

## NOTES AND DISCUSSIONS

### THE ROLE OF TORQUATUS THE YOUNGER IN THE *AMBITUS* PROSECUTION OF SULLA IN 66 B.C., AND CICERO *DE FINIBUS* 2.62

The purpose of this note is to argue that a particular passage in Cicero's *De Finibus* does not provide reliable historical information about the trial of Sulla in 66 B.C.<sup>1</sup>

There is no doubt that in the year 66 B.C. L. Manlius Torquatus, the homonymous son of the consul of 65, participated in the successful prosecution of P. Cornelius Sulla, praetor by 68 and consul-elect for the year 65. But no consensus exists as to whether he served as the chief prosecutor (*nominis delator*) or merely assisted someone else, probably his father, in the role of assistant prosecutor (*subscriptor*). In his impressive new commentary on Cicero's *Pro Sulla*,<sup>2</sup> D. H. Berry succinctly and lucidly restates the case for two propositions about the trial: (1) that the son was the chief prosecutor,<sup>3</sup> and (2) that he received the *praemium* of magisterial *insignia* as a result.<sup>4</sup> I wish to argue that the very passage (Cic. *Fin.* 2.62) that, according to Berry's argument, decisively proves that the younger Torquatus was the chief prosecutor, either must be explained away as a general rhetorical reference to what happened in the trial in 66, or, if it is accepted as accurately reflecting the details of the trial, is actually inconsistent with Berry's second proposition.<sup>5</sup> Berry and others, including myself, have failed to take adequate note of the philosophic context in which Cicero, in the *De Finibus*, refers to the trial.

In 66 the two consuls-elect, Sulla and P. Autronius Paetus, were found guilty of *ambitus*, electoral bribery.<sup>6</sup> The subsequent events of 66 have been clarified by three important articles. G. V. Sumner shows that Catiline ran for the consulate of 65 only in the supplementary election that was held after these *ambitus* prosecutions.<sup>7</sup> J. T. Ramsey shows, on the basis of *Pro Sulla* 68, (1) that the prosecutors in his *vis* trial of 62 B.C. claimed that Sulla, after his conviction, had first supported the candidacy of Catiline in this supplementary election; and (2) that they also claimed that, when

1. I have benefited from the comments of John T. Ramsey of the Classics Department at the University of Illinois at Chicago, Richard Kraut of the Philosophy Department at Northwestern University, and the referees for this journal, who have read this note in one or another of its previous drafts. I wish to thank them for their help. They are, of course, not responsible for any shortcomings in this version.

2. D. H. Berry, ed., *Cicero: "pro P. Sulla Oratio"*, Cambridge Classical Texts and Commentaries, vol. 30 (Cambridge, 1996).

3. *Ibid.*, pp. 4–5, n. 21. In this note he also provides a summary of scholarly views on this question.

4. *Ibid.*, 230–31.

5. I was encouraged to see, after I had submitted this note, that W. J. Tatum has made a similar point in his review of Berry's commentary (*CJ* 93 [1998]: 462): "The evidence of Cic. *Fin.* 2.62 hardly clinches the case for young Torquatus as Sulla's prosecutor in 66 (as opposed to his having been his father's *subscriptor*)." This statement occurs, it should be stressed, in the context of a review in which the overall verdict is "splendid."

6. For an outline of these trials, see my *Trials in the Late Roman Republic, 149 BC to 50 BC (TLRR)*, Phoenix Supplementary Volume 26 (Toronto, 1990), trials 200 and 201.

7. G. V. Sumner, "The Consular Elections of 66 B.C.," *Phoenix* 19 (1965): 226–31.

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Catiline's candidacy had been disallowed, Sulla then plotted to murder the elder Torquatus.<sup>8</sup> R. Seager explains how the legend of the so-called First Catilinarian Conspiracy was invented, and came to be accepted as fact.<sup>9</sup> The precise composition of the prosecution team in Sulla's *ambitus* trial, however, remains murky. The source closest to the event, Cicero's defense of Sulla in his *vis* trial of 62 (*TLRR*, trial 234), uses ambiguous second person plurals when referring to the activities of the two Torquati (*clamitabatis*, 49; *abstulissetis, vos contentos esse*, 90), so whether we take them in a technical sense as referring to two prosecutors, as I did in an article on legal *praemia*, or as nontechnical descriptions of all the legal and political maneuvers of father and son to get the consulate for the father, as Berry suggests in his comments on these two passages, that speech does not settle the question of who served as chief prosecutor.<sup>10</sup> Nevertheless, the speech does suggest that both Torquati participated in the trial of 66 B.C. in some way, since Cicero says that the consular campaign led both of them (*vos*) to the *causa*.<sup>11</sup> Dio (36.44.3) and Asconius (75C) say that the disappointed candidates in the first election for the consulate of 65 were the prosecutors, although Asconius has the elder Torquatus prosecute P. Autronius Paetus, and L. Aurelius Cotta prosecute Sulla.<sup>12</sup>

The final piece of evidence that is usually brought to bear in determining the facts about this trial occurs in Cicero's philosophical dialogue *De Finibus Bonorum et Malorum*, which he wrote in 45 B.C. One of the interlocutors is the younger Torquatus, who is described as praetor-elect (2.74).<sup>13</sup> He represents the Epicurean point of view, and Cicero portrays himself as using Torquatus' own experience as a counterexample to the proposition that pleasure (*voluptas*) should be the sole end of human life (2.62). Cicero poses a rhetorical question, the answer to which must be no:

Quid enim? Te ipsum, dignissimum maioribus tuis, voluptasne induxit ut adolescentulus eriperes P. Sullae consulatum? Quem cum ad patrem tuum rettulisses, fortissimum virum, qualis ille vel consul vel civis cum semper, tum post consulatum fuit.

Well, was it pleasure that motivated you yourself, though a mere youth, someone very worthy of your ancestors, to snatch away the consulate from P. Sulla? When you had brought it back to your father, that very brave man, what a consul and citizen he was, always, and especially after his consulate.

8. J. T. Ramsey, "Cicero, *Pro Sulla* 68 and Catiline's Candidacy in 66 BC," *HSPH* 86 (1982): 121–31.

9. R. Seager, "The First Catilinarian Conspiracy," *Historia* 13 (1964): 338–47.

10. "Praemia in the *Quaestiones* of the Late Republic," *CP* 80 (1985): p. 26, n. 20. The involvement of the father with the prosecution in some capacity is shown by *Sull.* 49, 50, and 90, as is noted by M. Mello, "Sallustio e le elezioni consolari del 66 a.C.," *PP* 88 (1963): p. 51, n. 59. Ramsey, "*Pro Sulla* 68," p. 129, n. 33 points out that Cicero's description of Torquatus (the father) suggests his active involvement in the trial; the father did not get angry at his close friends who spoke on behalf of Sulla at the trial. Commenting on §49, Broughton glosses *vos* in the phrase *vos clamitabatis* as referring to Cotta and Torquatus, presumably Torquatus (the father), but all the other second person plurals in that section refer to the Torquati (father and son), specifically, to the honor of their family, and the trial of Sulla, in which Cotta had not been involved (T. R. S. Broughton, *Candidates Defeated in Roman Elections: Some Ancient Roman "Also-Rans,"* Transactions of the American Philosophical Society, vol. 81, Part 4 [Philadelphia, 1991], p. 8, n. 10).

11. "... si nihil aliud Sullae nisi consulatum abstulissetis, tamen eo vos contentos esse oportebat; honoris enim contentio vos ad causam, non inimicitiae deduxerunt" (90).

12. Berry (*Pro P. Sulla*, pp. 4–5, n. 21) rightly challenges the attempt of Münzer (*RE* 14 [1928]: 1201, s.v. "Manlius [79]," and 1203, s.v. "Manlius [80]") to square the sources by suggesting that Torquatus (the son) served as *subscriptor* to Cotta in the prosecution of Sulla. Münzer is followed by E. W. Gray, "The Consular Elections held in 65 B.C.," *Antichthon* 13 (1979): 64–65.

13. Since he was praetor in 50 or 49 B.C., the dialogue is set in 51 or 50 (Broughton, *MRR* 3.136).

Berry uses this passage to establish the fact that Torquatus the son was the chief prosecutor: "The son could hardly be credited with having won the consulship for his father if it had been his father who was the principal prosecutor."<sup>14</sup> Berry, in commenting on *Pro Sulla* 50.4 (pp. 230–31), also argues that, as a result of this successful prosecution, the son received magisterial *insignia* as a *praemium*. I believe that Berry is wrong on two counts: first, the *De Finibus* passage does not establish that the younger Torquatus acted as the chief participant in the prosecution, and second, the argument presented by Cicero in this passage of the *De Finibus* is actually inconsistent with the existence of any *praemium* awarded to the younger Torquatus, or even with the possibility of such an award.

To take my first objection: It is not the case that the passage makes sense only if it was the younger Torquatus who served as chief prosecutor. In the context of the philosophical argument, Cicero needs to focus only on the motivation for the actions of the younger Torquatus. It is obvious why Cicero at this point would not refer to the actions of the elder Torquatus, actions which were clearly self-interested, and therefore not illustrative of Cicero's philosophical point.<sup>15</sup> Although the second person singular verb *eriperes* could suggest that Torquatus single-handedly wrested the consulate from Sulla, in this context the next verb (*rettulisses*), also second person singular, clearly cannot mean that Torquatus *single-handedly* brought back the consulate to his father. First, we know that both Torquati were involved in the trial itself, as is shown by Cicero's exhortation to them to be satisfied with the consulate that they wrested from Sulla.<sup>16</sup> Second, the conviction of Sulla for electoral bribery was not enough for the elder Torquatus to become consul; the presiding magistrate, L. Volcacius Tullus, had to accept his name as a candidate in the supplementary election, and he had to campaign in that election, persuading voters to vote for him. So, just as the second person singular verb *rettulisses* does not imply that

14. Berry, *Pro Sulla*, p. 4, n. 21. I agree with Münzer and Gray to the extent that they believe that the evidence is consistent with a subordinate role for Torquatus (the son) in the prosecution of Sulla, as does E. A. Bauerle, "Procuring an Election: *Ambitus* in the Roman Republic, 432–49 B.C." (Ph.D. diss., University of Michigan, 1990), p. 137, n. 61. Berry relies on the *De Finibus* passage as proof that it was the younger Torquatus who served as chief prosecutor against Sulla in 66, rather than on the *Pro Sulla*, because he accepts the argument in my article, "*Praemia*" (21–22), that Torquatus (the son) could have obtained Sulla's *insignia* (as he thinks *Sull.* 50 shows Torquatus did) even if he had served only as *subscriptor*. Berry counterpoises my reliance on Dio and Asconius against reliance on the evidence of the *De Finibus*, followed by a parenthetical comment, "thus Badian." Badian's remarks, which, it should be noted, occur in a review of Malcovati's *Oratorum Romanorum Fragmenta*, 2d ed., as part of a general observation rather than as a sustained argument, suggest that he is arguing for the reliability of Cicero both in the *Pro Sulla* and in the *De Finibus*. Arguing for the fallibility of Asconius, he writes that Cicero "decisively convicts him of error," and criticizes Malcovati for seeming "to prefer the scholiast to the contemporary speaking to an audience that knew the men." That description of Cicero could apply to his oration as well as to his dialogue, both of which are cited by Malcovati (p. 356). See E. Badian, *Studies in Greek and Roman History* (Oxford, 1964), 248 = *JRS* 46 (1956): 220, whose assessment of the evidence is followed by B. A. Marshall, *A Historical Commentary on Asconius* (Columbia, MO, 1985), 262. Broughton (*Candidates Defeated*, p. 8, n. 10) specifically cites the *Pro Sulla* and the *De Finibus* passages as the evidence for his conclusion (pp. 7–8) that it was the younger L. Manlius Torquatus who prosecuted Sulla. Marshall and Broughton both agree that only the younger Torquatus was involved in the prosecution.

15. Ramsey ("*Pro Sulla* 68," p. 129, n. 33) points out that it was to Cicero's advantage in both the *Pro Sulla* and the *De Finibus* to emphasize the part played by the younger Torquatus. In Münzer's words ("*Manlius* [79]," col. 1201), "Weil Cicero lediglich mit dem Sohne Torquatus zu tun hat, lässt er die übrigen Ankläger unbeachtet . . ." Cicero's tone toward the elder Torquatus in the *Pro Sulla* is respectful, although Berry (*Pro Sulla*, 153–54) detects some coolness.

16. See p. 66 above.

the younger Torquatus was *solely* responsible for his father's election to the consulate, so the second person singular verb *eriperes* does not have to imply that he was *solely* responsible for the conviction of P. Sulla and the consequent stripping of the consulate from him.

My second objection to Berry's interpretation of the *De Finibus* passage is that any reward that the younger Torquatus received as a result of the trial poses a substantial problem for that interpretation. In the second book of the *De Finibus*, Cicero wishes to refute the Epicurean point of view, which he has made Torquatus express in the first book, that pleasure should be the sole ethical goal. To rebut this notion, he cites counterexamples of actions in the past that Torquatus would have to admit were praiseworthy, but that were clearly not motivated by the prospect of pleasure.<sup>17</sup> The most clear-cut instances of such actions were for Cicero those in which someone risked his life in battle for his fellow countrymen, or even killed his own son to enforce discipline (2.60–62), starting with his opponent's ancestor T. Manlius Imperiosus Torquatus (cos. III 340) and the other consul in that year, P. Decius Mus, and going on to mention Leonidas at Thermopylae and Epaminondas at Mantinea (whose sacrifices are more explicitly described at 2.97). Professing to have an abundance of counterexamples he could cite, he then mentions one more, the fact that Torquatus brought back the consulate to his father. The counterexample makes no sense if the younger Torquatus did so with a clear expectation of securing some significant benefit for himself; clearly, he would have experienced pleasure in obtaining magisterial *insignia*.<sup>18</sup> Cicero is simply presenting it as an *exemplum* of an altruistic action that refutes Torquatus' Epicurean explanation of ethical motivation; he must either admit to having failed his master's teachings by having acted on a non-hedonistic motive, such as filial piety, or else concede Cicero's point.<sup>19</sup>

I wish here neither to enter upon the debate about whether the younger Torquatus did actually receive a reward, nor to cite the *De Finibus* passage as firm evidence that he did not. Rather, I do not believe that it can be relied upon to provide any historical information about the trial of Sulla, beyond the mere fact that the younger Torquatus participated in the prosecution. As a matter of historical fact, the younger Torquatus did benefit from the successful prosecution of his father's rival; as a result

17. For a treatment of the second book of the *De Finibus* which is both critical and sympathetic, see Brad Inwood, "Rhetorica Disputatio: The Strategy of *de Finibus* II," *Apeiron* 23 (1990): 143–64, especially 151–53 and 158–62 for Cicero's rhetorical use of *exempla* in a philosophic dialogue. The author points out (p. 152) that Cicero tries to overwhelm his readers in a rhetorical manner with a plethora of examples, rather than proving his point in a philosophical manner with one irrefutable example. Inwood also argues (p. 160) that the issue of *conscious* motivation is a red herring brought into the discussion by Cicero.

18. It might be argued that a good Epicurean would find no pleasure in public honor or office. But Cicero is clearly contrasting *voluptas* with altruistic motivation, and not only here. At 1.34 he has Torquatus argue that someone who commits such seemingly other-directed acts as risking his life in battle, or killing his own son, can be thinking *de utilitatibus* and *de commodis suis*, insofar as he or she benefits personally from the common good. In a discussion of friendship at 2.82, speaking for himself, Cicero equates *utilitas* with *spes voluptatis*, and contrasts those with a disinterested love: "... primo utilitatis causa amicum expeti, cum autem usus accessisset, tum amari per se, etiam omnia spe voluptatis." No altruistic action can be motivated by pleasure (that is, the pleasure of the person performing the action). That is not to say that altruistic actions are the *only* kind of actions that are not motivated by pleasure, but for Cicero they evidently constitute the clearest counterexamples.

19. It would not make any difference if Torquatus' motivation came both from pleasure and some other motivation or motivations. Even if Torquatus were motivated only partly by pleasure, the answer to Cicero's rhetorical question would have to be yes (pleasure did motivate him to snatch away the consulate from P. Sulla), and this instance would not serve as a counterexample to Epicurean ethical doctrine.

of the prosecution, he was no longer just the great-great-grandson of a consular, but rather the son of a consular.

In fact, in order to make historical sense of the *De Finibus* passage, one would have to argue not only that Torquatus received no benefit, but also that he had no *prospect* of receiving a benefit. This could be the case only if: (a) the law under which the trial was held offered no *praemia* to successful prosecutors; (b) there was no likelihood that the prosecution would be successful; or (c) that Torquatus was not in a legal position to be offered a *praemium*. Proposition (a) is unlikely, since *ambitus* laws were relatively lucrative in terms of rewards.<sup>20</sup> Proposition (b) is unlikely to be correct since we know that the prosecution of Sulla was successful. Proposition (c) is also unlikely to be correct, especially if Berry is right that he was the *nominis delator*, since that role would make him the logical recipient of any rewards.<sup>21</sup>

Therefore, if Berry is right that the younger Torquatus did receive a *praemium* as a result of this trial, then the *De Finibus* should not be used as a historical source for the details of the trial back in 66 B.C., since the existence of a *praemium*, or just the prospect of one, is inconsistent with the philosophical argument advanced by Cicero. Even if Berry is wrong about the *praemium*, and Torquatus did not receive a formal legal reward as a result of his participation in the trial, he certainly did benefit politically from its outcome, and so Cicero's *exemplum* does not stand up to historical scrutiny. Since the *De Finibus* should not be used to establish historical details about the trial, it cannot help us to decide whether the younger Torquatus had served as *nominis delator* or as *subscriptor*. For if we cannot press the passage to establish what a literal interpretation of it clearly implies—that the younger Torquatus neither actually received, nor had any prospect of receiving, a significant benefit for taking part in the prosecution of Sulla in 65—by the same token we cannot press it to tell us definitively whether he was *nominis delator* or *subscriptor*.

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20. See my article, "*Praemia*," 28–29.

21. Note, however, that a *subscriptor* could be in a position to receive a *praemium*, at least under some earlier statutes (see n. 14 above).

#### EUERGETIC SELF-REPRESENTATION AND THE INSCRIPTIONS AT SATYRICON 71.10

At *Satyricon* 71.9 the vainglorious Trimalchio calls for the decoration of his funerary monument with specific details from his own life. Among the scenes to be portrayed is a feast (*epulum*) that he once sponsored, a depiction meant to serve as a perpetual reminder of his great wealth and magnanimity (Petron. *Sat.* 71.10–11):

scis enim quod epulum dedi binos denarios. faciantur, si tibi videtur, et triclinia. facias et totum populum sibi suaviter facientem.<sup>1</sup>

1. Like much of the Petronian text, this passage contains interpretive difficulties, particularly concerning the term *triclinium* (see note 15 below). The text is that of K. Müller and W. Ehlers, eds., *Petronius, "Satyricon"* (Munich, 1983).