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A NOTE ON THE SPEECHES OF THE PROSECUTORS IN CICERO'S *PRO MILONE* 35–6

OLLI SALOMIES

Quintilian advises the prospective orator to study the speeches by both the prosecutors and the advocates dealing with the same case (*inst.* 10,1,22f.). However, regarding the trials known from Cicero's speeches, this is of course not possible for us, so we must try to reconstruct the allegations of the opposing party – that is, of the prosecution, as Cicero normally acted as an advocate rather than a prosecutor – on the basis of what Cicero says in his speeches.¹ This article deals briefly with a detail – a very small one – concerning the performance of the prosecution as described by Cicero in his speech on behalf of Milo in 52 BC. It is well known that the speech we have is a revised version of the one Cicero actually gave (Asconius p. 42 C.). Although I am not sure this point is of much importance in this particular context, I am inclined to think that the speech that we have differs from the one Cicero actually gave only with respect to certain details rather than its structure and content.²

¹ Cf. Alexander 2002 (on *Font.*, *Flacc.*, *Scaur.*, *Rab. Post.*, *Mur.*, *Planc.*, *Rosc. Am.*, *Cluent.*, *Sull.*, *Sest.*, *Cael.*; on *Cael.* cf. also Gotoff 1986).

² Cf., e.g., Neumeister 1964, 87; Wisse 2007, 65–6. Asconius (p. 41 C.; cf. *Schol. Bob.* p. 112 St.) says that the whole (original) speech was aimed at showing that Clodius ambushed Milo (*Cicero ... Clodium Miloni fecisse insidias disputavit, eoque tota oratio eius spectavit*), but, of course, the speech we have contains another line of argument (originally proposed, according to Asconius, for the whole speech by M. Brutus), namely that Clodius' death was in the interest of the state (*pro re publica*). There is a school of thought according to which this would show that this latter part is a later addition to the original speech (thus Melchior 2008, with references to predecessors p. 286 n. 23; add Humbert 1925, 192; Clark – Ruebel 1985, 70f.). However, I do not see a problem in assuming that Cicero from the beginning thought it would be a good idea to try to show that Clodius had ambushed Milo but that it would be of use, in view of the possibility that all of the judges would not swallow this, to present the additional argument that Clodius' death was in any case *pro re publica* (cf. *Quint. inst.* 7,1,35); one could

As for the prosecutors' claims as adduced by Cicero, it is of course obvious that he would try to reproduce them in a manner advantageous to him, by distorting them in various ways, e.g., by arranging them differently (as in the *pro Murena*, cf. below), as well as by isolating a certain point made by the prosecution more or less in passing and representing it as an important accusation, etc. (cf. on this Classen 1982, 167f.; also Wisse 2007, 51f.). It seems, for instance, quite obvious that the prosecutors cannot have meant to say that they accused Murena simply of "having been in Asia" (*Mur.* 11, *obiecta est enim Asia*) or Ligarius of "having been in Africa" (*Lig.* 1, cf. 9); and in the trial of Murena, it is hard to believe that the prosecutors could have presented their accusations in the same way and order as Cicero wants to make us believe they did (*Mur.* 11).³

From the report of Asconius (p. 31f. C.) we of course know that Milo was in fact responsible for the murder of Clodius inasmuch as he had ordered his slaves to kill him when he was already seriously wounded. This is naturally presented in a different light by Cicero (*Mil.* 29, cf. 56), who claims that Milo's "faithful" slaves thought that Milo himself had been killed and thus avenged his assumed death by killing Clodius *nec sciente nec praesente domino*. However, there was clearly no point in keeping the minds of the judges fixed on what happened once the encounter between the retinues of Milo and Clodius on the via Appia had commenced; instead, Cicero insists on interpreting the incident as the result of an ambush, and on representing the question of who had ambushed whom as the main and only issue to be discussed, the perpetrator of course in his narration having been Clodius, who accordingly was himself to be blamed for his own death.

Although one would expect that concentrating on the question of who had ambushed whom would have been useful from the point of view of Cicero rather

perhaps compare the approach in the speech for Archias, in which Cicero shows that there was no problem with Archias' citizenship but goes on by pointing out that even if there were one Archias should be made a citizen because of his merits (cf. on this Berry 2004, 299). As for Asconius' observation on the content of the speech, I also do not see a problem in considering his remark quoted above as referring to the *main*, but not to the only, argument used by Cicero in his speech (cf., e.g., the very frequent use of *insidiae*, *insidiator*, *insidiari* and *insidiosus* in the speech, as observed by Stone 1980, 92 n. 21).

³ *Intellego, iudices, tris totius accusationis partis fuisse, et earum unam in reprehensione vitae* (Cicero immediately adds that this particular *accusatio* was meant to be the *gravissima*), *alteram in contentione dignitatis, tertiam in criminibus ambitus esse versatam*. This is described as "irreführende Zusammenstellung von Anklagepunkten und Vorwürfen" by Classen 1982, 168 n. 1. On the manipulation of accusations made by the prosecutors in the *pro Caelio*, see Gotoff 1986.

than from that of the prosecution, Asconius (p. 41 C.; cf. Quint. *inst.* 6,3,49) assures us that although the confrontation was in fact accidental, the prosecutors, too, had concentrated on the question of who had ambushed whom, obviously naming Milo as the culprit. In fact, Asconius' words⁴ could be interpreted as implying that it was only because of this choice of strategy by the prosecution that Cicero himself settled on this line of defence (with the *pro re publica* aspect being added to strengthen his case). Because of Asconius' report, the fact that the prosecutors emphasised the question of who had ambushed whom can in any case not be doubted, although one may wonder about the exact motives behind this choice of strategy,⁵ especially as it must have been extremely convenient for Cicero, who, as observed above, had absolutely no reason to dwell on whatever happened *after* the hostilities had commenced. On the other hand, it must be admitted that in the months preceding the trial the incident had already been labelled by several persons as an ambush set up by either Clodius or Milo.⁶ And naming Milo as the initiator of the *insidiae* did, from the point of view of the prosecution, have some advantages.⁷

However, whereas Cicero had good reasons to concentrate only on the question of the *insidiae*, it is quite inconceivable that the prosecutors, after having tried to establish Milo's guilt as far as the *insidiae* went, would not have had a lot to say also about what followed. As Cicero had his own version of the facts, not much of what the prosecutors had said about the details of the incident is reflected in his speech. However, I suggest that we can recover from the speech traces of what the prosecutors had said concerning the events leading to Clodius' death.

As stated above, an important section of the speech deals with the question of who was responsible for the ambush, Cicero doing his best to show that

⁴ *Itaque cum insidias Milonem Clodio fecisse posuissent accusatores, quia falsum id erat – nam forte illa rixa commissa fuerat – Cicero apprehendit et contra Clodium Miloni fecisse insidias disputavit.*

⁵ Cf. Humbert 1925, 191f. (according to whom the prosecutors acted "*maladroitement*"); Wisse 2007, 63. Riggsby (1995, 248 n. 13) says it "is not impossible that Asconius is here dependent on [i.e., *only* on] Cicero's text", but goes on to correctly observe that Asconius did have "a variety of materials" (and not just Cicero's speech) at his disposal.

⁶ See Stone 1980, 92f.; Wisse 2007, 63 n. 115. To be exact, Metellus Scipio had not, according to Asconius (p. 34f.), accused Milo of *insidiae*, but only of having attacked Clodius while he was off his guard (*inopinantem*). According to Stone (1980, 92), even the Senate itself had declared that "insidiae had been perpetrated by someone", but I am unable to locate a passage in Asconius saying this.

⁷ Stone 1980, 94f.

Clodius was the culprit (§ 32–60). Now in this section Cicero quotes his opponents at least four times; according to Dyck (1998, 231), we have here an "imaginary objector", but surely we must be dealing with quotations, although no doubt modified, from the prosecutors' speeches.⁸ In paragraphs 34 (*obstabit in spe consulatus Miloni Clodius*) and 48 (*igitur ne Clodius quidem de insidiis cogitavit, quoniam fuit in Albano mansurus*) the quotations are clearly from those parts of the prosecutors' speeches which dealt with the question of the *insidiae*. But what about the prosecutors' observations referred to in paragraphs 35 and 36? They, too, have been inserted into the discussion of who could have wanted, or had reason, to arrange the ambush (i.e., Clodius), and this seems to be taken at face value in all commentaries on the speech known to me, as well as in studies of the speech which have addressed this passage. However, the quote in § 35 goes as follows: *At valuit odium, fecit iratus, fecit inimicus, fuit ultor iniuriae, punitor doloris sui*. This is quoted as an introduction to a section meant to prove that Milo had felt no *odium* whatsoever for Clodius, *segetem ac materiem* of his own *gloria* – except, of course, that which all good citizens feel for bad men –, whereas Clodius had every reason to hate Milo. This of course takes us back to the question of the *insidiae*; however, the quotation leaves the impression of coming from a quite different context. *Odium* and *inimicitia* are indeed suitable sentiments to be attached to a villain at any stage of his criminal career aiming at the destruction of a respectable citizen, but *iratus* is not at all the *mot juste* to describe the state of mind of a cunning criminal who is planning an ambush. Moreover, the verb *facere* (*fecit iratus* ...) strikes me as rather lame if applied to the scheming of a man with sinister plans, and the use of the perfect *fecit* in any case means that the prosecutors had pointed out that Milo had brought an action to a conclusion, which of course one would not expect them to say when describing the preparations – as contrasted with the result – of an ambush. But the key word here is *valuit*. The use of this verb at the beginning of the passage clearly implies a situation in which Milo had to choose between two or more possibilities, and at the end chose one line of action. However, it is quite impossible to assume that the prosecutors would have presented Milo as having been uncertain about whether to ambush Clodius at all; they would certainly not have implied that Milo would have been asking himself questions such as "Is it really such a good idea to ambush for Clodius?", "What would Fausta say at dinner if she found out?", or "Would it not perhaps be better just to take it easy for a while

⁸ Dyck (1998, 231 n. 54) sees also *cur igitur victus est?* (§ 55) as a quote from the prosecutors (or rather from the "imaginary objector"). Of course they must have touched upon this point.

and think of something later?"; and they would certainly not have described Milo as concluding in the end that he might, after all, give the ambush a try and then proceed to the preparation of his scheme. No, in presenting their case, the prosecutors will certainly have portrayed Milo as a man of grim determination right from the start.

Hence, I suggest that this quote from the speech by the prosecution, however modified, does not at all belong to a section of the speech by one of the prosecutors dealing with the question of who planned the ambush and how, but to a section describing the scenario leading to Milo's decision to order his slaves to kill Clodius. If this were the case, everything would fit into this scenario: equipped from the start with *odium* and *inimicitia*, Milo would at the end of the encounter have been enraged, and seeing, full of *ira*, his arch-enemy Clodius lying on the ground wounded, he would have realised that he could now dispose of Clodius once and for all, and having quickly considered the possible consequences, would have let his *ira* dictate his course of action. As for the second part of the quote, *fuit ultor iniuriae, punitor doloris sui*, this obviously cannot be a faithful reproduction of what the prosecutors had said, for it is hardly conceivable that they would have stressed the *iniuriae* suffered by Milo and his *dolor*; but perhaps one could assume that the prosecutors had decided, in order to illustrate the circumstances of Clodius' murder as clearly as possible, to dwell on Milo's motivations when deciding to order his enemy killed, and that in doing so they had admitted, although surely rather in passing, that Milo may well have had his reasons to hate Clodius. (Another possibility could perhaps be that Cicero had simply made up this part of the "quotation").

In addition, the quote from the speech of one of the prosecutors in the next paragraph (§ 36), *nihil per vim unquam Clodius, omnia per vim Milo*, would seem to fit well into the narration by the prosecutors of the final phase of the encounter. This quote is introduced by Cicero at the beginning of a section pointing out that Milo's *natura* and *consuetudo*, characterised by moderation and restraint and to be contrasted with the sinister disposition of Clodius, showed that it would be quite unlikely that Milo could have even thought about the possibility of ambushing Clodius. I am not sure the prosecutors' speeches would have included a corresponding section, but even if there had been one, I wonder whether the key word would have been *vis*, for although *vis* is of course something that normally results from *insidiae*, one would expect the prosecutors, when describing the actions of Milo in devising the *insidiae*, to have highlighted, rather than just *vis*, such traits of Milo as his ruthlessness, his tendency to be aggressive, his resolution to proceed with his evil plan, etc. On the other hand, saying that Milo did

omnia per vim would be exactly the right thing to say when explaining Milo's decision to have the wounded Clodius killed in the end.⁹

In conclusion, I suggest that the quotations from the prosecutors' speeches in paragraphs 35 and 36, or at least that in § 35, however modified and tampered with, may in fact come not from that section of the speech of the prosecution they are purported to come from, namely from that dealing with arranging the ambush, but from a section which dealt with the situation leading to the killing of Clodius. As observed above, Cicero had no reason whatsoever to discuss at length the later developments of the encounter, but it may have seemed a good idea to leave the impression that he was reacting to at least some accusations put forward by the prosecution. Moving them from their original context to one which he preferred to concentrate on, may have seemed an attractive idea to Cicero, an orator not at all alien to the manipulation of details.

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⁹ However, it must be observed that the presence of the words *nihil per vim umquam Clodius* renders this interpretation a bit problematic, and the prosecutors may well have pointed to Milo's propensity to *vis* when describing his decision to ambush Clodius. On the other hand, the claim that Clodius had no record of violence is so absurd that it is not easy to believe that the prosecutors (who had no reason to deal with Clodius' activities prior to the encounter with Milo) could have made it; one could thus imagine that this description of Clodius was added by Cicero himself to make the allegations of the prosecution seem ridiculous.

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