



Tamás Nótári: *Handling of Facts and Forensic Tactics in Cicero's Defence Speeches*

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In the monograph by Tamás Nótári, edited by Schenk Verlag in Passau in 2014, the author analyses ten forensic speeches (*Pro Roscio Amerino*, *Pro Cluentio*, *Pro Murena*, *Pro Cluentio*, *Pro Caelio*, *Pro Sestio*, *Pro Milone*, *Pro Marcello*, *Pro Ligario*, and *Pro rege Deiotaro*) by Marcus Tullius Cicero, probably the greatest orator of antiquity.

First, the author describes the order of criminal procedure, i.e. the system of the *quaestiones perpetuae*. The author also gives a more detailed analysis of Sulla's jurisdiction reforms that renewed the system of *quaestiones perpetuae*. From that time on, only persons ranked among senators were allowed to participate in the *quaestio* as jurors. In 81 B.C., Sulla also regulated the order of procedure in his *leges*. From these laws, hardly any have been preserved in their original wording, as Cicero's speeches and the *responsa* of the jurists of the classical period of Roman law quoted them as it served their own purposes. The author names the following laws of Sulla that have created or renewed some *quaestiones perpetuae*: *lex Cornelia de sicariis et veneficis*, *lex Cornelia testamentaria nummaria*, *lex Cornelia de iniuriis*, *lex Cornelia maiestatis*, and *lex Cornelia repetundarum*. Concerning the existence of a *lex Cornelia de ambitu*, he stresses out that there might arise some doubts. The author also points out that one of the most important cankers of Sulla's *quaestiones* was their tendency 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 B.C. By this law, the juridical monopoly of the senators was terminated and from this time on the list of jurors was compiled from 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 by the *praetor urbanus*.

After the analysis of the system of criminal procedure in Cicero's age, the ten speeches are grouped according to the facts of the case (*Tatbestand*) and the chronological order.

I. *Parricidium* and *veneficium*

The speeches given in defence of Sextus Roscius from Ameria in 81 and in defence of Aulus Cluentius Habitus in 66 were delivered in lawsuits brought by the charge of homicide (*parricidium* and *veneficium*).

Pro Sexto Roscio Amerino was Cicero's first *causa publica*, i.e. "criminal case," in which he tried to defend Sextus Roscius from Ameria of the charge invented by his relatives and one of Sulla's closest confidant-libertine. Sextus Roscius junior was charged with *parricidium* by his relatives, who claimed that he had his father murdered in June 81 B.C. With help of Sulla's confidant, Chrysogonus, the relatives achieved that the name of Sextus Roscius senior should be included in the list of persons inflicted by *proscriptio*. That made it possible that his property could be sold by auction, of which both Chrysogonus and the relatives had their great share. To enjoy this property in safety, they wanted to get the heir, Sextus Roscius junior, out of the way by a show trial. Because of the dangerous political aspects of the trial, the accusers thought that none of the great advocates would dare to defend Sextus Roscius. However, the twenty-six-year-old Cicero took the case that seemed hopeless for its political reasons. His undertaking was crowned by success. In the long run, this case established the reputation of Marcus Tullius, and from that time he began his career as a successful orator and advocate. First, the author shed light on the historical situation; after that, he outlined the legal background of the crime; finally, he analysed the handling of the facts of the case and the rhetorical tactics by which Cicero gained the acquittal of young Sextus Roscius.¹

The speech of defence of Aulus Cluentius Habitus was held in 66 B.C., the year when Cicero was *praetor*. Cluentius was charged with poisoning his stepfather, Statius Albius Oppianicus. The other part of the charge was in connection with a criminal proceeding eight years before, when Cluentius charged Oppianicus with a poisoning attempt against him. (As a result of this former case, Oppianicus had to go into exile.) In the current case, the prosecution brought up against Cluentius that the former court had declared Oppianicus guilty only because Cluentius had bribed the judges. The *lex Cornelia de sicariis et veneficis* from 81 served as basis for the trial against Cluentius. First, the author outlines the historical background of the case. Then, he turns his attention to the legal (i.e. statutory) background of *Pro Cluentio*, that is, the *lex Cornelia de sicariis et veneficis*. After that, he

1 See also Nótári, T.: Tatbestandsbehandlung und forensische Taktik in Ciceros Rede für Sextus Roscius. *Nova Tellus* 2011. 129. ff.

analyses, on the one hand, the charge of bribe arising in connection with the so-called *iudicium Iunianum* (the case eight years before) and, on the other hand, the charge of poisoning allegedly committed by Cluentius. Finally, the author examines the rhetorical tools used by Cicero in this speech.²

II. *Crimen ambitus*

The speeches made in the lawsuit of Lucius Licinius Murena in 63 and in the lawsuit of Cnaeus Plancius in 55 were delivered in defence of future magistrates charged of election bribery by their competitors.

The speech in defence of Lucius Licinius Murena was delivered in November 63 B.C. Murena, who had been elected *consul*, was charged by his competitors with election fraud, *ambitus*. In 63, Lucius Licinius Murena and Decimus Iunius Silanus were elected consuls for 62. Apart from them, Lucius Sergius Catilina and Servius Sulpicius Rufus (one of the most outstanding jurists of that age) applied for this office. The act of condemning an elected consul (*consul designatus*) was likely to shake the stability of the Republic. The charge made by Sulpicius went far beyond the usual extent of the possible danger to the Roman State because 63—when Marcus Tullius Cicero and Caius Antonius Hybrida were consuls—was the year of the second conspiracy of Catilina (*coniuratio Catilinae*). The lawsuit involved four prosecutors (Ser. Sulpicius Rufus, M. Porcius Cato, Ser. Sulpicius Rufus minor, and C. Postumius) and three counsels for defence (Q. Hortensius Hortalus, M. Licinius Crassus, and Marcus Tullius Cicero). The case ended with the acquittal of Murena. In his speech of defence, Cicero compared the personal merits of the competitors (Licinius Murena and Sulpicius Rufus), on the one hand, and then the public use of the profession of the commander and the jurist, on the other (*contentio dignitatis*). The author first analyses the historical background of *Pro Murena*. After that, he describes the procedure of the election of consuls in the Roman Republic and the laws concerning election bribery. Finally, the author analyses the rhetorical tools used by Cicero in his speech *Pro Murena*.³

The speech in defence of Cnaeus Plancius was held in 54 B.C. Cnaeus Plancius was elected aedile, and his competitor (who lost the election), M. Iuventius Laterensis, charged him of bribery (*ambitus*). Cicero responded to the charges brought up by the prosecution not too extensively. After that, he turned his

2 See also Nótári, T.: Forensic Strategy in Cicero's Speech in Defence of Aulus Cluentius Habitus. *Acta Juridica Hungarica* 2012/1. 48. ff.; Nótári, T.: Tatbestandsbehandlung und forensische Taktik in Ciceros Cluentiana. *Acta Universitatis Sapientiae, Legal Studies* 2012/1. 45. ff.

3 See also Nótári, T.: *Law, Religion and Rhetoric in Cicero's Pro Murena*. Passau 2008; Nótári, T. On the Legal and Historical Background of Cicero's Speech "Pro Murena". *Studia Iuridica Caroliniensia* 2009. 125. ff.

attention from the accused to his own person, and the speech became a hymn of gratitude addressed to his friend, Plancius, who had given him a refuge when he was in exile. First, the author describes the historical background of the case. After that, he compares the rhetorical tools of Cicero used in *Pro Plancio* with those applied in his *Pro Murena* held nine years earlier.⁴

III. *Vis publica*

The speeches held in defence of Marcus Caelius Rufus and Publius Sestius in 56 and in defence of Titus Annius Milo in 52 were delivered in lawsuits concerning the charge of *vis*. *Vis (publica)* as a crime containing several statements of facts from violent disturbance of public order to certain cases of murder.

Cicero delivered his speech in defence of Marcus Caelius Rufus charged with *vis* in 56 B.C., on the first day of the *Ludi Megalenses (Megalensia)*. *Pro Caelio* is a very important stage in Cicero's fight against Clodius (and the *gens Clodia*). The feud between Cicero and Clodius produced sometimes fatal impact on Cicero's life and also on the political events of the Roman Republic. The first stage of the hostility dated back to 73, when Clodius accused Fabia, a Vesta priestess (*virgo Vestalis*) and Cicero's sister-in-law of *incestum*. Cicero wanted to take revenge for this scandal in 61 when he made a testimony against Clodius in the so-called Bona Dea trial. Three years later, Clodius as *tribunus plebis* forced Cicero to go into exile and had his house destroyed by the Roman mob. In 56, Cicero was given the opportunity to take revenge for this injury and to treat Clodius and his sister Clodia in the trial with murderous humour. First, the author outlines the background of the Bona Dea trial and the conflict between Cicero and Clodius. After that, he deals with the historical background of the *Pro Caelio* and analyses the rhetoric situation given by the *Ludi Megalenses*. Finally, the author outlines Cicero's rhetoric tools used in the speech in defence of Marcus Caelius.⁵

The speech in defence of Publius Sestius was held in March 56 B.C. Sestius was charged on the basis of the *lex Plautia de vi* with violence offending public order. In this trial, Cicero could prove that the violent acts of Sestius were just a reaction to a similar situation, so he only made use of lawful defence, i.e. of the principle "*arma armis repellere licere*". As the author stresses, the speech in defence of Sestius can be considered also as a statement of Cicero's philosophy of the state. *Pro Sestio* was the first occasion when Cicero formulated his idea of the Roman *res publica* after his exile. Sestius was acquitted not only due to the brilliant

4 See also Nótári, T.: Election Bribery and Forensic Strategy in Cicero's Planciana. *Fundamina* 2011. 96. ff.

5 See also Nótári, T.: Law on Stage-Forensic Tactics in the Trial of Marcus Caelius Rufus. *Acta Juridica Hungarica* 2010/3. 198. ff.

rhetoric tools used by Cicero but also due to the political programme formulated in the speech. First, the author analyses the historical and legal background of the speech. After that, he pays attention to the philosophy of the state formulated in *Pro Sestio*. In those chapters of the speech, Cicero gave a definition of the term *optimates*, who should govern the State. He also defined the goal of good citizens (*optimus quisque*) in public life: the principle of *cum dignitate otium*. (Dignitas, i.e. moral values and dignity, and *otium*, i.e. the interest in farewell. Finally, the author analyses how the philosophical thought formulated in *Pro Sestio* appeared in one of Cicero's most important theoretical works, his *De re publica*.⁶

In January 52, the leader of the *populares* and Cicero's long-time enemy, Clodius Plucher, was killed by the troop of Milo, the leader of the *optimates*. Milo was accused of *vis* according to the *lex Pompeia de vi*, and his defence was undertaken by Cicero. Cicero delivered the weakest performance in his career: both the Clodian mob and the soldiers of Pompey frightened him, so he could not deliver the speech properly. The speech he delivered was taken down in shorthand as usual, and Pedianus Asconius could still read it in the 1st c. A.D. So, it is beyond any doubt that the speech *Pro Milone* published later could not be identical with the delivered speech. First, the author outlines the historical situation and the political background of the lawsuit. Then, using the *commentarii* by Asconius, he tries to clarify the events around the death of Clodius to give a reconstruction of the trial itself. After that, he analyses the probable reasons of Cicero, why he decided to publish a rewritten version of his speech *Pro Milone*. Finally, the author outlines the elements of political philosophy that appear in *Pro Milone*, paying great interest to the fact that this speech might have been the first occasion when Cicero mentioned the motif of killing the tyrant.⁷

IV. *Crimen maiestatis*

The three speeches analysed in the last chapter of the monograph are connected not only by the charge itself but also by the fact that the addressee of all the three speeches is Caius Iulius Caesar.

The oration in defence of Marcus Claudius Marcellus was held in September 46 in the senate. Therefore, its title does not fully cover the rhetoric situation as it can be also regarded as a political speech. As the author stresses out: *Pro Marcello* seems to be a statement of the defence; however, it is also an important

6 See also Nótári, T.: Cum dignitate otium – Staatsgedanke und forensischen Taktik in Ciceros Rede Pro Sestio. *Revue Internationale Des Droits De L Antiquite* 2009. 91. ff.

7 See also Nótári, T.: Notwehr oder Tyrannenmord? Tatbestandsbehandlung und forensische Taktik in Ciceros Pro Milone. *Revue Internationale Des Droits De L Antiquite* 2010. 331. ff.; Nótári, T.: "Killing the Tyrant" – Remarks on Cicero's Miloniana. *Annals of the Faculty of Law in Belgrade – Belgrade Law Review* 2012/3. 279. ff.

speech containing some thoughts of Cicero on the theory of the state and politics. *Pro Marcello* can be characterized both as *oratio suavioria* and *gratiarum actio* for the pardon granted to Marcellus, one of the leaders in Pompey's army. First, the author gives an account of the relation between Cicero and Caesar. Then, he outlines the historical background of the speech and defines its place in Cicero's philosophy. After that, the author analyses the orator's tactic used in *Pro Marcello*. Finally, he compares the image of Caesar outlined in the speech with the reality of politics, i.e. the image of Caesar drawn by contemporary authors.⁸

The speech *Pro Ligario* was held in 46 B.C. It was Cicero's first oration delivered on the Forum, that is, before the general public, in which he praised Caesar's *clementia* and seemingly legitimized the dictatorship. First, the author analyses the historical background of the speech and the trial. Then, he examines the issue if the proceedings against Ligarius can be considered a real criminal trial. As a result of this analysis, the author claims that the proceedings against Ligarius can be regarded not as a real trial but only as one of Caesar's abusive measures. After the analysis of the genre of the speech, a *deprecatio*, the author investigates the appearance of the term *clementia Caesaris* in *Pro Ligario*. Finally, he pays attention to Cicero's irony and points out how the orator voices his conviction that he considers the dictator's power and clemency illegitimate.⁹

In November 45 B.C., Cicero delivered his speech of defence before Julius Caesar in favour of King Deiotarus (*Pro rege Deiotaro*). King Deiotarus sided with Pompey in the civil war. By then, in November 45, Caesar had defeated Pompey's sons in the battle at Munda. The grandson of Deiotarus, Castor, and the one-time royal physician, Phidippus, hired by him acted as prosecutors of King Deiotarus. They charged the king with capital offences, an assassination attempt against Caesar – dated by them to 47 – and conspiracy. That is, the charge brought against the King can be described as *crimen imminutae maiestatis*. Cicero had always maintained good relations with the King, so he undertook the defence. First, the author analyses the charge against King Deiotarus to find out if the proceedings can be considered a criminal trial at all. After that, the author pays attention to *Pro rege Deiotaro* with respect to the political programme that appears in it and Caesar's image drawn by Cicero.

8 See also Nótári, T.: Staatsdenken und Rhetorik in Ciceros Marcelliana. *Fundamina* 2010. 64. ff.

9 See also Nótári, T.: Staatsdenken und forensische Taktik in Ciceros Ligariana. *Fundamina* 2013. 12. ff.