

EVIDENCE AND RHETORIC IN CICERO'S *PRO ROSCIO AMERINO*: THE CASE AGAINST SEX. ROSCIUS

In his later years Cicero chose to represent his defence of Sextus Roscius of Ameria as a stroke *contra L. Sullae dominantes opes* (*Off.* 2.51). Plutarch, perhaps influenced by that construction, remarked: 'Cicero undertook the defence of Roscius, won the case, and was greatly admired for what he had done. He was afraid of Sulla, however, and went abroad to Greece, after giving it out that the journey was being made for the sake of his health' (*Cic.* 3.6, trans. R. Warner). Modern scholarship has not been persuaded, emphasizing instead that the speech was politically trivial,¹ the travel probably motivated in fact by considerations of health.² But the accumulated problems of this complex speech, with its parading of town/country stereotypes, its satire of the outrageous personal behaviour of the freedman L. Cornelius Chrysogonus, and its dark coda warning of a possible revival of the proscriptions, are only gradually coming to light. The dominance of such editorializing and the thinness of the defence of Sex. Roscius proper might well give pause, especially when one considers Cicero's candid (presumably private) admission of having occluded the jurors' vision in another of his early cases.³ In recent memory Stroh has pointed out that Cicero is unable to prove his client's innocence,⁴ and Kinsey has teased out from the speech the scattered but buried counter-indications and argued that the prosecution had a fairly strong case.⁵ The point is still not generally accepted, however.⁶ My aim in this paper is to push further in that direction and to claim that the hypothesis of Roscius' guilt provides an explanation of such evidence as we have that is at least as plausible as that of his innocence. A further benefit of this approach is that, if we are less attached to the conclusion Cicero wants us to reach, we may be better placed to appreciate his own artistry.

I. WHAT IS MISSING FROM THIS PICTURE?

The opening of the speech presents the paradox that Cicero—and not the *homines nobilissimi* who have come to sit as *advocati* on the defence side of the court—has risen to speak. They are said to have declined to plead the case because sensitive

¹ Cf. R. J. Seager, 'The political significance of Cicero's *Pro Roscio*', *LCM* 7.1 (1982), 10–12; T. E. Kinsey, 'The political insignificance of Cicero's *Pro Roscio*', *LCM* 7.3 (1982), 39–40; a different emphasis, perhaps still too much influenced by Cicero ('political ramifications of great importance') at T. N. Mitchell, *Cicero: The Ascending Years* (New Haven, 1979), 91; sim. V. Buchheit, 'Ciceros Kritik an Sulla in der Rede für Roscius aus Ameria', *Hermes* 24 (1975), 570–91.

² So Matthias Gelzer, *Cicero. Ein biographischer Versuch* (Wiesbaden, 1969), 23; sim. Mitchell (n. 1), 93.

³ Quint. 2.17.21: *nec Cicero, cum se tenebras offudisse iudicibus in causa Cluenti gloriatus est, nihil ipse vidit.*

⁴ W. Stroh, *Taxis und Taktik* (Stuttgart, 1975), 59.

⁵ T. E. Kinsey, 'The case against Sextus Roscius of Ameria', *AC* 54 (1985), 188–96; see also D. M. Ayers, 'The speeches of Cicero's opponents: studies in *Pro Roscio Amerino*, *In Verrem*, and *Pro Murena*', dissertation (Princeton, 1950), 4–23.

political matter needs to be broached, and this should be done by someone without a previous political record: too much weight would otherwise attach to any such pronouncements.⁷ The situation was, however, not so simple, as appears later in the speech: the *homines nobilissimi* include M. Valerius Messalla Niger, who is excused from undertaking the defence on grounds of *aetas et pudor* but otherwise made into a model of how *nobiles* should behave.⁸ In fact, Messalla was at most only two years younger than Cicero, as his occupancy of the consulate of 61 shows,⁹ and could well have served as Roscius' *patronus*, if so inclined. It looks as if, contrary to Cicero's suggestion, the *homines nobilissimi* were prepared to show support for the son of a client but only to the point of sending some of their younger members as *advocati* to the court; they did not regard the case as important enough to require deeper involvement.¹⁰

While emphasizing the absence of other *patroni* and the presence of *homines nobilissimi* on Roscius' side of the court, what Cicero contrives to conceal is the absence of local supporters for Roscius, in particular relatives or family members. A parade of such, dressed in *sordes*, was a regular feature of the *peroratio* of a Ciceronian defence speech.¹¹ But, to our knowledge, the only relative of Sex. Roscius present in the courtroom is T. Roscius, called Magnus, who is seated conspicuously on the prosecution side;¹² and another probable relative, T. Roscius Capito,¹³ a respected man at Ameria, as is shown by his presence among the *decem primi* (§109), is expected to testify for the prosecution (§100).¹⁴ The widow of the murdered man, Sex. Roscius sen., presumably also mother of the defendant,¹⁵ is notably absent, as are any surviving sibling(s).¹⁶ Their absence can hardly be explained by political considerations of the kind that are said to have silenced the *homines nobilissimi*. In fact, Cicero does not attempt to explain it at all; his strategy is rather to try to distract attention in the *peroratio* with hints that feed the current, almost prurient, interest in the political situation, which has been a taboo subject for so long. Cicero's claim that his client is a *probatuſ suis filius* (§152) would thus be left hanging in the air had he not thought of a novel way of 'proving' it.

⁶ Cf. D. H. Berry (trans.), *Cicero: Defence Speeches* (Oxford, 2000), 5: 'The prosecution's case against Roscius was (as far as we can judge) extremely weak.'

⁷ §2: *si verbum de re publica fecisset, id quod in hac causa fieri necesse est, multa plura dixisset quam dixisset putaretur*.

⁸ §149: *haec acta res est ut ii nobiles restituerentur in civitatem qui hoc facerent quod facere Messallam videtis, qui caput innocentis defenderent*, and so on.

⁹ For Messalla and his age (and the confusions in the older literature as a result of Cicero's exaggerations), see F. Münzer, *RE* 8A1 (1955), s.v. Valerius no. 266, esp. 162.64ff.

¹⁰ Similar conclusion at T. E. Kinsey, 'Cicero's case against Magnus, Capito and Chrysogonus in the *Pro Sex. Roscio Amerino* and its use for the historian', *AC* 49 (1980), 185–6, pointing out *inter alia* that 'the *nobiles* themselves would hardly have told Cicero that they were too frightened to speak'.

¹¹ For relevant theory, see *Rhet. Her.* 2.50.

¹² See below n. 48.

¹³ For other examples of *gentes* named after physical characteristics (Capito = Great Head), see O. Weise, *Language and Character of the Roman People*, trans. H. A. Strong and A. Y. Campbell (London, 1909), 32.

¹⁴ To the enmity between father and son?

¹⁵ Cicero makes, as Kinsey (n. 5), 194, points out, no attempt to brand her as a *noverca*.

¹⁶ Presumably a sister or sisters; cf. the reference at §96: *cum Ameriae Sex. Rosci domus, uxor liberique essent*; the other son had died previously (§42).

II. THE COUNTRY MOUSE AND THE CITY MOUSE

Cicero's portrait of his client takes as its premiss his being *ferus* and *agrestis* (§§39, 42, 74) as claimed by the prosecutor, C. Erucius, but reinterprets these as positive attributes in view of the hardscrabble farmers who built the Roman state. The first section of the *argumentatio* becomes a paean in praise of Rome's origins and the qualities that made the city great (especially §51); Roscius, represented as a hard-working rustic, is thus allowed to bask in those reflected glories. The inferred virtues of diligence, parsimony, and so on, are contrasted with the vices of the city, *libido*, *audacia*, and the like, associated in subsequent sections of the *argumentatio* with Magnus, Capito, and Chrysogonus. If not the ancient courtroom listener,¹⁷ certainly the modern reader, sensitized to the use and abuse of stereotypes, soon becomes suspicious that the dichotomy is a bit too pat, the reality likely to have been more complex.¹⁸ Certainly Cicero adduces no evidence that the Amerians Magnus and Capito were more closely connected with the capital than Roscius jun., nor does he, in spite of his insinuations about Capito,¹⁹ attempt to tie any of the three to any crime except the murder of Roscius sen.

The contrast might have been helpful as a clarifying, ancillary feature of the defence, but that is not its function: rather, this construction of his character must *substitute* for the proof of Roscius' innocence. A closer look at the sparse evidence does not allay scepticism. Cicero does not deny that Roscius was anti-social; he tries, rather lamely, to explain away this behaviour.²⁰ He does not deny a contrast of temperaments between the sociable father and the anti-social son;²¹ he merely denies that the *relegatio* to the country of Roscius jun. was a mark of disapproval or that, at the time of his death, his father was contemplating disinheriting him (§54). But whether or not the *relegatio* showed disapproval depends upon its precise terms. Cicero claims that by placing him in charge of all his estates and ensuring that he could live from the produce of some of them, the father was rather showing his approval. However, estate-management at this period was commonly the work of a slave (*vilicus*).²² The critical question is: was the living thus provided sufficient for the son's needs? Or was Roscius jun., apparently unmarried and now over forty years of age (§39), growing restive under the strict regime of his *paterfamilias* and envious of the old man's city pleasures? He would not be the first case or the last.²³ The accusation of illegal enrichment with public funds (*peculatus*), for which Cicero has no satisfactory reply (§82), if true, suggests that he felt the means at his disposal insufficient.

Kinsey, who saw the possible implications of the charge of *peculatus*, distinguishes two phases in the life of the younger Roscius: a first in which he sowed his 'wild oats'

¹⁷ Given that the delivered speech is irrecoverable, I make no distinction between it and the published version that we have.

¹⁸ Good analysis of Cicero's argument and the scepticism it provokes by Ann Vasaly, *Representations: Images of the World in Ciceronian Oratory* (Berkeley, 1993), 156–72.

¹⁹ First mentioned as *plurimarum palmarum vetus ac nobilis gladiator* (§17), the imagery continued at §§84 and 100; by contrast Magnus is admitted to have had a clean previous record (*ante hanc pugnam tiro*: §17).

²⁰ §52: *'domum suam istum non fere quisquam vocabat.'* *nec mirum, qui neque in urbe viveret neque revocaturus esset.* But could he not have cultivated friendships in Ameria?

²¹ §52: *convivia cum patre non inibat*, not denied by Cicero.

²² Cato, *Agr.* 5 = T. Wiedemann, *Greek and Roman Slavery* (Baltimore and London, 1981), 148–9.

²³ Cf. e.g. the mention of *mors parentum* as a goal of Catiline's followers at *Cat.* 2.8 or the case of Tarius, who detected his son plotting against his life (*Sen. Clem.* 1.15.2).

and accumulated debts, from which he attempted to extricate himself by *peculatus*, and a second in which he dropped out of society and led an anti-social life; as a result, his father, who had always disliked him, threatened to disinherit him.²⁴ But he fails to explain the change from one mode of life to another or supply a *causa efficiens* for the father's threat. A more probable scenario would be this: the son indulged in vices and accumulated debts with resulting *peculatus*; the father, forced to clear the debts, relegated the son to hard work on his rural estates (perhaps to repay the debts to his father) and threatened to disinherit him (presumably if he did not perform satisfactorily). After bearing this yoke for some years, during which he was not seen at Rome (§74), the son's patience broke, and he suborned some of the slaves to murder his father. This scenario explains several features that are otherwise puzzling: the father's dislike, hardly a mere difference in preferred lifestyle; the claim that Roscius jun. is free from debt;²⁵ and the lack at the trial of local support for the son, the locals being aware of the whole history.

III. CUI BONO?

The extant speeches suggest that in a murder trial it was a virtual requirement of a successful defence to provide an alternative suspect,²⁶ a requirement that the defence of Sex. Roscius fully satisfies. While faulting the prosecution for failing to establish a motive (*causa*) for his client's murder of his father (§72), Cicero makes use of the heuristic tool pioneered by the atypical *popularis* politician L. Cassius Longinus Ravilla,²⁷ who was wont to pose the simple question: *cui bono?* (§84). Cicero claims that the 'money trail' leads inevitably to Capito, now in possession of three of the elder Roscius' estates, and Chrysogonus, who holds the remaining ten. Or does it? Richter observed that the younger Roscius had every reason to expect that he would be the beneficiary of his father's death; it was only the unexpected placement of his father's name *ex post facto* on the list of the proscribed and sale of his goods at auction that altered that outcome.²⁸ The ultimate disposition of the property thus need not be a reliable guide to the murderer's identity; the fruits could have been 'hijacked' by others who had no part in the planning and execution of the crime.

IV. THE SCENE OF THE CRIME

Cicero makes much of the fact that the prosecution has not been able to tie Roscius jun. to the crime scene (but neither does he establish that the defendant was at Ameria that day). The city/country stereotypes are trotted out yet again to argue the implausibility that the accused, so long isolated in the country, had the city contacts or character necessary to carry out the deed (§§74–5). He strongly suggests instead

²⁴ Kinsey (n. 5), 189.

²⁵ §39: *nihil autem umquam debuit* may be exaggerated; Cicero is perhaps counting on the memory having faded.

²⁶ Cf. A. M. Riggsby, *Crime and Community in Ciceronian Rome* (Austin, 1999), ch. 3, esp. 64.

²⁷ Cf. *Brut.* 97: *tum L. Cassius multum potuit non eloquentia, sed dicendo tamen; homo non liberalitate, ut alii, sed ipsa tristitia et severitate popularis . . .*; see in general F. Münzer, *RE* 3 (1899), s.v. Cassius no. 72.

²⁸ F. Richter *apud* Landgraf on *Sex. Rosc.* 84: 'Durch Berufung auf dies berühmte Wort will Cicero seine Beweisführung stützen; aber man übersehe nicht, daß Magnus, auch ohne selbst der Täter zu sein, aus der Ermordung Nutzen gezogen haben kann, und daß ohne die Dazwischenkunft des Chrysogonus aller Gewinn aus der Tat dem Sextus zugefallen wäre'; sim. Kinsey (n. 10), 181.

that the murder was planned by Capito and Magnus and executed by the latter's freedman Mallius Glaucia, first characterized as *homo tenuis libertinus* (§19), bound to make him suspect in the eyes of the senatorial jury. Yet Cicero is no more able to tie Magnus to the crime scene than the prosecution had the defendant. He substitutes for evidence an audacious construct of the imagination, evidently in the hope that his vivid picture of the scene will distract the reader/listener from the lack of proof.²⁹ In this same passage Cicero also imagines Glaucia present, stained in blood.³⁰ The 'proof' for this consists in the fact that Glaucia brought news of the murder with great speed to Ameria that very night (§19). Cicero spins dark suspicions out of the fact that Glaucia's first visit in Ameria was to Capito (§§96–7). As Kinsey observed, however, Cicero is likely to have known of the duration of Glaucia's journey and such details as the type of chariot (§19: *cisiis pervolavit*) from his client, whom Glaucia will likewise have visited.³¹ In that case the fact that he stopped first at Capito's house seems less significant and may have a perfectly innocent explanation, for example he may have been the relative of the deceased who lived closest to the highway to Rome; he will then have sent the messenger on immediately to Roscius jun., as the words *potissimum* and *primo* in §96 might suggest. Capito's inclusion among the *decem primi* sent to Sulla to protest the proscription of Roscius sen. shows that no one in Ameria connected him with the murder. Those who were indubitably at the scene of the murder were slaves belonging to the elder Roscius and currently in the possession of Chrysogonus, who refuses to release them to testify (§§120–3).

V. *FALSA LEGATIO?*

Cicero is evidently right that there was a conspiracy to defraud Roscius jun. of his property, but its genesis and implications for the murder seem to be other than he claims. He indicates that the report of the elder Roscius' death reached Sulla's camp at Volaterrae four days after the fact (§§20, 105). He does not say how he knows this; it looks like a guess based upon estimated travel time and the fact that Roscius jun. was expelled from possession before funerary rites were complete.³² He has no proof of the messenger's identity; in spite of initial hints that it was Magnus and/or Capito (§20), he later suggests that it was once again Mallius Glaucia:

quaeritur etiam nunc quis eum nuntium miserit? nonne perspicuum est eundem qui Ameriam?
(§105)

The short answer is: no, it is not obvious. Why should Glaucia have been the one to bring word? Sulla and Chrysogonus surely had numerous informants and a regular messenger service between Rome and Volaterrae. The fact that Chrysogonus bought all thirteen of the elder Roscius' estates and only later gave some of them to Capito,

²⁹ §98: *nonne vobis haec quae audistis cernere oculis videmini, iudices? . . . non adest iste T. Roscius? non suis manibus in curru collocat Automedontem illum . . . ?*, and so on.

³⁰ Ibid.: *non versatur ante oculos vobis in caede Glaucia? Cf. §19: . . . ut . . . cruorem inimici quam recentissimum telumque paulo ante e corpore extractum ostenderet.*

³¹ Kinsey (n. 10), 176.

³² §23: *qui nondum etiam omnia paterno funeri iusta solvisset*; presumably he was still observing the *feriae denicales*, a liminal period of nine days after the burial before the bereaved family resumed normal activity; see Samter, *RE* 5.1 (1903), s.v. *Denicales feriae*; F. de Visscher, *Le droit des tombeaux romains* (Milan, 1963), 144–5; J. M. C. Toynbee, *Death and Burial in the Roman World* (London, 1971), 50; Kinsey (n. 10), 177, pointing out that Cicero has apparently not looked up the record of the sale of Roscius' property (§128).

as Cicero's own narrative makes plain,³³ suggests that Chrysogonus' actions were at first independent, the *societas* of which Cicero complains (§20) formed later.³⁴ After reporting the arrival of the news at Volaterrae, Cicero adds: *curat Chrysogonus ut eius bona veneant statim* (105). This is in line with the claim already staked at §21: *haec omnia . . . imprudente L. Sulla facta esse certe scio*. Cicero, of course, knows no such thing. Could names be added to the proscription list without Sulla's knowledge?³⁵ To answer this question with a 'yes' is virtually as damning as with a 'no', as Cicero comes close to admitting.³⁶ Moreover, the fact that Chrysogonus bought the elder Roscius' property does not show that he added the name to the list or organized the sale; he had bought the property of many other families of the proscribed (§133).³⁷ Nor does the fact that the delegation from Ameria was prevented from meeting with Sulla necessarily show his ignorance,³⁸ merely that Chrysogonus sensed a possible threat to his own interests if they gained access: the delegates might persuade Sulla to alter the status of Roscius sen., whether or not Sulla had himself entered him among the proscribed in the first place; he could always claim ignorance and blame his underlings.

Cicero uses Capito's role in the embassy of the *decem primi* of Ameria as the occasion for a lengthy homily on *fides* and the moral bankruptcy of those who betray a trust. But if the case were that simple, surely some at least of the *decem primi* would have volunteered to testify for the defence; as it is, they will not testify unless compelled by the prosecution (§110).³⁹ Perhaps they have been bribed to keep silent. But there is another possibility: perhaps Capito himself was the *spiritus movens* behind the embassy. He may have been the only relative of the Roscii in the group. If the cause of his enmity with the elder Roscius (§§17, 19) was property (as it was in the case of Magnus: §87), then his only hope of realizing his claims was for Roscius' name to be removed from the proscription list. When the embassy arrives at Volaterrae and Chrysogonus blocks access to Sulla, Capito sees an opportunity to cut a deal: he presses his claims, Chrysogonus acquiesces,⁴⁰ in return Capito fobs off the delegates with assurances, and they leave.⁴¹ With Capito satisfied, there is no move to revive the

³³ §110 (during the embassy): *cum illo* [sc. *Chrysogono*] *partem suam depecisci* [sc. *Capitonem*].

³⁴ Although in this speech the word is used with negative connotations (cf. §87: *ex tota societate, hoc est ex tot sicariis*), *societas* is *per se* a neutral word for partnership of any kind; see M. Wegner, *Untersuchungen zu den lateinischen Begriffen socius und societas* (Göttingen, 1969), 30–8.

³⁵ Plut. *Sull.* 31 certainly makes it appear that Sulla bore sole responsibility for inclusion on the list; for the proscriptions in general, see François Hinard, *Les proscriptions de la Rome républicaine* (Rome, 1985); more briefly Arthur Keaveney, *Sulla: The Last Republican* (London, 1982), ch. 8.

³⁶ §131: *placet igitur in his rebus aliquid imprudentia praeteriri? non placet, iudices, sed necesse est*.

³⁷ Cf. T. E. Kinsey, 'The sale of the property of Roscius of Ameria: how illegal was it?', *AC* 57 (1988), 296–7.

³⁸ As Cicero suggests (§26): *usque adeo autem ille pertimuerat ut mori mallet quam de his rebus Sullam doceri*.

³⁹ On the defendant's inability to compel testimony, see T. Mommsen, *Römisches Strafrecht* (Leipzig, 1899), 403–5.

⁴⁰ He evidently prefers to yield a part of his gains rather than risk a debate in front of Sulla; see above.

⁴¹ Much less likely is Cicero's supposition that Capito confessed his part in the murder to Chrysogonus (§110: *ostendit, si sublata sit venditio bonorum, illum pecuniam grandem amissurum, sese capitis periculum aditurum*): by doing so, he would merely be placing himself in Chrysogonus' power, not gaining leverage; cf. Kinsey (n. 10), 179.

embassy, Sex. Roscius jun. evidently enjoying scant sympathy at Ameria (in spite of Cicero's claim at §24), perhaps widely suspected of parricide.

VI. A LOCAL AFFAIR?

The only certain witnesses to the murder were two slaves of the elder Sex. Roscius who were with him on the fatal night. They are now in the possession of Chrysogonus, who declines to make them available for testimony under torture.⁴² But, as Stroh points out,⁴³ they must have been under the control of Roscius jun. for some days before their confiscation and sale and must have been questioned immediately; yet there is no word of that from Cicero. Instead he paints a contrast between these slaves and Chrysogonus' sophisticated urban retinue,⁴⁴ and wonders why they are so valuable to him, the suggestion being that Chrysogonus has something to hide. Cicero claims that he does not suspect that Chrysogonus was part of the *audacia*, that is, the murder itself, merely the *potentia* that is behind the prosecution (§§35, 122); hence the cover-up is part of Chrysogonus' role as a member of the *societas*. But there is another, more plausible possibility, namely that the *societas* was a limited partnership involving merely the division of the elder Roscius' property and that Chrysogonus had, as some of Cicero's own formulations hint (§§32, 146), no interest in the prosecution of Sex. Roscius jun. Indeed he may have been keen to avoid having a *iudicium publicum* shed a bright light on the whole affair, for clarification of the circumstances of the death of the elder Roscius would cast doubt on his title to the property;⁴⁵ hence his non-cooperation.

The choice of C. Erucius as prosecutor points in the same direction. He appeared opposite Cicero in another early case as a member of the team that prosecuted L. Varenus. This was another murder case that originated in Umbria, and Cicero followed a similar tactic in trying to foist responsibility onto the prosecutors or their agents, this time without success.⁴⁶ It looks as though Erucius, though the family may ultimately have had south Italian or Sicilian roots,⁴⁷ was a local Umbrian personality, the prosecution in our case organized by people in Ameria⁴⁸ who were counting on the younger Roscius' bad local reputation being decisive. The prosecution was surprised by the number of *homines nobilissimi* on the defence side and visibly relieved that only Cicero rose to speak (§60). If Chrysogonus had, in fact, been behind the prosecution, surely a different, more sophisticated *orator* would have been found to represent it, and he would have seen to it that the slaves testified.

⁴² For the procedure, see Mommsen (n. 39), 416–17; O. F. Robinson, *The Criminal Law of Ancient Rome* (London 1995), 45; Wiedemann (n. 22), 168–9.

⁴³ Stroh (n. 4), 69.

⁴⁴ The contrast (§§120–1) is doubtless overdrawn. Roscius sen. certainly had a house with staff in the city; he was hardly planning, after dining on the fatal night, to take the journey back to his bed in Ameria.

⁴⁵ Cf. §§126 and 128; difficulties arise for Chrysogonus from the fact that Roscius sen. died some months after 1 June 81, the closing date of the proscriptions (though Cicero also assimilates the sales; cf. Kinsey [n. 37]), and not behind enemy lines.

⁴⁶ Cf. H. Gundel, *RE* 8A1 (1955), s.v. Varenus no. 3; J. W. Crawford, *M. Tullius Cicero: the Fragmentary Speeches* (Atlanta, 1994²), 7ff.

⁴⁷ So A. Fleckeisen *apud* Landgraf on *Sex. Rosc.* 35 based on inscriptions and a possible connection to Mt. Eryx.

⁴⁸ Notable the prominence of Magnus on the prosecution side of the court (§17), which Cicero pretends is a kind of provocation (§§87, 95), and reliance on the testimony of Capito (§100).

If this is plausible, then it follows that Cicero's later claim that the speech was a stroke *contra L. Sullae dominantes opes* (*Off.* 2.51) is a bald misrepresentation of what was at stake.⁴⁹ Sulla can have taken exception, at most, to the suggestion that he was not fully in control of the proscription list, but for this Cicero offers an elaborate *apologia* (see below). The *dominantes opes* or *potentia* in this case was that of the *nobiles*, who were arrayed on the defence side to overawe the prosecution and impress the jurors,⁵⁰ since, as persons whom the elder Sex. Roscius had met and entertained on the social circuit at Rome, they were willing, out of *pietas* to his memory, to take a limited part in his son's defence (section I above). They were, however, without real knowledge of the son's character or behaviour prior to the murder, since he had not been to Rome for many years.

The remaining puzzle in this speech is the amount of emphasis given to Chrysogonus, who appears prominently in §6 even before his alleged co-conspirators are named (§17) and to whose *potentia* the final section of the *argumentatio* is devoted (§§124–47), a section that was even more substantial before the loss of matter in the lacuna at §132.⁵¹ Kinsey thought that the *nobiles* in whose interest Cicero was acting wanted Chrysogonus attacked because he had, through his agent Magnus, snubbed two of their own, Scipio and Metellus, when they asked that he submit two slaves for judicial inquiry (§77).⁵² That may have been a contributory factor—it gave Cicero licence—but is perhaps not the full story.

At *De Or.* 2.186 Antonius emphasizes the importance of the orator's sniffing out in advance the sentiments of the jurors. We must assume that Cicero did not omit this step in his first *causa publica*. The general interest in political questions and desire of the public to draw a line under the lawlessness of the past is likely to be the cause for the teasing emphasis on sensitive political matter at the beginning of the speech and reversion to politics at the end. The first murder trial after a long interval (§§3, 11) gave the young *patronus* the opportunity, if he knew how to use it, of making a debut with éclat. The other personalities involved in the case were unremarkable, but Chrysogonus, if he could be isolated from Sulla,⁵³ was the perfect target, given his outsider status as a Greek freedman, personal vanity, extravagant lifestyle, noisy parties, collecting of the latest gadgets,⁵⁴ fine paintings, statuary, embossed silver, and so on, and above all the way he had acquired them (§§133–5, especially 133: *tantum scilicet quantum e multis splendidisque familiis in turba et rapinis coacervari una in domo potuit*). The first mention of Chrysogonus had a (no doubt calculated) effect on the prosecution; when his name fell a second and third time, a frenzy of activity was unleashed on the prosecution side (§60). The jurors were evidently not expecting it either (§5) and may have been no less surprised. If Cicero could collect the pent-up outrage the jurors were feeling over the proscriptions and canalize it at this individual, and at the same

⁴⁹ Criticized also by Berry (n. 6), 7; cf. Kinsey (n. 10), 183 but also 186.

⁵⁰ So already Kinsey (n. 5), 189, and id. (n. 10), 183.

⁵¹ See the reconstruction by T. E. Kinsey, 'The lacuna in Cicero's *Pro Sexto Roscio Amerino*', *Revue Belge de philologie et d'histoire* 67 (1988), 78–9.

⁵² Kinsey (n. 10), 189.

⁵³ For Cicero's not wholly convincing attempt to do so, see p. 245 below.

⁵⁴ The *authepsa*, a cooker containing its own heating source, allegedly purchased by Chrysogonus at the cost of a farm (§133), is apparently excoriated as an unnecessary refinement at Sen. *Ep.* 78.23 (*cocorum . . . ipsos cum opsoniis focos transferentium . . . ne quis intepescat cibus* and so on).

time portray his client as a hapless victim,⁵⁵ he was well on his way to victory.⁵⁶ At the same time he is careful to reassure Chrysogonus that he is not accusing him of complicity in the murder (§122) and that his client poses no threat to his property interests (§§7, 144).

Cicero has, apart from the decree of the decurions of Ameria (§25), no evidence to cite, holds no witnesses in prospect. It is surprising to see innocence in a murder case argued on grounds of relative probability and not on facts.⁵⁷ This case, one of Cicero's weakest, is built on a reinterpretation of the prosecution's characterization of the defendant, town/country stereotypes, and class snobbism. It is just possible that Cicero's construction is right and that his client has suffered from victimization and small-town prejudice against an anti-social character,⁵⁸ but the alternative possibility that the defendant was, in fact, behind his father's murder—presumably committed by slaves suborned by the son in order to forestall his own disinheritance—is at least as strong.

VII. A PORTRAIT OF THE ARTIST AS A YOUNG MAN

Disabused of any illusions about the probative force of his arguments, we are left free to savour the rhetorical achievement that enabled Cicero to claim victory based on such weak materials. Although this is his first *causa publica*, Cicero's technique is already fully formed, the hallmarks of the mature style already present. The exception is the rather crude handling of the *persona* of the opposing counsel (especially §46); this will later, with greater maturity and social experience, be much refined, the best example being the precisely calibrated treatment of the three prosecutors in *Cael*.⁵⁹

First of all our speech is very careful in its construction of Cicero's own *persona*.⁶⁰ The young *eques* without political record appearing in his very first *causa publica* is keen to avoid any hint of arrogance before the senatorial court: he is rising as the speaker though many distinguished men are seated on the defence side, not because he would be the best *patronus* and so on (§§1–5); at first he claims merely that his client has not been abandoned (§5), later that he is being defended *diligenter* (§148);⁶¹ he shows that he has done his homework by citing fairly recent precedent.⁶² The analogy of the prosecution to C. Fimbria's attacks on Q. Scaevola (§33) seems at first sight far-fetched, but it has surely been carefully planted to reassure the jurors that, though Cicero, like C. Marius, hales from Arpinum, he had no sympathy with the *popularis*

⁵⁵ The claim of a plot against Roscius' life is, however, notably lacking in substantiation (§26): see Kinsey (n. 10), 179.

⁵⁶ Aristotle's remarks on indignation (τὸ νεμεσᾶν) and how it particularly attaches to the *nouveaux riches* are worth reading in this connection: *Rhet.* 1387a6ff., esp. 22ff.

⁵⁷ §152; cf. Riggsby (n. 26), 61–4, esp. 64: 'Ironically here, where the issue is clearly one of fact, the decision turns on relative probability.'

⁵⁸ Cf. §20: *cum pater . . . nullo negotio sit occisus, perfacile hunc, hominem incautum et rusticum et Romae ignotum, de medio tolli posse.*

⁵⁹ H. C. Gotoff, 'Cicero's analysis of the prosecution speeches in the *Pro Caelio*: an exercise in practical criticism', *CPh* 81 (1986), 122–32.

⁶⁰ J. M. May, *Trials of Character: the Eloquence of Ciceronian Ethos* (Chapel Hill, 1988), 21–2 and 31.

⁶¹ Cicero thus sets his work in contrast to that of the prosecution, which lacks *diligentia* (§72), and in a line with the country life of his client that inculcates *diligentia* (§75).

⁶² The murder of T. Caelius (§64).

side in the recent civil war,⁶³ a point repeated with emphasis later in the speech (§§136, 142): no political vendetta, then, is being pursued by judicial means.

Although a *municeps*, Cicero has also, as he demonstrates early on, fully assimilated the ideology of the capital and its nobility, as seen in his paean to the farmers' work ethic that made Rome great (§50). But he trumps even that with his comparison of the Roman *maiores*, to their advantage, with Solon, one of the legendary 'wise men' of Greece (§§69–70).⁶⁴ This *σύγκρισις* in turn serves as a prologue to the most famous passage of the speech, the discussion of the parricide's punishment under Roman law (§§71–2). In retrospect, this display of rhetorical pyrotechnics slightly embarrassed the mature Cicero.⁶⁵ The parricide stands at the intersection of religious and criminal law, the punishment of the offender being at the same time the disposal of a pollutant; hence the confinement in the sack, undoing the work of begetting and parturition that the condemned has violated.⁶⁶ Cicero presents a rhetorical dilation on the offender's deprivation of the four elements, something evidently far from the minds of the *maiores*; nevertheless, if the orator's recollection can be trusted, the passage roused the audience to cheers.⁶⁷

Once Cicero has convinced the jurors that he is a good Roman and free of any suspect political motives, he can take the further step of adding depth and colour to his defence through allusions to literature and philosophy. The first of these, a case of the relation of father and sons from Caecilius' *Hypobolimaheus*, provides a contrasting foil to the prosecution's picture of the relations among Roscius sr. and his two sons. The literary example is broached very cautiously: Cicero seeks licence in Erucius' own *humanitas* and *studium doctrinae* (§46). He also hedges the example with an *apologia* at the end: he could cite living examples, but *homines notos sumere odiosum est*, and the characters of comedy are better known anyway and are devised to reflect real life (§47). The next example is also from drama, this time tragedy, a matricide being harried by Furies. Plays on the saga of Alcmaeon by Ennius and Accius are known to have included this feature,⁶⁸ but Cicero makes no reference to any specific play or character, nor does he insist on the literal truth of the picture,⁶⁹ only that it shows that parricide entails *summus furor atque amentia* (§66). It is part of his strategy of showing that the parricide is a class apart and thus of raising the bar of proof necessary for the prosecution to meet.⁷⁰ To these allusions, which can be followed by a reader/listener equipped with no great amount of learning, he adds at §98 a titbit for the connoisseur: Mallius Glaucia on his breakneck ride to bear the news of Roscius' death to Ameria is

⁶³ Fimbria is also linked to the T. Roscii as possessing *audacia* (*hominem longe audacissimum nuper habuimus in civitate C. Fimbriam*: §33); cf. Ch. Wirszubski, 'Audaces: a study in political phraseology', *JRS* 51 (1961), 16. For Cicero Fimbria was simply a madman (*Brut.* 233); for his life in general, see F. Münzer, *RE* 6.2 (1909), s.v. Flavius no. 88.

⁶⁴ Similar the praise of the Roman *maiores* for superior laws to those of Lycurgus, Draco, and Solon at *De Or.* 1.197 (Crassus); not that Cicero had a fixed opinion on the subject; indeed at *Leg.* 2.59 he suggests that some of the laws of the Twelve Tables have been borrowed from Solon.

⁶⁵ *De Or.* 107: *quantis illa clamoribus adulescentuli diximus de supplicio parricidarum quae nequaquam satis defervisse post aliquanto sentire coepimus* with following quotation from §72.

⁶⁶ On the *poena cullei* and its bizarre revival in modern times, see most recently F. Egmond, 'The cock, the dog, the serpent, and the monkey: reception and transmission of a Roman punishment, or historiography as history', *IJCT* 2 (1995), 159–92 with literature.

⁶⁷ See n. 65 above.

⁶⁸ Cf. *Trag.* 20–1 and 165–6; it is not clear that a pre-Ciceronian play on Orestes included such a scene (*ibid.* Index Fabularum, s.vv. *Agamemnonidae*, *Orestes*).

⁶⁹ He would later reinterpret it as purely psychological at *Pis.* 46 and *Leg.* 1.40.

⁷⁰ On Cicero's manipulation of 'judging paradigms' in this speech, see Riggsby (n. 26), 55–9.

identified with Automedon, Achilles' charioteer; besides emphasizing the speed of the journey (§19), the brief allusion, as often in Juvenal, serves to illustrate the chasm between heroic saga and sordid reality.⁷¹

Cicero claimed to be in some sense a 'philosophical orator',⁷² and his earliest forensic approach to a philosophical theme occurs in our speech. This is at the tricky point when he has admitted that the *imprudentia* of a Sulla is not to be condoned.⁷³ Now Cicero deeply detested Sulla, as later passages amply attest,⁷⁴ but this was not the time or the place to show his true feelings.⁷⁵ What he has done instead is simply—and audaciously—to adapt the Stoic defence of divine providence so as to produce a defence of Sulla. As elsewhere in the forensic speeches, he does not descend to philosophical technicalities and pursues the matter only long enough to secure his point.⁷⁶ But the similarity to Seneca's reasoning at *Nat.* 2.46 is striking:

interim hoc dico, fulmina non mitti a Iove, sed sic omnia esse disposita ut etiam quae ab illo non fiunt tamen sine ratione non fiant, quae illius est, nam etiamsi Iuppiter illa nunc non facit, Iuppiter fecit ut fierent.

That is to say, the divine agency is not at the level of the proximate cause but one step removed, in the creation of the physical principles governing the formation of clouds, precipitation, lightning, and so on.⁷⁷ Cicero is vague about what the deity's involvement in destructive nature actually is (*magnitudine rerum factum putamus*: §131),⁷⁸ and pretends that only blessings are actually ascribed to divine agency, though Roman cult recognized such entities as Febris and Mala Fortuna as divine powers, as he elsewhere admits (*Leg.* 2.28). The convenience of this obfuscation for the immediate argument is obvious, however: Sulla, too, should be given the benefit of the doubt and be assigned responsibility only for the benefits accruing from his regime. The philosophical adept will see an allusion to Stoic doctrine whereas other listeners will see the matter simply in terms of pious usage; in either case the identification of Sulla with the supreme deity is effected and any political damage effaced.

Cicero later reminisced that after the successful defence of Sex. Roscius there was no case to which he was thought to be unequal (*Brut.* 312). One does not earn such a reputation by winning straightforward cases, and the defence of Roscius was, as detailed analysis shows, anything but straightforward. Besides the masterly playing upon

⁷¹ Cf. C. Schmitz, *Das Satirische in Juvenals Satiren* (Berlin, 2000), 248ff.

⁷² *Orat.* 12: *fateor me oratorem, si modo sum aut etiam quicumque sum, non ex rhetorum officinis, sed ex Academiae spatiis extitisse* . . .

⁷³ See above p. 240 and n. 36.

⁷⁴ Cf. *Ver.* 3.81, *Agr.* 3.5, *Leg.* 1.42; H. Diehl, *Sulla und seine Zeit im Urteil Ciceros* (Hildesheim, 1988), 149–50.

⁷⁵ Cf. *Clu.* 139: *sed errat vehementer, si quis in orationibus nostris quas in iudiciis habuimus auctoritates nostras consignatas se habere arbitrat*ur.

⁷⁶ See e.g. A. R. Dyck, 'Narrative obfuscation, philosophical *topoi*, and tragic patterning in Cicero's *Pro Milone*', *HSPH* 98 (1998), 233–4.

⁷⁷ See H. M. Hine, *An Edition with Commentary of Seneca Natural Questions, Book 2* (New York, 1981), ad loc. with parallels, including *Nat. D.* 3.86: *at enim minora di neglegunt*, and so on, where 'Cotta' repudiates the doctrine; the Stoics in their turn were adapting popular arguments, as Hine shows.

⁷⁸ This is in line, however, with the representation of Sulla at §22 as engaged in many weighty matters and therefore prey to those who would capitalize on his preoccupation; I agree with Berry (n. 6), 7–8, that Cicero's remarks in these two passages are insincere, but not that they are double-edged; sim. T. E. Kinsey, 'Cicero's speech for Roscius of Ameria', *SO* 50 (1975), 91–104.

town/country stereotypes⁷⁹ and the stock abuse of those whom the orator represents as the pillars of the prosecution—Erucius, Magnus, Capito, and Chrysogonus—the speech illustrates *in nuce* the qualities that would make Cicero the leading advocate of his generation: the careful delineation of his own *persona*, the sounding of patriotic themes, the periodic pyrotechnics, verbal repetition to drive home a point,⁸⁰ the discreet insertion of puns⁸¹ and literary and philosophical titbits for the delectation of the educated. He has already learned how to dazzle the jurors.

Finally there remains the problem of Cicero's trip to Greece. Neither of the explanations ordinarily offered, namely fear of Sulla and concern for his health, seems *prima facie* convincing. For Sulla the speech was at most a very minor irritant (see above). In taking the tack that he had in the defence of Roscius, Cicero must have angered Magnus, Capito, and Chrysogonus, but he limited the damage as best he could by claiming that he would pursue the matter no further than his pledge to his client required (§§83, 95).⁸² Nor did he leave Rome immediately after the trial but defended two other clients in the first half of 79.⁸³ Given his great reluctance to leave Rome in later life⁸⁴ and the availability of Greek rhetoricians in the city, it is hard to see that learning to speak in such a way as to spare his lungs (cf. *Brut.* 313) would have absolutely required a trip to Greece. However, his health was evidently in danger through overexertion and, given his nature, it would have been difficult for him to resist the offers of cases that must now have been regularly coming his way.⁸⁵ The opportunity of a rest and also of renewed study of philosophy and rhetoric seemed, on reflection, to be just the tonic he needed.

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⁷⁹ See n. 18 above.

⁸⁰ *Innocens/innocentia* occur sixteen times in the course of the speech (based on a search of the Packard Humanities Institute CD-ROM); except for three passages (§§56, 77, 85) the reference is to the defendant; the suggestion is planted well before Cicero has even begun to try to prove his case (§§6, 7, 14, 15, 25, and so on).

⁸¹ §81: *eisdem fere sectores fuisse collorum et bonorum*; §124: *nomen aureum Chrysogoni*; §128: *cum capiti Sex. Rosci mederi debeam, rediviam curem*. See in general H. Holst, *Die Wortspiele in Ciceros Reden* (Oslo, 1925).

⁸² On the importance of *fides* in the relation of *patronus* and *cliens*, see G. Freyburger, *Fides. Etude sémantique et religieuse depuis les origines jusqu'à l'époque augustéenne* (Paris, 1986), 160–4.

⁸³ N. Marinone, *Cronologia ciceroniana* (Rome, 1997), 59.

⁸⁴ He gave up Macedonia to his consular colleague C. Antonius and Cisalpine Gaul to Q. Caecilius Metellus Celer in 63; see Walter Allen, Jr, 'Cicero's provincial governorship in 63 B.C.', *TAPA* 83 (1952), 233–41; Cicero was far from pleased with the senatorial decree requiring him to serve as governor of Cilicia (51–50) and asked his friends at Rome to hinder any attempt to lengthen his term; cf. *Fam.* 3.2.1, *Att.* 5.10.3 and 11.1; David Stockton, *Cicero: A Political Biography* (Oxford, 1971), 227; Gelzer (n. 2), 225.

⁸⁵ Cf. his initial resistance to advice as narrated at *Brut.* 314: *itaque cum me et amici et medici hortarentur ut causas agere desisterem, quodvis potius periculum mihi adeundum quam a sperata dicendi gloria discedendum putavi*.