choice: if he allows his *iracundia* to govern, he will be just as cruel, i.e., a tyrant, as the prosecutors; but if he lets his *clementia* and *miser cordia* prevail, then he must give pardon to Deiotarus.²²⁸⁹ Thereby he drives the dictator's attention to the point that very little—the exercise of *fides* and *clementia*—separates him from the form of ruling his power is now referred to in Rome: tyranny. Here, most of the virtues attributed to Caesar in *Pro Marcello* and *Pro Ligario* appear as features of Deiotarus only and Caesar's *sapientia* and *aequitas* are presented in much paler and more relative colour. *Clementia Caesaris*—in the meantime celebrated by official cult, which must have been rather displeasing to Cicero—emerges at more emphatic loci than in *Pro Marcello*, however, with strong critical and ironic overtones.

Although later on Cicero himself commented upon *Pro rege Deiotaro* with not much appreciation and called it *oratiuncula* with some disdain, the fact, however, that he edited and sent it to his friends, for example, Dolabella, as a modest gift woven by rough thread²²⁹⁰ implies that he attributed significance to it that pointed beyond the circumstances of the specific lawsuit, and wanted to provide publicity for it, primarily for the criticism formulated in the speech against Caesar's autocracy.²²⁹¹ Caesar, returning in the first days of October 45 from the war in Hispania²²⁹² to Rome by triumph, started to behave more and more like a *rex*.²²⁹³ The cult his personality was celebrated by assumed increasingly exaggerating forms—although, as tradition has it, Cicero was the first to make proposals on acknowledgements to be granted to Caesar, while doing so he did not miss to keep sensible measure in view.²²⁹⁴ It happened in those days that—motivated by fear,²²⁹⁵ out of overzealousness, provocation or on Caesar's initiative²²⁹⁶—Caesar's statue with the inscription "*Deo invicto*" was erected in the Quirinus temple,²²⁹⁷ and the senate adopted a resolution on erecting the temple of *Clementia Caesaris*. Much to the delight of Cicero, who saw it as a mockery of the ideal state of the

²²⁸¹ Cic. *Deiot.* 25.

²²⁸² Cic. *Deiot.* 26.

²²⁸³ Cic. *Deiot.* 28.

²²⁸⁴ Rochlitz 1993. 139.

²²⁸⁵ Cic. *Deiot.* 26.

²²⁸⁶ Seel 1967. 229.

²²⁸⁷ Cic. *Tusc.* 3, 16f.; 4, 36.

²²⁸⁸ Rochlitz 1993. 140.

²²⁸⁹ Cic. *Deiot.* 40. 43.

²²⁹⁰ Cic. *fam.* 9, 12, 2.

²²⁹¹ Rochlitz 1993. 132.

²²⁹² *Bell. Hisp.* 31, 9.

²²⁹³ Cf. Cic. *Att.* 13, 37, 2; *fam.* 6, 19, 2; Habicht 1990. 88ff.

²²⁹⁴ Plut. *Caes.* 57; Cic. 40.

²²⁹⁵ Strasburger 1990. 26.

²²⁹⁶ Plut. *Cic.* 57. Cf. Seel 1967. 352f.

²²⁹⁷ Dio Cass. 43, 45, 3; *Att.* 13, 38, 3. Weinstock 1971. 186.

Republic, the Caesar statue carried around on the occasion of *Ludi Caesaris* was not greeted by much jubilation by the people.²²⁹⁸ It came out that Caesar wanted to restore the name of the state of form of the Republic only and not its core and actual aspect,²²⁹⁹ he did not live up to the hopes attached to him in *Pro Marcello*, and Cicero was compelled to be disappointed with him;²³⁰⁰ yet, he could not fully back out of the impact produced by Caesar's personality.²³⁰¹ Caesar required the political notabilities of the age of the Republic to give evidence of passivity, silent and disciplined "adapting", "adjustment";²³⁰² politics were controlled by Caesar and his camarilla;²³⁰³ the integrity of common *sapientia* appeared to be vain hope.²³⁰⁴ Cicero was forced to remain silent on public affairs,²³⁰⁵ he devoted himself to his philosophical works—which resulted in 45 in *Hortensius*, *Academici libri*, *De finibus bonorum et malorum* and *Tusculanae disputationes*—in which he resolutely criticised the general conditions of his age and Caesar's autocratic ambitions.²³⁰⁶ In the light of that, the assessment of *Pro rege Deiotaro* divided the literature on the subject. Hugo Willrich, for example, evaluated it as the sign of good relations between Cicero and Caesar and as the document of Cicero's opportunism.²³⁰⁷ Otto Seel—in addition to clearly identifiable criticism of Caesar and the general conditions—discovered in it the picture of demoralisation by power, specifically, demoralisation of both the person who exercises power and the person who bows to power, which created a humiliating, undeserved situation for both Caesar and Cicero.²³⁰⁸ Matthias Gelzer, however, claims that the oration clearly shows how far Cicero could go even in Caesar's presence in discussing political issues and that he openly gave evidence of his values supporting the republic.²³⁰⁹ In *Pro rege Deiotaro* Eckart Olshausen unambiguously discovers the reflection of Cicero using his defendant's case as a tool to enable him to reveal his thoughts before Caesar on political issues and expound his opinion on the conditions of the age.²³¹⁰ Helga Botermann considers this oration ultimate settlement of accounts with Caesar and his state, in which Cicero makes Caesar's state as tyranny the subject of criticism.²³¹¹

In the mirror of all that it can be declared that Cicero was deeply disappointed in his hopes attached to Caesar;²³¹² the gap between them became irreconcilable, and in the speech it is possible to reveal masked condemnation of Caesar and idealisation of his opponents.²³¹³ That in those days Cicero might have already thought of assassinating Caesar is revealed by a letter written to Atticus,²³¹⁴ in which the orator referred to Caesar's purchase of a house in Quirinal: the house stood near to the Salus and Quirinus temple, and Cicero remarked that he would like to see Caesar close to Quirinus and Quirinus's fate rather than to balanced welfare

²²⁹⁸ Cic. Att. 13, 44; *Deiot.* 34.

²²⁹⁹ Suet. *Caes.* 77.

²³⁰⁰ Cic. Att. 14, 1, 2; 14, 2, 3.

²³⁰¹ Cic. Att. 13, 42; 14, 17, 6; 15, 4, 3.

²³⁰² Strasburger 1968. 61.

²³⁰³ Cic. *fam.* 6, 19, 2.

²³⁰⁴ Rochlitz 1993. 133.

²³⁰⁵ Cic. *fam.* 4, 6, 3.

²³⁰⁶ Strasburger 1990. 37.

²³⁰⁷ Willrich 1944. 221ff.

²³⁰⁸ Seel 1967. 350ff.

²³⁰⁹ Gelzer 1969. 318f.

²³¹⁰ Olshausen 1975. 122f.

²³¹¹ Botermann 1992. 323ff.; 344ff.

²³¹² Klass 1939. 211.

²³¹³ Habicht 1990. 91.

²³¹⁴ Cic. Att. 12, 45, 1–2. *De Caesare vicino scripseram ad te, quia cognoram ex tuis litteris. Eum synnaon Quirino malo quam Saluti.*

(*salus*), by which he clearly lets his younger brother infer identification of Romulus, assassinated according to certain traditions, with Quirinus.²³¹⁵

As Suetonius left it to us, in a letter Cicero purportedly writes about Caesar: when he was aedil he was already thinking about royal power, striving for royal authority.²³¹⁶ It is worth paying some attention to the loci where Cicero refers to Caesar as *rex*. The letter addressed to Atticus—which mentions Caesar with ironic overtones²³¹⁷—was written on 14 August 45,²³¹⁸ and the one to Matius at the end of August 44.²³¹⁹ On the other hand, it cannot be concealed that it was not only Caesar whom Cicero called *rex*, earlier he called Pompey the same, however, stressing his positive traits.²³²⁰ Cicero was addressed by the title *rex*, and, for that matter, *peregrinus rex*, among others, in 62 regarding the execution of the plotters—and not in flattery.²³²¹ Consequently, the concepts of *rex* and *tyrannus* belonged to the generally accepted phrases of rhetoric in Roman public affairs in naming men who were striving for autocracy or at least prime power positions, *dominatio*.²³²² In the letter mentioned earlier, written to Atticus on 17 May 45, regarding purchase of property by Caesar, Cicero makes a statement which is open for *interpretatio multiplex*, that he would like to see Caesar close to Quirinus rather than to Salus.²³²³ The background of the text is provided by the fact that the villa purchased by Caesar was located near to the Salus and Quirinus temple, and Cicero wished Caesar the fate of Quirinus rather than *salus*, that is, welfare and health.²³²⁴ Quirinus as a Roman god was quite often identified with Romulus, who founded Rome but was later assassinated since he ruled as a tyrant—so Cicero wished a similarly bloody end for Caesar too.²³²⁵

The political rhetoric of the period used the name of Romulus as the synonym of tyrant—so, for example, the invective attributed to Sallust called Cicero *Romulus Arpinas*,²³²⁶ and in 67 Pompey, entrusted to wage war against pirates, wanted to have himself vested with a too wide scope of power by *lex Sabina*, whereupon C. Calpurnius Piso warned him not to strive for Romulus's laurels if he does not want to come to the same end as Romulus.²³²⁷ Although Cicero did not mention Romulus's name in a negative context—what is more, he comments on the founder of the city in expressly praising context and in acknowledgement,²³²⁸ his positive “Romulus propaganda” did not evoke much response.²³²⁹ Livius discloses two versions on Romulus's death. According to more widely known tradition, Romulus was enveloped by a cloud during a huge storm and ascended to heaven;²³³⁰ according to the legend less kept in evidence, and understandably less popular, in his old age he became a tyrant and was torn to pieces by the senators with their bare hands.²³³¹ Later on, religious faith identified the last member of the ancient Jupiter—Mars—Quirinus triad²³³² with the first King—that is

²³¹⁵ Habicht 1990. 92.

²³¹⁶ Suet. *Caes.* 9.

²³¹⁷ Riemer 2001. 77.

²³¹⁸ Cic. *Att.* 13, 37. 2.

²³¹⁹ Cic. *fam.* 11, 27, 8.

²³²⁰ Cic. *Att.* 10, 7, 1.

²³²¹ Cic. *Sulla* 22.

²³²² Lederbogen 1969. 10.

²³²³ Cic. *Att.* 12, 45, 1–2.

²³²⁴ Borzsák 1975. 34.

²³²⁵ Gelzer 196. 325; Meyer 1922. 449.

²³²⁶ Cf. Ps.-Sall. *Cic.* 7. Cf. Classen 1962. 183ff.

²³²⁷ Plut. *Pomp.* 25.

²³²⁸ Cic. *Cat.* 3, 2.

²³²⁹ Classen 1962. 191.

²³³⁰ Liv. 1, 16, 1.

²³³¹ Liv. 1, 16, 4.

²³³² See Dumézil 1954. 129ff.; Dumézil 1973. *passim*

how the legend on the King having become a god, on the one hand, and on the assassinated tyrant, on the other hand, was created.²³³³ Caesar took firm steps to introduce the Romulus—Quirinus cult, and in his last years he placed great emphasis on his own legitimisation as “second Romulus”. In view of the fact that the apotheosis of statesmen after their death was alien to Roman thinking—the act of deification could take place solely temporarily during the triumph through cultic identification with Iuppiter on the Capitol firmly supported by several preventing rites²³³⁴—in order to build his own later cult, Caesar resolutely propagated the respect of Romulus Quirinus.²³³⁵ It was not by chance that the senate had a statue erected for him with the inscription “*Deo Invicto*” in the Quirinus temple—probably upon suggestion from “above”, which Caesar did accept.²³³⁶ Cicero mentions the opportunity of this cultic identification a few times, mostly, however, he handles this identification rather cautiously.²³³⁷

At this point it seems to be justified to sum up or repeat what was expounded regarding the motif of killing the tyrant in *Pro Milone*. Cicero openly calls Caesar *tyrannus* after his death;²³³⁸ the stoic element of the motif of killing the tyrant can be demonstrated most clearly in the third book of *De officiis* written in 44.²³³⁹ He declares that the element of killing the tyrant²³⁴⁰ is in harmony with stoic philosophy to the greatest extent,²³⁴¹ which also suits *naturalis ratio*,²³⁴² i.e., it is the ultimate conclusion of ethical consideration.²³⁴³ In view of the fact that the tyrant ruins human community and places himself outside the rules of coexistence,²³⁴⁴ accordingly, these rules are not binding him either.²³⁴⁵ His reasoning culminates in turning the right of killing the tyrant into the ethical/legal command of killing the tyrant: making common cause with the tyrant is excluded, he must be barred and removed from human community since he is nothing else than a beast having assumed human form.²³⁴⁶ Phalaris’s case is Cicero’s most favourite example, and by that he demonstrates that assassination is not only ethically fair but it is definitely a moral obligation (*honestum necare*), elimination of the tyrant from the community (*feritas et immanitas beluae segreganda est*). This again is in line with the identification of the *tyrannus* with *belua* also present in stoic philosophy, which is clearly formulated in *De re publica* too²³⁴⁷ in such form that the *tyrannus* is the most harmful species of animals, which is the most hateful subhuman being both to gods and humans, that is, it lives merely *in figura hominis*.²³⁴⁸ Thus, the key attributes of the tyrant can be described by the following concepts: *nulla societas, belua, genus pestiferum, exul, contra leges, contra naturam*; i.e., a being close to a subhuman form of existence, whose assassination cannot constitute moral offence just as killing any harmful beast.²³⁴⁹

²³³³ Riemer 2001. 80.

²³³⁴ On triumph see also Nótári 2006. 117ff.

²³³⁵ Classen 1962. 192ff.; Burkert 1962. 373.

²³³⁶ Dio Cass. 43, 45. 2–3.

²³³⁷ Cf. Cic. *rep.* 2, 20; *leg.* 1, 3; *nat.* 2, 62; *off.* 3, 41.

²³³⁸ Cic. *off.* 1, 26.

²³³⁹ Cic. *off.* 3, 19–32.

²³⁴⁰ Cic. *off.* 3, 32.

²³⁴¹ Cic. *off.* 3, 20.

²³⁴² Cic. *off.* 3, 23.

²³⁴³ Cic. *off.* 3, 14. 19.

²³⁴⁴ Cic. *off.* 3, 21.

²³⁴⁵ Cic. *off.* 3, 32.

²³⁴⁶ Cic. *off.* 3, 32.

²³⁴⁷ Cic. *rep.* 2, 48.

²³⁴⁸ Clark–Ruebel 1985. 61.

²³⁴⁹ Clark–Ruebel 1985. 62.

In the proceedings against Deiotarus no sentence was passed. After Caesar's death, in *De divinatione* Cicero puts the statement into Deiotarus's mouth that he did not regret that instead of Caesar, who had deprived him of his kingdom, he sided with Pompey because by doing so he protected the authority of the senate (*senatus auctoritatem*), the freedom of the people of Rome (*populi Romani libertatem*) and the dignity of the empire (*imperii dignitatem*).²³⁵⁰ This statement (no matter if together with Hermann Strasburger we accept it as authentic²³⁵¹ or not) from the mouth of a non-Roman as justification of his act sounds insult since he refers to traditional Roman values—just to those by which Caesar, too, legitimised the starting of the civil war.²³⁵²

²³⁵⁰ Cic. *div.* 1, 27.

²³⁵¹ Strasburger 1990. 50.

²³⁵² Caes. *civ.* 1, 7. 22. Cf. Riemer 2001. 35.

Conclusions

In the analysis of the lawyer's handling of the facts of the case and rhetorical tactics manifesting itself in Cicero's statements of the defence, in summary it should be made clear, and in harmony with what has been said in relation to each speech—whose repeated *recapitulatio* here can be dispensed with—it needs to be reiterated that the primary aim of the speeches was (could have been) nothing else than to win success in the given lawsuit. It is this ultimate goal to which he subordinates the intermediate aims identifiable in the speech, discernible in *inventio*, *dispositio* and *elocutio* since his intention is not to give an exact description or reconstruction of the events or historical facts of the case but, every time, to make the process of convincing bring result; so, the function of each element can be understood and interpreted from the ultimate goal only.

We began our work with Quintilian's words written on Cicero—let us close it with his words too for it would be hard to sum up the ingenuity of the greatest orator of all times more worthily than that! *“In all what he says there is so great authority one is ashamed not to agree, and it inspires confidence not in the lawyer's efforts but the witness's or the judge's reliability while all the master strokes that nobody could imitate even by utmost practising are flowing naturally; yet, the speech, than which nothing more beautiful we have ever heard, gives a magnificently free and easy impression. Therefore, it was not undeservedly that his contemporaries told about him that he had control over courts of justice, and in the eyes of posterity he attained that Cicero should mean the name of elocution itself and not just a man. So let us cast our glance on him, he should stand before us as a model, and one who likes Cicero very much should know about himself that he has improved.”*²³⁵³

²³⁵³ Quint. inst. 10, 1, 111–112. *Iam in omnibus quae dicit tanta auctoritas inest ut dissentire pudeat, nec advocati studium sed testis aut iudicis adferat fidem, cum interim haec omnia, quae vix singula quisquam intentissima cura consequi posset, fluunt inlaborata, et illa qua nihil pulchrius auditum est oratio prae se fert tamen felicissimam facilitatem. Quare non inmerito ab hominibus aetatis suae regnare in iudiciis dictus est, apud posteros vero id consecutus ut Cicero iam non hominis nomen sed eloquentiae habeatur. hunc igitur spectemus, hoc propositum nobis sit exemplum, ille se profecisse sciat cui Cicero valde placebit.*

Lists of Abbreviations

I. Abbreviations of Antique Sources

Amm.	Ammianus Marcellinus
App.	Appianus
<i>civ.</i>	<i>Bella civilia</i>
<i>Hann.</i>	<i>Hannibalica</i>
Arist.	Aristoteles
<i>rhet.</i>	<i>Rhetorica</i>
Arnob.	Arnobius
	<i>Adversus nationes</i>
Asc.	Asconius
	<i>Commentarius in Cic. Mil.</i>
Auct. ad Her.	Auctor ad Herennium
<i>Bell. Afr.</i>	<i>De bello Africano</i>
Caes.	Caesar
<i>civ.</i>	<i>De bello civili</i>
<i>Gall.</i>	<i>De bello Gallico</i>
Cic.	Cicero
<i>ac.</i>	<i>Academica</i>
<i>Arch.</i>	<i>Pro Archia poeta</i>
<i>Att.</i>	<i>Epistulae ad Atticum</i>
<i>Balb.</i>	<i>Pro Balbo</i>
<i>Brut.</i>	<i>Brutus</i>
<i>Caecil.</i>	<i>Divinatio in Caecilium</i>
<i>Caecin.</i>	<i>Pro Caecina</i>
<i>Cael.</i>	<i>Pro Caelio</i>
<i>Cat.</i>	<i>In Catilinam</i>
<i>Cato</i>	<i>Cato maior de senectute</i>
<i>Cluent.</i>	<i>Pro Cluentio</i>
<i>De orat.</i>	<i>De oratore</i>
<i>Deiot.</i>	<i>Pro rege Deiotaro</i>
<i>div.</i>	<i>De divinatione</i>
<i>dom.</i>	<i>De domo sua</i>
<i>fam.</i>	<i>Epistulae ad familiares</i>
<i>fin.</i>	<i>De finibus bonorum et malorum</i>
<i>Flacc.</i>	<i>Pro Flacco</i>
<i>Font.</i>	<i>Pro Fonteio</i>
<i>har. resp.</i>	<i>De haruspicum responso</i>

<i>imp. Cn. Pomp.</i>	<i>De imperio Cnaei Pompeii</i>
<i>inv.</i>	<i>De inventione</i>
<i>Lael.</i>	<i>Laelius de amicitia</i>
<i>leg.</i>	<i>De legibus</i>
<i>leg. agr.</i>	<i>De lege agraria</i>
<i>Lig.</i>	<i>Pro Ligario</i>
<i>Marc.</i>	<i>Pro Marcello</i>
<i>Mil.</i>	<i>Pro Milone</i>
<i>Mur.</i>	<i>Pro Murena</i>
<i>nat.</i>	<i>De natura deorum</i>
<i>off.</i>	<i>De officiis</i>
<i>Or.</i>	<i>Orator</i>
<i>parad.</i>	<i>Paradoxa Stoicorum</i>
<i>part. or.</i>	<i>Partitiones oratoriae</i>
<i>Phil.</i>	<i>Philippicae in Marcum Antonium</i>
<i>Pis.</i>	<i>In Pisonem</i>
<i>Planc.</i>	<i>Pro Plancio</i>
<i>prov. cons.</i>	<i>De provinciis consularibus</i>
<i>Q. fr.</i>	<i>Ad Quintum fratrem</i>
<i>Quinct.</i>	<i>Pro Quinctio</i>
<i>Rab. perd.</i>	<i>Pro Rabirio perduellionis</i>
<i>Rab. Post.</i>	<i>Pro Rabirio Postumo</i>
<i>red. in sen.</i>	<i>Post reditum in senatu</i>
<i>rep.</i>	<i>De re publica</i>
<i>Rosc. Am.</i>	<i>Pro Roscio Amerino</i>
<i>Scaur.</i>	<i>Pro Scauro</i>
<i>Sest.</i>	<i>Pro Sestio</i>
<i>Sulla</i>	<i>Pro Sulla</i>
<i>tog.</i>	<i>In toga candida</i>
<i>top.</i>	<i>Topica</i>
<i>Tull.</i>	<i>Pro Tullio</i>
<i>Tusc.</i>	<i>Tusculanae disputationes</i>
<i>Vat.</i>	<i>In Vatinius testem</i>
<i>Verr.</i>	<i>In Verrem</i>
CIL	Corpus Inscriptionum Latinarum
Coll.	<i>Collatio legum Mosaicarum et Romanarum</i>
Comm. pet.	<i>Commentariolum petitionis</i>
D.	<i>Digesta Iustiniani</i>
Cels.	P. Iuventius Celsus
Gai.	Gaius
Marci.	Aelius Marcianus
Mod.	Herennius Modestinus
Pap.	Aemilius Papinianus
Paul.	Iulius Paulus
Pomp.	Sex. Pomponius
Tryph.	Clausius Tryphoninus

Ulp.	Domitius Ulpianus
Dio Cass.	Dio Cassius
Dion. Hal.	Dionysius Halycarnassensis
Enn. <i>ann.</i>	Ennius <i>Annales</i>
Fest.	Sex. Pompeius Festus <i>De verborum significatione</i>
Fronto	M. Cornelius Fronto <i>Epistulae</i>
Gell.	Gellius <i>Noctes Atticae</i>
Gorg. <i>frg.</i>	Gorgias <i>Fragmenta</i>
Ios. Flav. <i>Ant. Iud.</i>	Iosephus Flavius <i>Antiquitates Iudaicae</i>
Isid. <i>etym.</i>	Isidorus Hispalensis <i>Etymologiae</i>
Iuv.	Iuvenalis <i>Saturae</i>
Lact. <i>inst.</i>	Lactantius <i>Divinae institutiones</i>
Liv. <i>epit.</i> <i>per.</i>	T. Livius <i>Ab urbe condita</i> <i>Ab urbe condita librorum epitoma</i> <i>Ab urbe condita librorum periochae</i>
Macr. <i>Sat.</i>	Macrobius <i>Saturnalia</i>
Ov. <i>fast.</i>	Ovidius <i>Fasti</i>
Paul.	Paulus <i>Sententiarum libri</i>
Plaut. <i>Merc.</i> <i>Mil.</i>	Plautus <i>Mercator</i> <i>Miles gloriosus</i>

<i>Poen.</i>	<i>Poennulus</i>
Plin. <i>nat.</i>	Plinius maior <i>Naturalis historia</i>
Plin. <i>epist.</i> <i>paneg.</i>	Plinius minor <i>Epistulae</i> <i>Panegyricus</i>
Plut. <i>C. Gr.</i> <i>Caes.</i> <i>Cato min.</i> <i>Cic.</i> <i>Pomp.</i> <i>Rom.</i> <i>Ti. Gracch.</i>	Plutarchus <i>Caius Gracchus</i> <i>Caesar</i> <i>Cato minor</i> <i>Cicero</i> <i>Pompeius</i> <i>Romulus</i> <i>Tiberius Gracchus</i>
Polyb.	Polybios <i>Historiae</i>
Ps.-Sall. <i>Cic.</i>	Pseudo-Sallustius <i>Invectiva in Ciceronem</i>
Quint. <i>inst.</i>	Quintilianus <i>Institutio oratoria</i>
Sall. <i>Cat.</i> <i>epist.</i> <i>Iug.</i>	Sallustius <i>De coniuratione Catilinae</i> <i>Epistulae</i> <i>De bello Iugurthino</i>
Sen. <i>contr.</i>	M. Annaeus Seneca <i>Controversiae</i>
Sen. <i>clem.</i>	L. Annaeus Seneca <i>De clementia</i>
Serv. <i>in Verg. Aen.</i>	Servius <i>Commentarius in Verg. Aen.</i>
Sil.	Silius Italicus <i>Punica</i>
Strab.	Strabo <i>Geographica</i>
Suet. <i>Caes.</i> <i>Claud.</i>	Suetonius <i>Caesar</i> <i>Claudius</i>

<i>Tib.</i>	<i>Tiberius</i>
Tac. <i>ann.</i>	Tacitus <i>Annales</i>
Ter. <i>Ad.</i>	P. Terentius Afer <i>Adelphoe</i>
Vell.	Velleius Paterculus
Verg. <i>Aen.</i>	Vergilius <i>Aeneis</i>

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