

approximation to the Justinianian foot is possible. If we are confident that it was still current four centuries later, when the *τόξου βολή* was defined, the Byzantine bowshot would fall between 324.3 metres and 337.0 metres. An improvement, certainly.

VICTORIA COLLEGE, TORONTO

PRO MURENA 16 AND CICERO'S USE OF HISTORICAL EXEMPLA

J. H. D'ARMS

IN WHAT IS BY FAR the most substantial portion of the *refutatio* in the *Pro Murena*, the *contentio dignitatis*,¹ Cicero undertakes to show that his client's claims to the consulship are more compelling than those of Ser. Sulpicius Rufus, Murena's unsuccessful competitor in the consular elections of 63, and his accuser under the *lex de ambitu*. In answer to Sulpicius Rufus' contention that his was the nobler family, Cicero draws upon historical precedent. It is by virtuous qualities, he argues, rather than by nobility of birth that a man must be judged, and he goes on to employ an *exemplum* involving two consulars of earlier days:

Nec mihi umquam minus in Q. Pompeio, novo homine et fortissimo viro, virtutis esse visum est quam in homine nobilissimo, M. Aemilio. Etenim eiusdem animi atque ingeni est posteris suis, quod Pompeius fecit, amplitudinem nominis quam non acceperit tradere et, ut Scaurus, memoriam prope intermortuam generis sua virtute renovare. (Mur. 16)

It is, at first sight, a curious collocation of names, for the consulars in question belonged to different generations. Cicero is saying that Murena, who was not a *nobilis*, is no more inferior to Sulpicius Rufus, scion of a decayed noble family, than was Q. Pompeius (*cos.* 141), a new man, to M. Aemilius Scaurus (*cos.* 115), whose brilliant career reinvigorated a noble family which in the generations previous to Scaurus had greatly declined in influence.² And the analogy also has further implications which might not have been lost upon the jury at Murena's trial. Both Q. Pompeius and Scaurus had had their difficulties in the courts. Pompeius, after surviving an acrimonious hearing on the subject of his misconduct as proconsul in Spain, was forced to endure prosecution for

¹Cf. *Mur.* 11: *Intellego, iudices, tris totius accusationis partis fuisse, et earum unam in reprehensione vitae, alteram in contentione dignitatis, tertiam in criminibus ambitus esse versatam.* The sections devoted to the respective subjects are as follows: *vita Murenæ* 11–14; *contentio dignitatis* 15–53; *crimina ambitus* 54–77.

²Miltner, *RE* 21. 2056–2058, no. 12 (Q. Pompeius); Klebs, *RE* 1.584–588, no. 140 (M. Aemilius Scaurus).

res repetundae, probably in 139;³ whereas Scaurus, after the consular elections in 116, was the first known defendant to be tried before the recently created *quaestio de ambitu*.⁴ In both instances, the verdict was acquittal. And it can scarcely be coincidence that Scaurus had been prosecuted for electoral malpractice by an unsuccessful competitor for the consulship, P. Rutilius Rufus, a situation precisely parallel with that of Murena in 63. Cicero is not explicit, but his implication, and part of the force of his *exemplum*, are clear: in Scaurus' case, a consul designate had been prosecuted for *ambitus* by a disappointed rival and the case had resulted in acquittal; how, therefore, could the present jury fail to acquit Murena?

The foregoing Ciceronian use of the careers of Pompeius and Scaurus thus illustrates his skilful employment of the historical *exemplum*, which had an important place in ancient rhetorical theory: Cicero and Quintilian independently attest to its potency as a weapon in the orator's arsenal.⁵ It is worth noting, moreover, that in actual practice Cicero might alter the contents of *exempla* over the course of time, adapting them to fresh contexts. Two Ciceronian references to Appius Claudius Caecus provide a familiar case in point: he and his famous roadway were invoked by Cicero in the *pro Caelio* and four years later in the *pro Milone*, to the embarrassment of a sister and a brother, two unworthy—and notorious—descendants.⁶ There was precedent, too, for Cicero's juxtaposition of the consulars Pompeius and Scaurus. They are mentioned together once elsewhere in the Ciceronian corpus, in a passage of the *pro Fonteio*, delivered some six years before the *pro Murena*.⁷ To illustrate his contention that a jury needs to exercise the utmost caution and objectivity in evaluating the testimony of witnesses, however influential, Cicero employs a number of *exempla*, drawn from legal proceedings of different generations. First, he observes that in the trial of the *novus homo* Q. Pompeius, the accusers (two Caepiones and two Metelli) were of noble

³The senatorial hearing: Vell. Pat. 2.1.5; Cic. *Off.* 3.109; *Rep.* 3.28. Prosecution for *res repetundae*: Cic. *Font.* 23 (discussed below); Val. Max. 8.5.1. On the date see E. S. Gruen, *Roman Politics and the Criminal Courts, 149–78 B.C.* (Harvard 1968) 36–37.

⁴Cic. *Orat.* 2.280, *Brut.* 113; Tac. *Ann.* 3.66. For the political overtones of the case, cf. Gruen (above, n. 3) 120–121. The exact date of creation of the standing court to hear cases of electoral bribery is unknown, but the *quaestio de ambitu* cannot have been established much before 116: Mommsen, *Strafrecht* 867; Gruen (above, n. 3) 124–125.

⁵Cic. *Brut.* 145, 167 (with the remarks of A. E. Douglas, *M. Tulli Ciceronis Brutus* [Oxford 1966] *ad loc.*); Quint. *Inst.* 5.11; cf. R. Volkmann, *Die Rhetorik der Griechen und Römer* (Berlin 1872) 185 ff.

⁶*Cael.* 34: . . . *ideo viam munivi ut eam tu (sc. Clodia) alienis viris comitata celebrares?* *Mil.* 17 . . . *proinde quasi Appius ille Caecus viam munierit, non qua populus uteretur, sed ubi impune sui posterii latrocinaurentur.*

⁷The year in which the speech was delivered is uncertain, but the Lex Aurelia, which provided that juries be empanelled equally of senators, *equites*, and *tribuni aerarii*, furnishes a secure *terminus ante* of 70 B.C.: sources in Broughton, *MRR* 2.127.

birth, but biased, and therefore rightly failed to convince the jurors of his guilt.⁸ The second *exemplum* follows immediately: Cicero asserts that M. Aemilius Scaurus, the very embodiment of excellence, was suspected of personal animus as witness in the prosecution of C. Flavius Fimbria and C. Memmius, and his testimony was therefore discredited.⁹ Because *exempla* from different historical periods are being juxtaposed, the fact that Pompeius and Scaurus were not contemporaries is unimportant, as are the other differences in their situations. Thus, Pompeius is represented as a defendant, Scaurus as a witness for the prosecution; Pompeius is explicitly described as *novus homo*, and his birth is contrasted not with that of Scaurus (whose *virtus* and *ingenium* are stressed), but with that of his noble accusers. Here nevertheless, albeit loosely distributed over two consecutive *exempla*,¹⁰ are the elements—the contrast between a *novus homo* and men of noble birth, possession of *ingenium* and *virtus*—which Cicero later condensed and focussed more sharply in a single *exemplum* in the *pro Murena*; he shifted the emphasis from judicial proceedings in which Pompeius and Scaurus had happened to be participants, to an explicit contrast (which he embellishes) between their respective births, and to an assertion that they possessed virtue in equal measure.

It is difficult to resist the conclusion that Cicero's choice of names for the *exemplum* in *pro Murena* 16 was suggested to him by that earlier collocation of *exempla* in the *pro Fonteio*. As he remarked in the *Topica*, an orator's *commemoratio exemplorum* could have telling effects.¹¹ Ancient rhetorical tracts are more reticent, however, about the different uses to which components of particular *exempla* could be put. The passages discussed above may provide some insight into that intriguing—and largely neglected—process.

UNIVERSITY OF MICHIGAN, ANN ARBOR

⁸Font. 23: *Qui Cn. et Q. Caepionibus, L. et Q. Metellis testibus in Q. Pompeium, hominem novum, non crediderunt, quorum virtuti, generi, rebus gestis fidem et auctoritatem in testimonio cupiditatis atque inimicitiarum suspicio derogavit.*

⁹Font. 24: *Ecquem hominem vidimus, equem vere commemorare possumus parem consilio, gravitate, constantia, ceteris virtutis, honoris, ingenii, rerum gestarum ornamentis M. Aemilio Scauro fuisse? Tamen huius, cuius iniurati nutu prope terrarum orbis regebatur, iurati testimonio neque in C. Fimbriam neque in C. Memmium creditum est; noluerunt ii, qui iudicabant, hanc patere inimicitii viam, quem quisque odisset, ut eum testimonio posset tollere.* M. Gratiidius brought the formal charges against Fimbria (Cic. *Brut.* 168). Other details of these cases of extortion are obscure, nor are they precisely dateable. See Klebs, *RE* 1.586.46, and Gruen (above, n. 3) 174–175, where it is proposed that the trials fell “in 103 or early 102” (175).

¹⁰Cicero in fact directly adds as a third *exemplum* (Font. 24) a reference to the unsuccessful prosecution, sometime in the nineties, of M. Claudius Marcellus by L. Licinius Crassus (*cos.* 95); on this see E. S. Gruen, “Political Prosecutions in the 90's B.C.,” *Historia* 15 (1966) 51.

¹¹Cic. *Top.* 44.