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MISCELLANEA

THE PUBLICATION OF CICERO'S *PRO ROSCIO AMERINO*

The *Catilinarians* and *Pro Milone* demonstrate that Cicero was prepared on occasion to make changes to his speeches, in the light of changed circumstances, when he came to write them up for publication. The *Catilinarians* were delivered in 63 BC but written up and sent to Atticus only in 60 (*Att.* 2.1.3), and it is clear that the pervasive element of *apologia* in the speeches reflects the climate of 60, when Cicero was being criticised by P. Clodius for the executions of the captured conspirators, rather than that of the original time of delivery, when the executions had not yet taken place.¹) *Pro Milone*, on the other hand, was delivered in an original form at the trial of Milo in April 52 BC, but then, on the evidence of Asconius (41-2 C), Dio (40.54.2-3) and the speech itself, revised and extended in the light of subsequent trials in, perhaps, January 51.²) In this paper I should like to consider whether anything similar has happened in the case of *Pro Roscio Amerino*, a speech originally delivered under Sulla in 80 BC.

Let us begin with the background to the case. The speech is a defence of Sex. Roscius of Ameria, accused by a hostile relation T. Roscius Magnus (and the formal prosecutor, C. Erucius) of having arranged the murder of his own father, also called Sex. Roscius, some months after the closing of Sulla's proscription lists on 1 June 81. After the murder, Magnus, together with another relation T. Roscius Capito, formed a partnership with Sulla's powerful freedman L. Cornelius Chrysogonus, and Chrysogonus fraudulently inserted the dead man's name retrospectively into the lists of the proscribed: instead of being inherited by his son, therefore, the dead man's property, consisting of thirteen farms with a total value of six million sesterces, was confiscated and put up for auction. Chrysogonus then bought it at a knock-down price, 2,000 sesterces, sharing it with his accomplices Magnus and Capito afterwards. When the younger Sex. Roscius made attempts to recover his inheritance, his enemies sought to remove him by prosecuting him for his father's murder. Roscius had powerful friends among the nobility, but they declined to undertake his defence because they were afraid of offending Sulla; so the 26 year old Cicero took it on as his first criminal case. The prosecutors seem to have supposed that fear of Sulla would deter the defence from mentioning their purchase of the dead man's property, and hence their motive for bringing the charge; but Cicero fearlessly exposed what they had done, and went on to win a famous victory.

For Cicero, the chief difficulty in the case lay in its political sensitivity. The proscriptions were over, but Sulla was still in power, and the case was the first one to be heard in Sulla's newly-established, permanent murder

court. Moreover, the figure behind the prosecution was Chrysogonus, a henchman of Sulla's who would be assumed to have his master's support; any criticism of Chrysogonus would therefore most naturally be interpreted as a criticism of Sulla. This is why the Metelli, despite being Roscius' patrons, declined to become involved: they gave Roscius material assistance, but would not speak for him in court. For Cicero, the danger was perhaps less because he was unknown and inconspicuous. But he was, on the other hand, a distant relation of Marius, and an *equus*, and he needed to tread with extreme care.

The strategy he adopted in his speech was to expose the partnership of Magnus and Capito with Chrysogonus, revealing how they had purchased the dead man's property and were now seeking to destroy his son; without taking this line, he had no hope of winning his case. But he actually went further, accusing Magnus and Capito (but not Chrysogonus) of murdering the elder Roscius themselves. He recognised, however, that in the prevailing political climate any criticism of Sulla would be instantly fatal to his case. As an essential part of his strategy, therefore, he took great care to distinguish between Sulla and his minion, and attribute blame only to the latter (Sulla is explicitly exculpated at §§ 21-2, 25-6, 110, 127 and 130-1). Condemnation of Chrysogonus, he stressed, did not in any way imply criticism of Sulla.

The question whether *Pro Roscio* has been revised for publication hinges, as we shall see, upon the attitude to Sulla and his régime which Cicero espouses in the speech. It is not a new question. In 1925 Humbert published his well-known monograph *Les plaidoyers écrits et les plaidoiries réelles de Cicéron* in which he analysed a selection of speeches and argued, unconvincingly, that they were amalgamations of separate speeches and passages of altercation from different points in the respective trials.³) In the case of *Pro Roscio*, Humbert argued that the speech is an amalgamation of several different speeches, but he also made the interesting suggestion that the speech or speeches which Cicero gave in court contained no hostile references to Sulla, but that the published speech does so; and he explained the difference between the two versions by supposing that Cicero revised the speech when he returned from Greece after Sulla's death, in 77. In 1975, however, Kinsey refuted most of Humbert's arguments, showing that the passages he selected did not support his conclusions; the idea that the speech contains criticisms of Sulla was rejected (Kinsey, 1975). Kinsey concluded that the speech as published was identical to the speech as delivered. Evidence of improvisation in the speech, Kinsey argued, showed that Cicero did not prepare his speech beforehand and then simply publish what he had prepared; instead, he improvised what was necessary, and published exactly what he had said. For him to be able to do this, publication would have to have been immediate.

Kinsey's article did not, however, take account of the view of Gabba, Gruen and Harris.⁴) These scholars had argued (in historical works not

primarily concerned with *Pro Roscio*) that Cicero does in fact make hostile references to Sulla—although they are not, with one exception (§ 3), the passages selected by Humbert—and that the speech was therefore likely to have been revised for publication at a later date. After this, in 1975, Buchheit went further and detected hostility to Sulla and his régime throughout large sections of the speech.⁵⁾ He did not go on to consider whether this has any bearing on whether the speech was revised, or when it was published; instead he assumed what Kinsey argued, that the published speech is identical to the speech that was originally delivered.

In view of this lack of consensus, a re-examination of the question seems in order. Rather than go through all the passages where hostility to Sulla or later revision have been suspected, I should like to focus only on those passages which seem to present the strongest case for a later revision: these seem to me to be §§ 3, 21-2, 130-1 and 152-3. As far as the rest of the speech is concerned, I should be happy to agree with Kinsey that there is nothing that we can categorically assert could not have been delivered at the trial.⁶⁾

A premise of my argument is that Cicero, like any competent advocate, would not have allowed his own private views to lead him into saying anything that would damage his case. Criticism of Sulla and his régime, even if oblique, would unquestionably have been extremely damaging, as would any suggestion of disrespect—a fact implicitly acknowledged by Cicero in his references in the speech to Sulla, which are generally characterised by the utmost respect and deference (e.g. §§ 6 *de viro fortissimo et clarissimo L. Sulla, quem honoris causa nomino*; 127 *nam Sullam et oratio mea ab initio et ipsius eximia virtus omni tempore purgavit*; 136; 146). Nevertheless, some of the passages to which I now turn do appear to contain an element of criticism and/or disrespect, while others, even more tellingly, do not relate to the time and circumstances of Roscius' trial.

First, then, § 3. Cicero is giving reasons why a young and inexperienced speaker such as himself has stood up to defend Roscius, rather than one of the distinguished nobles who have come to the court to support him:

Ego si quid liberius dixerō, vel occultum esse propterea quod nondum ad rem publicam accessi, vel ignosci adolescentiae meae poterit; *tametsi non modo ignoscendi ratio verum etiam cognoscendi consuetudo iam de civitate sublata est.*

The last clause, which I have italicised, comes as a very abrupt and outspoken qualification to what has preceded: Cicero says that in present-day Rome not only is no one pardoned, but punishment is inflicted without due process of law. The remark is not necessary to his argument, and in fact contradicts it, because his point is that he will indeed be pardoned. More fundamentally, however, the remark is not appropriate to the period of the trial, since that was of course held under due process of law: it was the first case to be heard in Sulla's new murder court (§ 11 *longo intervallo*

iudicium inter sicarios hoc primum committitur). Instead, Cicero's words must relate to the period of lawlessness from 88 BC down to Sulla's establishment of the *quaestiones* in 81;⁷) this would include the *Cinnanum tempus* and, most recently, the proscriptions of 82/1. It appears, then, that a disparaging reference to the recent period of lawlessness—for which Sulla, as the author of the proscriptions, was in part responsible—has been inserted, gratuitously and anachronistically, into the text of the speech. Kinsey (1975: 93) remarks that "it is understandable that someone of Cicero's character should have committed such an indiscretion at the time when the speech was delivered". But even if we allow that Cicero has made an error which any competent advocate would surely have known to avoid, it is nevertheless impossible that he should have stated in a newly-established court that no process of judicial enquiry existed at Rome. The passage, therefore, can only be a later addition, presumably intended to advertise Cicero's disapproval of the recent lawlessness, and in particular perhaps of Sulla's proscriptions.

Next, two passages which should be considered together, §§ 21-2 and 130-1. In the first one, Cicero has just explained how Chrysogonus fraudulently added the elder Roscius' name to the proscription lists and purchased his property, and now he adds that Sulla knew nothing about this (§§ 21-2):

Haec omnia, iudices, imprudente L. Sulla facta esse certo scio. Neque enim mirum, cum eodem tempore et ea quae praeterita sunt <reparet> et ea quae videntur instare praeparet, cum et pacis constituendae rationem et belli gerendi potestatem solus habeat, cum omnes in unum spectent, unus omnia gubernet, cum tot tantisque negotiis distentus sit ut respirare libere non possit, si aliquid non animadvertat. . . . Huc accedit quod, quamvis ille felix sit, sicut est, tamen in tanta felicitate nemo potest esse in magna familia qui neminem neque servum neque libertum improbum habeat.

Although ostensibly respectful towards Sulla, the passage makes the point that he has a failing—inadvertence—and it does so in a slightly impudent manner. First, there is a note of impertinent presumption in the way in which the 26 year old Cicero expects the jury to take his word for it (*certo scio*) that Sulla knew nothing: instead of simply asserting Sulla's ignorance, Cicero vouches for it on his own authority.⁸) Secondly, in the sentence beginning *Neque enim mirum*, Sulla's unique importance is emphasised in a long sequence of clauses, but there is then perhaps a note of bathos in *si aliquid non animadvertat*: Sulla does seem implicitly to be being accused of not paying attention. Finally, the way in which Sulla's famed *felicitas* is qualified in the last sentence is impertinent: Sulla is genuinely fortunate—but not, however, as fortunate as he thinks. The greater directness of this last reference serves to confirm a subversive reading of what has come before. If Cicero were being more tactful, he would not have mentioned Sulla's *felicitas* at all. The topic seems to have been introduced purely in order to give the whole passage a double-edged quality.

In the third passage, which similarly seeks to exculpate Sulla (at least on the surface), the irony is more pronounced (§ 131):

Placet igitur in his rebus aliquid imprudentia praeteriri? Non placet, iudices, sed necesse est. *Etenim si Iuppiter Optimus Maximus cuius nutu et arbitrio caelum terra marique reguntur saepe ventis vehementioribus aut immoderatis tempestatibus aut nimio calore aut intolerabili frigore hominibus nocuit, urbis delevit, fruges perdidit, quorum nihil pernicii causa divino consilio sed vi ipsa et magnitudine rerum factum putamus, at contra commoda quibus utimur lucemque qua fruimur spiritumque quem ducimus ab eo nobis dari atque impertiri videmus, quid miramur, iudices, L. Sullam, cum solus rem publicam regeret orbemque terrarum gubernaret imperique maiestatem quam armis receperat iam legibus confirmaret, aliqua animadvertere non potuisse?*

Sulla's inadvertence—or negligence—has once again become a topic for Cicero to pronounce upon. A comparison of Sulla with Jupiter allows him to pretend that he is treating him with deference—reverence, even; but the comparison is damaging to Sulla, and draws our attention to the destructiveness of his rule. Through the comparison (in the clauses which I have italicised), Cicero points out that Sulla has not merely allowed Chrysogonus to profit: he has destroyed the cities of Italy and ruined Italian agriculture. Kinsey detects no irony here (or in §§ 21-2); Kennedy is uncertain.⁹) But if Cicero really wished not to be taken as hostile to Sulla, he would have put the comparison in less provocative terms (for example, by shortening the list of Jupiter's acts of destruction) or, better, would have omitted it altogether.¹⁰)

My final passage comes from the end of the speech, and is the most puzzling; I have found no discussion of it. Cicero has been appealing to the jury to save Roscius from Chrysogonus: their function should not be to assist the purchasers of confiscated property by condemning those who have escaped their clutches. Then he continues (§§ 152-3):

An vero, iudices, vos non intellegitis nihil aliud agi nisi ut proscriptorum liberi quavis ratione tollantur...?... Quod si... idcirco sedetis ut ad vos adducantur eorum liberi quorum bona venierunt, cavete, per deos immortalis! iudices, ne nova et multo crudelior per vos proscriptio instaurata esse videatur. Illam priorem quae facta est in eos qui arma capere potuerunt tamen senatus suscipere noluit, ... hanc vero quae ad eorum liberos atque ad infantium puerorum incunabula pertinet nisi hoc iudicio a vobis reicitis et aspernamini, videte, per deos immortalis! quem in locum rem publicam perventuram putetis!

The prosecution of Roscius, Cicero says, is the beginning of a more general attack on the children of the proscribed. The passage is undeniably impressive in its use of rhetoric to move the jurors to pity (note especially *infantium puerorum incunabula*) and to increase the apparent significance of the decision they are about to make. But all the same, I do not see how Cicero could have used this argument in court since the fact that the elder Roscius was not proscribed is the corner-stone of his defence, and is something that he states again and again in his speech (§§ 21, 32, 125-

6, 128, 130). If Roscius was proscribed, then his property was legally sold, and Chrysogonus, Magnus and Capito have done nothing wrong. Cicero could hardly have ended his speech with a point that contradicted his entire line of defence, and the passage must surely therefore have been added later, together with those parts of §§ 145-6 which anticipate it (if §§ 152-3 are removed, the remaining text provides an effective and logical conclusion to the speech; but of course we cannot know what the original text of the conclusion was before Cicero altered it). §§ 152-3 were most likely written at a time when the restoration of the property of the children of the proscribed was a live issue, i.e. after Sulla's death, and Cicero wished to go on record as having supported their claims. Evidently, at the time he added this passage to the speech, he was more concerned to be seen as having supported the children of the proscribed than to have made a logically coherent defence. A similar priority is in evidence at § 3: there a disparaging reference to the lawlessness of the period was inserted even though it gave rise to anachronism. But since Cicero was known to have won his case, perhaps such inconsistencies did not matter much. They are certainly less glaring than the inconsistency at the heart of the published *Pro Milone*. In that speech, Cicero felt free to base his published defence on two mutually contradictory lines of argument; in the trial, on the other hand, he had been forced to make a choice between the two (and it was the defence that allowed the greater scope for emotional display that was sacrificed). (See note 2.)

The hypothesis that Cicero made alterations to *Pro Roscio* after Sulla's death would explain all the passages which I have examined. The criticisms of Sulla and his régime would have damaged his chances of securing an acquittal, and so cannot have been included in the original speech: they must be later additions. Their tone, for the most part, is one of irony: Cicero could not afford to make ironic remarks about Sulla in his original speech, but they are appropriate to a later revision. The revision of *Pro Roscio* would therefore resemble, to some extent, the revision of *Pro Milone*, where ironic references to Pompey betray a re-writing of the speech at a later point, something which in the case of that speech is supported by external evidence. This is, in fact, only one of a number of resemblances between Cicero's first and last defences in a criminal court.¹¹)

Humbert would therefore appear to be right in supposing that Cicero revised the speech when he returned from Greece after Sulla's death, in 77. Kinsey, on the other hand, would be wrong to conclude that the speech as published was identical to the speech as delivered (evidence of improvisation, therefore, need not imply immediate publication). Cicero tells us at *Brutus* 312 that after the success of his defence of Roscius he was thought capable of taking on any case at all, and accepted a large number of commissions. Among these was his successful defence of the freedom of a woman from Arretium, politically a more significant case than that of Roscius because it called into question, while Sulla was still

alive, his disenfranchisement of entire communities (*Caec.* 97). The speech was not published (to our knowledge): to have published it would have been to court danger for no purpose. In 79 he went abroad for the sake of his health, and studied under Molon of Rhodes (*Brut.* 313-6). When he returned in 77, Sulla was dead. It would not be surprising if he took his case notes with him to Asia, wrote up *Pro Roscio*, the most admired of the speeches he had made (and perhaps approved or even improved by Molon), and published it on his return to Rome.¹² With Sulla dead, the criticisms of him and the championing of the children of the proscribed would have been suitable to the times, and his defence of the woman of Arretium would have made his outspokenness appear in character.

At the end of his life Cicero spoke of his defence of Roscius in the following terms (*Off.* 2.51):

Maxime autem et gloria paritur et gratia defensionibus, eoque maior si quando accidit ut ei subveniatur qui potentis alicuius opibus circumveniri urgerique videatur, ut nos et saepe alias et adulescentes contra L. Sullae dominantis opes pro Sex. Roscio Amerino fecimus; quae, ut scis, exstat oratio.

This is misleading because *Pro Roscio* was not *contra L. Sullae dominantis opes*: it was against Chrysogonus, of whose misdeeds Cicero repeatedly claimed that Sulla was ignorant. But the passage shows that Cicero wanted it to be thought that he had a track record of resisting dictators. In his revision of *Pro Roscio* at the outset of his career, we can see that he was motivated by the same consideration.

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1) See Berry (1996: 54-5; also 54-9 on the issue of publication more generally).

2) See Stone (1980); Berry (1993); Berry (2000: 169-71).

3) Humbert (1925); cf. Clark (1927) (review); Stroh (1975: 31-54) (demolition).

Pro Roscio is discussed by Humbert (1925: 100-11).

4) Gabba (1964:10-1) (= *Republican Rome, the Army and the Allies*, tr. P.J. Cuff (Oxford 1976), 137-8); Gruen (1968: 268); Harris (1971: 271-3).

5) Buchheit (1975).

6) Although I would class parts of §§ 145-6 with my fourth passage, §§ 152-3.

7) Cf. *Brut.* 306 *sublata iam esse in perpetuum ratio iudiciorum videbatur*, referring to 88 BC.

8) Buchheit (1975: 580) suggests that *imprudente* in the first sentence may imply foolishness as well as mere ignorance. But that sense of the word is rare in Cicero's speeches (TLL 7.1.703.50 ff. cites only *Deiot.* 16).

9) Kinsley (1980: 175 n. 4); Kennedy (1972: 153-4).

10) Buchheit (1975: 588-9) makes a further point, that Cicero's comparison of Sulla to Jupiter and his description of Sulla's power in quasi-regal terms (*solus rem publicam reget*, the only instance in Cicero of *regere* governing *res publica*) serve to underline the tyranny of his rule. If one first accepts that the passage is hostile to Sulla (because of the references to destruction), then this point may also be accepted;

but I do not think that the comparison to Jupiter and the words *solus . . . regetur* by themselves imply hostility.

11) See further Berry & Heath (1997: 396-406).

12) Of course, *Pro Roscio* is usually thought to be stylistically interesting because it pre-dates Molon's toning-down of Cicero's style (*Brut.* 316; cf. Davies (1968)); this view might now require some qualification.

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JUVENAL 10.84: A BRIEF NOTE

quam timeo, victus ne poenas exigit Ajax
 ut male defensus. curramus praecipites et,
 dum iacet in ripa, calcemus Caesaris hostem.

Nisbet suggested altering *quam* to *non*; Weidner suggested *quam timeo victis, ne . . .*, though it is difficult to see who 'the conquered' might be in this context.

Courtney (1980) ad loc. rightly rejects all those interpretations which do not identify Ajax with Tiberius; it is after all only Tiberius whom the speaker and his friends have reason to fear. He continues: "Difficulty however remains; *male defensus* has no application to Ajax . . . and hardly seems