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Nótári, Tamás, *Law, Religion and Rhetoric in Cicero's Pro Murena.*

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It is quite interesting to have already met the author that one reviews. In a way, one expects to recognise the man behind the text. With professor Nótári's book, this was exactly the case. It is an elegantly written work, full of witty remarks. This seems very appropriate for the subject because the author analyses one of Cicero's particularly ingenious speeches, his defence of Lucius Licinius Murena against the accusations of electoral fraud made by the jurist Servius Sulpicius Rufus.

The action occurs in 63 BC, when the tumbling Republic was on the edge of a new civil war, thanks to Lucius Sergius Catilina. Four candidates presented themselves to the elections for consulship for the year 62 BC, Catiline, Servius Sulpicius, Decimus Silanus Junius (brother-in-law of Young Cato) and, of course, Lucius Licinius Murena. The winners of the elections were Silanus and Murena, leaving on the way both Catiline, the revolutionary, and Servius, the jurist. This latter, in an incredible act of irresponsibility, put in risk the result of the elections accusing Murena of the electoral crime of *ambitu*. This would have reopened a chance for Catiline to accede to consulate. Probably this was the determining factor that convinced Cicero of the necessity of assuming Murena's defence against Servius's attack.

Professor Nótári's work is an interesting approach to Pro Murena. It is an historical, philological and legal analysis of Cicero's speech in defence of Murena's cause. After Gábor Hamza's prologue, the book begins by giving the historical context in which the action develops.

The author, in a skilful manner, dates the speech using the circumstances that surround the event. He can very accurately establish that it took place in November 63 BC, that is to say, in the heat of Catiline's crisis. Done, he analyses the structure of the *oratio* and the nature of the *quaestio de ambitu* promoted against Murena.

The author draws a brief description on the origins of *quaestiones perpetuae* and its development between the Gracchi and Sulla. Regarding *ambitu* (pp. 23 ff.), he accomplishes a detailed history of this electoral crime. The original prohibition seems to prohibit wandering among the possible voters looking for support. With time, the crime developed to comprehend electoral bribe. The author's treatment of the matter is pleasant, especially for its smooth cynicism while studying the Late Republican electoral system.

In the following pages, the author studies the role of *collegia* in the elections, specifying its nature and function. His analysis seems remarkably interesting, especially when he treats the relations between the *patronus* and his clients, distinguishing the *ingenui* from the *libertini*. His conclusion is that the liberalisation of the obligations between the freed men and their old masters by the end of the Republic, forced the candidates to induce *ingenui* to become their clients by adopting a speech that represented the ideas and feelings of the lower classes.[1]

Somehow, this allowed the opinion of the lower classes to penetrate the more elevated circle of the upper classes to which the candidates belonged.

Some pages ahead (pp. 31 ff.), the author analyses both Murena's and Servius's careers. This seems quite useful because it gives a context to the speech and also explains the reasons for the jurist's electoral defeat. Apparently, instead of campaigning for the position, Servius prepared the accusation against his rival.

The fifth chapter treats the problem of 'perfect orator' in the *Corpus Ciceronianum* (pp. 43 & ff.) and the education a rhetorician should follow to master such an *ars*. Particularly assuming is the section dedicated to humor and other rhetorical weapons in Cicero's arsenal. There, the author explains Cicero's attitude towards Servius in *Pro Murena*. The rhetorician knows that humor is a powerful weapon, so he uses it with moderation, avoiding cutting too deep in an adversary whom he respects. In fact, he does not mock the man, but instead he uses irony against Jurisprudence and its extreme formalism. The main juridical interest of Pro Murena is, in fact, the valuable information Cicero gives through his mockery on the nature of some institutions of the *ius Quiritium*.

From page 63 onwards, the central part of the book begins. The following pages are focused on the analysis of the legal figures that one can find in the chapters 26 and 27 of Cicero's Pro Murena.

The analysis begins with the study of the syntagma *manum conserere*, present in the *legis actio sacramento*. The expression designates the physical apprehension of the object under dispute, and the ritualised fight that the plaintiff and the defendant simulate. The analysis begins with the study of ritualisation of violence.[2] Then it points out the problems that emerge when performing the ritual *in iure*, before the magistrate, when the vindication concerns non portable goods, like real estate.

1 See Nótári 2010b 35 ff.

2 See Nótári 2006. 133 ff.; Nótári 2007. 231 ff.

In such a case, the magistrate would go himself to the place where the object is. Nevertheless, when Roman territorial growth made this translocation too difficult or even impossible (maybe around 426 BC after the taking of Fidenas), there was a change in the procedure. The litigants would start going to the place where the disputed object was, they would take a piece of it in order to represent it and simulate the fight, transforming the ceremony into an *ex iure manum consertum vocare*.

The author continues his analysis focusing on verbalism, as an element of Archaic Law and its connection with *ius sacrum*. In a very similar line of work as Castresana's,[3] he relates the formal singularity of words, as an entity capable of legal creation, with magical power. Words can create realities in the magical-religious world of Archaic Rome. The author studies *fatum*, as a divine verbal expression of the goddess Fata.

The sacred value of archaic legal wording is evident. A simple error on the pronunciation is enough to lose a lawsuit, the same way a fault in the wording of a magical formula denatures the rite. To illustrate the matter, the author brings a curious example, the dedication of the temple to *Ops Opifera*. Its *inauguratio* was postponed several times because of the incapacity of a stutterer Pontifex Maximus to pronounce the name of the goddess.

The author continues analysing the prodigies and the magical value of words, to finalise with the study of the *carmen* and its legal consequences on the XII Tables, especially the prohibition of *malum carmen incantare* reported by Pliny.[4] It is significant that the words pronounced by the litigants in the *legis actio sacramento* are expressly called *carmen* in *Pro Murena*. This enlightens the magical nature of the *legis actiones*, and the neurotic Roman obsession with words becomes perfectly cogent.[5]

On the same *legis actio sacramento*, from page 80 onwards, the author analyses the *festuca* and the *hasta*, as symbols of property in Ancient Roman Law.

The *hasta*, the spear, is the traditional weapon to obtain booty. Also, it is a symbol of power and military command. In a way, it can be linked to *imperium*. The author states that *imperium* would have a magical and religious dimension. It would be a mystical force that summons the forces needed to execute an order.

The *hasta*, as a symbol of booty, would have not only a connection with *imperium*, but also with property, playing a significant role at the tribunal of the *centumviri*.

In connection with the *hasta*, the author analyses the role of the *augures' litus*. It was a type of scepter full of magical virtues, which was used, among other things, to divide the skies and draw the limits of different things. He compares it with the *skeptrov* used by Hellenistic kings.

3 See Castresana 2007. 19 ff.

4 Gaius Plinius Secundus, *Naturalis Historia* 28, 18, 2.

5 See Nótári 2008b 203 ff.; Nótári 2009. 2 ff.

By the comparison of the magical function of the *hasta* and the *litus*, the author calls attention to the connection that would exist between these instruments and some Roman superior deities. An example is Mars, whose spear was kept at his Temple, or Quirinus, whose name comes from the sabine voice *quiris*/*curis*, equivalent to spear. In fact, the city of Rome called itself the city of the *quirites*, that is to say, the spearmen, and therefore its traditional Law is the *ius quiritium*. There is a clear connection between the inherent magical power of the spear and the *numen* of Mars and Quirinus. On the replacement of the *hasta* by the *festuca*, a simple rod, on the *legis actio sacramento*, the author, in concordance with Gaius,[6] attributes it to the limitation of the use of arms within the *pomerium*, bordering the *hastae* to the most essential rites.

Returning to *imperium*, the author comments a certain particularity that is usually overlooked by the critic. Both the Flamen Dialis and the Vestals are provided with *lictores*, just like the magistrates *cum imperio*. He relates the magical dimension of *imperium* to the presence of *lictores* and the taboos that both priests and the magistrates would share.

We would like to add, that the *lictores*, like the rest of the symbols of *imperium*, were introduced in Rome during the regime of Tarquin the Elder,[7] specifically from Vetulonia[8], where, in addition, was discovered a tomb of a *lictor* from the 6th century BC We also know that during the Etruscan period,[9] specifically during the regime of Tarquin the Elder, there was some kind of reform to the Vestals's *collegia*. From that reform the number of vestals was fixed in six, two for each tribe.[10] Therefore, it is possible that the provision of *lictores* happened at this same time.

A little further (pp. 98 ff.), the author explores the possibility of understanding *legis actio sacramento* as a sort of sacred duel. He makes a parallel between *ius fetiale* and *ius privatum*, specifically in reference to the *legis actio sacramento*. In both we find the same rigid and formal declaration of pretensions, made through the pronunciation of a specific wording accompanied by specific acts. Words and acts must agree to acquire a significant lawful meaning. According to the author, the main difference between the two procedures is the acceptance of a trial by a

6 See Gai. *Inst.* 4, 16. *festuca autem utebantur quasi hastae loco, signo quodam iusti dominio.*

7 See Dion. 3, 61–62; Lucius Ampelius, *Mem.* 17, 1. *Priscus Tarquinius qui insignibus magistratus adornavit.* Flor. *Epit.* 1, 1, 150. *Duodecim namque Tusciae populos frequentibus armis subegit. Inde fasces, trabeae, curules, anuli, phalerae, paludamenta, praetextae, inde quod aureo curru, quattuor equis triumphatur, togae pictae tunicaeque palmatae, omnia denique decora et insignia, quibus imperii dignitas eminet.*

8 Silus Italicus, *Pun.* 8, 484. *Maeoniaeque decus quondam Vetulonia gentis. Bissenos haec prima dedit praecedere fasces et iunxit totidem tacito terrore securis. Haec altas eboris decorauit honore curulis et princeps Tyrio uestem praetexuit ostro. Haec eadem pugnas accendere protulit aere.*

9 Dion. 3, 67, 2.

10 Festus 344, 54. *Sex Vestae sacerdotes constitutae sunt, ut populus pro sua quaque parte haberet ministram sacrorum; quia civitas Romana in sex est distributa partis: in primos secundosque Titienses, Ramnes, Luceres.*

judge, in the *actio sacramento*, whereas *ius fetiale* leaves the decision of the matter to the divine powers summoned to witness the oaths pronounced. They will favour in war the one who has the just cause and who has performed the suitable rites.

In both cases, the rituals performed are destined to obtain the restitution of whatever was unrightfully taken. In the *actio sacramento*, the litigants must state that the vindicated things belonged to them, as the *fetiales* also demand their restitutions in their own process. Both processes intend to avoid war and anarchy, submitting the conflict to a superior authority, being that a judge or the gods.

Next, the author shows the connection between the *legis actio sacramento* and the duels and ordeals. In order to accomplish it, he compares the *legis actio* with an odd scene taken from Casina, one of Plautus's comedies.[11] It is a very interesting scene[12] where a husband (Olympio) and his spitfire wife (Cleostrata) gamble the destiny of one of their slaves in dispute (Casina).[13] The procedure is called *oraculum*, and it is similar to a duel, followed by a bet taken by their slaves (Lysidamus for Olympio and Chalinus for Cleostrata).

The episode includes the pronunciation of oaths, a ritual fight between the salves and, only in the end, the draw of lots, as a procedure to settle the conflict. The author infers from the scene the existence of an archaic *vindicatio* that would involve physical violence, the pronunciation of oaths and a bet. This idea is a little bold, and it should be considered seriously and in detail before accepting or refuting it. We might come back to it in the future, in a different and specialised work.

Once he has finished his analysis on *legis actio sacramento*, the author considers the relations between *manus* and *matrimonium*, through the analysis of chapter 27 of Pro Murena (pp. 109 ff.).

He starts his study by the engagement. In the Archaic period, it was performed through the *sponsio*. It was traditionally carried out by the *patres familiarum* of the groom and bride, for they had the *patria potestas* over them.[14]

Next, from the references made by Cicero in his speech, the author enters into the problem of *conventio in manum*. He believes that the traditional forms of *conventio in manum* were in disuse by the time of Gaius, because the jurist starts

11 On the problem, we have also referred to the episode in Amunátegui Perelló 2009. 248 ff.

12 Plautus, Cas., v. 352 ff.

13 The author believes that the husband can rightfully dispose of his wife's property (pp. 104–105), interpreting the dialogue between Mirrina and Cleostrata (v. 191 & ff.) in this sense. Although he does not explicitly state so, we understand he qualifies Cleostrata's marriage as *cum manu*, for only then could the husband dispose of her goods at will. This idea, elaborated by Watson (1984. 29 ff.) has been successfully rebutted by Dees 1988. 107 ff.
We also disagree with the author, essentially because we do not think that Cleostrata and Mirria's dialogue can be decisive in any sense. The problem seems to be more social than juridical. See Amunátegui Perelló 2009. 248.

14 We believe that there was also a social problem. It was probably unsuitable for a woman to directly participate in a marriage negotiation. We can find an example in Plautus' *Trinummus*. There, the *sponsalia* is carried out by the *pater* of the groom and the brother of the bride, although this last has no power over her. See on the problem Amunátegui Perelló 2006. 421 ff.

his narration on the problem using the word *olim*.[15] Anyway, we think the use of *olim* is not conclusive enough. Gaius is describing the three traditional forms to enter *manus* and he uses a past tense (imperfect) only to refer to *usus*, but he speaks of *coemptio* and *confarreatio* with a present tense, as if they were still used at his age. We also know that *coemptio* had a significant presence by the time of Gaius, although for scopes not necessarily connected with marriage, as to avoid *tutela legitima* or to make a will. The use of *confarreatio* also continued, although it did not produce the legal effects of *manus* any longer.[16] To be married with *manus* obtained by *confarreatio* it was needed to access certain priesthoods like *flamen dialis* and *rex sacrorum*.

The author's position on *confarreatio* is extremely interesting.[17] He analyses separately each source that makes reference to it and accomplishes an accurate picture of its elements and function. Nevertheless, we think that the author goes a little too far, at least in two problems. One is the Etruscan origin, which the author claims for *confarreatio*. He ties it with Etruria for its sacred nature and the egalitarian position between the spouses in the rites. They are both seated in identical chairs and make the same oaths.

We think that the origins of *confarreatio* are too obscure for anyone to determine. It may have Indo-European origins, especially for the existence of a parallel ceremony in Ancient India called *samskara*, but little more can be said.[18]

The author is also too daring, believing that *confarreatio* was an exclusively patrician ceremony, and therefore, not accessible for plebeians. We have expressed our doubts on this point elsewhere[19], so we will not come back to it.

The study of *usus* and *coemptio* that follow are interesting, as is the detailed description of the rites that accompany marriage.

Another aspect where we disagree with the author is on the legal status that he believes *manus* grants to the wife (p. 123 ff.). He refutes that the wife who has performed *conventio in manum* is an *adgnata* of her husband. He arguments that she only is a *heres quasi sui*, but she would not have the real quality of *adgnatio*.

15 Gai. *Inst.* 1, 110. *Olim itaque tribus modis in manum conueniebant: usu, farreo, coemptione.*

16 Tac. 4, 16 *Sub idem tempus de flamine Diali in locum Servi Maluginensis defuncti legendo, simul roganda nova lege disseruit Caesar. Nam patricios confarreatis parentibus genitos tres simul nominari, ex quis unus legeretur, vetusto more; neque adesse, ut olim, eam copiam, omissa confarreandi adsuetudine aut inter paucos retenta (pluresque eius rei causas adferebat, potissimam penes incuriam virorum feminarumque; accedere ipsius caerimoniae difficultates quae consulto vitarentur) et quoniam exiret e iure patrio qui id flamonium apisceretur quaeque in manum flaminis conveniret. Ita medendum senatus decreto aut lege, sicut Augustus quaedam ex horrida illa antiquitate ad praesentem usum flexisset. Igitur tractatis religionibus placitum instituto flaminum nihil demutari: sed lata lex qua flaminica Dialis sacrorum causa in potestate viri, cetera promisco feminarum iure ageret.*

17 See also Nótári 2010a 14 ff; 2008a 319 ff.

18 On the problem see Banerjee 1923; Mazzarella 1950. 434 ff.; Duncan–Derrett 1968. 94 ff.; Hanard 1989. 265 ff.

19 See Amunátegui Perelló 2009. 207 ff.

We think that this thesis introduces unnecessary complications to family relations, especially for the Archaic period, when *manus* would have been at its highest point. If the *loco filiae* quality that *manus* grants is not enough to consider her an *adgnata*, then who would have the *tutela* when the husband *cum manu* died? According to the XII Tables, the trusteeship corresponds to the *adgnati*, but, according to Nótári's interpretation, there would be no *adgnati* on the husband's side. *Manus* cuts all bonds with the woman's original family, so she would neither have any *adgnati* on that side. Then, who would exert the trusteeship? Nobody? If this was the case, then *tutoris optio* would have no sense at all. By *tutoris optio*, the husband with *manus* granted by testament to his wife the faculty of choosing a tutor. The faculty of choosing a tutor is relevant only to escape the trusteeship of the *adgnati*. If she had no *adgnati*, then the faculty would be senseless.

Next, the author studies *iudicium domesticum* (pp. 125 ff.).[20] Here, he sustains that the husband *cum manu* would have *ius vitae necisque* on his wife. This faculty would only be moderated by the *iudicium domesticum*, following Düll's[21] traditional thesis. We have already expressed our disagreement with this thesis,[22] for we do not believe that *manus* grants personal powers over the wife equivalent to the ones *patria potestas* grants. In every case where the capacity of killing a wife appears, the possibility does not seem to be connected neither to a discretional right, as in *patria potestas*, nor to *manus*. It is always on an adultery or wine drinking context, and it looks more like a legal excuse for manslaughter than a faculty.

The chapter finishes with a reference to divorce and *repudium*. It is particularly significant the reference to the possibility of transferring fertile women to other men for reproductive scopes. The author agrees with the traditional thesis that binds this faculty with *manus*, by means of *mancipatio* and *nuncupatio*, followed by a *remancipatio* after the birth of children. We think this thesis is wrong,[23] especially for the only historical case we know of, Young Cato's cession of his wife Marcia, is a succession of divorce and marriage. In fact we do not see any trace of *mancipatio* or *remancipatio*.

The final chapter of this fascinating work studies the proverb *summum ius, summa iniuria* in the *Corpus Ciceronianum*. He begins by analysing the concept of *interpretatio*. Then, he focuses on the proverb itself and its influence on the concept of *aequitas*.

After exposing his conclusions, the author offers a beautiful summary of the whole work in perfect Latin. We think this book is an elegant work, very well written and beautifully finished. Although we differ with some of the author's opinions, we thank him for this pleasant voyage through Cicero's Pro Murena.

20 Nótári 2011. 28 ff.
21 Düll 1946. 54 ff.
22 Amunátegui Perelló 2009. 260 ff.
23 Amunátegui Perelló 2009. 317 ff.

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