

Tamás Nótári

Legal and Rhetorical Aspects  
of Cicero's Murder Trials

C.H. Beck

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## Preface

The present monograph intends to get closer to understanding the mechanisms of handling of legal facts in cases, when Cicero's defendees were charged with murder or attempted murder. Therefore five pieces of the orator's life-work will be analysed 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.<sup>1</sup>

The speeches given in defence of Sextus Roscius from Ameria in 81<sup>2</sup> 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 speech given in defence of Titus Annius Milo in 52 was made in a lawsuit brought by the charge of *vis*. *Vis (publica)* as *crimen* covered a general group of crimes that comprised several states of facts from violent disturbance of public order to certain cases of manslaughter. *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.

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

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<sup>1</sup> Despite the speech in defence of Caius Rabirius can be also regarded as a case of murder, because of its fragmentary text, it will not be analysed in this volume.

<sup>2</sup> All dates relating to ancient events in this volume are BC.

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.

Cluj Napoca, 13 February 2011

Tamás Nótári

### 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 adjudicate 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*,<sup>1</sup> 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 1<sup>st</sup> 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 1<sup>st</sup> 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*.<sup>2</sup> It is in this sense *quaestiones perpetuae* can be postulated from the 2<sup>nd</sup> century using Cicero's formulation.<sup>3</sup> 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*

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<sup>1</sup> Mommsen 1899. 187.

<sup>2</sup> Kunkel 1974b 35.

<sup>3</sup> Cic. *Brut.* 106.

(although this term does not occur in sources), which were usually set up to adjudge cases with heavier political weight.<sup>1</sup>

Several hypotheses have been made in the literature to explain the origin and development of the procedure of *quaestio*,<sup>2</sup> and for a long time it was supposed that this form of procedure evolved not earlier than the 2<sup>nd</sup> century, so, for example, Theodor Mommsen discovered the analogy of the procedure of the *recuperatores* in it,<sup>3</sup> and Hitzig tried to explain it with influence produced by Greek judicial process.<sup>4</sup> 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,<sup>5</sup> then this theory becomes groundless. A drastically new and still prevailing result was attained by Wolfgang Kunkel, who believed that the Romans 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*<sup>6</sup> 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*.<sup>7</sup>

At the turn of the 3<sup>rd</sup> and 2<sup>nd</sup> 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.<sup>8</sup> 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 practices<sup>9</sup> and the investigation

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<sup>1</sup> See e.g. the Bona Dea trial.

<sup>2</sup> See Lengle 1971. 25ff.

<sup>3</sup> Mommsen 1887–1888. I. 182.

<sup>4</sup> Hitzig 1909. 41f.

<sup>5</sup> *Lex Acilia* 23.

<sup>6</sup> Cf. Bleicken 1959 324ff; Lintott 1972. 226ff.; Martin 1970. 72ff.

<sup>7</sup> Kunkel 1962. 21ff.

<sup>8</sup> Kunkel 1974b 46.

<sup>9</sup> Liv. 9, 26, 9.

was conducted thereafter following this track.<sup>1</sup> Initially, similar kind of punitive court of justices were set up much rather for suppressing organising activity of the unruly allies,<sup>2</sup> however, from the first half of the 2<sup>nd</sup> 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*,<sup>3</sup> or by *plebiscita* too,<sup>4</sup> yet, the senate continued to draw certain cases to its own powers.<sup>5</sup>

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.<sup>6</sup>

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.<sup>7</sup>

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

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<sup>1</sup> Liv. 9, 26, 6f.

<sup>2</sup> Liv. 10, 1, 3; 28, 10, 4; 29, 36, 10f.

<sup>3</sup> In the early period of the Roman Republic *quaestiones extraordinariae* could be set up only by *senatus consulta*.

<sup>4</sup> E.g. the case of M. Popilius Laenas (consul in 173-ban) and L. Hostilius Tubulus (praetor in 140).

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

<sup>6</sup> Cic. *Caecil.* 50; Cic. *Cluent.* 39.

<sup>7</sup> Kunkel 1974b 51.

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,<sup>1</sup> which later only Sulla managed to achieve for no other way did he see it possible to ensure the legislative monopoly of the senate.<sup>2</sup> 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*<sup>3</sup> *crimen maiestatis*, *peculatus*<sup>4</sup>). *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*.<sup>5</sup> According to the general view, Sulla merged these two courts of justice (*quaestio de sicariis et veneficis*);<sup>6</sup> yet, for example, Andrew Lintott presumes that they continued to operate separately.<sup>7</sup> 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.<sup>8</sup> At a locus Pomponius refers to Sulla's court of justice purportedly set up for investigating *par(r)icidium*;<sup>9</sup> however, competent literature agrees with the point that *par(r)icidium* also fell within the powers of *quaestio de sicariis et*

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<sup>1</sup> All three attempts (made by Ti. Gracchus, C. Gracchus and M. Livius Drusus) to raise the number of the senate failed.

<sup>2</sup> Cf. Plut. C. Gracch. 5; Liv. perioch. 60.

<sup>3</sup> Val. Max. 6, 9, 14; Plut. Mar. 5, 3.

<sup>4</sup> Plut. Pomp. 4, 1; Cic. Brut. 230; Val. Max. 5, 3, 5.

<sup>5</sup> Auct. ad Her. 4, 41.

<sup>6</sup> Cf. Santalucia 1998. 146.

<sup>7</sup> Lintott 1978. 127.

<sup>8</sup> Sáry 2001. 303.

<sup>9</sup> Paul. D. 1, 2, 2, 32.



*veneficis*, and Sulla did not set up an independent *quaestio de par(r)icidio*,<sup>1</sup> 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;<sup>2</sup> 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*.<sup>3</sup>

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 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*,<sup>4</sup> *lex Cornelia testamentaria nummaria*,<sup>5</sup> *lex Cornelia de iniuriis*,<sup>6</sup> *lex Cornelia maiestatis*,<sup>7</sup> *lex Cornelia repetundarum*.<sup>8</sup> 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.<sup>9</sup>

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*.<sup>10</sup> 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

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<sup>1</sup> Santalucia 1998. 148.

<sup>2</sup> Gruen 1968. 261f.

<sup>3</sup> Cloud 1971. 41ff.

<sup>4</sup> 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.

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

<sup>6</sup> Ulp. D. 47, 10, 5 pr.–5; Paul. 5, 4, 8; Inst. 4, 4, 8.

<sup>7</sup> Cic. *Pis.* 50; Tac. *ann.* 1, 72.

<sup>8</sup> Cic. *Rab.* 9; *div. in Caec.* 17.

<sup>9</sup> Kunkel 1974b 62.

<sup>10</sup> Cf. Cic. *Verr.* 2, 1, 26.

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.<sup>1</sup>

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 approximately forty-fifty senators. Each of these *decuriae* was assigned at the beginning of each official year to a specific *quaestio*,<sup>2</sup> and in specific lawsuits it was from them that jurors were selected by drawing lots.<sup>3</sup> 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

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<sup>1</sup> Kunkel 1974b 69.

<sup>2</sup> Cf. Cic. *Verr.* 1, 158; 2, 2, 79; *Cluent.* 103.

<sup>3</sup> Cf. Cic. *Verr.* 1, 16.

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.<sup>1</sup> 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*.

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<sup>1</sup> Cic. *Verr.* 2, 1, 158.

## I. 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.

### I. 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.<sup>1</sup> 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

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<sup>1</sup> See Kinsey 1967. 61ff. On Cicero's political career see Barbu 1959. *passim*

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, Marius and Cinna, that is, on the grounds of *lex Cornelia sive Valeria* he imposed *proscriptio* on them.<sup>1</sup> 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 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*).<sup>2</sup>

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,

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<sup>1</sup> 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; Volkman 1958. passim

<sup>2</sup> Krüger 1994. 143f.; Richter–Fleckeisen–Amon 1906. 1ff.; Mommsen 1899. 938<sup>1</sup>. Cf. Sall. *Cat.* 51.

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,<sup>1</sup> 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,<sup>2</sup> Sulla cannot know of the foul deeds of his liberated slave.<sup>3</sup> 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, thereby again serving Sulla's intention, who placed great emphasis on fairness of court proceedings.<sup>4</sup> Accordingly, the structure of the speech is as follows.<sup>5</sup> The introduction (*exordium*, *prooemium*) prepares the audience for what follows (*conciliare*)<sup>6</sup> so that in the *narratio*<sup>7</sup> the presentation of the facts of the case (*docere*) could be given proper emphasis. In the *partitio*<sup>8</sup> Cicero outlines the planned order of demonstration, which is followed by the *argumentatio* itself,<sup>9</sup> meant to convince (*probare*). The *argumentatio* can be divided into three parts: Cicero first deals with Erucius,<sup>10</sup> then with the Roscii,<sup>11</sup> after that with Chrysogonus.<sup>12</sup> The *peroratio*

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<sup>1</sup> Cic. *Rosc. Am.* 59ff.

<sup>2</sup> Cic. *Rosc. Am.* 131.

<sup>3</sup> Cic. *Rosc. Am.* 21. 25. 26. 91. 110. 130.

<sup>4</sup> Cic. *Rosc. Am.* 154ff.

<sup>5</sup> Krüger 1994. 146.

<sup>6</sup> Cic. *Rosc. Am.* 1–14.

<sup>7</sup> Cic. *Rosc. Am.* 15–29.

<sup>8</sup> Cic. *Rosc. Am.* 29–36.

<sup>9</sup> Cic. *Rosc. Am.* 37–142.

<sup>10</sup> Cic. *Rosc. Am.* 37–82.

<sup>11</sup> Cic. *Rosc. Am.* 83–123.

<sup>12</sup> Cic. *Rosc. Am.* 124–154.

of summary character intends to produce effect primarily on the audience's emotions.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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,<sup>4</sup> which he successfully threw off after his studies in Greece.<sup>5</sup> 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.<sup>6</sup> The oration—as Roscius junior was acquitted<sup>7</sup>—and undertaking the perils involved by it<sup>8</sup> bore worthy fruit to Cicero too, since from then on he was kept in evidence as one of the prime advocates of Rome.<sup>9</sup>

## I. 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.<sup>10</sup> 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.<sup>11</sup> Later on, the crime of homicide was 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,

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<sup>1</sup> Cic. *Rosc. Am.* 143–154.

<sup>2</sup> Cic. *Rosc. Am.* 13. 29ff.; 55ff.; 59ff.; 64ff.

<sup>3</sup> Krüger 1994. 147.

<sup>4</sup> Cic. *Brut.* 108.

<sup>5</sup> Cic. *Brut.* 316.

<sup>6</sup> Cic. *Or.* 107; *Phil.* 2, 30f.

<sup>7</sup> Plut. *Cic.* 3, 6.

<sup>8</sup> Cic. *off.* 2, 51.

<sup>9</sup> Cic. *Brut.* 312.

<sup>10</sup> Fest. 221. *Parricida non utique is, qui patrem occidisset, sed qualemcunque hominem indemnatum ... Si qui hominem liberum dolo sciens morti duit, par(r)idas esto.*

<sup>11</sup> Plut. *Rom.* 22. For religious connotations see Agamben 1998. 54ff.

however, investigation against murderers was carried out by *quaestores par(r)icidii*.<sup>1</sup> 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.<sup>2</sup> 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*.<sup>3</sup>

*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,<sup>4</sup> 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.<sup>5</sup> 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,<sup>6</sup> and therefore we know the punishment imposed on *par(r)icidae*, sacking (*poenae cullei*) in proper details.<sup>7</sup> In the beginning, *poena cullei* must have been a sacrifice conciliating higher powers, *procuratio prodigii* rather than a sanction.<sup>8</sup> 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.<sup>9</sup> Upsetting the cosmic order, so, any extraordinary, new event was considered *prodigium*.<sup>10</sup> *Par(r)icidium* was also such a phenomenon violating the cosmic order, *pax deorum*.

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<sup>1</sup> Zlinszky 1991. 109; Cloud 1969. 258ff.; Santalucia 1998. 146; Sály 2001. 301ff.

<sup>2</sup> Mommsen 1899. 612<sup>3</sup>.

<sup>3</sup> Mommsen 1899. 613.

<sup>4</sup> 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.*

<sup>5</sup> Zlinszky 1991. 113; Cloud 1971. 41ff.

<sup>6</sup> Cic. *inv.* 2, 149.

<sup>7</sup> Cf. Egmond 1995/96. 159ff.

<sup>8</sup> Mommsen 1899. 922f.

<sup>9</sup> Köves-Zulauf 1995. 61.

<sup>10</sup> Zintzen 1979. 1151.



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*.<sup>1</sup> 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.<sup>2</sup> 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*".<sup>3</sup> Upon the occurrence of *prodigium*, be it of either 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;<sup>4</sup> 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,<sup>5</sup> 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,<sup>6</sup> especially because emperor Claudius took exceptional pleasure in the spectacle of executing qualified death penalties.<sup>7</sup> 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.<sup>8</sup> 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—

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<sup>1</sup> Walde–Hofmann 1954. II. 368.

<sup>2</sup> Zintzen 1979. 1153

<sup>3</sup> Köves-Zulauf 1995. 62.

<sup>4</sup> Cf. Liv. 1, 26, 11.

<sup>5</sup> 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.*

<sup>6</sup> Sen. *contr.* 5, 4; Sen. *clem.* 1, 15; Iuv. 8, 214; 13, 155.

<sup>7</sup> Suet. *Claud.* 34.

<sup>8</sup> Richter–Fleckeisen–Amon 1906. 13.

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.<sup>1</sup>

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.<sup>2</sup> Consequently, *exilium* was not punishment but fleeing from punishment.<sup>3</sup> 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.<sup>4</sup>

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*).<sup>5</sup> 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.<sup>6</sup> In

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

<sup>2</sup> Cic. *Rosc. Am.* 6.

<sup>3</sup> Zlinszky 1991. 78.

<sup>4</sup> Richter–Fleckeisen–Amon 1906. 14.

<sup>5</sup> Cf. Cic. *Mil.* 59; Tac. *ann.* 2, 30, 12. On later regulation see Ulp. D. 48, 18, 1, 17–18; Mommsen 1899. 447ff.

<sup>6</sup> Cf. Paul. 5, 16, 3.

such cases the judge had to decide if the slaves made testimony only upon the effect of torture or their confession reflected reality.<sup>1</sup>

### I. 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*<sup>2</sup> of the speech. Roscius senior could come and go with a clear conscience in Rome even during the time of Sulla's *proscriptiones*<sup>3</sup> 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.<sup>4</sup> Doom struck him from elsewhere: two of his relatives,<sup>5</sup> T. Roscius Capito and T. Roscius Magnus, with whom he had maintained a hostile relation for a long time, allied to murder him.<sup>6</sup> Regarding the details of implementing the murder Cicero does not make any effort to clear up mystery either:<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> Ensuing events reveal the goal that moved the murderers: to grab Roscius's property.<sup>10</sup> The relatives straight away inform Sulla's libertine, Cornelius Chrysogonus, who was just staying in Volaterrae,<sup>11</sup> 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*,<sup>12</sup> and from that moment his property worth six million *sestertii* becomes confiscable, and it is acquired by Chrysogonus himself for two thousand *sestertii*.<sup>13</sup> Roscius Magnus is entrusted with administering the property in his capacity as *procurator*,

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<sup>1</sup> Ulp. D. 48, 18, 1, 22. 27.

<sup>2</sup> Cic. *Rosc. Am.* 15–29.

<sup>3</sup> Cic. *Rosc. Am.* 16.

<sup>4</sup> Cic. *Rosc. Am.* 1–4. 27. 77. 119. 147–149.

<sup>5</sup> Cf. Cic. *Rosc. Am.* 96.

<sup>6</sup> Cic. *Rosc. Am.* 17. 87.

<sup>7</sup> Cic. *Rosc. Am.* 97–98.

<sup>8</sup> Cic. *Rosc. Am.* 18. 126.

<sup>9</sup> Cic. *Rosc. Am.* 19. 95–99. 102.

<sup>10</sup> Stroh 1975. 55.

<sup>11</sup> Cic. *Rosc. Am.* 20. 105–108.

<sup>12</sup> Cic. *Rosc. Am.* 20f.; 32.

<sup>13</sup> Cic. *Rosc. Am.* 6. 21.

and he is not slow in grasping the opportunity of getting rich quickly;<sup>1</sup> from the victim's thirteen estates Roscius Capito seizes three,<sup>2</sup> and they simply chase the son of the murdered man away from his father's house.<sup>3</sup>

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.<sup>4</sup> The delegates, however, include Roscius Capito too, who does everything to mislead his fellow-delegates;<sup>5</sup> 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.<sup>6</sup> 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 peace<sup>7</sup>—the candidate for victim, however, escapes to Rome to his father's friends.<sup>8</sup>

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.<sup>9</sup> The representation of the charge was undertaken by Erucius, having already often acted as prosecutor,<sup>10</sup> whom Roscius Magnus, administrator of Chrysogonus's robbed property, served with a lot of “useful” advice<sup>11</sup>—yet, Roscius Magnus was not an *accusator* in the strict sense of the word: although, as Cicero claims, he is among the prosecutors,<sup>12</sup> and he refers to him as *accusator* in the *peroratio*,<sup>13</sup> the orator would certainly not have omitted to mention Roscius Magnus being a prosecutor as exceptional impudence.<sup>14</sup> Roscius Capito acted as witness,<sup>15</sup> and Chrysogonus, as Sulla's confidant and influential mover of the events, was to assume the part

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<sup>1</sup> Cic. *Rosc. Am.* 21. 23. 108.

<sup>2</sup> Cic. *Rosc. Am.* 17. 21. 99. 103. 108. 115. 117.

<sup>3</sup> Cic. *Rosc. Am.* 23ff.

<sup>4</sup> Cic. *Rosc. Am.* 24–25.

<sup>5</sup> Cic. *Rosc. Am.* 26. 109–117.

<sup>6</sup> Cic. *Rosc. Am.* 26.

<sup>7</sup> Cic. *Rosc. Am.* 13. 26.

<sup>8</sup> Cic. *Rosc. Am.* 27.

<sup>9</sup> Cic. *Rosc. Am.* 28.

<sup>10</sup> Cic. *Rosc. Am.* 28. 55. 61. 89.

<sup>11</sup> Cic. *Rosc. Am.* 35.

<sup>12</sup> Cic. *Rosc. Am.* 17. 87. 95. 104.

<sup>13</sup> Cic. *Rosc. Am.* 152.

<sup>14</sup> Stroth 1975. 56. (The opposite view—see Zumpt 1871. 519.)

<sup>15</sup> Cic. *Rosc. Am.* 84. 101–103.

to prevent the real background of the facts from being disclosed.<sup>1</sup> The prosecution pleaded that the murder arose from a family strife: Roscius junior had always hated his father,<sup>2</sup> and when his father planned to disinherit his son, the son decided to kill his father to avert it.<sup>3</sup> 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.<sup>4</sup>

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,<sup>5</sup> Gustav Landgraf,<sup>6</sup> Ernst Lincke<sup>7</sup> and Wilfried Stroh,<sup>8</sup> Cicero does not properly justify the charge against the two Roscii. The motif of their act is logical as both profited from the murder,<sup>9</sup> 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 time<sup>10</sup> 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*.<sup>11</sup> If Capito was indeed sent to Volaterrae together with the delegation, then he could get the estate only later;<sup>12</sup> 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

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<sup>1</sup> Cic. *Rosc. Am.* 5f.; 28. 58. 60f.

<sup>2</sup> Cic. *Rosc. Am.* 40ff.

<sup>3</sup> Cic. *Rosc. Am.* 52–54. 58.

<sup>4</sup> Stroh 1975. 57.

<sup>5</sup> Heinze 1960. 101.

<sup>6</sup> Landgraf 1914. 170.

<sup>7</sup> Lincke 1890. 187ff.; 193ff.

<sup>8</sup> Stroh 1975. 57ff.

<sup>9</sup> Cic. *Rosc. Am.* 17. 84–88. 99. 107. 152.

<sup>10</sup> Cic. *Rosc. Am.* 21.

<sup>11</sup> Stroh 1975. 58.

<sup>12</sup> Lincke 1890. 196.

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.<sup>1</sup> 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.<sup>2</sup>

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 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

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<sup>1</sup> Stroh 1975. 59.

<sup>2</sup> Stroh 1975. 60f.

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.<sup>1</sup> 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*.<sup>2</sup> First, Cicero suggests that Chrysogonus was able to acquire Roscius senior's property because he belonged to the first category,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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*,<sup>6</sup> 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

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<sup>1</sup> Heinze 1960. 99.

<sup>2</sup> Cic. *Rosc. Am.* 126. *Ut aut eorum bona veneant, qui proscripti sunt ... aut eorum, qui in adversariorum praesidiis occisi sunt*

<sup>3</sup> Cic. *Rosc. Am.* 32.

<sup>4</sup> Cic. *Rosc. Am.* 127.

<sup>5</sup> Stroh 1975. 61f.

<sup>6</sup> Cic. *Rosc. Am.* 60.

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.<sup>1</sup> Thus, Chrysogonus's interest was exactly acquittal of the accused in such form! 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.<sup>2</sup> 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

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<sup>1</sup> Stroh 1975. 62f.

<sup>2</sup> Cic. *Rosc. Am.* 59.



“warns” the accused lest he should cherish excessive hopes based on the mild statement of the prosecution.<sup>1</sup>

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.<sup>2</sup>) 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;<sup>3</sup> 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 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.<sup>4</sup>

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

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<sup>1</sup> Stroh 1975. 64.

<sup>2</sup> Cic. *Rosc. Am.* 28.

<sup>3</sup> Cic. *Rosc. Am.* 6. 143.

<sup>4</sup> Stroh 1975. 65.

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 *proscriptios* in this property, he begs them to decide not to deprive the unlucky fellow, already done out of his property, of his life.<sup>1</sup> He obscures his own tactics too, as its aim is, among others, just to get the property of the accused back.<sup>2</sup> 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 too<sup>3</sup>: 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!<sup>4</sup> 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.<sup>5</sup>

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 morals<sup>6</sup> 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,<sup>7</sup> which otherwise makes the obvious character of depraved conduct of life questionable—seems to contradict all

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<sup>1</sup> Cic. *Rosc. Am.* 7. 32. 49. 128. 143ff.; 150.

<sup>2</sup> Heinze 1960. 102.

<sup>3</sup> Cic. *Rosc. Am.* 6.

<sup>4</sup> Cic. *Rosc. Am.* 6. 21ff.; 25. 91. 127. 130.

<sup>5</sup> Stroh 1975. 66f.

<sup>6</sup> Cic. *Rosc. Am.* 17. 84. 100.

<sup>7</sup> Cic. *Rosc. Am.* 25.

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.<sup>1</sup> So, one by one they are not suitable for the role of the murderer for 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.<sup>2</sup>

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*.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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*.<sup>6</sup> 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,<sup>7</sup> 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,

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<sup>1</sup> Cic. *Rosc. Am.* 17. 86.

<sup>2</sup> Stroh 1975. 68.

<sup>3</sup> Cic. *Rosc. Am.* 6ff.

<sup>4</sup> Heinze: 1960. 101; Büchner 1964. 83.

<sup>5</sup> Stroh 1975. 69.

<sup>6</sup> Cic. *Rosc. Am.* 15–29.

<sup>7</sup> Cic. *Rosc. Am.* 15.

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 above<sup>1</sup> is preceded by a brief *partitio*.<sup>2</sup> In accordance with the rules of *anticategorica*<sup>3</sup> Cicero, first, puts forward evidence to prove Roscius junior's innocence,<sup>4</sup> then, he starts his attack against Capito and Magnus<sup>5</sup>—his aim here is to protect his defendant's life. This is followed by the argumentation on Chrysogonus's unlawful grabbing<sup>6</sup>—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.<sup>7</sup>

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*.<sup>8</sup> 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*),<sup>9</sup> 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*<sup>10</sup> 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*.<sup>11</sup> Although the prosecution asserts that Roscius, as an indirect perpetrator with the assistance of slaves, killed his father,<sup>12</sup> Cicero ignores this statement and considers

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<sup>1</sup> Cic. *Rosc. Am.* 37–142.

<sup>2</sup> Cic. *Rosc. Am.* 35–36.

<sup>3</sup> Cf. Quint. *inst.* 7, 2, 23.

<sup>4</sup> Cic. *Rosc. Am.* 37–82.

<sup>5</sup> Cic. *Rosc. Am.* 83–123.

<sup>6</sup> Cic. *Rosc. Am.* 124–142.

<sup>7</sup> Stroh 1975. 70f.

<sup>8</sup> Cic. *Rosc. Am.* 37–39.

<sup>9</sup> Cic. *Rosc. Am.* 28.

<sup>10</sup> Cic. *Rosc. Am.* 40–73.

<sup>11</sup> Cic. *Rosc. Am.* 73–81.

<sup>12</sup> Cic. *Rosc. Am.* 79.

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.<sup>1</sup>

In the attack against the opponents, Cicero puts forward his arguments in an order following the chronology of the events.<sup>2</sup> 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.<sup>3</sup> The framework of *argumenta e facto*—more specifically *argumenta e loco*,<sup>4</sup> *e tempore*,<sup>5</sup> *e tempore consequenti*<sup>6</sup>—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.<sup>7</sup> 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*<sup>8</sup> and *argumenta e vita*,<sup>9</sup> which he closes with a tirade against the two Roscii.<sup>10</sup> Cicero does not carry through the analysis of the importance of the news immediately forwarded to Chrysogonus,<sup>11</sup> however, by stressing the extent of grabbing he allows to presume the motif of the crime.<sup>12</sup> Spending a long time with the role of the delegation sent to Volaterrae is primarily aimed at increasing the antipathy against Capito.<sup>13</sup> At this point, Cicero again turns to the refusal of the opportunity of interrogating the slaves,<sup>14</sup> 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

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<sup>1</sup> Cic. *Rosc. Am.* 80ff.

<sup>2</sup> Cic. *Rosc. Am.* 83–123.

<sup>3</sup> Cic. *Rosc. Am.* 84–91.

<sup>4</sup> Cic. *Rosc. Am.* 92.

<sup>5</sup> Cic. *Rosc. Am.* 93.

<sup>6</sup> Cic. *Rosc. Am.* 93–98.

<sup>7</sup> Cic. *Rosc. Am.* 92–98.

<sup>8</sup> Cic. *Rosc. Am.* 99.

<sup>9</sup> Cic. *Rosc. Am.* 100.

<sup>10</sup> Cic. *Rosc. Am.* 102–104.

<sup>11</sup> Cic. *Rosc. Am.* 105–107.

<sup>12</sup> Cic. *Rosc. Am.* 108.

<sup>13</sup> Cic. *Rosc. Am.* 109–118.

<sup>14</sup> Cic. *Rosc. Am.* 119ff.

power (*potentia*) did he help the infamy of the infamous Capito and Magnus (*audacia*).<sup>1</sup> 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.<sup>2</sup>

The *argumentatio* against Chrysogonus hides several difficulties attributable, among others, to the deterioration of the text;<sup>3</sup> 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;<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> Accordingly, first, he sharply separates Chrysogonus’s deeds in the past from the procedure of others who benefited from auctions and *proscriptiones*,<sup>7</sup> 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.<sup>8</sup>

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

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<sup>1</sup> Cic. *Rosc. Am.* 122.

<sup>2</sup> Stroh 1975. 74.

<sup>3</sup> Cic. *Rosc. Am.* 124–142.

<sup>4</sup> Cic. *Rosc. Am.* 124–131.

<sup>5</sup> Cic. *Rosc. Am.* 132ff.

<sup>6</sup> Stroh 1975. 75.

<sup>7</sup> Cic. *Rosc. Am.* 124–125.

<sup>8</sup> Cic. *Rosc. Am.* 135–136.

to deliver his property voluntarily to Chrysogonus<sup>1</sup>—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 defendant<sup>2</sup>—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.<sup>3</sup> By doing 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 humanity<sup>4</sup>—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*.<sup>5</sup>

It is not without any reason that Cicero himself considered this oration delivered by him at the age of twenty-six his masterpiece<sup>6</sup> 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.<sup>7</sup>

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*,<sup>8</sup> almost superstitious insistence on what has been acquired in training. Accordingly, Cicero too sharply separates *narratio* from *argumentatio* and does

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<sup>1</sup> Cic. *Rosc. Am.* 144.

<sup>2</sup> Cic. *Rosc. Am.* 128.

<sup>3</sup> Cic. *Rosc. Am.* 129.

<sup>4</sup> Cic. *Rosc. Am.* 143–154.

<sup>5</sup> Stroh 1975. 76f.

<sup>6</sup> Cic. *Brut.* 312.

<sup>7</sup> Stroh 1975. 77.

<sup>8</sup> Cf. Quint. *inst.* 4, 2, 85.

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.<sup>1</sup> 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.

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<sup>1</sup> Stroh 1975. 78.



## II. 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 charged, on the one hand, with poisoning his stepfather, Statius 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.

### II. 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,<sup>1</sup> and quotes a truly successfully made phrase<sup>2</sup> from it.<sup>3</sup> Writing about the orator’s power of judgement Quintilian brings up *Cluentiana* as a textbook example of properly built rhetorical strategy,<sup>4</sup> and elsewhere he expounds that Cicero threw sand (that is, dust) into the judges’ eyes.<sup>5</sup> The oration is cited by Gellius too;<sup>6</sup> Pliny considers it Cicero’s most outstanding rhetorical achievement,<sup>7</sup> and from among Claudius Tryphoninus mentions it.<sup>8</sup> Philology of the

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<sup>1</sup> Cic. *Or.* 103.

<sup>2</sup> Cic. *Cluent.* 199.

<sup>3</sup> Cic. *Or.* 108.

<sup>4</sup> Quint. *inst.* 6, 5.

<sup>5</sup> Quint. *inst.* 2, 17, 21. *gloriatu est offudisse tenebras iudicibus Cluentianis*

<sup>6</sup> Gell. 16, 7, 10.

<sup>7</sup> Plin. *epist.* 1, 20, 4.

<sup>8</sup> Tryph. D. 48, 18, 39. Cf. Nörr 1978. 122ff.

modern age also devoted considerable scope to the *Pro Cluentio*, Theodor Mommsen refers to the speech as an outstanding example of antique “criminal statistics”.<sup>1</sup>

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,<sup>2</sup> which shows the reflection of crimes growing wild in Rome<sup>3</sup> and it cannot be said that at a rate of a small town.<sup>4</sup> He lost his father, Cluentius senior when he was fifteen, in 88;<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> Aurius—purportedly as a result of the machinations of St. Abbius Oppianicus—fell victim of Sulla’s *proscriptiones*,<sup>8</sup> and Cluentius’s mother married Oppianicus, who earlier divorced at least two wives, Papiia (Magius’s widow) and Novia, and lost two wives, the elder Cluentia and Magia.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> 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

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<sup>1</sup> 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.*

<sup>2</sup> See Hoenigswald 1962. 109f.

<sup>3</sup> Cf. Sall. *Cat.* 11, 4.

<sup>4</sup> Kroll 1924. 176.

<sup>5</sup> Cic. *Cluent.* 11.

<sup>6</sup> Cic. *Cluent.* 12f.

<sup>7</sup> Cic. *Cluent.* 16. Cf. Hoenigswald 1962. 115.

<sup>8</sup> Cic. *Cluent.* 25.

<sup>9</sup> Cic. *Cluent.* 27f.

<sup>10</sup> Hoenigswald 1962. 116.

<sup>11</sup> Cic. *Cluent.* 47ff.

senior. The court of justice found all the accused persons guilty; however, Oppianicus was convicted with a little majority of the votes cast.<sup>1</sup> The lawsuit involved several suspicious circumstances, for example, the judges were drawn irregularly,<sup>2</sup> the suspicion of bribe<sup>3</sup> emerged with respect to several senators, e.g., C. Fidiculanus Falcula,<sup>4</sup> M. Atilius Bulbus and Staienus.<sup>5</sup>

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.<sup>6</sup> Consequently, the lawsuit caused political stir and served as grounds for proceedings against several senators who participated in the lawsuit as judges.<sup>7</sup> Cicero, who defended Scamander in the 74 proceedings, refers to the case as a textbook example of the bribeability of courts of justice 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.<sup>8</sup>

Two years after he was convicted, in 72, Oppianicus senior died in exile but near Rome<sup>9</sup>—the prosecution claimed that Cluentius had him poisoned<sup>10</sup>—however, no factual data are available on the circumstances of his death. His widow, Sasia 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.<sup>11</sup> 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 lawsuit<sup>12</sup>—brought a charge against Cluentius, a member of the order of knights,<sup>1</sup> based

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<sup>1</sup> Cf. Cic. *Caecin.* 29.

<sup>2</sup> Cic. *Verr.* 2, 1, 157.

<sup>3</sup> Cic. *Verr.* 1, 29.

<sup>4</sup> Cic. *Caecil.* 28f.

<sup>5</sup> Cic. *Verr.* 2, 2, 79.

<sup>6</sup> Cic. *Cluent.* 74ff.

<sup>7</sup> Classen 1985. 21.

<sup>8</sup> Cic. *Verr.* 1, 38–40.

<sup>9</sup> Kroll 1924. 174.

<sup>10</sup> Cf. Cic. *Cluent.* 161ff.

<sup>11</sup> Hoenigswald 1962. 111; Kroll 1924. 175.

<sup>12</sup> Stroh 1975. 195.

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.<sup>2</sup> 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.<sup>3</sup> The office of *iudex quaestionis* was fulfilled by Q. Voconius Naso;<sup>4</sup> the young Titus Attius, knight of Pisaurum acted on the side of the prosecution,<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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

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<sup>1</sup> On the relation between Cicero and the *equites* see Bleicken 1995.

<sup>2</sup> See Mommsen 1899. 628; Kunkel 1962. 64–70; Cloud 1969. 258–268; Classen 1965. 140; Humbert 1938. 276.

<sup>3</sup> Stroh 1975. 196.

<sup>4</sup> Cic. *Cluent.* 147f.

<sup>5</sup> Cic. *Cluent.* 65. 84. 156; *Brut.* 271.

<sup>6</sup> Kroll 1924. 174.

<sup>7</sup> Stroh 1975. 202.

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

## II. 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 *subscriber* Attius.<sup>1</sup> 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.<sup>2</sup> 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*.<sup>3</sup>

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;<sup>4</sup> 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.<sup>5</sup> 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

<sup>1</sup> Cic. *Cluent.* 1–2. 11. 119. Cf. Humbert 1938. 287.

<sup>2</sup> Classen 1972. 1–17; Classen 1978. 604ff.; Köhler 1968. 100–109; Pugliese 1970. 155–181.

<sup>3</sup> On the different *status* see Martin 1974. 22ff.

<sup>4</sup> Paul. 5, 23; Coll. 1, 2. 3; D. 48, 8. Cf. Mommsen 1899. 628ff.; Cloud 1969. 258ff.

<sup>5</sup> Classen 1972. 2.

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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> It is worth looking at how much Cicero specifies statutory grounds of 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*,<sup>4</sup> *de maiestate*,<sup>5</sup> *de ambitu*,<sup>6</sup> *peculatus*,<sup>7</sup> *inter sicarios* and *veneficii*,<sup>8</sup> *iniuriarum*,<sup>9</sup> *furti*,<sup>10</sup> *de vi*,<sup>11</sup> *de alea*<sup>12</sup> and *de parricidio*<sup>13</sup> can be found item by item.<sup>14</sup> Furthermore, in several cases he names the particular law, for example *lex Plautia de vi*,<sup>15</sup> *lex Iulia de pecuniis repetundis*,<sup>16</sup> *lex Papia*,<sup>17</sup> *lex Acilia*<sup>18</sup> and *lex Scantinia*.<sup>19</sup> 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*,<sup>20</sup> *In Verrem*—among others regarding the statues erected<sup>21</sup>—*Pro Scauro*,<sup>1</sup> *Pro Rabirio Postumo*<sup>2</sup> and *Pro Ligario*.<sup>3</sup>

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<sup>1</sup> Classen 1972. 3.

<sup>2</sup> Mommsen 1899. 385<sup>4</sup>.

<sup>3</sup> Cic. *inv.* 2, 58.

<sup>4</sup> Cic. *Caecil.* 76; *Verr.* 2, 2, 142; *Q. fr.* 3, 1, 15; *fam.* 8, 8, 2, 3.

<sup>5</sup> Cic. *Q. fr.* 3, 1, 15; *inv.* 2, 72; *fam.* 3, 2, 3; *Phil.* 1, 23.

<sup>6</sup> Cic. *Cael.* 16. 76; *De orat.* 2, 274. 280; *Q. fr.* 1, 2, 15; 2, 3, 5; 3, 2, 3; *Cluent.* 114.

<sup>7</sup> Auct. ad Her. 1, 22.

<sup>8</sup> Cic. *inv.* 2, 58; *Rosc. Am.* 90; *Cluent.* 21; Auct. ad Her. 4, 23.

<sup>9</sup> Cic. *dom.* 13; *inv.* 2, 59.

<sup>10</sup> Cic. *Cluent.* 163; *fam.* 7, 22; *Flacc.* 43.

<sup>11</sup> Cic. *red. in sen.* 19; *Q. fr.* 2, 3, 5; *Sest.* 90. 95.

<sup>12</sup> Cic. *Phil.* 2, 56.

<sup>13</sup> Cic. *Rosc. Am.* 28. 64.

<sup>14</sup> Classen 1972. 5.

<sup>15</sup> Cic. *fam.* 8, 8, 1. See also Hough 1930/32. 135ff.

<sup>16</sup> Cic. *Rab. Post.* 12.

<sup>17</sup> Cic. *Balb.* 52.

<sup>18</sup> Cic. *Verr.* 2, 1, 26.

<sup>19</sup> Cic. *fam.* 8, 12, 3; 8, 14, 4.

<sup>20</sup> Cic. *Rosc. Am.* 28. 61. 64. 76.

<sup>21</sup> Cic. *Verr.* 2, 2, 141.

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,<sup>4</sup> 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;<sup>5</sup> 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.<sup>6</sup> 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; instead, he underlines it much rather as a point brought up by the prosecution that can generate prejudice<sup>7</sup> and bias.<sup>8</sup>

### II. 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 anything<sup>9</sup>—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

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<sup>1</sup> Cic. *Scaur.* 1.

<sup>2</sup> Cic. *Rab. Post.* 8. 9. 37.

<sup>3</sup> Cic. *Lig.* 1. 4. 5. 9. 11.

<sup>4</sup> Cic. *Cluent.* 1. 2. 148. 164.

<sup>5</sup> Cic. *Cluent.* 144ff.

<sup>6</sup> Classen 1972. 10f.

<sup>7</sup> Cf. Cic. *Cluent.* 142.

<sup>8</sup> Classen 1972. 14f.

<sup>9</sup> Cic. *Cluent.* 65.

reconstructed the opponent's argument without any distortion.<sup>1</sup> By the appearance that he speaks accepting Attius's division<sup>2</sup> he undoubtedly made an effort to give the impression of sincerity, insistence on truth and lack of rhetorical tactics to the audience.<sup>3</sup> 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.<sup>4</sup> Cicero looks forward, with trust, to the refutation of the actual charge discussed by the opponent—as the orator claims<sup>5</sup>—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.<sup>6</sup> (Based on Cicero's statement of the defence the charges of poisoning brought against Cluentius might have been the following:<sup>7</sup> poisoning Oppianicus senior by abetment of Strato, Micostratus and M. Asellius,<sup>8</sup> poisoning C. Vibius Capax<sup>9</sup> and assassination attempt against Oppianicus junior.<sup>10</sup>) At the same time he cannot fully ignore the charge of bribe—as Attius talked about 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.<sup>11</sup> 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.<sup>12</sup>

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

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<sup>1</sup> Classen 1985. 24.

<sup>2</sup> Cic. *Cluent.* 1. Cf. Classen 1965. 106; Stroh 1975. 194.

<sup>3</sup> Cf. Cic. *Cluent.* 4. 5. 6. 81. 83. 88. 142. 172. 183; Quint. *inst.* 9, 2, 19.

<sup>4</sup> Cic. *Cluent.* 6.

<sup>5</sup> Quint. *inst.* 4, 1, 36.

<sup>6</sup> Cic. *Cluent.* 1. 2. Cf. Classen 1965. 107; Hoenigswald 1962. 109.

<sup>7</sup> Stroh 1975. 195.

<sup>8</sup> Cic. *Cluent.* 169ff.

<sup>9</sup> Cic. *Cluent.* 165.

<sup>10</sup> Cic. *Cluent.* 161–163.

<sup>11</sup> Cic. *Cluent.* 2. 4. 5. 6. 77. 78. 79. 93. 95. 103. 108. 110. 113. 127. 130. 139. 202.

<sup>12</sup> Classen 1985. 26.



using the concept of *aequitas*.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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*,<sup>4</sup> 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.<sup>5</sup>

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,<sup>6</sup> and his own decision to expound the crimes of Oppianicus senior at length by his obligations as counsel for the defence,<sup>7</sup> 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.<sup>8</sup> 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*.<sup>9</sup> So, in the introduction<sup>10</sup> 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

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<sup>1</sup> Cic. *Cluent.* 5. 6. 7. 81. 94. 142. 147. 156. 159. 199. 200. 202.

<sup>2</sup> Cic. *Cluent.* 9. Cf. Classen 1965. 137.

<sup>3</sup> Cic. *Cluent.* 9.

<sup>4</sup> Hoenigswald 1962. 110.

<sup>5</sup> Classen 1985. 29f.

<sup>6</sup> Cic. *Cluent.* 65. 172.

<sup>7</sup> Cic. *Cluent.* 118.

<sup>8</sup> Cic. *Cluent.* 10. Cf. Classen 1965. 135.

<sup>9</sup> Cic. *Cluent.* 11. Cf. Humbert 1938. 277.

<sup>10</sup> Cic. *Cluent.* 1–11.

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.<sup>1</sup>

Cicero begins to describe the events as in a report,<sup>2</sup> 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.<sup>3</sup> 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,<sup>4</sup> perhaps all the more because it would be difficult to rephrase the Greek term *mētēr amētōr*<sup>5</sup> in Latin.<sup>6</sup> 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.<sup>7</sup>

Contrary to the original announcement—that he intends to discuss Oppianicus's lawsuit in 74 and the bribes that took place in relation to it<sup>8</sup>—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,<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> It is not 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

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<sup>1</sup> Classen 1985. 32.

<sup>2</sup> Cic. *inv.* 1, 28–29; Quint. *inst.* 4, 2, 129f.

<sup>3</sup> Cic. *Cluent.* 11.

<sup>4</sup> Cic. *Cluent.* 12.

<sup>5</sup> Soph. *El.* 1154.

<sup>6</sup> Classen 1985. 33.

<sup>7</sup> Cf. Cic. *Cluent.* 14. 18. 44. 167. 169. 174. 178. 186. 188. 190. 192. 199. 200. 201.

<sup>8</sup> Humbert 1938. 276.

<sup>9</sup> Cic. *Cluent.* 12–16.

<sup>10</sup> Cic. *Cluent.* 14. 15.

<sup>11</sup> Cic. *Cluent.* 23. 39. 41. 46. 50. 70. 83. 97. 101. 111. 124. 125. 167. 195.

accusation as an act of a child's *pietas*.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup> 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,<sup>5</sup> and in order to stop disbelief in Oppianicus's foul deeds he tries to present Cluentius's earlier accusation against his stepfather as lawful defence and make solely Oppianicus responsible for the failed poisoning attempt<sup>6</sup>—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.<sup>7</sup> 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.<sup>8</sup>

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<sup>1</sup> Classen 1985. 35.

<sup>2</sup> Cic. *Cluent.* 17–18.

<sup>3</sup> Stroh 1975. 199.

<sup>4</sup> Cic. *Cluent.* 18. Cf. Classen 1985. 36.

<sup>5</sup> Cic. *Cluent.* 19.

<sup>6</sup> Cic. *Cluent.* 19–20.

<sup>7</sup> Classen 1985. 38.

<sup>8</sup> Classen 1985. 38.

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.<sup>1</sup> Cicero mentions the precedents and preparation for Oppianicus's marriage to be concluded with Sassia as a textbook example of Oppianicus's *audacia*<sup>2</sup> by relating the sudden death of his two sons—the accuser's stepbrothers.<sup>3</sup> 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.<sup>4</sup>

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

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<sup>1</sup> Cic. *Cluent.* 21–25.

<sup>2</sup> Cf. Cic. *Cluent.* 23. 27. 29. 31. 33. 42. *audax/audacia*

<sup>3</sup> Cic. *Cluent.* 26–29.

<sup>4</sup> Classen 1985. 41.

it was not these deaths that Oppianicus was held responsible for.<sup>1</sup> 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 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.<sup>2</sup> 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,<sup>3</sup> focusing on his two "dear" crimes arising from his character: murder and bribe in court of justice.<sup>4</sup> 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*.<sup>5</sup>

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,<sup>6</sup> 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.<sup>7</sup> 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*.<sup>8</sup> 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 act<sup>9</sup> but that the assassination attempt itself was caught in the act,<sup>10</sup> and he does not omit to name its motif, the

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<sup>1</sup> Cic. *Cluent.* 29–30.

<sup>2</sup> Cic. *Cluent.* 30.

<sup>3</sup> Cic. *Cluent.* 30ff.

<sup>4</sup> Cic. *Cluent.* 39.

<sup>5</sup> Classen 1985. 43.

<sup>6</sup> Cic. *Cluent.* 42.

<sup>7</sup> Cic. *Cluent.* 18–20.

<sup>8</sup> Classen 1985. 45.

<sup>9</sup> Cic. *Cluent.* 20.

<sup>10</sup> Cic. *Cluent.* 43.

greed of Oppianicus craving for his stepson's inheritance.<sup>1</sup> (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”<sup>2</sup> now to be committed against Sassia—devolved to his stepfather.<sup>3</sup>)

When describing the preparations for the assassination attempt, Cicero first outlines a rather negative picture of Fabricius,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> Instead of enumerating any further possible proofs he 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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> Concerning senator testimony Cicero again formulates obscurely because he states that Scamander was caught in

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<sup>1</sup> Cic. *Cluent.* 44. Cf. Cic. *Cluent.* 27. 31. 33f.; 36ff.

<sup>2</sup> Cf. Cic. *Cluent.* 52.

<sup>3</sup> Hoenigswald 1962. 116.

<sup>4</sup> Cic. *Cluent.* 45ff.

<sup>5</sup> Cic. *Cluent.* 49–55.

<sup>6</sup> Cic. *Cluent.* 47.

<sup>7</sup> Cic. *Cluent.* 48.

<sup>8</sup> Cf. Cic. *Cael.* 61–69. On Cicero's speech in defence of Marcus Caelius see Classen 1963. 60ff.; Geffcken 1973. passim; Heinze 1925. 193ff.; Kiselewich 2004. passim; Saint Denis 1965. 129ff.; Salzman 1982. 299ff.

<sup>9</sup> Cf. Cic. *Cluent.* 43. 48. 189.

<sup>10</sup> Cic. *Cluent.* 20. 50. 201.

the act with the poison and money.<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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 distortion<sup>5</sup> 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 us<sup>6</sup>—is not unambiguous.<sup>7</sup>

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,<sup>8</sup> 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.<sup>9</sup>

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

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<sup>1</sup> Cic. *Cluent.* 53.

<sup>2</sup> Cic. *Cluent.* 49.

<sup>3</sup> Classen 1985. 49.

<sup>4</sup> Cic. *Cluent.* 53.

<sup>5</sup> Cic. *Cluent.* 125.

<sup>6</sup> See Rizzo 1983. *passim*

<sup>7</sup> Classen 1985. 50.

<sup>8</sup> See Schumacher 1982. 69–75; Robinson 1981. 223ff.; 235ff.

<sup>9</sup> Classen 1985. 51.

argument:<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Only somewhat later do we learn of the rate of the probably unanimous voting from Cicero,<sup>6</sup> from which it can be inferred with good chances that here again the orator knowingly conceals certain facts and connections.<sup>7</sup>

After that, following a long transition full of rhetorical questions and fictitious dialogue,<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> This locus was highly appreciated also

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<sup>1</sup> Humbert 1925. 28.

<sup>2</sup> Cic. *Cluent.* 49–50. Cf. Quint. *inst.* 11, 1, 74.

<sup>3</sup> Cic. *Cluent.* 50–55.

<sup>4</sup> Cic. *Cluent.* 59. 61.

<sup>5</sup> Cic. *Cluent.* 59.

<sup>6</sup> Cic. *Cluent.* 62. 105.

<sup>7</sup> Classen 1985. 53.

<sup>8</sup> Cic. *Cluent.* 59–61.

<sup>9</sup> Cic. *Cluent.* 61–63.

<sup>10</sup> Cic. *Cluent.* 64ff.

<sup>11</sup> Cic. *Cluent.* 64.



by Quintilian as a textbook example of refutation by *remotio*,<sup>1</sup> 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.<sup>2</sup> 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,<sup>3</sup> as most probably the prosecution tried to support Cluentius's guilt rather than Oppianicus's innocence.<sup>4</sup> 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.<sup>5</sup> (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,<sup>6</sup> and makes no effort to support his defendant's irreproachableness by further arguments derived from the scope of *vita anteacta*.<sup>7</sup>)

After the introduction consisting of several sentences<sup>8</sup> Cicero starts the characterisation of Oppianicus's abettor, senator Staienus.<sup>9</sup> In the following part, *narratio* and *argumentatio* again merge (almost inseparably or at least indistinctively),<sup>10</sup> 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.<sup>11</sup> 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

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<sup>1</sup> Quint. *inst.* 5, 10, 68.

<sup>2</sup> Cic. *Verr.* 1, 39; 2, 2, 78f.

<sup>3</sup> Classen 1985. 56; Classen 1965. 110; Humbert 1938. 284.

<sup>4</sup> Stroh 1975. 196.

<sup>5</sup> Cic. *Cluent.* 64.

<sup>6</sup> Cic. *Cluent.* 83. 133.

<sup>7</sup> Hoenigswald 1962. 117.

<sup>8</sup> Cic. *Cluent.* 65.

<sup>9</sup> Cic. *Cluent.* 66.

<sup>10</sup> Stroh 1975. 210.

<sup>11</sup> Cf. Classen 1985. 57.

or were convinced that the intermediary had embezzled a major part of it;<sup>1</sup> 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;<sup>2</sup> there might have been (as the orator later obscurely suggests) at least ten such judges,<sup>3</sup> while five unbribed judges took stand for the innocence of the accused.<sup>4</sup> 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,<sup>5</sup> 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”.<sup>6</sup>

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?<sup>7</sup> 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 the court of justice.<sup>8</sup> 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;<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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

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<sup>1</sup> Cic. *Cluent.* 75.

<sup>2</sup> Cic. *Cluent.* 76.

<sup>3</sup> Cic. *Cluent.* 107.

<sup>4</sup> Cic. *Cluent.* 76.

<sup>5</sup> Cic. *Cluent.* 77–79.

<sup>6</sup> Cic. *Cluent.* 80–81.

<sup>7</sup> Cf. Cic. *Cluent.* 81.

<sup>8</sup> Classen 1985. 59.

<sup>9</sup> Cic. *Cluent.* 82.

<sup>10</sup> Cic. *Cluent.* 84–87.

<sup>11</sup> Cic. *Cluent.* 83.

seventeen votes would have been needed for conviction<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> He considers the earlier judgments a part of the campaign of heckling before the popular assembly,<sup>7</sup> 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.<sup>8</sup> It is in the light of the above that he starts discussing

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<sup>1</sup> Cic. *Cluent.* 74.

<sup>2</sup> Classen 1985. 61; Humbert 1938. 290.

<sup>3</sup> Cic. *Cluent.* 88–116. 88–137.

<sup>4</sup> Cic. *Cluent.* 88.

<sup>5</sup> Cic. *Cluent.* 1ff. Cf. Classen 1965. 114.

<sup>6</sup> Classen 1985. 62.

<sup>7</sup> Cf. Cic. *Cluent.* 4. 8.

<sup>8</sup> 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.<sup>1</sup>

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 adjudication<sup>2</sup>—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.<sup>3</sup> He stresses that Iunius was actually convicted not due to bribe,<sup>4</sup> 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*.<sup>5</sup> 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.<sup>6</sup> 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,<sup>7</sup> 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.<sup>8</sup> 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

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<sup>1</sup> Cic. *Cluent.* 89–96.

<sup>2</sup> Stroh 1975. 195.

<sup>3</sup> Cic. *Cluent.* 91.

<sup>4</sup> Cic. *Cluent.* 92.

<sup>5</sup> Classen 1985. 64.

<sup>6</sup> Cic. *Cluent.* 93–95.

<sup>7</sup> Cic. *Cluent.* 55.

<sup>8</sup> Cic. *Cluent.* 96.

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!<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup> After a longer *praeteritio*<sup>4</sup> he starts to build his argument, and its weak points are not noticed by the audience at first hearing.<sup>5</sup> 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 antea*, 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 earlier<sup>6</sup> 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 blow<sup>7</sup>—is absolutely not against Cluentius but supports his innocence.<sup>8</sup>

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

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<sup>1</sup> Stroh 1975. 199.

<sup>2</sup> Cic. *Cluent.* 97–98.

<sup>3</sup> Cic. *Cluent.* 99–102.

<sup>4</sup> Cic. *Cluent.* 99–100.

<sup>5</sup> Classen 1985. 66.

<sup>6</sup> Cic. *Cluent.* 9. 64.

<sup>7</sup> Cf. Cic. *Cluent.* 88.

<sup>8</sup> Cic. *Cluent.* 102.

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.<sup>1</sup>) 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.<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup> As Oppianicus was convicted by a low majority,<sup>5</sup> 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 judgment<sup>6</sup>—although this digression is based on conjecture and assumptions, the enumeration by names gave the impression to the audience as if the orator 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,<sup>7</sup> so the prosecutor had no other choice than accepting either that the

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<sup>1</sup> Cic. *Caecin.* 28–30.

<sup>2</sup> Classen 1985. 67.

<sup>3</sup> Cic. *Cluent.* 103.

<sup>4</sup> Cic. *Cluent.* 104–106.

<sup>5</sup> Hoenigswals 1962. 110.

<sup>6</sup> Cic. *Cluent.* 105–107.

<sup>7</sup> Classen 1985. 68f.; Humbert 1938. 292.

lawsuit against Oppianicus was proper and fair or the *praeiudicia* were irrelevant with regard to Cluentius's lawsuit.<sup>1</sup>

In what follows Cicero again strives to annul the arguments of the prosecution and to demonstrate that they are insignificant instead of refuting them.<sup>2</sup> Just as he does not accept the *iudicium Iunianum* with scandalous outcome, causing great excitement even years later<sup>3</sup> 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 lawsuit<sup>4</sup> 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.<sup>5</sup> Thereby he substantiates the relativity of the sanction of *infamia*, i.e., loss of honour imposed under the censor's *regimen morum*,<sup>6</sup> and the argument by which he can qualify this measure less significant than the judge's decisions.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

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

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<sup>1</sup> Cic. *Cluent.* 114.

<sup>2</sup> Cic. *Cluent.* 115–137.

<sup>3</sup> Kroll 1924. 177.

<sup>4</sup> Humbert 1938. 295.

<sup>5</sup> Cic. *Cluent.* 115–116.

<sup>6</sup> Kroll 1924. 178; El Beheiri 2005. 1ff.

<sup>7</sup> Cic. *Cluent.* 119–122.

<sup>8</sup> Cic. *Cluent.* 123.

<sup>9</sup> Cic. *Cluent.* 125.

<sup>10</sup> Cic. *Cluent.* 126–127.

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.<sup>1</sup> 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 defamation<sup>2</sup>—and he considers that Cluentius's innocence has been sufficiently proved by this rather obscure sentence. Cicero gets down with Egnatius's last 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,<sup>3</sup> and criticises the *senatus consultum* sanctioning the corruption of the judges<sup>4</sup> due to its inaccurate wording and ineffectiveness.<sup>5</sup>

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 out<sup>6</sup> for once he had disputed and annulled the significance of *praeiudicia* he had to fight with his own statements made earlier.<sup>7</sup> Elsewhere he tried to use the fact of Scamander's defence to advance his own purposes,<sup>8</sup> just as Fidiculanus Falcula's case;<sup>9</sup> 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*.<sup>10</sup> 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.<sup>11</sup> As a parallel he refers to outstanding orators of the generation preceding him, M. Antonius and M. Crassus,<sup>12</sup> which

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<sup>1</sup> Cic. *Cluent.* 128–132. Cf. Hoenigswald 1962. 111.

<sup>2</sup> Cic. *Cluent.* 134.

<sup>3</sup> Cic. *Cluent.* 135.

<sup>4</sup> See Kroll 1924. 177.

<sup>5</sup> Cic. *Cluent.* 136–138.

<sup>6</sup> Cf. Classen 1985. 72.

<sup>7</sup> Cic. *Cluent.* 138–142.

<sup>8</sup> Cic. *Cluent.* 49–55.

<sup>9</sup> Cic. *Cluent.* 103ff.

<sup>10</sup> Cic. *Cluent.* 138.

<sup>11</sup> Cic. *Cluent.* 139.

<sup>12</sup> Cic. *Cluent.* 140ff.



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.<sup>1</sup> 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,<sup>2</sup> however, instead of summing up the above he starts—in spite of his defendant's desire<sup>3</sup> 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.<sup>4</sup> 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,<sup>5</sup> while tiring them out without being noticed. He explains why he discusses the issue of bribe so long by necessity required by public interest,<sup>6</sup> then he comments on Attius's arguments—albeit, by short references and quotations only<sup>7</sup> not to refresh the judges' memory—by which his opponent compared the letter of the law<sup>8</sup> (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,<sup>9</sup> that is, *aequitas*,<sup>10</sup> 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 aediles 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.<sup>11</sup>

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<sup>1</sup> Cic. *Cluent.* 142.

<sup>2</sup> Cic. *Cluent.* 143.

<sup>3</sup> Quint. *inst.* 4, 5, 20.

<sup>4</sup> Cic. *Cluent.* 143–160.

<sup>5</sup> Quint. *inst.* 4, 5, 10.

<sup>6</sup> Cic. *Cluent.* 145–147.

<sup>7</sup> Cic. *Cluent.* 145. 150.

<sup>8</sup> Classen 1965. 111.

<sup>9</sup> 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.

<sup>10</sup> Cic. *Cluent.* 145. 150. 160.

<sup>11</sup> Cf. Classen 1985. 76; Stroh 1975. 234; Hoeningwald 1962. 111.

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.<sup>1</sup> He analyses relevant passages of *lex Cornelia de sicariis et veneficis* in details,<sup>2</sup> and proves that no charge could have been brought against Cluentius for bribe based on this law.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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,<sup>7</sup> 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.<sup>8</sup> 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

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<sup>1</sup> Cic. *Cluent.* 146–148.

<sup>2</sup> Cic. *Cluent.* 149ff.

<sup>3</sup> Cic. *Cluent.* 154.

<sup>4</sup> Cic. *Cluent.* 148. 155. Cf. Stroh 1975. 197.

<sup>5</sup> Stroh 1975. 197f.

<sup>6</sup> Cic. *Cluent.* 156–159.

<sup>7</sup> Stroh 1975. 195ff.

<sup>8</sup> Classen 1985. 78.

achieve his goal more safely in the mirror of the past of the accused: to prove the charge of 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.<sup>1</sup>

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*.<sup>2</sup> 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*.<sup>3</sup> 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.<sup>4</sup> (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

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<sup>1</sup> Classen 1985. 79.

<sup>2</sup> On *concordia ordinum* see Strasburger 1931; Fuhrmann 1960. 481ff.; Boyancé 1941. 172ff.; Wirszubski 1954. 1ff.

<sup>3</sup> Cf. Cic. *Att.* 1, 17, 8; 1, 18, 3; 2, 1, 8.

<sup>4</sup> Classen 1985. 80ff.

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.<sup>1)</sup>

#### II. 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.<sup>2</sup> 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 off by a few commonplaces,<sup>3</sup> 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;<sup>4</sup> 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.<sup>5</sup>

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,<sup>6</sup> and substitutes the exact description of the case by more general wordings.<sup>7</sup> 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.<sup>8</sup> 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,

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<sup>1</sup> Classen 1985. 84.

<sup>2</sup> Cic. *Cluent.* 160. Cf. Humbert 1938. 294f.

<sup>3</sup> Hoenigswald 1962. 118.

<sup>4</sup> Cic. *Cluent.* 161–164.

<sup>5</sup> Classen 1985. 90ff.

<sup>6</sup> Cf. Hoenigswald 1962. 111.

<sup>7</sup> Cic. *Cluent.* 165.

<sup>8</sup> Cic. *Cluent.* 166–168.

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 assassination<sup>1</sup> against Cluentius.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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,<sup>6</sup> 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 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

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<sup>1</sup> Cic. *Cluent.* 44.

<sup>2</sup> Hoenigswald 1962. 120f.

<sup>3</sup> Cf. Quint. *inst.* 5, 7, 37.

<sup>4</sup> Cic. *Cluent.* 168.

<sup>5</sup> Classen 1985. 94.

<sup>6</sup> Cic. *Cluent.* 169–187.

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.<sup>1</sup>

As the first point of his reasoning Cicero denies that Cluentius had any motif to murder Oppianicus,<sup>2</sup> 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,<sup>3</sup> 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;<sup>4</sup> more specifically, he disputes that using M. Asellius as abettor was reasonable<sup>5</sup> and that poison put in bread was lifelike;<sup>6</sup> 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.<sup>7</sup> 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 events<sup>8</sup>—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,<sup>9</sup> and directing the suspicion of poisoning towards her too.<sup>10</sup>

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;<sup>11</sup> on the other hand, he stresses that the neighbourhood avoided and despised him.<sup>12</sup> 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

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<sup>1</sup> Classen 1985. 94f.

<sup>2</sup> Cic. *Cluent.* 169.

<sup>3</sup> Cic. *Cluent.* 170f.

<sup>4</sup> Cf. Hoenigswald 1962. 121f.

<sup>5</sup> Cic. *Cluent.* 172.

<sup>6</sup> Cic. *Cluent.* 173.

<sup>7</sup> Cic. *Cluent.* 174–187.

<sup>8</sup> Cic. *Cluent.* 181.

<sup>9</sup> Cic. *Cluent.* 177.

<sup>10</sup> Cic. *Cluent.* 175.

<sup>11</sup> Cic. *Cluent.* 66. 78. 172. 175. 176. 182. Cf. Hoenigswald 1962. 114.

<sup>12</sup> Cic. *Cluent.* 41. 170. 175.

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 (*torturamentum, eculeus*)<sup>1</sup>—and he declares that the slave’s testimony cannot be evaluated in view of the circumstances of the confession since he was not brought in court,<sup>2</sup> without commenting on its content on the merits.<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> Sassia’s foul deeds culminate in preparing the lawsuit against Cluentius,<sup>6</sup> 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;<sup>7</sup> then, in a powerful invective he presents a stylised figure of Sassia as a superhuman, subhuman monster.<sup>8</sup> 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.<sup>9</sup> In the *peroratio*<sup>10</sup> Cicero, on the one hand, addresses begging to the judges, on the other hand, he crowns his outbursts against Sassia.<sup>11</sup> 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.<sup>12</sup> 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

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<sup>1</sup> Cic. *Cluent.* 181–187.

<sup>2</sup> Stroh 1975. 198.

<sup>3</sup> Cic. *Cluent.* 181. 183.

<sup>4</sup> Cic. *Cluent.* 188–194.

<sup>5</sup> Cic. *Cluent.* 189.

<sup>6</sup> Cic. *Cluent.* 190f.

<sup>7</sup> Cic. *Cluent.* 190–192.

<sup>8</sup> Cic. *Cluent.* 192–194.

<sup>9</sup> Classen 1985. 100.

<sup>10</sup> Cic. *Cluent.* 195–202.

<sup>11</sup> Cic. *Cluent.* 199.

<sup>12</sup> Classen 1985. 102.

concept, at that.<sup>1</sup> 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.<sup>2</sup>

## II. 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 only<sup>3</sup>—follows the system set up by Attius. Regarding the forced choice between *status collectionis* and *status coniecturalis* Cicero resolves to perform a stunt, a highly break-neck one, at that, which he, however, already used successfully in *Pro Roscio Amerino*<sup>4</sup>: 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,<sup>5</sup> but at the request of Cluentius, who wanted not only to win the lawsuit but to restore his reputation<sup>6</sup> he has chosen the more difficult way, specifically he wants to prove the innocence of the accused not only formally but also substantively.<sup>7</sup> By that he can absolutely give the impression as if each of the two *status* represented proper weight for him to make a success of his case.<sup>8</sup>

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;<sup>9</sup> 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

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<sup>1</sup> Humbert 1938. 114.

<sup>2</sup> Volkmann 1885. 162f.; Stroh 1975. 210.

<sup>3</sup> Cic. *Cluent.* 59ff.

<sup>4</sup> Cic. *Rosc. Am.* 128ff.

<sup>5</sup> Cic. *Cluent.* 145.

<sup>6</sup> Cic. *Cluent.* 144.

<sup>7</sup> Stroh 1975. 200.

<sup>8</sup> Quint. *inst.* 6, 5. 9.

<sup>9</sup> Cic. *Cluent.* 150–155.



against knights too;<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup> With respect to the application of two *status*, in the *dispositio* of *Pro Cluentio*, together with Wilfried Stroh we can create the following system:<sup>4</sup> in the discussion of *iudicium Iunianum*,<sup>5</sup> *status coniecturalis* (i.e., it was not Cluentius who committed bribe) was addressed to senators<sup>6</sup> and *status collectionis* (i.e., Cluentius could not be punished pursuant to section six of *lex Cornelia de sicariis et veneficis*) to knights,<sup>7</sup> and it is followed by the discussion of *crimina veneficii*.<sup>8</sup>

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.<sup>9</sup> It is worth examining closer at what points and in what context Cicero mentions Sassia.<sup>10</sup>

Directly after *exordium/prooemium* he names Sassia as a mother guided by cruelty and hatred and as the source of the charge.<sup>11</sup> The question whether Sassia (as Joachim Classen argues) was personally present at the trial<sup>12</sup> or (as Wilfried Stroh and Jules Humbert asserts) was absent<sup>13</sup> 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,<sup>14</sup> and states that for the sake of saving

<sup>1</sup> Cic. *Cluent.* 152. 157. Cf. Mommsen 1899. 634f.

<sup>2</sup> Kroll 1924. 178.

<sup>3</sup> Stroh 1975. 203.

<sup>4</sup> Stroh 1975. 204.

<sup>5</sup> Cic. *Cluent.* 9–160.

<sup>6</sup> Cic. *Cluent.* 9–142.

<sup>7</sup> Cic. *Cluent.* 143–160.

<sup>8</sup> Cic. *Cluent.* 161–187.

<sup>9</sup> Cic. *Cluent.* 12ff. Cf. Quint. *inst.* 6, 5, 9; 11, 1, 62.

<sup>10</sup> Stroh 1975. 205ff.

<sup>11</sup> Cic. *Cluent.* 12ff.

<sup>12</sup> Classen 1985. 36.

<sup>13</sup> Stroh 1975. 206; Humbert 1925. 115f.

<sup>14</sup> Cic. *Cluent.* 17.

Cluentius he cannot show consideration for her,<sup>1</sup> however, it is much later, in the discussion of *crimina veneficii* that we learn what this significance is.<sup>2</sup> The minutes of the interrogation of the slave was read (caused to be read) by Attius before the court of justice,<sup>3</sup> but it is doubtful if Sassia's name occurred in it;<sup>4</sup> however, the most probably rather subjective reconstruction of the events imbued with rhetorical exaggerations enabled Cicero to make an attack against Cluentius's mother.<sup>5</sup> The orator keeps the promise made earlier<sup>6</sup> 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,<sup>7</sup> she made her stepson her son-in-law in order to enter him as an accuser acting resolutely against her son;<sup>8</sup> then, after brief summary of the interrogation of the slave<sup>9</sup> 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.<sup>10</sup>

As the prosecutor most probably did not mention Sassia, instead, tried to strengthen the “*pius Oppianicus—impius 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-law<sup>11</sup> 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.<sup>12</sup> 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

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<sup>1</sup> Cic. *Cluent.* 18.

<sup>2</sup> Cic. *Cluent.* 176ff.

<sup>3</sup> Cic. *Cluent.* 184.

<sup>4</sup> Stroh 1975. 206.

<sup>5</sup> Cic. *Cluent.* 176–187.

<sup>6</sup> Cic. *Cluent.* 17.

<sup>7</sup> Cic. *Cluent.* 189.

<sup>8</sup> Cic. *Cluent.* 190. Cf. Kroll 1924. 175; Hoenigswald 1962. 111.

<sup>9</sup> Cic. *Cluent.* 191.

<sup>10</sup> Cic. *Cluent.* 192ff.

<sup>11</sup> Cic. *Cluent.* 12.

<sup>12</sup> Stroh 1975. 208; Hoenigswald 1962. 113.

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.<sup>1</sup>

In the part on *iudicium Iunianum*<sup>2</sup> Cicero handles the tools of *narratio* and *argumentatio*, traditionally and theoretically clearly separable and to be separated, with brilliant and deceptive ease. Although after the *propositio*<sup>3</sup> and the interposed narrative on Sassia<sup>4</sup> he starts the *narratio* that culminates later in *confirmatio*,<sup>5</sup> its given parts,<sup>6</sup> for example, the paragraphs on Oppianicus's foul deeds<sup>7</sup> and those relating *praeiudicia*<sup>8</sup> actually fulfil the function of *probabile e causa* working towards the purpose to be proved<sup>9</sup> 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.<sup>10</sup> Similarly, the argument on the amount of bribe as *probabile facto* partly precedes,<sup>11</sup> partly follows,<sup>12</sup> that is, surrounds the *narratio* on this topic;<sup>13</sup> in other words, the *argumentatio* discussing these events, outlining an approximate chronology is of a narrative kind.<sup>14</sup>

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

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<sup>1</sup> Stroh 1975. 210.

<sup>2</sup> Cic. *Cluent.* 9–142.

<sup>3</sup> Cic. *Cluent.* 9–11.

<sup>4</sup> Cic. *Cluent.* 11–18.

<sup>5</sup> Cic. *Cluent.* 81.

<sup>6</sup> Cic. *Cluent.* 21–61.

<sup>7</sup> Cic. *Cluent.* 21ff.

<sup>8</sup> Cic. *Cluent.* 49ff.

<sup>9</sup> Stroh 1975. 211.

<sup>10</sup> Cic. *Cluent.* 62. 64. 81.

<sup>11</sup> Cic. *Cluent.* 64f.

<sup>12</sup> Cic. *Cluent.* 82.

<sup>13</sup> Cic. *Cluent.* 66–81.

<sup>14</sup> Stroh 1975. 211.

serious motif to bribe the court of justice.<sup>1</sup> 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;<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> In 73, C. Fidiculanus Falcula was acquitted in two lawsuits;<sup>6</sup> 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 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.<sup>7</sup> 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*;<sup>8</sup> 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,<sup>9</sup> furthermore, by anticlimactic editing, from cases with greater weight<sup>10</sup> through Septimius Severus's *listis aestimatio*,<sup>11</sup> censorial measures considered weightless,<sup>12</sup> Egnatius's last will and testament<sup>13</sup> and the *senatus consultum*<sup>14</sup> he gets to his own opinion formulated in *Verrine*

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<sup>1</sup> Stroh 1975. 312.

<sup>2</sup> Cic. *Cluent.* 1.

<sup>3</sup> Cic. *Cluent.* 19. 20. 30. 36. 41.

<sup>4</sup> Cic. *Cluent.* 1.

<sup>5</sup> Cic. *Cluent.* 136.

<sup>6</sup> Cic. *Cluent.* 114.

<sup>7</sup> Stroh 1975. 215f.

<sup>8</sup> Cic. *Cluent.* 115.

<sup>9</sup> Hoenigswald 1962. 111; Kroll 1924. 174ff.

<sup>10</sup> Cic. *Cluent.* 89–114.

<sup>11</sup> Cic. *Cluent.* 115–116.

<sup>12</sup> Cic. *Cluent.* 117–134.

<sup>13</sup> Cic. *Cluent.* 135.

<sup>14</sup> Cic. *Cluent.* 136–138.

*orations*,<sup>1</sup> thereby—by striking a tone ranging from pathetic to irony—he gives the impression of decrescendo of the *invidia* to the audience.<sup>2</sup>

Similarly, with respect to Oppianicus's murders and foul deeds—real ones and those attributed to him<sup>3</sup>—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.<sup>4</sup> The second and third murders: Oppianicus poisons the pregnant wife of his brother, C. Oppianicus and then his brother to get his inheritance.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> 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*.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> Counterfeiting of the last will and testament and the twelfth to indicate himself as inheritor Oppianicus forges the last will and testament of Asuvius from Larinum, then has Asuvius killed, and pays off Q. Manlius, *triumvir capitalis* who starts investigations in the case.<sup>11</sup>

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<sup>1</sup> Cic. *Cluent.* 138–142.

<sup>2</sup> Stroh 1975. 217.

<sup>3</sup> Cic. *Cluent.* 20–41.

<sup>4</sup> Cic. *Cluent.* 30.

<sup>5</sup> Cic. *Cluent.* 30–32.

<sup>6</sup> Cic. *Cluent.* 33–35.

<sup>7</sup> Cic. *Cluent.* 40–41.

<sup>8</sup> Cic. *Cluent.* 21–23.

<sup>9</sup> Cic. *Cluent.* 23–25.

<sup>10</sup> Cic. *Cluent.* 26–28.

<sup>11</sup> Cic. *Cluent.* 36–39.

Changing this chronology Cicero gives account of Oppianicus's crimes in the following chronology: assassination of M. Aurius,<sup>1</sup> A. Aurius and three citizens from Larinum,<sup>2</sup> the two male children,<sup>3</sup> Cluentia,<sup>4</sup> the sister-in-law and the brother, C. Oppianicus,<sup>5</sup> instigation for abortion,<sup>6</sup> counterfeiting of the last will and testament and assassination of Asuvius,<sup>7</sup> assassination of Dinaea and forging her last will and testament.<sup>8</sup> Why was Cicero "compelled" to act like that?<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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.

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<sup>1</sup> Cic. *Cluent.* 21–23.

<sup>2</sup> Cic. *Cluent.* 23–25.

<sup>3</sup> Cic. *Cluent.* 26–28.

<sup>4</sup> Cic. *Cluent.* 30.

<sup>5</sup> Cic. *Cluent.* 30–32.

<sup>6</sup> Cic. *Cluent.* 33–35.

<sup>7</sup> Cic. *Cluent.* 36–39.

<sup>8</sup> Cic. *Cluent.* 40f.

<sup>9</sup> Stroh 1975. 220.

<sup>10</sup> Michel 1960. 257ff.

<sup>11</sup> Stroh 1975. 221.

Aurius,<sup>1</sup> 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,<sup>2</sup> which supported failure to call Oppianicus to account for his deeds regarding other cases by his political influence.<sup>3</sup> 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 but counterfeiting of the last will and testament is not,<sup>4</sup> 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.<sup>5</sup> 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 husband<sup>6</sup> does not rule out but definitely makes the double assassination probable.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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*

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<sup>1</sup> Cic. *Cluent.* 23.

<sup>2</sup> Kroll. 1924. 176.

<sup>3</sup> Stroh 1975. 222.

<sup>4</sup> Cic. *Cluent.* 21f.

<sup>5</sup> Cic. *Cluent.* 40f.

<sup>6</sup> Cic. *Cluent.* 12–16.

<sup>7</sup> Stroh 1975. 222.

<sup>8</sup> Cic. *Cluent.* 29.

<sup>9</sup> Stroh 1975. 223.

*abortionis*.<sup>1</sup> To make the assassination of Dinaea and especially counterfeiting of her last will and testament<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup>

Cicero’s *narratio* in *Pro Cluentio* is a beautiful example of the appearance of *ordo artificialis*—and *mos Homericus*<sup>5</sup>—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.<sup>6</sup>

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 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.<sup>7</sup>

As *exemplum* of the exemplary combination of the three genres of style of rhetoric Cicero himself also referred to *Pro Cluentio*,<sup>8</sup> in which extended introduction, soberly brief

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<sup>1</sup> Cic. *Cluent.* 34.

<sup>2</sup> Cic. *Cluent.* 40f.

<sup>3</sup> Cic. *Cluent.* 36–39.

<sup>4</sup> Stroh 1975. 224.

<sup>5</sup> Quint. *inst.* 7, 10, 11.

<sup>6</sup> Stroh 1975. 224f.

<sup>7</sup> Stroh 1975. 226f.

<sup>8</sup> Cic. *Or.* 103. Cf. Humbert 1938. 280.



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.<sup>1</sup> 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.<sup>2</sup> Perhaps for this reason, Cicero considered *Pro Cluentio* one of the maximum outputs of his orator's career,<sup>3</sup> which both Quintilian<sup>4</sup> and Pliny, who praised this *oratio* as Cicero's most excellent speech, agreed with.<sup>5</sup> 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 speech<sup>6</sup>—and leading the judges qualified to decide the case, as a matter of fact, towards the direction he wanted to.

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<sup>1</sup> Classen 1985. 105.

<sup>2</sup> Quint. *inst.* 2, 17, 21.

<sup>3</sup> Cic. *Or.* 107f.

<sup>4</sup> Quint. *inst.* 4, 1, 35; 6, 5, 9.

<sup>5</sup> Plin. *epist.* 1, 20, 4.

<sup>6</sup> Quint. *inst.* 2, 17, 21.

### III. 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.

#### III. 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.<sup>1</sup> (Cicero's several friends, senator C. Velleius and senator L. Thorius Balbus, Q. Roscius the actor and grammarian L. Aelius Stilo came from Lanuvium.<sup>2</sup> In 49, Cicero himself wanted to buy an estate there; however, it could be carried out most probably only in 45.<sup>3</sup>) 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.<sup>4</sup> 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.<sup>5</sup> Milo detained

<sup>1</sup> Cic. *Cluent.* 78. 182; *Mil.* 64. Cf. Wiseman 1971. 195.

<sup>2</sup> Lintott 1974. 62.

<sup>3</sup> Cic. *Att.* 9, 9, 4; 13, 6; 12, 41, 1.

<sup>4</sup> Cic. *Sest.* 72.

<sup>5</sup> Cic. *Sest.* 75ff.; 85.

the gladiators; later, however, Serranus released them.<sup>1</sup> 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.<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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 guard.<sup>6</sup> 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,<sup>7</sup> which did not happen for the time being.<sup>8</sup>

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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> Milo

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<sup>1</sup> Cic. *Sest.* 85.

<sup>2</sup> Cic. *Sest.* 89. 95; *red. in sen.* 19.

<sup>3</sup> Cic. *Sest.* 84ff.; 127f.; *Vat.* 40; *off.* 2, 58.

<sup>4</sup> Dio Cass. 39, 8, 2–3; Plut. *Pomp.* 49, 3.

<sup>5</sup> Cic. *dom.* 11–14; *red. in sen.* 26. 29; *Sest.* 129; *Mil.* 39.

<sup>6</sup> Cic. *Att.* 4, 3, 2–3.

<sup>7</sup> Cic. *Att.* 4, 3, 5.

<sup>8</sup> Lintott 1974. 63.

<sup>9</sup> Cic. *Q. fr.* 2, 3, 1.

<sup>10</sup> Cic. *Q. fr.* 2, 3, 2.

<sup>11</sup> Cic. *Q. fr.* 2, 6, 4.

<sup>12</sup> Cf. Cic. *Q. fr.* 2, 3, 4; *Att.* 4, 3, 3; *Sest.* 86f.; 90f.

already gave resolute help to Cicero when in April 56 Clodius's gang attacked him again,<sup>1</sup> and the relation between Cicero and Milo was hammered into a personal friendship and close political alliance.<sup>2</sup>

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.<sup>3</sup> Milo soon married Fausta, Sulla's cousin, who divorced C. Memmius before that,<sup>4</sup> which was a serious step towards his consulship 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.<sup>5</sup> 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.<sup>6</sup>

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 consulship of the year 52.<sup>7</sup> Cicero supported Messala,<sup>8</sup> however, he was worried about the tension between Milo and Pompey, which became increasingly apparent since Pompey tried to turn Caesar too against Milo.<sup>9</sup> 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.<sup>10</sup> Milo was pondering over

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<sup>1</sup> Cic. *Att.* 4, 7, 3; *har. resp.* 17.

<sup>2</sup> Lintott 1974. 64.

<sup>3</sup> Cic. *Mil.* 68.

<sup>4</sup> Cic. *Att.* 4, 13, 1; 5, 8, 2.

<sup>5</sup> Cic. *Att.* 4, 16, 6; 4, 15, 7; 4, 17, 2f.

<sup>6</sup> Cic. *Q. fr.* 3, 6, 3; Ios. Flav. *Ant. Iud.* 14, 29ff.

<sup>7</sup> Lintott 1974. 64f.

<sup>8</sup> Cic. *Att.* 4, 16, 5; 4, 17, 3; *Q. fr.* 3, 3, 2; 3, 6, 3.

<sup>9</sup> Cic. *Q. fr.* 3, 2, 2; 3, 6, 6; 3, 7, 2.

<sup>10</sup> Cic. *Att.* 4, 17, 4; *Att.* 3, 2, 3; 3, 3, 2.

intervening in the course of the event by arms,<sup>1</sup> 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.<sup>2</sup>

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,<sup>3</sup> and Pompey used all his forces to have dictator's authorisation voted for himself;<sup>4</sup> however, the senate gave him authorisation only for ensuring orderly and lawful conduct of the election as proconsul.<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup>

In the meantime, Cicero vehemently tried to win Curio, who had returned from Asia, over to ensuring Milo's campaign,<sup>8</sup> 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*.<sup>9</sup> 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

<sup>1</sup> Cic. *Q. fr.* 3, 6, 4; 3, 7, 3; *Att.* 4, 18, 3; 4, 19, 1.

<sup>2</sup> Lintott 1974. 65.

<sup>3</sup> Dio Cass. 40, 45, 1; *App. civ.* 2, 19.

<sup>4</sup> Plut. *Pomp.* 54, 2f.; *Cato min.* 45, 7; Dio Cass. 40, 45, 5.

<sup>5</sup> Dio Cass. 40, 45, 2.

<sup>6</sup> Cic. *Phil.* 2, 49; *Mil.* 40.

<sup>7</sup> Cic. *Mil.* 24.

<sup>8</sup> Cic. *fam.* 2, 6, 3ff.

<sup>9</sup> Cf. Cic. *Rab. Post.* 19. 32. 41.

dating Gabinius's lawsuit to the end of 54<sup>1</sup> are formulated by Andrew Lintott.<sup>2</sup> Gabinius returned to Rome on 27 September 54 where he was charged of *crimen maiestatis*;<sup>3</sup> on 11 October a debate was in progress on who should bring a charge of *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*.<sup>4</sup>

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.<sup>5</sup> It is also hard to imagine that the lawsuit due to *crimen repetundaum* 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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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<sup>1</sup> Cf. Meyer 1922. 206f.

<sup>2</sup> Lintott 1974. 67.

<sup>3</sup> Cic. *Q. fr.* 3, 1, 15.

<sup>4</sup> Cic. *Q. fr.* 3, 2, 1; 3, 3, 2; 3, 4, 1f.

<sup>5</sup> Cf. Cic. *fam.* 7, 11, 1.

<sup>6</sup> Cic. *Verr.* 1, 6; 2, 1, 30.

<sup>7</sup> Lintott 1974. 67f.

<sup>8</sup> Cic. *Q. fr.* 3, 2, 2; 3, 4, 1f.; 3, 5, 5; 3, 7, 1.

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.<sup>1</sup>

### III. 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 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.<sup>2</sup> 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.<sup>3</sup>

On 18 January 52, Q. Pompeius Rufus and C. Sallustius Crispus delivered a hostile speech against Milo at the *contio plebis*,<sup>4</sup> 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

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<sup>1</sup> Lintott 1974. 68.

<sup>2</sup> Cf. Büchner 1964. 250.

<sup>3</sup> See Michels 1967. *passim*

<sup>4</sup> Cic. *Mil.* 45; Asc. 3.

of the local cult into his priestly office—according to Cicero the same day,<sup>1</sup> according to Asconius the following day.<sup>2</sup> 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.<sup>3</sup> Milo interrupted his journey in Bovillae at around the ninth hour (three in the afternoon), that is, three hours before dusk.<sup>4</sup> Later on—according to Asconius in the ninth, according to Cicero in the eleventh hour (i.e., five in the afternoon)<sup>5</sup>—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.<sup>6</sup> The clash took place in front of the Bona Dea sanctuary, near Clodius's estate;<sup>7</sup> 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.<sup>8</sup> They threw Clodius's corpse to the road, which was found and taken to Rome by senator Sextus Teidius.<sup>9</sup> 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.<sup>10</sup>

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 were killed, and he tries to make Clodius's gang appear as big as possible.<sup>11</sup> Asconius did not say a word about the death of Milo's men, and the fact that Clodius was taken not to his villa

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<sup>1</sup> Cic. *Mil.* 27f.

<sup>2</sup> Asc. 3.

<sup>3</sup> Cic. *Mil.* 51. 54.

<sup>4</sup> Quint. *inst.* 6, 3, 49.

<sup>5</sup> Cic. *Mil.* 29; Asc. 4.

<sup>6</sup> Cic. *Mil.* 28f.; Asc. 4. 12.

<sup>7</sup> Cic. *Mil.* 53. 86; Asc. 4.

<sup>8</sup> Asc. 5–6.

<sup>9</sup> Asc. 6.

<sup>10</sup> Cic. *Mil.* 29; Asc. 7.

<sup>11</sup> Cic. *Mil.* 29. 53f.



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.<sup>1</sup>

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.<sup>2</sup> The next day, on tribune Titus Munatius Plancus's proposal the corpse was taken down to the Forum and was placed on *rostra*.<sup>3</sup> 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.<sup>4</sup> 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,<sup>5</sup> whom they proclaimed now consul, now dictator.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup>

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.<sup>9</sup> 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

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<sup>1</sup> Cf. Lintott 1974. 69.

<sup>2</sup> Asc. 7.

<sup>3</sup> Asc. 7.

<sup>4</sup> Asc. 8; App. *civ.* 2, 21; Dio Cass. 40, 49.

<sup>5</sup> On *horti Pompeiani* see Plut. *Pomp.* 44, 3; Cic. *Phil.* 2, 109; Vell. 2, 60, 3; App. *civ.* 3, 14.

<sup>6</sup> Asc. 8.

<sup>7</sup> Cic. *Mil.* 91; Asc. 9.

<sup>8</sup> Asc. 10.

<sup>9</sup> Asc. 12.

public law.<sup>1</sup> 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.<sup>2</sup> 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 Ahala and Scipio Nasica, who were compelled to commit homicide in order to save the State.<sup>3</sup> 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,<sup>4</sup> 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.<sup>5</sup> In the case, the most influential and venerable representatives of the *optimates*, Cicero, Hortensius, Cato, Faustus Sulla and Marcus Marcellus resolutely sided with Milo.<sup>6</sup> 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,<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> 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;<sup>10</sup> 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.

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<sup>1</sup> Asc. 14.

<sup>2</sup> Cf. Asc. 22.

<sup>3</sup> Cic. *Mil.* 8.

<sup>4</sup> Asc. 24.

<sup>5</sup> Asc. 13.

<sup>6</sup> Asc. 11.

<sup>7</sup> Cic. *Mil.* 65.

<sup>8</sup> Asc. 13.

<sup>9</sup> Cf. 1974. 72.

<sup>10</sup> Asc. 16. 21.

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.<sup>1</sup> On 23 January, Q. Pompeius Rufus accused Milo before the *contio* of preparing for an assassination against Pompey.<sup>2</sup> 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;<sup>3</sup> it might have been at the same time that they adopted the *senatus consultum ultimum* that ordered “state of emergency”.<sup>4</sup> Although Dio Cassius dates the *senatus consultum ultimum* to the days immediately following Clodius's death<sup>5</sup> and conscription by Pompey to a time somewhat later;<sup>6</sup> yet, even at this point no weighty arguments support that Asconius's precise description and the chronology based on it should be questioned.<sup>7</sup> Around 18 February, in the senate Q. Metellus Scipio heavily attacked Milo's defence referring to self-defence<sup>8</sup> 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.<sup>9</sup>

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,

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<sup>1</sup> Asc. 13.

<sup>2</sup> Asc. 21.

<sup>3</sup> Ruebel 1979. 236ff.

<sup>4</sup> Asc. 10.

<sup>5</sup> Dio Cass. 40, 49, 5.

<sup>6</sup> Dio Cass. 40, 50, 1.

<sup>7</sup> Ruebel 1979. 238.

<sup>8</sup> Asc. 12.

<sup>9</sup> Dio Cass. 40, 50, 2; Asc. 16.

Cicero, Marcus Marcellus, Marcus Calpurnius Bibulus, Gnaeus Pompeius Magnus and Marcus Porcius Cato clearly stood up for Milo already.<sup>1</sup> Simultaneously, rumours started to spread about electing Pompey<sup>2</sup> or Caesar dictator.<sup>3</sup> 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,<sup>4</sup> which took place (with quite a propaganda value) one day after the *Regifugium*, i.e., the holiday celebrating the chasing away of kings.<sup>5</sup> The senate granted Pompey the right to choose a *collega* beside him, however, only after two months later.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> 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* acts<sup>9</sup> so that thereby he could take the edge of Pompey's laws directed against Milo and his act could be judged under *quaestio ordinaria*.<sup>10</sup> Q. Fufius Calenus demanded that Clodius's death should be treated separately from other events,<sup>11</sup> however, this proposal was vetoed by T. Mutius Plancius and C. Sallustius Crispus.<sup>12</sup> On 1 March, Pompey's laws were enacted,<sup>13</sup> their ratification must have taken place after 26 March, once the popular assembly had accepted

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<sup>1</sup> Asc. 10–11.

<sup>2</sup> Asc. 14.

<sup>3</sup> Dio Cass. 40, 50, 3.

<sup>4</sup> Asc. 14; Dio Cass. 40, 50, 4.

<sup>5</sup> Ruebel 1979. 239.

<sup>6</sup> Plut. *Pomp.* 54.

<sup>7</sup> Asc. 15.

<sup>8</sup> Asc. 16.

<sup>9</sup> Cic. *Mil.* 14.

<sup>10</sup> Lintott 1974. 72.

<sup>11</sup> Cic. *Mil.* 14.

<sup>12</sup> Asc. 20.

<sup>13</sup> Asc. 23.

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 consulship.<sup>1</sup>

On 15 March, Pompey postponed the session of the senate claiming that he was afraid of Milo’s armed attack.<sup>2</sup> At the next session, P. Cornificius 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> Cicero was under increasing pressure to leave Milo to his fate; yet, he resolutely stood by him.<sup>6</sup>

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.<sup>7</sup> L. Domitius Ahenobarbus was elected *quaesitor* of the court of justice set up on the grounds of Pompey’s laws.<sup>8</sup> 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.<sup>9</sup>

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.<sup>10</sup> On 4 April, Milo’s representatives appeared

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<sup>1</sup> Cic. *Att.* 7, 1, 4.

<sup>2</sup> Asc. 16.

<sup>3</sup> Asc. 17.

<sup>4</sup> Asc. 18.

<sup>5</sup> Asc. 19.

<sup>6</sup> Asc. 20–22.

<sup>7</sup> Ruebel 1979. 243.

<sup>8</sup> Asc. 23.

<sup>9</sup> Asc. 24.

<sup>10</sup> Asc. 25.

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*.<sup>1</sup> 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.<sup>2</sup> 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 Domitius was compelled to seek protection on the judge's pulpit. All this induced Pompey to promise to safeguard the trials thereafter with arms.<sup>3</sup>

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.<sup>4</sup> M. Porcius Cato confessed that M. Favonius had said to him: Clodius declared on 15 January that Milo would be dead in three days.<sup>5</sup> On 6 April, Clodius's mother-in-law, Sempronia and his wife, Fulvia testified, which considerably made the public feeling side with them.<sup>6</sup> After that, T. Munatius Plancus held a *contio* where he fired the crowd up so that they should not let Milo escape.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> Afterwards, Cicero recalled this unsuccessful performance with indifference—whether pretended or real indifference it cannot be decided.<sup>10</sup> 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

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<sup>1</sup> Asc. 25.

<sup>2</sup> Asc. 25.

<sup>3</sup> Asc. 27.

<sup>4</sup> Asc. 28.

<sup>5</sup> Asc. 32.

<sup>6</sup> Asc. 28.

<sup>7</sup> Asc. 28.

<sup>8</sup> Plut. *Cic.* 35, 2–5.

<sup>9</sup> Asc. 31.

<sup>10</sup> Cic. *opt. gen.* 10.

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.<sup>1</sup>

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.<sup>2</sup> On 8 or 9 April, Milo was convicted due to *ambitus* too in his absence.<sup>3</sup> On 11 or 12 April, Milo was again convicted due to *vis* based on *lex Plautia* in his absence.<sup>4</sup> 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.<sup>5</sup> Approximately on 13 April, Milo went into exile to Massilia.<sup>6</sup> 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.<sup>7</sup> 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 convicted with a huge majority of the votes cast as public feeling turned against the Clodian mob again.<sup>8</sup>

### III. 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.<sup>9</sup> 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

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<sup>1</sup> Dio Cass. 40, 54, 2; 46, 7, 2f.

<sup>2</sup> Asc. 29–32.

<sup>3</sup> Asc. 33.

<sup>4</sup> Asc. 33.

<sup>5</sup> Asc. 34.

<sup>6</sup> Asc. 33.

<sup>7</sup> Asc. 34.

<sup>8</sup> Asc. 35. Cf. Ruebel 1979. 246ff.

<sup>9</sup> Asc. 30.

by referring to the interest of the state<sup>1</sup>—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*.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> As a key legal argument he uses the “*vim vi*” and “*arma armis repellere cuique licet*” principle.<sup>5</sup> 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*<sup>6</sup> and wanted to prove that Clodius

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<sup>1</sup> Asc. 30.

<sup>2</sup> Cic. *Mil.* 72–83. Cf. Lintott 1974. 74; Cahen 1923. 119ff.

<sup>3</sup> Lintott 1974. 74<sup>141</sup>.

<sup>4</sup> Cic. *Mil.* 8–11. 29–31.

<sup>5</sup> Cf. Ulp. D. 43, 16, 1, 27. Cf. Hanga 1999; Hanga 1989; Zlinszky 1991. 114f.

<sup>6</sup> 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.<sup>1</sup>

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.<sup>2</sup> 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 edict<sup>3</sup> was in several cases adopted in the usage of *quaestiones de vi* too.<sup>4</sup> 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.<sup>5</sup> *Lex Cornelia de sicariis et veneficis* ordered to punish bearing of arms suitable for manslaughter and bearing of arms with intent to kill.<sup>6</sup> 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.<sup>7</sup>

Accordingly, Cicero, responding to the usage of the prosecution, uses the phrases “*insidiae*” and “*insidiator*” several times;<sup>8</sup> 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.<sup>9</sup> He convincingly refers to the opportunity provided by *ius naturale* that killing of the aggressor *insidiator* does not qualify an unlawful act.<sup>10</sup> Cicero endeavours to turn it to his and his defendant's advantage that the senate qualified the events taken place on Via Appia treason

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<sup>1</sup> Lintott 1968. 23.

<sup>2</sup> Cic. *Mil.* 46ff.

<sup>3</sup> Cf. Cic. *Tull.* 7. 24.

<sup>4</sup> Ulp. D. 48, 6. 10 pr.–1.

<sup>5</sup> Fest. 247. *si qui hominem liberum sciens morti duit, paricidas esto.*

<sup>6</sup> Cloud 1971. 1ff.; Kunkel 1962. 65ff.

<sup>7</sup> Lintott 1974. 75.

<sup>8</sup> Cic. *Mil.* 10. 11. 14. 23. 28. 30. 31.

<sup>9</sup> Cic. *Mil.* 23. 31ff.

<sup>10</sup> Cic. *Mil.* 7–11.

when he tries to prove regarding the clash that it was seemingly condemned but practically approved by the senate.<sup>1</sup> In the *narratio* the orator touches on lawful defence as well as stresses that the slaves killed Clodius *not* upon Milo's instructions.<sup>2</sup> 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.<sup>3</sup> 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. 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*;<sup>4</sup> 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*.<sup>5</sup> 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,<sup>6</sup> 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*.<sup>7</sup> 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.<sup>8</sup> In this respect *perduellio* was considered an exception because in most of the cases forfeiture of full property was imposed as second punishment.<sup>9</sup> *Lex Plautia de vi*

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<sup>1</sup> Cic. *Mil.* 12–14.

<sup>2</sup> Cic. *Mil.* 28–29.

<sup>3</sup> Cic. *Sest.* 88ff.

<sup>4</sup> Cf. the regulation of *lex Aurelia de iudiciis*.

<sup>5</sup> Asc. 32.

<sup>6</sup> Asc. 33.

<sup>7</sup> Cf. Cic. *Quinct.* 60.

<sup>8</sup> Cf. Suet. *Caes.* 42, 3. See Mommsen 1899. 1005ff.; Cloud 1971. 60ff.

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

held out the prospect of exile,<sup>1</sup> 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 correspondence<sup>2</sup> 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.<sup>3</sup>

### III. 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.<sup>4</sup> 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.<sup>5</sup> In this respect, *Pro Milone* is an exception: the accused was convicted, Cicero, however, published the revised version of the speech. From 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.<sup>6</sup>

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<sup>1</sup> Cic. *Sulla* 89; *Sest.* 146.

<sup>2</sup> Cic. *Att.* 5, 8, 2; 6, 4, 3; 6, 5, 2.

<sup>3</sup> Lintott 1974. 77f.

<sup>4</sup> Crawford 1984. 15.

<sup>5</sup> Melchior 2008. 283.

<sup>6</sup> Melchior 2008. 284.

Wilfried Stroh explains the publication of *Pro Milone* by pedagogical reasons, that is, Cicero's intention was to set an *exemplum* to young orators.<sup>1</sup> 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*.<sup>2</sup>

### III. 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.<sup>3</sup>

There is a completely striking connection between the portrait of the tyrant in *De re publica*<sup>4</sup> and the formulation of the demand to eliminate the tyrant from public life<sup>5</sup> and the image of “Milo as *tyrannoktonos*”.<sup>6</sup> 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*.<sup>7</sup> 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*,<sup>8</sup> his death as killing the tyrant,<sup>9</sup> Milo as

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<sup>1</sup> Stroh 1975. 51ff.

<sup>2</sup> Melchior 2008. 284.

<sup>3</sup> Clark-Ruebel 1985. 72; Melchior 2008. 283.

<sup>4</sup> *Cic. rep.* 2, 47.

<sup>5</sup> *Cic. rep.* 2, 51.

<sup>6</sup> See also Büchner 1962. 116–147; Heinze 1924. 73ff.; 98.

<sup>7</sup> Büchner 1962. 121; Meyer 1964. 345.

<sup>8</sup> *Cic. Mil.* 35.

<sup>9</sup> *Cic. Mil.* 80. 83. 89.

*conservator populi*, and through killing Clodius as *tutor et procurator rei publicae*.<sup>1</sup> As a historical example for tyrant Cicero very often mentions Tarquinius Superbus, Sp. Maelius and Ti. Gracchus,<sup>2</sup> and refers to Verres from the recent past.<sup>3</sup> Cicero himself was several times called tyrant by his political opponents and enemies.<sup>4</sup>

Cicero's theory of killing the tyrant is primarily based on stoic philosophy;<sup>5</sup> 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*.<sup>6</sup> 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.<sup>7</sup> He declares that the element of killing the tyrant<sup>8</sup> is fully in harmony with stoic philosophy,<sup>9</sup> which also complies with *naturalis ratio*,<sup>10</sup> i.e., it is the ultimate conclusion of ethical consideration.<sup>11</sup> In view of the fact that the tyrant ruins human community and places himself outside the rules of coexistence,<sup>12</sup> accordingly, these rules are not binding him 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*.<sup>14</sup> 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.<sup>15</sup>

Cicero transforms the thesis of stoic moral philosophy into the legal thinking and concepts of the Romans.<sup>16</sup> 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.<sup>17</sup> Phalaris's case is Cicero's most favourite and by that he demonstrates that assassination is not only ethically fair but it is definitely a

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<sup>1</sup> Cic. *Mil.* 80. Cf. Büchner 1962. 138f.

<sup>2</sup> Cf. Clark-Ruebel 1985. 59; Lintott 1968. 55ff.

<sup>3</sup> Cic. *Verr.* 2, 3, 20.

<sup>4</sup> Cic. *Vat.* 23; *Sest.* 109.

<sup>5</sup> Pohlenz 1964. 139. 185. 313.

<sup>6</sup> Clark-Ruebel 1985. 59.

<sup>7</sup> Cic. *off.* 3, 19–32.

<sup>8</sup> Cic. *off.* 3, 32.

<sup>9</sup> Cic. *off.* 3, 20.

<sup>10</sup> Cic. *off.* 3, 23.

<sup>11</sup> Cic. *off.* 3, 14. 19.

<sup>12</sup> Cic. *off.* 3, 21.

<sup>13</sup> Cic. *off.* 3, 32.

<sup>14</sup> Cic. *off.* 3, 23.

<sup>15</sup> Cic. *off.* 3, 23. 25.

<sup>16</sup> Clark-Ruebel 1985. 61.

<sup>17</sup> Cic. *off.* 3, 32.

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* too<sup>1</sup> 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*.<sup>2</sup> 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.<sup>3</sup>

In *Pro Milone* this train of thoughts and images can be clearly followed. Cicero devotes two paragraphs to Clodius's sexual debaucheries,<sup>4</sup> three to his religious offences,<sup>5</sup> and underlines his crimes committed against natural law and positive law.<sup>6</sup> 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*,<sup>7</sup> and of which he slipped out several times, and the representation of the wild beast hiding in darkness creates the image of beastly existence.<sup>8</sup> The wild animal topos occurs several times in Cicero's *corpus* in the characterisation of both Clodius<sup>9</sup> and Antonius.<sup>10</sup> So, Clodius was nothing else than a *belua* upsetting the order of Roman *societas*, terrorising decent citizens, among others Cicero and Pompey,<sup>11</sup> who tried to carry through the seizing of *dominatio* by undermining laws (*legibus Clodianis*) too, as it is an immanent feature of every tyrant,<sup>12</sup> 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,<sup>13</sup> on the one hand, he supports his argument by the terminology of the relevant passage of *lex Cornelia de sicariis*,<sup>14</sup> on the other hand, he not refer to written law but to man's innate right derived from nature in order to prove Milo's

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<sup>1</sup> Cic. *rep.* 2, 48.

<sup>2</sup> Clark–Ruebel 1985. 61.

<sup>3</sup> Clark–Ruebel 1985. 62.

<sup>4</sup> Cic. *Mil.* 55–56.

<sup>5</sup> Cic. *Mil.* 85–87.

<sup>6</sup> Cic. *Mil.* 44. 73f.

<sup>7</sup> Cic. *Mil.* 43. 76–78.

<sup>8</sup> Cic. *Mil.* 40–41.

<sup>9</sup> Cic. *Sest.* 16; *Mil.* 40. 85; *har. resp.* 5.

<sup>10</sup> Cic. *Phil.* 3, 28; 4, 12; 7, 27.

<sup>11</sup> Cic. *Mil.* 37–39.

<sup>12</sup> Cic. *Mil.* 89. Cf. Cic. *dom.* 43ff.; *Pis.* 58.

<sup>13</sup> Cic. *Mil.* 10–11.

<sup>14</sup> Cahen 1923. 122ff.

act, for if an assassin, aggressor, robber or enemy attacks somebody by arms, then he can use every means to protect his life.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> Therefore, in this sense, his defendant is no longer an independent doer but an agent who fulfils the prediction made by Cicero in 57 that Milo would kill Clodius,<sup>8</sup> 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.<sup>9</sup>

All this is unambiguously reverberated in the relevant paragraphs of *De officiis*. *Providentia*, which is the form of appearance of stoic *fatum*,<sup>10</sup> that is, *heimarmenē*, is manifested through the *sapiens*, who is, on the basis of *naturae ratio*, not only entitled but obliged to kill the

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<sup>1</sup> Cic. *Mil.* 10. *haec ... non scripta, sed nata lex, quam ... ex natura ipsa adripuimus*

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

<sup>3</sup> Cic. *Mil.* 30.

<sup>4</sup> Cic. *Mil.* 6.

<sup>5</sup> Cic. *Mil.* 93.

<sup>6</sup> Cic. *rep.* 6, 13ff.

<sup>7</sup> Cic. *Mil.* 83–84. Cf. Büchner 1964. 276; Clark–Ruebel 1985. 67.

<sup>8</sup> Cic. *Att.* 4, 5.

<sup>9</sup> Cic. *Mil.* 86.

<sup>10</sup> On the other aspects of *fatum* see Pötscher 1978. 393ff.

*tyrannus* that annihilates *coniunctio civium*.<sup>1</sup> 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,<sup>2</sup> law and order of the State could not put proper tools into Milo's hands to act as avenger.<sup>3</sup>

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.<sup>4</sup> 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.<sup>5</sup> 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*.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

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<sup>1</sup> Cic. *off.* 3, 23.

<sup>2</sup> Cic. *Mil.* 77.

<sup>3</sup> Cic. *Mil.* 88.

<sup>4</sup> Asc. 30.

<sup>5</sup> Clark–Ruebel 1985. 69.

<sup>6</sup> Cf. Ungern-Sternberg 1970. 12ff.

<sup>7</sup> Cic. *dom.* 91; *Att.* 4, 3.

<sup>8</sup> Clark–Ruebel 1985. 72.



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 that Milo will be called back too, and that is what he wanted to advance by publishing the *oratio*.<sup>1</sup>

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*.<sup>2</sup> 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*<sup>3</sup> and *audacia*;<sup>4</sup> they appear as *latro*,<sup>5</sup> *insidiator*<sup>6</sup> and *parricida*.<sup>7</sup> Clodius and his adherents are also characterised by *furor*<sup>8</sup> and *audacia*<sup>9</sup> just as by the classifications *latro*,<sup>10</sup> *insidiator*<sup>11</sup> and *parricida*.<sup>12</sup> The identification of Catilina with Clodius develops most clearly the point where the orator speaks about the causes of his own exile,<sup>13</sup> and in relation to it characterises Clodius as it were as the “legal successor” of Catilina who undermined the State.

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<sup>1</sup> Melchior 2008. 285f.

<sup>2</sup> Cic. *dom.* 72.

<sup>3</sup> Cic. *Cat.* 1, 1. 2. 15. 23. 31; 2, 19. 25; 3, 4; 4, 12.

<sup>4</sup> Cic. *Cat.* 1, 1. 4. 7; 2, 3. 10; 3, 27.

<sup>5</sup> Cic. *Cat.* 1, 23. 31. 33; 2, 7. 16. 22.

<sup>6</sup> Cic. *Cat.* 1, 11. 32; 2, 6. 10.

<sup>7</sup> Cic. *Cat.* 1, 17. 29. 33; 2, 7. 22.

<sup>8</sup> Cic. *Mil.* 3. 27. 32. 34. 35. 77.

<sup>9</sup> Cic. *Mil.* 6. 30. 32.

<sup>10</sup> Cic. *Mil.* 17. 18. 55.

<sup>11</sup> Cic. *Mil.* 6. 10. 11. 14. 19. 27. 30. 54.

<sup>12</sup> Cic. *Mil.* 18. 86.

<sup>13</sup> Cic. *Mil.* 36–37.

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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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 speaker,<sup>4</sup> 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.<sup>5</sup> 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*.<sup>6</sup> When he puts the statement into Milo's mouth that he fended off Clodius's dagger that he drove at citizens' throat,<sup>7</sup> it is a clear allusion to the passage of the third *Catilinarian oration* where Cicero tells the same about himself regarding Catilina's weapons.<sup>8</sup> 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.<sup>9</sup> (At the same time, the orator makes use of the identification properly in other respects too: he opposes

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<sup>1</sup> Cic. *Mil.* 82.

<sup>2</sup> Cic. *Cat.* 1, 3–4.

<sup>3</sup> Melchior 2008. 290.

<sup>4</sup> Cic. *Mil.* 72–73.

<sup>5</sup> Cic. *Cat.* 4, 4.

<sup>6</sup> Cic. *Mil.* 73. 80.

<sup>7</sup> Cic. *Mil.* 77.

<sup>8</sup> Cic. *Cat.* 3, 2.

<sup>9</sup> Cic. *Mil.* 30. Cf. Cic. *Cat.* 4, 18.

Milo's courage to his own fear,<sup>1</sup> and Milo's face and glance turned rigid as marble to his own tears.<sup>2</sup>)

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.<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> Cicero was not wrong—this statement makes us discern: in a certain sense Milo was a stoic sage indeed.

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<sup>1</sup> Cic. *Mil.* 1.

<sup>2</sup> Cic. *Mil.* 101. 105.

<sup>3</sup> Melchior 2008. 293.

<sup>4</sup> Melchior 2008. 295.

<sup>5</sup> Dio Cass. 40, 54, 2.

#### IV. 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*<sup>1</sup> 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 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.<sup>2</sup>

##### IV. 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’s<sup>3</sup>—filled the office of legate in 50 beside Considius Longus propraetor in the Africa province.<sup>4</sup> After Considius went to Rome at the end of 50 to run as candidate for consulate, the administration of the province was left to Ligarius, who—as Cicero asserts—was not pleased to undertake it.<sup>5</sup> 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

<sup>1</sup> See Dyer 1990. 17ff.; Ewert 1969. 403ff.

<sup>2</sup> On the friendship and feud between Cicero and Caesar see Mihălescu 1940; Mihălescu 1947; Hanga 1967; Gaiță 1971.

<sup>3</sup> Broughton 1951–1960. II. 223. 581; III. 35.

<sup>4</sup> Cic. *Lig.* 2.

<sup>5</sup> Cic. *Lig.* 2.

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,<sup>1</sup> who arbitrarily took over the governance of the province on behalf of the republican side and ordered to set up two legions.<sup>2</sup> Ligarius was compelled to subordinate himself to Varus’s supremacy;<sup>3</sup> however, both Cicero and Caesar disputed its validity as Varus’s procedure lacked lawful grounds.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> In the plea of defence Cicero shifted the responsibility for the above onto Varus.<sup>7</sup> Regarding these events Caesar did not mention Ligarius’s name either, only Varus’s.<sup>8</sup> 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 joined Pompey in Greece, and took part in the battle at Pharsalus on his side; then, he was granted pardon by Caesar.<sup>9</sup>

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.<sup>10</sup> 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

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<sup>1</sup> Cic. *Lig.* 3; Caes. *civ.* 1, 31, 2.

<sup>2</sup> Caes. *civ.* 1, 31, 2.

<sup>3</sup> Walser 1959. 90.

<sup>4</sup> Cic. *Lig.* 3; Caes. *civ.* 1, 31, 2.

<sup>5</sup> Cic. *Lig.* 27.

<sup>6</sup> Pomp. D. 1, 2, 2, 46.

<sup>7</sup> Cic. *Lig.* 22.

<sup>8</sup> Caes. *civ.* 1, 31, 3.

<sup>9</sup> Walser 1959. 91; McDermott 1970. 321.

<sup>10</sup> Caes. *civ.* 2, 44.

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.<sup>1</sup>

After the battle at Thapsus Ligarius was taken as captive in Hadrimentum, however, Caesar gave him pardon just as to Considius's son.<sup>2</sup> 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 Caesar<sup>3</sup> or without his knowledge is disputed.<sup>4</sup> This is fully supported by Cicero's statement when he speaks about a victory where only armed persons were killed.<sup>5</sup> 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 relation<sup>6</sup>—the orator assured Ligarius of his help.<sup>7</sup> 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.<sup>8</sup> 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,

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<sup>1</sup> Walser 1959. 91; McDermott 1970. 321f.

<sup>2</sup> *Bell. Afr.* 89.

<sup>3</sup> Dio Cass. 43, 12, 3.

<sup>4</sup> *Bell. Afr.* 95.

<sup>5</sup> *Cic. Lig.* 19.

<sup>6</sup> McDermott 1970. 322.

<sup>7</sup> *Cic. fam.* 6, 13, 1; 6, 14, 1.

<sup>8</sup> McDermott 1970. 323.

Hirtius and Postumus.<sup>1</sup> In Ligarius's matter, together with Ligarius's brothers he made efforts to get close to Caesar through mediators and disclose the matter to him.<sup>2</sup> 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;<sup>3</sup> Cicero encouraged Ligarius by asserting that his troubles would be soon solved for Caesar's anger lessened from day to day.<sup>4</sup> His next letter more resolutely voiced the hope in the opportunity of returning home soon<sup>5</sup> 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,<sup>6</sup> 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.<sup>7</sup> To all that Caesar responded generously, which made giving amnesty unquestionable in Cicero's eyes, however, it could not be considered a completed fact.<sup>8</sup>

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 Tubero<sup>9</sup> 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.<sup>10</sup>

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.<sup>11</sup> Thus, Plutarch presumed that the outcome of the proceedings had been determined right from the outset,

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<sup>1</sup> Cic. *fam.* 7, 7, 6; 6, 12, 2.

<sup>2</sup> Cic. *fam.* 6, 13, 2.

<sup>3</sup> Cic. *fam.* 6, 13, 3.

<sup>4</sup> Cic. *fam.* 6, 13, 4.

<sup>5</sup> Cic. *fam.* 6, 14.

<sup>6</sup> McDermott 1970. 323.

<sup>7</sup> Cic. *fam.* 6, 14, 2.

<sup>8</sup> Walser 1959. 92.

<sup>9</sup> Cf. Pomp. D. 1, 2, 2, 46; Kunkel 1967. 37.

<sup>10</sup> Walser 1959. 90.

<sup>11</sup> Plut. *Cic.* 39, 5–6.

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,<sup>1</sup> then he and his family became the victim of the *proscriptiones* ordered by Antonius and Octavianus.<sup>2</sup>

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.<sup>3</sup> 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 November, describing Caesar's intentions.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> It cannot be ruled out that for Caesar—using Cicero's role taking for his

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<sup>1</sup> Plut. *Brut.* 11.

<sup>2</sup> Walser 1959. 93.

<sup>3</sup> Walser 1959. 94; Kumaniecki 1967. 440ff.; Loutsch 1984. 98–110; Craig 1984. 193–199.

<sup>4</sup> Cic. *fam.* 6, 14.

<sup>5</sup> Rochlitz 1993. 118.

<sup>6</sup> Walser 1959. 95.

<sup>7</sup> Kumaniecki 1967. 442.

<sup>8</sup> Kumaniecki 1967. 439.



own goals<sup>1</sup>—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.<sup>2</sup>

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*.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

*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.<sup>6</sup> 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 adherents of the Republic<sup>7</sup>—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.<sup>8</sup> Cicero, however, presumably—contrary to Gerold Walser's view, who interprets the Ligarius case as demonstration of Cicero's vanity and

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<sup>1</sup> McDermott 1970. 327.

<sup>2</sup> Drumann–Groebe 1899–1929. III. 636ff.; VI. 232ff.; Rochlitz 1993. 1993. 119.

<sup>3</sup> Drumann–Groebe 1899–1929. III. 63.

<sup>4</sup> Klass 1939. 188f.

<sup>5</sup> Walser 1959. 96.

<sup>6</sup> McDermott 1970. 325. See also Leggewie 1958. 17ff.

<sup>7</sup> Cic. *Att.* 13, 20, 4.

<sup>8</sup> Kumaniecki 1967. 453; Fuhrmann 1991. 34.

overestimation of his own role<sup>1</sup>—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:<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

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,<sup>6</sup> upon which Marcellus's cousin with identical name<sup>7</sup> 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

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<sup>1</sup> Walser 1959. 96.

<sup>2</sup> Cic. *fam.* 4, 4, 4.

<sup>3</sup> Cf. Cic. *fam.* 6, 13. 14; *Att.* 13, 20, 4; Rochlitz 1993. 119.

<sup>4</sup> Drumann–Groebe 1899–1929. III. 637; Kumaniecki 1967. 457.

<sup>5</sup> Rochlitz 1993. 120.

<sup>6</sup> Cic. *fam.* 4, 4, 3

<sup>7</sup> Marcellus was the husband of Caesar's granddaughter, Octavia.

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.

#### IV. 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?<sup>1</sup> 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,<sup>2</sup> 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.<sup>3</sup> 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*,<sup>4</sup> and as this statute of Augustus repeats the elements of earlier legislation,<sup>5</sup> 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*

<sup>1</sup> Walser 1959. 93; McDermott 1970. 322.

<sup>2</sup> Cic. *Lig.* 2. *Habes igitur, Tubero, quod est accusatori maxime optandum, confitentem reum...*

<sup>3</sup> Cic. *Lig.* 10. *...arguis fatentem. Non est satis: accusas eum, qui causam habet aut, ut ego dico, meliorem quam tu, aut, ut vis, parem.*

<sup>4</sup> Baumann 1967. 142ff.

<sup>5</sup> Kunkel 1974b 94f.

does not occur at all in the entire *Pro Ligario*, and Cicero does not determine the legal nature of the charges either.<sup>1</sup>

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.<sup>2</sup> 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;<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> However, the fact of the alliance with Iuba was known to Caesar already at the 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.<sup>6</sup>

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.<sup>7</sup> 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 5<sup>th</sup> century, the second triumvirate and the *dictatura rei publicae constituendae* (he ranks both Sulla's and Caesar's dictatorship under the latter).<sup>8</sup> This view is fundamentally shaken by Jochen Bleicken<sup>9</sup> and Wolfgang Kunkel<sup>10</sup> by stating that *provocatio* protected the Roman citizen from the unlawful

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<sup>1</sup> Bringmann 1986. 73.

<sup>2</sup> Mommsen 1899. 332ff.

<sup>3</sup> Cic. *Phil.* 2, 3; Dio Cass. 43, 25, 1.

<sup>4</sup> Bringmann 1986. 75.

<sup>5</sup> Quint. *inst.* 11, 1, 80. Cf. Neumeister 1964. 47; Kumaniecki 1967. 439.

<sup>6</sup> Rochlitz 1993. 117.

<sup>7</sup> Mommsen 1899. 35ff.; Mommsen 1887–1888. I. 126; II. 735.

<sup>8</sup> Mommsen 1899. 35.

<sup>9</sup> Bleicken 1975. 324f.

<sup>10</sup> Kunkel 1962. 25ff.

*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)*.<sup>1</sup>

Even Theodor Mommsen refers to a single example of the application of this extraordinary punitive power only: Ligarius's case.<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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.<sup>8</sup> 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 just exercising

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<sup>1</sup> See Bringmann 1986. 75.

<sup>2</sup> Mommsen 1887–1888. II. 735.

<sup>3</sup> Cic. *Lig.* 11.

<sup>4</sup> Cic. *Lig.* 11–12.

<sup>5</sup> Mommsen 1887–1888. II. 735.

<sup>6</sup> Cic. *leg.* 1, 42; *leg. agr.* 3, 5.

<sup>7</sup> Dio Cass. 42, 10, 1.

<sup>8</sup> Cic. *Lig.* 11. *Non habet eam vim ista accusatio, ut Q. Ligarius condemnetur, sed necetur...*

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*”.<sup>1</sup> 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.

#### IV. 3. *Pro Ligario* as *deprecatio*

The above is also supported by the form of the speech; *Pro Ligario* is a so-called *deprecatio*,<sup>2</sup> 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*.<sup>3</sup> So, if Cicero chose a form for his speech that could not be used in court proceedings,<sup>4</sup> 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.<sup>5</sup> Right at the beginning of the oration he emphasises that he considers his task is to raise Caesar’s compassion rather than refute the charges<sup>6</sup> as most probably Pansa had already dealt with possible forms of refuting the charges.<sup>7</sup> 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.<sup>8</sup> At the same time, it should be noted that *Pro Ligario* is not purely *deprecatio* but also a statement of the defence,

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<sup>1</sup> McDermott 1970. 324.

<sup>2</sup> Martin 1974. 28.

<sup>3</sup> Auct. ad Her. 1, 14, 24. Cf. Cic. inv. 2, 104–108; Quint. inst. 5, 13, 5.

<sup>4</sup> Cic. inv. 2, 104ff.

<sup>5</sup> 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*

<sup>6</sup> Cic. Lig. 1.

<sup>7</sup> Kumaniecki 1967. 445.

<sup>8</sup> Auct. ad Her. 2, 25; Cic. inv. 1, 104.

as Cicero presents several fact-based arguments to defend Ligarius.<sup>1</sup> The usual elements of *deprecatio* are commonplaces (*loci communes*) meant to evoke *misericordia*,<sup>2</sup> so, for example, the audience's sympathy can be aroused by referring to *humanitas*,<sup>3</sup> *fortuna*, *misericordia* and *rerum commutatio*.<sup>4</sup> 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.<sup>5</sup>

The logically and psychologically proper arrangement of arguments, as a matter of fact, constitutes a tense structure in *Pro Ligario* too,<sup>6</sup> and, accordingly, the *misericordia*-topoi filled with temper, meant to affect Caesar's *clementia*, were placed in the speech consciously.<sup>7</sup> Already in the *prooemium* the orator makes it clear that he builds on Caesar's *misericordia*,<sup>8</sup> thus, he makes his audience aware of the fact that his purpose regarding Ligarius is not *liberatio culpae* since in his opinion his defendant has not committed crime by joining Pompey<sup>9</sup> but *errati venia*, i.e., obtaining forgiveness for taking erroneous position.<sup>10</sup> 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,<sup>11</sup> is followed by the *argumantatio*<sup>12</sup> 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*, *misericordia* and *lenitas*.<sup>13</sup> By that he turns Caesar's brightly gleaming *clementia* away from the prosecutors and as it were urges him to side with his defendant,<sup>14</sup> turns *crudelitas* that the Tuberos reproach Ligarius with around, and lets it fall back on the prosecutors.<sup>15</sup> He deprives Ligarius's case of its individuality, and contrasts the general

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<sup>1</sup> Cic. *Lig.* 2–5. 20–22.

<sup>2</sup> Auct. ad Her. 2, 50; Cic. *inv.* 1, 106–109.

<sup>3</sup> On the different aspects of *humanitas* see Büchner 1957.

<sup>4</sup> Auct. ad Her. 2, 26.

<sup>5</sup> Rochlitz 1993. 121.

<sup>6</sup> Neumeister 1964. 71ff.

<sup>7</sup> Rochlitz 1993. 121.

<sup>8</sup> Cic. *Lig.* 1.

<sup>9</sup> Cic. *Lig.* 17–19.

<sup>10</sup> Cic. *Lig.* 30.

<sup>11</sup> Cic. *Lig.* 2–5.

<sup>12</sup> Cic. *Lig.* 6–29.

<sup>13</sup> Cic. *Lig.* 11–16.

<sup>14</sup> Neumeister 1964. 51.

<sup>15</sup> Rochlitz 1993. 122.

*miseria* of the civil war with *misericordia* showed by Caesar, general *luctus* with his *lenitas*, general *crudelitas* with the dictator's *clementia*.<sup>1</sup> The virtue of *humanitas* especially comes to the front for *misericordia* 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.<sup>2</sup> By underlining Caesar's well-known *humanitas* Cicero as it were obliges the dictator to adhere to enforcing this virtue,<sup>3</sup> and reminds the Tuberos of *studia humanitatis*, which was once not alien to them either.<sup>4</sup> By that he again sets Caesar and the wing of his party urging for conciliation against the Tuberos desiring petty-minded revenge.<sup>5</sup>

He makes it as it were obligatory for Caesar to keep to his principles formulated in his own propaganda since *misericordia* 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*.<sup>6</sup> The following passages shed light on the purpose of these paragraphs heavily charged with emotions.<sup>7</sup> 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 dictator.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup>

The heightening of emotions and temper reaches its climax in *peroratio*: Caesar can have no other choice than exercise the virtue of *clementia*.<sup>11</sup> He repeats that his speech had no other goal than to produce effect on the dictator's *humanitas*, *clementia* and *misericordia*, however

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<sup>1</sup> Cic. *Lig.* 14f.

<sup>2</sup> Quint. *inst.* 5, 13, 7. Cf. Nybakken 1939. 398.

<sup>3</sup> Cic. *Lig.* 16.

<sup>4</sup> Cic. *Lig.* 12.

<sup>5</sup> Cic. *Lig.* 15.

<sup>6</sup> Rochlitz 1993. 123.

<sup>7</sup> Cic. *Lig.* 17–19.

<sup>8</sup> Kumaniecki 1967. 442ff.

<sup>9</sup> Bringmann 1986. 79.

<sup>10</sup> Rochlitz 1993. 123.

<sup>11</sup> Cic. *Lig.* 29–38.



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.<sup>1</sup> The task of *peroratio* is *commovere*, the effect produced on the decision-maker's emotions,<sup>2</sup> 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,<sup>3</sup> that he badly tolerates being far away from his brothers,<sup>4</sup> 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,<sup>5</sup> and that Ligarius's family had obtained several merits with regard to Caesar.<sup>6</sup> He points out that many people from all over Italy appeared in mourning to beg for Ligarius.<sup>7</sup> He refers to the pardon granted earlier by the dictator to others,<sup>8</sup> Caesar's *clementia*,<sup>9</sup> *misericordia*,<sup>10</sup> *humanitas*,<sup>11</sup> *liberalitas*,<sup>12</sup> *bonitas*,<sup>13</sup> crowns all that by the praise that mortals having mercy on their fellow beings become similar to gods.<sup>14</sup> 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 *misericordia*-propaganda for the benefit of his defendant.<sup>15</sup>

#### IV. 4. *Clementia Caesaris*

In *Pro Ligario* both the term *clementia*<sup>16</sup> and *misericordia*<sup>17</sup> 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,<sup>18</sup> which Caesar is required to do in his capacity as

<sup>1</sup> Cic. *Lig.* 29. Cf. Neumeister 1964. 54.

<sup>2</sup> Neumeister 1964. 76. Cf. Cic. *part. or.* 15; *Mil.* 92; *Sulla* 92f.; *Cluent.* 202; *Cael.* 79f.

<sup>3</sup> Cic. *Lig.* 30.

<sup>4</sup> Cic. *Lig.* 33.

<sup>5</sup> Cic. *Lig.* 34.

<sup>6</sup> Cic. *Lig.* 35f.

<sup>7</sup> Cic. *Lig.* 32f.

<sup>8</sup> Cic. *Lig.* 30.

<sup>9</sup> Cic. *Lig.* 29–30.

<sup>10</sup> Cic. *Lig.* 29. 37.

<sup>11</sup> Cic. *Lig.* 29.

<sup>12</sup> Cic. *Lig.* 31.

<sup>13</sup> Cic. *Lig.* 37.

<sup>14</sup> Cic. *Lig.* 38.

<sup>15</sup> Rochlitz 1993. 124.

<sup>16</sup> Cic. *Lig.* 6. 10. 15. 19. 29. 30.

<sup>17</sup> Cic. *Lig.* 1. 14. 15. 16. 29. 37.

<sup>18</sup> Cic. *Lig.* 17–19. 30. See also Bux 1948. 201ff.; Coulter 1930/31. 513ff.

father<sup>1</sup>—stressing father’s characteristic is perhaps reference to the *parens patriae* title.<sup>2</sup> So, the conduct arising from *clementia* is *ignoscere*,<sup>3</sup> that is, contrary to *Pro Marcello*, here *clementia* is shifted from the concept of *temperantia animi* towards the meaning *mercy*.<sup>4</sup> At the same time, *ignoscere* is suitable for expressing *humanitas*,<sup>5</sup> *misericordia*<sup>6</sup> and *clementia*<sup>7</sup> and thereby the border between these concepts and virtues fades away, and *misericordia* and *clementia* become the form of manifestation of *humanitas Caesaris*.<sup>8</sup> 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,<sup>9</sup> which is a sufficient cause for his former enemies evaluating and experiencing his victory as benefit too.<sup>10</sup>

By praising Caesar’s *clementia* he introduces the part in which he speaks about his own former hostile emotions towards Caesar<sup>11</sup> 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.<sup>12</sup>

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

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<sup>1</sup> Cic. *Lig.* 30.

<sup>2</sup> Cf. App. *civ.* 2, 106. 144. 442. 602; Dio Cass. 44, 4, 4. Cf. Fuhrmann 1963. 508<sup>7</sup>.

<sup>3</sup> Cic. *Lig.* 13. 14. 15. 16. 29. 30.

<sup>4</sup> Rochlitz 1993. 125; Albrecht 1988. 7ff.

<sup>5</sup> Cic. *Lig.* 13. 14. 16.

<sup>6</sup> Cic. *Lig.* 14. 15.

<sup>7</sup> Cic. *Lig.* 15. 30.

<sup>8</sup> Cic. *Lig.* 30.

<sup>9</sup> Cic. *Lig.* 10.

<sup>10</sup> Cic. *Lig.* 19.

<sup>11</sup> Cic. *Lig.* 6.

<sup>12</sup> Cf. Plut. *Cic.* 39; *Cato min.* 54; Cic. *fam.* 7, 3, 6; *Att.* 11, 7, 3; *Marc.* 18.

Cicero's soul. Reference to Caesar as father<sup>1</sup> and denial of the effect his own orator's performance produced on Caesar's decision<sup>2</sup> perhaps did not lack ironic overtones.<sup>3</sup> 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,<sup>4</sup> yet, he did not openly give voice to his bitterness and criticism, he dressed his conviction in an ambiguous form.<sup>5</sup> 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.<sup>6</sup> 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 *miser cordia* he uses the dictator's propagandistic concepts for his own purposes.<sup>7</sup>

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.<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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

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<sup>1</sup> Cic. *Lig.* 30.

<sup>2</sup> Cic. *Lig.* 31. 38.

<sup>3</sup> Rochlitz 1993. 126. On the other hand see Walser 1959. 96.

<sup>4</sup> Bringmann 1986. 80.

<sup>5</sup> Cf. Cic. *Lig.* 7. 13. 18. 19. 33. See Loutsch 1984. 98ff.

<sup>6</sup> Bringmann 1986. 80.

<sup>7</sup> Rochlitz 1993. 126f.

<sup>8</sup> Cic. *Lig.* 6. On *sapientia* see Klima 1971. passim

<sup>9</sup> Cic. *Lig.* 19.

<sup>10</sup> Rochlitz 1993. 127.

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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

#### IV. 5. The issue of legitimacy of Caesar’s power in the mirror of *Pro Ligario*

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.<sup>4</sup> It is not by chance that it is quoted by Quintilian, who based his textbook on rhetoric mostly on Cicero whom he enthusiastically respected,<sup>5</sup> 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.

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<sup>1</sup> Cic. *Lig.* 6. 37.

<sup>2</sup> McDermott 1970. 337.

<sup>3</sup> Gelzer 1960. 265.

<sup>4</sup> McDermott 1970. 327ff.; Haury 1955. 185f.; Canter 1936. 457ff.; Drumann–Goebe 1899–1929. III. 637.

<sup>5</sup> Cf. Quint. *inst.* 10, 1, 112.

Regarding *Pro Ligario* Quintilian calls the attention to masterly handling of the facts of the case and exemplary use of irony.<sup>1</sup> Thus, Quintilian considered *Pro Ligario*, unique of its kind, a work of outstanding significance in training rhetoric.<sup>2</sup>

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.<sup>3</sup> The latter, for that matter, could not be present when the speech was delivered as by then he was dead<sup>4</sup>—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.<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> According to Dio Cassius, Caesar was granted the title *parens patriae* in 44,<sup>9</sup> and albeit it took place two years after *Pro Ligario* was delivered, the *intitulatio* must have become public knowledge earlier.<sup>10</sup> To address 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

<sup>1</sup> Quint. *inst.* 4, 1, 38–39; 4, 1, 70; 9, 2, 29. 50.

<sup>2</sup> McDermott 1970. 336.

<sup>3</sup> Cic. *Lig.* 33.

<sup>4</sup> Cic. *Att.* 13, 44, 3.

<sup>5</sup> McDermott 1970. 337.

<sup>6</sup> Cic. *Lig.* 13.

<sup>7</sup> Cic. *fam.* 6, 14, 2.

<sup>8</sup> Cic. *Lig.* 30.

<sup>9</sup> Dio Cass. 44, 4, 44; 44, 48, 3.

<sup>10</sup> McDermott 1970. 338.

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.<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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 Oppius<sup>5</sup> and Caesar himself, and in this letter he tried to find excuses for his brother, Quintus for joining Pompey.<sup>6</sup> Although on 12<sup>th</sup> August 47 Cicero received a highly generous letter (*litterae satis liberales*) from Caesar, he gave an account of this to

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<sup>1</sup> About this title see Alföldi 1953. 103ff.; Collins 1972. 922ff. For a broader context see also Alföldi 1985; Gelzer 1960.

<sup>2</sup> Cic. *Lig.* 7.

<sup>3</sup> Cic. *Att.* 11, 7, 2.

<sup>4</sup> Cf. Cic. *fam.* 14, 23; *Att.* 11, 20–22.

<sup>5</sup> Cic. *Att.* 11, 6, 3.

<sup>6</sup> Cic. *Att.* 11, 12, 1–2.

Terentia, yet—as it has been already mentioned—this did not dispel his fears.<sup>1</sup> 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.<sup>2</sup> 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,<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> 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.<sup>6</sup> In 60, by the mediation of Balbus, Caesar offered Cicero the opportunity of joining the first triumvirate,<sup>7</sup> and in July 59 he urged him to accept the office of legate in Gallia offered by him,<sup>8</sup> which Cicero again refused.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

Taking all the above into consideration, we can presume that Caesar had the meeting with Cicero in Brundisium organised for a definite cause,<sup>12</sup> 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

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<sup>1</sup> Cic. *fam.* 14, 23.

<sup>2</sup> McDermott 1970. 340f.

<sup>3</sup> Cf. Cic. *Att.* 11, 7, 2; 11, 6, 3.

<sup>4</sup> McDermott 1970. 341.

<sup>5</sup> Cf. Cic. *fam.* 9, 17, 3.

<sup>6</sup> Drumann–Groebe 1899–1929. 696–701.

<sup>7</sup> Cic. *Att.* 2, 3, 3f.

<sup>8</sup> Cic. *Att.* 2, 19, 5.

<sup>9</sup> Cic. *prov. cons.* 41.

<sup>10</sup> Cf. Cic. *Att.* 9, 6a, 1.

<sup>11</sup> McDermott 1970. 342.

<sup>12</sup> Cf. Plut. *Cic.* 39, 3–4.

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,<sup>1</sup> likewise the status of patrician, which he later granted to several people,<sup>2</sup> for example, to Octavianus too,<sup>3</sup> 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.<sup>4</sup>

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.<sup>5</sup> Although in a negative context, Dio Cassius brings up that Cicero had not become *magister equitum*.<sup>6</sup> 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 commit the assassination.<sup>7</sup> 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.<sup>8</sup> 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

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<sup>1</sup> Cf. *Cic. Att.* 8, 3, 6.

<sup>2</sup> *Dio Cass.* 43, 47, 4.

<sup>3</sup> *Dio Cass.* 45, 2, 7.

<sup>4</sup> McDermott 1970. 343.

<sup>5</sup> McDermott 1970. 344.

<sup>6</sup> *Dio Cass.* 46, 12, 4.

<sup>7</sup> *Dio Cass.* 46, 23, 3.

<sup>8</sup> McDermott 1970. 345.



Caesar's power and *clementia*.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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*.

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<sup>1</sup> McDermott 1970. 346f.

<sup>2</sup> Cic. *Lig.* 33.

<sup>3</sup> Cic. *Marc.* 17.

<sup>4</sup> Cic. *Phil.* 2, 116.

## V. Lawsuit of King Deiotarus

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 dissatisfaction<sup>1</sup> as triumphal marches were meant to legitimise victories over external enemies and not compatriots.<sup>2</sup> 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,<sup>3</sup> assassination attempt against Caesar dated by them to 47<sup>4</sup> and conspiracy,<sup>5</sup> that is,<sup>6</sup> the charge can be described in brief by the facts of the case of *perduellio*, and *crimen imminutae maiestatis*.<sup>7</sup> Cicero, who had maintained good relations with the King since he was proconsul in Cilicia, undertook the defence.<sup>8</sup>

### V. 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.<sup>9</sup> 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.<sup>10</sup>

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<sup>1</sup> Cf. Plut. *Caes.* 56, 7.

<sup>2</sup> Werner 1984. 255; Bruhns 1978.

<sup>3</sup> Cic. *Deiot.* 1.

<sup>4</sup> Cic. *Deiot.* 15. 17–22.

<sup>5</sup> Cic. *Deiot.* 22–25. 33.

<sup>6</sup> On the political role of King Deiotarus see Niese 1901. 2401ff.; Richter–Eberhard 1904. 79ff.; Hoben 1969. 83ff.

<sup>7</sup> Riemer 2001. 30.

<sup>8</sup> Cf. Cic. *Att.* 6, 1, 14; *Deiot.* 39.

<sup>9</sup> On the topic of *gratia* see Drexler 1988. passim

<sup>10</sup> Bringmann 1986. 81.

After Pharsalus, Deiotarus sided with Caesar and supported his campaign in Alexandria,<sup>1</sup> yet, Caesar decided that although Deiotarus could retain his royal dignity, he should give up a significant part of his empire.<sup>2</sup> This dismemberment, which took place after the battle at Zela in Nikaia,<sup>3</sup> 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.<sup>4</sup> For a while Deiotarus hoped for the victory of Pompey's adherents in Africa, however, after their defeat he definitely distanced himself from them.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.<sup>8</sup> The prosecutors most probably founded their claim on Caesar's aversion to and bias against Deiotarus.<sup>9</sup>

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* 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

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<sup>1</sup> *Bell. Alex.* 34. 39f.; 67–70.

<sup>2</sup> *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.

<sup>3</sup> *Bell. Afr.* 78; *Cic. div.* 2, 79; *Phil.* 2, 94.

<sup>4</sup> Cf. Hoben 1969. passim

<sup>5</sup> *Cic. Deiot.* 25.

<sup>6</sup> Ritter 1970. 124ff.

<sup>7</sup> *Cic. Deiot.* 38. Cf. Bringmann 1986. 82.

<sup>8</sup> *Cic. Deiot.* 38.

<sup>9</sup> *Cic. Deiot.* 8f.; *Phil.* 2, 94f.

with the order of Roman criminal procedure no proceedings could be conducted against the accused in his absence.<sup>1</sup> 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*”<sup>2</sup> 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.<sup>3</sup> Yet, easily rising above all these reservations Caesar himself desired to proceed in King Deiotarus’s case as a judge.

Cicero,<sup>4</sup> as a matter of fact, did not omit to bring up these awkwardnesses,<sup>5</sup> but being compelled to present these legal abuses as Caesar’s merits,<sup>6</sup> he made capital of this need, declaring that the dictator would guarantee that he should not be afraid of any inequity in the case.<sup>7</sup> Cicero’s words also reveal that Caesar did not take the principle of passing judgment in *consilium*<sup>8</sup> into account either, and the orator, while emphasising the dictator’s *clementia*, was compelled to make the absurd charges inauthentic by weighty counter-arguments.<sup>9</sup> Although the biography written by Suetonius on Caesar asserts that in his administration of justice he proceeded very strictly and justly,<sup>10</sup> 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,<sup>11</sup> on the other.<sup>12</sup> 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.<sup>13</sup> There are good chances of excluding the opportunity of acquittal since later Cicero noted that Caesar adjudged no issue whatsoever regarding Deiotarus justly.<sup>14</sup> Nor can it be ascertained that

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<sup>1</sup> See also Nótári 2003. 97ff.

<sup>2</sup> C. 3, 5. On the principles of Roman criminal procedure see Molnár 1996. 167ff.

<sup>3</sup> Mommsen 1899. 35ff.; Kunkel 1962. 21ff.

<sup>4</sup> See Gelzer 1968. passim

<sup>5</sup> Cf. Gotoff 1993. passim

<sup>6</sup> Cf. Dahlmann 1967. 32ff.

<sup>7</sup> Cic. *Deiot.* 4.

<sup>8</sup> On the role of *consilium* see Kunkel 1974a 151ff.

<sup>9</sup> Cic. *Deiot.* 15ff.

<sup>10</sup> Suet. *Caes.* 43, 1. *ius laborosissime ac severissime dixit*

<sup>11</sup> Val. Max. 6, 2, 11.

<sup>12</sup> Bringmann 1986. 85.

<sup>13</sup> Cic. *Att.* 14, 12, 1.

<sup>14</sup> Cic. *Phil.* 2, 95.

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.<sup>1</sup> 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,<sup>2</sup> and this annexation was acknowledged as lawful by a regulation made public by Antonius—presumably in return for significant valuable consideration.<sup>3</sup>

## V. 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> He draws conclusions regarding the entirety of the community from the Deiotarus 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,<sup>7</sup> his favourable countenance,<sup>8</sup> *aequitas* and *audiendi diligentia* reassured him<sup>9</sup>—probably in order to influence his defendant's case towards a favourable direction (*insinuatio*).<sup>10</sup> However, success of Caesar's *natura* and *sapientia* might be overshadowed by

<sup>1</sup> Cic. *Phil.* 2, 93–96; Olshausen 1975. 123<sup>40</sup>.

<sup>2</sup> Cic. *Phil.* 2, 95.

<sup>3</sup> Cic. *Att.* 14, 12, 1; *Phil.* 2, 93; Rochlitz 1993. 130f.

<sup>4</sup> Schumacher 1982. 38f.; Bringmann 1986. 83.

<sup>5</sup> Rochlitz 1993. 135.

<sup>6</sup> Cic. *Deiot.* 3.

<sup>7</sup> Cic. *Deiot.* 4.

<sup>8</sup> Cic. *Deiot.* 5.

<sup>9</sup> Cic. *Deiot.* 7.

<sup>10</sup> Cic. *inv.* 1, 20.

public opinion.<sup>1</sup> 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.<sup>2</sup>

The concept of *clementia* comes up first at the beginning of the *argumentatio*, and appears together with the concept of *fides* and *constantia*.<sup>3</sup> 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.<sup>4</sup> Again, the *metus* theme of the *prooemium* emerges, and in such form that Caesar, 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.<sup>5</sup> In order to explain why Deiotarus took the position to side with Pompey by "erroneously" sizing up the situation of internal politics in Rome<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup> In *Pro Ligario*<sup>10</sup> and *Pro Marcello*<sup>11</sup>—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

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<sup>1</sup> Olshausen 1975. 121f.

<sup>2</sup> Cic. *Deiot.* 4.

<sup>3</sup> Cic. *Deiot.* 8.

<sup>4</sup> Cic. *Deiot.* 8.

<sup>5</sup> Rochlitz 1993. 136.

<sup>6</sup> Cic. *Deiot.* 10.

<sup>7</sup> Cf. Riemer 2001. 31.

<sup>8</sup> Cic. *Deiot.* 39.

<sup>9</sup> Cic. *Deiot.* 8. 10. 11. 15. 39. 41. Cf. Cic. *rep.* 2, 45; *off.* 2, 23ff.; *Phil.* 2, 116.

<sup>10</sup> Cic. *Lig.* 6.

<sup>11</sup> Cic. *Marc.* 1.

*clementia* practised earlier.<sup>1</sup> *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.<sup>2</sup> The orator himself neither confirms, nor refutes the charge of tyranny,<sup>3</sup> 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,<sup>4</sup> especially because Cicero does not conceal the rage and anger manifested by Caesar either.<sup>5</sup>

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.<sup>6</sup> Antiochus paid the same price for *furor* as Deiotarus for an excusable *error*<sup>7</sup>—all that highly questions the value of Caesar’s *clementia*. Albeit, in the form of a rhetorical question he denies that Deiotarus can suffer any further loss and damage through grave *iniuria*<sup>8</sup>—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.<sup>9</sup>

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 temple<sup>10</sup>—is yet accepted by

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<sup>1</sup> Rochlitz 1993. 137.

<sup>2</sup> Cic. *Deiot.* 33–34.

<sup>3</sup> Botermann 1992. 339ff.; Werner 1984. 250.

<sup>4</sup> Bringmann 1986. 344.

<sup>5</sup> Cic. *Deiot.* 8. 9. 40.

<sup>6</sup> Cic. *Deiot.* 38.

<sup>7</sup> Cic. *Deiot.* 36.

<sup>8</sup> Cic. *Deiot.* 37.

<sup>9</sup> Rochlitz 1993. 138.

<sup>10</sup> Dio Cass. 43, 45, 2–3.

the people of Rome but if Caesar should go beyond that, this would amount to tyranny.<sup>1</sup> Thus, reference to tyranny is actually made, even if only from the mouth of Deiotarus's delegates and grandson.<sup>2</sup> 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 assumes<sup>3</sup>) 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.<sup>4</sup>

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 members<sup>5</sup> and so much disagreed with Caesar's territorial regulations that immediately after Caesar's death he marched into his earlier provinces.<sup>6</sup> 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*.<sup>7</sup> 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*,<sup>8</sup> in the orator's presentation, however, Deiotarus has already realised and achieved all that Cicero set as a goal to Caesar in *Pro Marcello*.<sup>9</sup> The idealised and, as a matter of fact, unhistorical Deiotarus is in possession of generosity and consistency<sup>10</sup> that Cicero deems doubtful in the case of Caesar.<sup>11</sup>

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*,

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<sup>1</sup> Klass 1939. 212; Hoffmann 2003. 12ff.

<sup>2</sup> Riemer 2001. 34.

<sup>3</sup> Riemer 2001. 34.

<sup>4</sup> Botermann 1992. 344; Rochlitz 2003. 134ff.

<sup>5</sup> Richter–Eberhard 1904. 81f.

<sup>6</sup> Cic. *Phil.* 2, 95.

<sup>7</sup> Cic. *Deiot.* 38.

<sup>8</sup> Cf. Cic. *Marc.* 26–30.

<sup>9</sup> Cic. *Marc.* 25.

<sup>10</sup> Cic. *Deiot.* 38.

<sup>11</sup> Rochlitz 1993. 138f.



*probitas, constantia, integritas* and *gravitas*<sup>1</sup>—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 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*,<sup>2</sup> *frugalitas, modestia, temperantia*,<sup>3</sup> *pudor, pudicitia*<sup>4</sup>. 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*<sup>5</sup>—the ancient Roman *frugalitas*, which is an asset possessed by *optimus pater familias* and *diligentissimus agricola et pecuarius*.<sup>6</sup> Thus, this virtue characterises private persons rather than kings;<sup>7</sup> yet, it is one of the most valuable traits beside *temperantia, moderatio* and *modestia* as a synonym of the Greek *sophrosynē*.<sup>8</sup> 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.<sup>9</sup>

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 *misericordia* prevail, then he must give pardon to Deiotarus.<sup>10</sup> 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 thread<sup>11</sup> implies that he attributed significance to it that pointed beyond the circumstances of the specific

<sup>1</sup> Cic. *Deiot.* 16. 20.

<sup>2</sup> Cic. *Deiot.* 25.

<sup>3</sup> Cic. *Deiot.* 26.

<sup>4</sup> Cic. *Deiot.* 28.

<sup>5</sup> Rochlitz 1993. 139. See also Kloft 1970. *passim*

<sup>6</sup> Cic. *Deiot.* 26.

<sup>7</sup> Seel 1967. 229.

<sup>8</sup> Cic. *Tusc.* 3, 16f.; 4, 36.

<sup>9</sup> Rochlitz 1993. 140.

<sup>10</sup> Cic. *Deiot.* 40. 43.

<sup>11</sup> Cic. *fam.* 9, 12, 2.

lawsuit, and wanted to provide publicity for it, primarily for the criticism formulated in the speech against Caesar's autocracy.<sup>1</sup> Caesar, returning in the first days of October 45 from the war in Hispania<sup>2</sup> to Rome by triumph, started to behave more and more like a *rex*.<sup>3</sup> 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.<sup>4</sup> It happened in those days that—motivated by fear,<sup>5</sup> out of overzealousness, provocation or on Caesar's initiative<sup>6</sup>—Caesar's statue with the inscription "*Deo invicto*" was erected in the Quirinus temple,<sup>7</sup> 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 Republic, the Caesar statue carried around on the occasion of *Ludi Caesaris* was not greeted by much jubilation by the people.<sup>8</sup> 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,<sup>9</sup> he did not live up the hopes attached to him in *Pro Marcello*, and Cicero was compelled to be disappointed with him;<sup>10</sup> he could not fully back out of the impact produced by Caesar's personality.<sup>11</sup>

Caesar required the political notabilities of the age of the Republic to give evidence of passivity, silent and disciplined "adapting", "adjustment";<sup>12</sup> politics were controlled by Caesar and his camarilla;<sup>13</sup> the integrity of common *sapientia* appeared to be vain hope.<sup>14</sup> Cicero was forced to remain silent on public affairs,<sup>15</sup> 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.<sup>16</sup> 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

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<sup>1</sup> Rochlitz 1993. 132.

<sup>2</sup> *Bell. Hispanica* 31, 9.

<sup>3</sup> Cf. *Cic. Att.* 13, 37, 2; *fam.* 6, 19, 2; Habicht 1990. 88ff.

<sup>4</sup> *Plut. Caes.* 57; *Cic.* 40.

<sup>5</sup> Strasburger 1990. 26.

<sup>6</sup> *Plut. Cic.* 57. Cf. Seel 1967. 352f.

<sup>7</sup> *Dio Cass.* 43, 45, 3; *Att.* 13, 38, 3. See also Weinstock 1971. 186.

<sup>8</sup> *Cic. Att.* 13, 44; *Deiot.* 34.

<sup>9</sup> *Suet. Caes.* 77.

<sup>10</sup> *Cic. Att.* 14, 1, 2; 14, 2, 3.

<sup>11</sup> *Cic. Att.* 13, 42; 14, 17, 6; 15, 4, 3.

<sup>12</sup> Strasburger 1968. 61.

<sup>13</sup> *Cic. fam.* 6, 19, 2.

<sup>14</sup> Rochlitz 1993. 133.

<sup>15</sup> *Cic. fam.* 4, 6, 3.

<sup>16</sup> Strasburger 1990. 37.

good relations between Cicero and Caesar and as the document of Cicero's opportunism.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> 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.<sup>5</sup>

In the mirror of all that it can be declared that Cicero was deeply disappointed in his hopes attached to Caesar;<sup>6</sup> the gap between them became irreconcilable, and in the speech it is possible to reveal masked condemnation of Caesar and idealisation of his opponents.<sup>7</sup> That in those days Cicero might have already thought of assassinating Caesar is revealed by a letter written to Atticus,<sup>8</sup> 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 (*salus*), by which he clearly lets his younger brother infer identification of Romulus, assassinated according to certain traditions, with Quirinus.<sup>9</sup>

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.<sup>10</sup> 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 overtones<sup>11</sup>—was written on 14 August 45,<sup>12</sup> and

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<sup>1</sup> Willrich 1944. 221ff.

<sup>2</sup> Seel 1967. 350ff.

<sup>3</sup> Gelzer 1969. 318f.

<sup>4</sup> Olshausen 1975. 122f.

<sup>5</sup> Botermann 1992. 323ff.; 344ff.

<sup>6</sup> Klass 1939. 211.

<sup>7</sup> Habicht 1990. 91.

<sup>8</sup> Cic. *Att.* 12, 45, 1–2. *De Caesare vicino scripseram ad te, quia cognoram ex tuis litteris. Eum synnaon Quirino malo quam Saluti.*

<sup>9</sup> Habicht 1990. 92.

<sup>10</sup> Suet. *Caes.* 9.

<sup>11</sup> Riemer 2001. 77.

<sup>12</sup> Cic. *Att.* 13, 37. 2.

the one to Matius at the end of August 44.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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*.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup>

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*,<sup>8</sup> 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.<sup>9</sup> 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,<sup>10</sup> his positive “Romulus propaganda” did not evoke much response.<sup>11</sup> 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;<sup>12</sup> according to the legend less kept in evidence, and understandably less popular, in his old age he became a tyrant and was torn to

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<sup>1</sup> Cic. *fam.* 11, 27, 8.

<sup>2</sup> Cic. *Att.* 10, 7, 1.

<sup>3</sup> Cic. *Sulla* 22.

<sup>4</sup> Lederbogen 1969. 10.

<sup>5</sup> Cic. *Att.* 12, 45, 1–2.

<sup>6</sup> Borzsák 1975. 34.

<sup>7</sup> Gelzer 1969. 325; Meyer 1922. 449.

<sup>8</sup> Cf. Ps.-Sall. *Cic.* 7. Cf. Classen 1962. 183ff.

<sup>9</sup> Plut. *Pomp.* 25.

<sup>10</sup> Cic. *Cat.* 3, 2.

<sup>11</sup> Classen 1962. 191.

<sup>12</sup> Liv. 1, 16, 1.

pieces by the senators with their bare hands.<sup>1</sup> Later on, religious faith identified the last member of the ancient Jupiter—Mars—Quirinus triad<sup>2</sup> with the first King—that is 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.<sup>3</sup> 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 rites<sup>4</sup>—in order to build his own later cult, Caesar resolutely propagated the respect of Romulus Quirinus.<sup>5</sup> 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.<sup>6</sup> Cicero mentions the opportunity of this cultic identification a few times, mostly, however, he handles this identification rather cautiously.<sup>7</sup> 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;<sup>8</sup> 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.<sup>9</sup> He declares that the element of killing the tyrant<sup>10</sup> is in harmony with stoic philosophy to the greatest extent,<sup>11</sup> which also suits *naturalis ratio*,<sup>12</sup> i.e., is the ultimate conclusion of ethical consideration.<sup>13</sup> In view of the fact that the tyrant ruins human community and places himself outside the rules of coexistence,<sup>14</sup> accordingly, these rules are not binding him either.<sup>15</sup> 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

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<sup>1</sup> Liv. 1, 16, 4.

<sup>2</sup> See Dumézil 1954. 129ff.; Dumézil 1973. passim

<sup>3</sup> Riemer 2001. 80.

<sup>4</sup> On triumph see also Nótári 2006. 117ff.

<sup>5</sup> Classen 1962. 192ff.; Burkert 1962. 373.

<sup>6</sup> Dio Cass. 43, 45. 2–3.

<sup>7</sup> Cf. Cic. *rep.* 2, 20; *leg.* 1, 3; *nat.* 2, 62; *off.* 3, 41.

<sup>8</sup> Cic. *off.* 1, 26.

<sup>9</sup> Cic. *off.* 3, 19–32.

<sup>10</sup> Cic. *off.* 3, 32.

<sup>11</sup> Cic. *off.* 3, 20.

<sup>12</sup> Cic. *off.* 3, 23.

<sup>13</sup> Cic. *off.* 3, 14. 19.

<sup>14</sup> Cic. *off.* 3, 21.

<sup>15</sup> Cic. *off.* 3, 32.

nothing else than a beast having assumed human form.<sup>1</sup> 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*),<sup>2</sup> 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* too<sup>2</sup> 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*.<sup>3</sup> 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.<sup>4</sup>

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*).<sup>5</sup> This statement (no matter if together with Hermann Strasburger we accept it as authentic<sup>6</sup> 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.<sup>7</sup>

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<sup>1</sup> Cic. *off.* 3, 32.

<sup>2</sup> Cic. *rep.* 2, 48. See also Berti 1963.

<sup>3</sup> Clark–Ruebel 1985. 61.

<sup>4</sup> Clark–Ruebel 1985. 62.

<sup>5</sup> Cic. *div.* 1, 27.

<sup>6</sup> Strasburger 1990. 50.

<sup>7</sup> Caes. *civ.* 1, 7. 22. Cf. Riemer 2001. 35.

## Conclusions

In the first chapter, first, we intended to shed light on the historical situation; after that, we outlined the statutory background of the crime that provides grounds for the charge; finally, we analysed 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.

In the second chapter, first, we intended to outline the historical background of the oration, so to say, the historical facts of the case; then, we turned our attention to the opportunity of applying statutory facts of the case, i.e., *lex Cornelia de sicariis et veneficis*. After that—in accordance with the system of arguments divided into two of the *oratio*—we analysed handling of the charge of bribe arising in relation to *iudicium Iunianum* and discussed at length, 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. Finally, we examined 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.

In the third chapter, first, we outlined the historical situation that provides the background of the lawsuit; then, after clarifying the events around killing of Clodius, we attempted to reconstruct the course of the lawsuit; later, we outlined the structure and legal background of the argument. After that, we made 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. Finally, we summed 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 pointed out the parallels drawn by Cicero between Catilina and Clodius.

In the fourth chapter, first, we described the historical background of the *oratio* and the proceeding; then, we examined the issue if the proceedings against Ligarius can be considered a real criminal trial. After the analysis of the genre of the speech, *deprecatio* we analysed the appearance of Caesar's *clementia* in *Pro Ligario*. Finally, we focused 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.

In the fifth chapter, first, we reviewed 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. After that, we intended 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.

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,<sup>1</sup> 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;<sup>2</sup> 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 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 analysed *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

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<sup>1</sup> Humbert 1925. *passim*

<sup>2</sup> See Stroh 1975. 31–54.



memory of his own deeds and achievements<sup>1</sup> by making his speeches available to “eternity”. 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. 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 either—it was just by this that Cicero (who proudly declared that in Cluentius’s case he threw sand, that is, dust into the judges’ eyes<sup>2</sup>) wanted to show to people who read him: that is how one must achieve the goal, have success, win a lawsuit!

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<sup>1</sup> As evidence of Cicero’s awareness of his achievements see Ps.-Sall. *Cic. 5. O, fortunatam natam me consule Roman!*

<sup>2</sup> Quint. *inst. 2, 17, 21.*

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