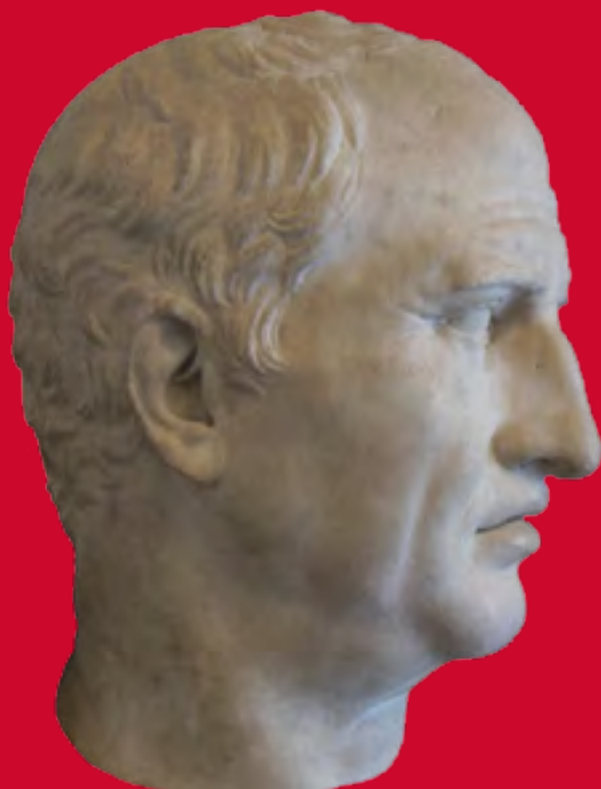


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# Cicero's defence of Sextus Roscius and the Sullan *res publica*

CATHERINE STEEL

*Summary:* The approach Cicero takes in his defence of Sextus Roscius forces him to discuss recent political events, above all the proscriptions and Sulla's position as dictator. This is a deliberate choice by Cicero, which does not prevent him from constructing an effective defence but allows him to combine that defence with the articulation of a vision for the Sullan *res publica*. This vision does not conflict with any of Sulla's acts, but allows Cicero to argue that more work needs to be done to secure Sulla's achievement and to suggest that he, despite his youth and lack of experience, can be part of the *res publica* towards which he and the jurors should work.

## 1 Context and argument of the speech

The trial of Sextus Roscius of Ameria was dominated by the upheavals which had affected Roman public life during the two years prior to its likely date in late 80 B.C. The defendant Roscius was charged under the *lex de sicariis et veneficiis*, which covered unlawful killing. Yet the victim whose death gave rise to the charge against Roscius – that is, his father the elder Roscius – had apparently been named on the proscription lists issued under the authority of the dictator Sulla, which should have given legal immunity to his killer or killers. The proscription of the elder Roscius plays a large part in Cicero's argument in the speech. He claims that Roscius' name was added to the list fraudulently, because his death occurred after June 1<sup>st</sup> 81 B.C., the date which Sulla had established as the end of the period of proscriptions (*Pro Roscio Amerino* 22, 128). Cicero explains that Roscius' actual murderers added him to the list after his death, to ensure that his estate did not go to his son and instead became available for their own acquisition. This argument dominates the second and third parts of the speech, in which Cicero first identifies Roscius' relatives Magnus and Capito as the men who ordered Roscius' death, and then explains how they joined forces with Sulla's freedman Chrysogonus in order to insert Roscius' name into the proscription list and then buy his property at a very advantageous price.

Cicero's decision to adopt a line of argument which denied the validity of the elder Roscius' proscription meant that he could not use the apparently cast-iron argument in favour of his client which Roscius' presence on the proscription list, if accepted, would provide, namely that if Roscius was proscribed, his death could not be the subject of legal inquiry. This was a bold move given the seriousness of the offence, and points to the complexity of the legal issues surrounding the proscriptions and the appropriation of property which accompanied Sulla's victory.<sup>1</sup> It also ensures that the broader context of the *res publica* in which Cicero places the death of Roscius and his defence of Roscius' son remains constantly in view during his speech. Against this background, Cicero presents a narrative of recent history and offers a series of aspirations for the *res publica*, which are carefully in accord with the Sullan *res publica* but nonetheless may not have been identical to those held by all of Sulla's partisans. The result of this is that Cicero turns his defence of Sextus Roscius into a wide-ranging and, in many ways, astonishingly ambitious vision of the Sullan *res publica*, which also allows him to identify himself as a confident and committed member of that community.

## 2 Location and audience

Cicero says quite early in the speech (11) that Roscius' trial is the first to take place at the *quaestio* for murder (*de sicariis*) *longo intervallo* ('for a long time'), despite the large number of murders that have taken place in the meantime. The phrase *longo intervallo* is vague, but combined with the reference to slaughter since the last trial it does suggest that this is the first trial in this *quaestio* since Sulla's victory in 82. If that was the situation, then this trial was the first case of murder to be heard in the newly constituted *quaestio de sicariis et veneficiis*, operating under one of the series of laws passed by the dictator Sulla which established the offences tried in the *iudicia publica*. This novelty matters: Cicero is reminding his audience that they are witnessing a moment of transition, from a *res publica* in which violent death, through the proscriptions, has been sanctioned, to one in which the killing of a member of the *res publica* has returned to its normal status of being an event which deserves scrutiny and potentially punishment by the *res publica*.<sup>2</sup>

Although Sulla's laws did not introduce any major changes to the nature of the offences, and were generally based on existing legislation, they did consistently resolve the question of the composition of the jury in favour of en-

1 On the legal background, see Dyck (2010: 1-19); Kinsey (1985); and Tellegen-Couperus in this volume of *Lampas*.

2 On the conception of murder as an offence against the *res publica*, Riggsby (1999: 50-78).

tirely senatorial juries.<sup>3</sup> Thus Cicero was speaking to an audience of senators only. Moreover, in all probability many of these senators were recently appointed. The Senate at the time of Sulla's victory at the Colline gate in November 82 had perhaps shrunk in size to only 150 or 200, with extraordinary attrition among its more senior members.<sup>4</sup> Sulla raised the number of quaestors to be elected each year to twenty, and as the quaestorship now gave automatic entry to the Senate, this change would in time bring the size of the Senate up towards 600, around twice the size it had been prior to Sulla's dictatorship.

Sulla also created a number of senators immediately. The number of senators appointed directly in this way is not attested, but since the demand for jurors was immediate, we can reasonably assume at least a hundred new senators, and perhaps rather more, were enrolled with immediate effect. Although these new senators are frustratingly badly attested we can also, I think, reasonably assume that many of them were older men – that is, older than thirty, the age at which someone could stand for the quaestorship. By implication, then, these were men who had not hitherto pursued a public career at Rome, and they must also have been demonstrably loyal to Sulla and his reforms. This implies some degree of expansion in the senatorial class, though it remains unclear whether this expansion was geographical or economic. He may have brought into the Senate those who had supported him from towns across Italy.<sup>5</sup> And some of his new senators will have come from other backgrounds, such as his army. Importantly, there is no evidence that these directly appointed senators were expected to stand for election to any post after their entry into the Senate: for the first time in Roman history, there were senators who had no experience of public administration obtained through the tenure of a magistracy or a priesthood.

The consequence of these changes to the membership of the Senate meant that Cicero faced at this trial an audience of jurors containing a number of men whose status as senators depended on the continuation of Sulla's reforms and were entirely indebted to him, and not the Roman people, for their position. Some of them will have derived significant personal benefit from the proscriptions through the acquisition of property appropriated from the proscribed. These men will not have welcomed anything which suggested that recent history should be undone.

<sup>3</sup> See Cloud (1994) for a helpful summary.

<sup>4</sup> Steel (2014).

<sup>5</sup> Sulla's invasion of Italy was an issue which split ruling elites within Italian towns and it is clear that choosing the successful side was hugely beneficial, *Pro Cluentio* being a fine case study of this phenomenon.

### 3 Looking to the future: Sulla and civil society

The context of the trial combines an audience of jurors deeply committed to the *status quo* with the prospect of change represented by the return to the application of the rule of law. This context helps to explain why Cicero's very modest suggestions for change within the speech all refer to the future, and insofar as he comments on recent events, he does so in a way which suggests he is a keen supporter of the regime. An important indication of his stance are the explicit references to Sulla himself.

Sulla's name occurs nineteen times in the speech.<sup>6</sup> The mentions of his name cluster at particular points through the speech: he is in particular focus in the *narratio* and in the concluding arguments. The first mention, early in the speech at 6, identifies Sulla as the vendor of Roscius' estate: the purchaser is Chrysogonus, one of Sulla's freedmen. Cicero's style at this point is appropriately simple and straightforward for a factual narrative, drawing attention to the key point about price (Roscius' estate was worth six million sesterces, he claims, and sold for 2,000). Nonetheless, Sulla's name is qualified by honorific adjectives (*de viro fortissimo et clarissimo L. Sulla*, 'from the most courageous and distinguished L. Sulla') and Cicero pauses to add *quem honoris causa nomino* ('whom I name with all due respect').

The second group is a set of mentions in the context of the description, during the *narratio*, of a visit by town councillors from Ameria to Sulla's camp at Volaterrae to get Roscius' name removed from the proscription list. The delegation did not in fact manage to talk to Sulla. Cicero emphasises that Sulla did not know of Chrysogonus' machinations and cannot be held responsible for them, given the scope and importance of the activities with which he was pre-occupied at the time (22). It was Chrysogonus who dealt with the decurions and convinced them to leave matters with him rather than insist on speaking with Sulla directly. The third cluster of Sulla's name is at 110, when Cicero recapitulates the visit of the decurions to Volaterrae in the context of his analysis of Capito and Magnus' motives for the murder of the elder Roscius. Here he simply repeats the failure of the envoys to talk directly to Sulla.

The final set of references to Sulla towards the end of the speech are the most revealing. At this point (132-135) Cicero is discussing the role of Chrysogonus in the events, arguing that he was the prime mover in the *post mortem* plot to put Roscius' name onto the proscription lists. The attack on Chrysogonus is unsparing, but it is not without nuance. Part of Cicero's approach is to draw on tropes of luxurious living to denigrate Chrysogonus' character; though this part of the speech is lacunose, Cicero evidently describes Chrysogonus' way of life, the expensive and novel goods he possesses, and the size

6 In 6, 20, 22, 25 (three times), 26, 105, 110 (three times), 126, 127 (twice), 131 (twice), 137, 143, 146.

of his household and the elaborate differentiation in roles within it. This kind of living was always vulnerable to attack at Rome. But the point of Cicero's attack is not simply to present Chrysogonus as a morally dubious character. It is also to alarm his conservative jurors by evoking the social dislocation which follows from over-powerful freedmen such as Chrysogonus acquiring a position which can be represented by their excessive material possessions but whose real danger lies in the exercise of unconstitutional and unrestricted power over their betters. Cicero repeatedly links Chrysogonus to *potentia* (35, 60, 122) and to *dominatio* (140). Chrysogonus, that is, exercises power in a way that is distasteful under any circumstances, given his servile background, but is also inherently alarming because it operates outside the constitutional and legal framework of the *res publica*. The jury has the opportunity and the obligation to take action against Chrysogonus through their verdict in this case, and to do so would not in any way harm the *causa nobilitatis* ('the cause of the nobility'; 135, 138).

Sulla himself is exonerated because he did not know what Chrysogonus was doing, and Cicero is careful to say that this ignorance was unavoidable given the duties with which Sulla was preoccupied at the time. This point is repeated through the speech. In part the justification of Sulla is based on the model of master and freedman which was in fact the relationship between Sulla and Chrysogonus. Sulla's own operation may have blurred the distinction between household and *res publica*, particularly in the large number of 'his' freedmen – slaves taken from the proscribed but manumitted and enfranchised as Corneli – who were installed in Rome and openly supported him.<sup>7</sup> But the model itself will have been entirely familiar to the slave-owning senators who formed the jury: they too will have been able to see themselves in the picture which Cicero paints of the master at the mercy of his unscrupulous and disloyal freedmen.

More challenging is the second framework within which Cicero explains how Sulla is entirely guiltless of the plot against Roscius and the insertion of the elder Roscius' name onto a list which should by that point have been closed (130–131). Here, Cicero emphasises the scale of Sulla's operations as dictator; but he also brings in a divine analogy. Jupiter Greatest and Best is not responsible for the damage which is caused by the weather, but that is simply an inevitable concomitant of the forces involved; is it surprising that Sulla, solely responsible for running the world, does not notice some things? This is one of the most interpretatively challenging parts of the speech, since we must decide whether we think that Cicero is sincere in drawing this analogy between Sulla and Jupiter, or that he is not, and perhaps even that this

<sup>7</sup> Appianus, *Bellum Civile* 1.100, who says that their number was μυρίων πλείους ('more than 10,000'); that suggests a number that would be clearly visible within Rome.

passage is an addition to the speech, not delivered at the trial but added to the written version after Sulla had retreated from public life in order to convey Cicero's opposition to the Sullan regime and offer a sarcastic comment on its effects.<sup>8</sup>

A process of subsequent rewriting, to allow Cicero to articulate opposition to Sulla that he dared not utter at the trial itself, raises considerable difficulties. It would undermine Cicero's commitment to the function of his speeches as didactically valuable examples of what worked in practice, since he would be including in his published version an argument that would have been utterly counter-productive at the trial itself. And arguably, this interpretation relies on a model of textual resistance to autocratic power that is implicated in mid-twentieth century experiences of totalitarianism and which cannot simply be translated to the novel and experimental environment of Sulla's dictatorship and its immediate aftermath. In fact, close attention to what Cicero might have hoped to achieve by the comparison between Sulla and Jupiter in the context of 80 B.C. may explain his strategy. There was a degree of fluidity around Sulla's self-presentation, since he sought to highlight his transcendence whilst not relying on it in any formal sense. He assumed the novel title *Felix* ('Fortunate' or 'Blessed'), and in the Greek world the even more loaded Ἐπαφρόδιτος ('favoured by Aphrodite'), and he named his twins – born in 81 – Faustus and Fausta. Sulla did not distance himself from the suggestion of divine favour to accompany his extraordinary and unprecedented position within the Roman state, which was not articulated in such terms. Cicero employs this comparison between Sulla and a god in a context in which Sulla himself was exploring the ways in which his actions could be shown to have divine support or favour. It is also apparent from this passage that Cicero was careful to draw the comparison in such a way as to stress the distinction between divine and human spheres. Jupiter deploys *vis divina* ('divine power'); Sulla has *mens humana* ('human mental capacity'). There is a balance between the suggestion that Sulla's power can be compared to that of a god and the reminder that he and his position are human.

It is also at least worth noting that the comparison that Cicero draws doesn't quite work. Although he brings in the example of Jupiter apparently to illustrate *imprudencia*, the weather damages human activity not because Jupiter is not aware of what is going on but through the nature of these meteorological forces. When we return to Sulla, however, we are back with his failure to notice. I would not suggest that this disjunction is deliberate on Cicero's part, or an attempt to make us read this passage as insincere or sarcastic; rather, this is an indication of a genuine difficulty which Cicero – and, we should assume, others – had in finding a way to talk to and about Sulla. The fact that Sulla

8 The latter approach is found in Gabba (1976: 137–139), and developed in Berry (2004).



resigned his power should not distract us from the extraordinary and unprecedented nature of his autocracy.<sup>9</sup>

#### 4 The proscriptions

Cicero's handling of the proscriptions themselves also raises a number of problems for the reader.<sup>10</sup> The most striking instance of this is at 89, where he draws attention to what he claims are the prosecutor Erucius' shortcomings as a prosecutor. He links Erucius' rise to prominence as a prosecutor to the large number of recent deaths of prosecutors:

*verum ego forsitan propter multitudinem patronorum in grege adnumerer, te pugna Cannensis accusatorem sat bonum fecit. multos caesos non ad Trasumennum lacum, sed ad Servilium vidimus. 'quis ibi non est volneratus ferro Phrygio?' non necesse est omnis commemorare Curtios, Marios, denique Memmios quos iam aetas a proeliis avocabat, postremo Priamum ipsum senem, Antistium, quem non modo aetas sed etiam leges pugnare prohibebant. iam quos nemo propter ignobilitatem nominat, sescenti sunt qui inter sicarios et de veneficiis accusabant; qui omnes, quod ad me attinet, vellem viverent.*

But I perhaps am part of the group because of the number of defence advocates; the battle of Cannae made you a good enough prosecutor. We saw many slaughtered, not beside Lake Trasimene, but at Servilius' waterhole. 'Who there was not wounded by Phrygian steel?' It is not necessary to list the Curtii or Marii, or the Memmii whom old age had already called away from battle, or finally that Priam, Antistius, whom not only age but also the laws kept from the fight. And there are six hundred who used to prosecute murder cases, whom no-one lists because of their obscurity; and for my part I would wish they were alive.

*(Pro Sexto Roscio 89-90)*

Cicero is talking about the proscriptions in this passage; and the tone he adopts has caused unease among some commentators insofar as it appears to play down the gravity of events, with its play on the word *lacus* and its emotional distancing, with the evocation of the Trojan war through the quotation from Ennius and the likening of Antistius to Priam. At the very least it is clear that Cicero is here aligning himself in support of the proscriptions as a necessary evil. When he returns to the topic towards the end of the speech his support is unambiguous, though euphemistic:

9 From this perspective, the most illuminating parallel to *Pro Sexto Roscio* within the Ciceronian corpus is *Pro Marcello*, another attempt to find a language in which to talk to an autocrat.

10 See also Tellegen-Couperus in this volume of *Lampas*.

*quod animadversum est in eos quo contra omni ratione pugnarunt, non debeo reprehendere; quod viris fortibus quorum opera eximia in rebus gerendis exstitit bonos habitus est, laudo.*

I cannot find fault with the punishment of those who fought in defiance of reason;  
I praise the bestowal of honours on brave men who were outstanding in action.  
(*Pro Sexto Roscio* 137)

He consistently and explicitly identifies himself as a supporter of Sulla and acknowledges the legitimacy of his actions. And in 89, where he identifies by name some of the victims, he does so in a context which is dismissive of them as undistinguished practitioners of an activity without much social capital. According to this speech, the only named victims of Sulla – apart from the elder Roscius, who is very much not to be seen as one of Sulla’s victims – are prosecutors.

Sulla is guiltless, and the proscriptions – when carried out legitimately – involved the elimination of enemies of the state. Nonetheless, all is not well at Rome as Cicero delivers his defence of Roscius. Cicero refers to a *calamitas rei publicae* (14); fear has held advocates back from defending Roscius (5); Cicero himself is surrounded by danger as he undertakes the defence (31). Blame for this situation sits with Chrysogonus, with Capito and Magnus, who have been able to implement their plans because of Chrysogonus’ protection, and with the prosecutor Erucius. The most obvious amelioration of this injustice which Cicero requests is the acquittal of his client: as would subsequently emerge in Cicero’s defence speeches as a recurrent technique, the state of the *res publica* is primarily a lever to push the jurors towards the right verdict.<sup>11</sup> Thus Verres’ conviction is required because the jury cannot otherwise demonstrate their integrity and thus avoid law-court reform; Murena’s acquittal is necessary because the *res publica* requires two consuls in office on January 1<sup>st</sup> to avoid catastrophe. But Cicero does not confine himself to Roscius’ acquittal as a necessary remedy against current threats.

At the very end of the speech, his exposé of Chrysogonus’ activities goes into broader ‘state of the nation’ considerations. He contrasts what has happened, because of Chrysogonus’ greed and faithlessness, with the aims of the *nobilitas* when they fought ‘to recover the *res publica*’, (*rem publicam recipervit*, 141). He emphasises, in these closing chapters, Roscius’ links to the *nobilitas*, with the identification by name of Caecilia, the daughter of Metellus Balearicus, and M. Valerius Messalla (149). These people are significant, not simply because they are part of the pre-Sullan *nobilitas*, but also because of their connections with Sulla himself. Caecilia was a cousin of Sulla’s recently deceased fourth wife, another Caecilia; Messalla was the brother or cousin of Sulla’s fifth wife Valeria, though the marriage may not have taken place at the

11 See further the discussion in Gildenhard (2011: 196–222).

time of the trial. Cicero is careful to reassure the jurors that Roscius is one of them, that he is part of the victorious side, whose acquittal is not a threat to the order which Sulla has established but rather a confirmation of the values of that victory at a moment at which they are under threat.

In the final sentences Cicero draws an explicit link between the threat against Roscius from this trial with the wider threat to the *res publica* which is still present, namely *crudelitas* (153-154). The particular *crudelitas* that he urges them to remove is, of course, Roscius' conviction, but it is striking that the appeal is framed in such broad terms. *Crudelitas* is an evil, not just because it has led to the awful deaths of citizens, but because it becomes a habit, even among decent people, and prevents them from being fully human. The final words of the speech place the problem directly in front of the jurors:

*vestrum nemo est quin intellegat populum Romanum, qui quondam in hostes lenissimus existimabatur, hoc tempore domestica crudelitate laborare. hanc tollite ex civitate, iudices, hanc pati nolite diutius in hac re publica versari. quae non modo id habet in se mali quod tot cives atrocissime sustulit verum etiam hominibus lenissimis ademit misericordiam consuetudine incommodorum. nam cum omnibus horis aliquid atrociter fieri videmus aut audimus, etiam qui natura mitissimi sumus assiduitate molestiarum sensum omnem humanitatis ex animis amittimus.*

None of you does not understand that the Roman people, who once were considered outstandingly kind to their enemies, are now struggling with cruelty at home. Remove this from the state, jurors, do not allow it longer to roam in this *res publica*. Its inherent evil is not only that it has destroyed so savagely so many citizens; it also deprives even the kindest people of pity because they are habituated to suffering. When every hour we see or hear some savage act, even those of us who are naturally exceptionally gentle lose all sense of decency from our characters. (*Pro Sexto Roscio* 154)

Without necessarily contradicting his earlier support for Sulla, Cicero ends the speech by reminding the jurors that the *res publica* is not yet as they should wish it to be and that they have the opportunity to do something about this.

## 5 Cicero and the *res publica*

Cicero's speech in defence of Sextus Roscius consciously and deliberately positions itself as a comment on the *res publica*. It does so in a way that complements and supports its overt purpose, namely to secure Roscius' acquittal, by creating a plot against Roscius which can also, because of the involvement in it of Chrysogonus, be presented as a plot against the Sullan settlement to which the jurors were deeply committed. Cicero was too good an advocate, even this

early in his career, to risk his client's interests in the search for broader political impact. To link the younger Roscius' situation with what was happening more widely in the community worked, both in terms of Roscius' chances and for Cicero as a young and ambitious member of the political and legal environment. And there is nothing, in my view, in this speech which challenges Sulla or his vision for the *res publica*. Indeed, the reverse is the case. The speech offers unequivocal support for Sulla and for the *res publica* which he has formed, one directed by the law and in which the *nobilitas* is rightly dominant. And he makes it clear that the jurors' decision is an important stage in embedding that *res publica*, part of the necessary and desirable movement from the distressingly but inevitably violent salvation of the state to its smooth and effective operation.

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Bij uw artikel levert u (1) een Engelstalige samenvatting (maximaal 200 woorden), (2) uw correspondentieadres (post en e-mail) en (3) een beknopte biografie (functie, affiliatie, onderzoeksgebied en publicaties, maximaal 70 woorden).

## 8 Illustraties

De redactie stelt illustraties (met bijschriften en bronvermeldingen) op prijs. Deze worden geplaatst indien van voldoende grootte en kwaliteit; uitgangspunt is een resolutie van 300 dpi bij een formaat van 10x15 cm. Bij vragen kunt u contact opnemen met de redactiesecretaris.

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