

## *Cicero Pro Roscio Amerino*

### INTRODUCTION

Cicero's oration for Sex. Roscius of Ameria in 80 BCE is his first extant criminal pleading; he was twenty-six years old when he defended his client on a charge of having murdered his own father. The victim had been killed on the street at Rome at some time in 81 BCE, the year when L. Cornelius Sulla was dictator.

### **Background on the Civil Strife of the Late 90's and 80's in Rome**

Sulla's capture of Rome after the Battle of the Colline Gate (1 November 82) was the beginning of the end of nearly a decade of war and civil strife in Italy from the outbreak of the Social War between Rome and her Italian allies in 90. Over a century before, the Romans had ceased to extend full citizenship to the allied peoples of Italy, although a number of Roman statesmen had worked unsuccessfully to extend citizens' rights to the Italians. When their latest champion, M. Livius Drusus, was murdered in 91, a coalition of Italians began what we call the Social War, to fight not for a share in Rome but for complete independence.

After two years of fighting, the Romans reestablished control over the peninsula and the Italians acquired Roman citizenship, but troubles persisted. Roman leaders faced both remaining pockets of resistance, especially among the Samnites, and internal disagreement on how best to incorporate the newly enfranchised Italians into the tribes and assemblies. At first the new citizens were enrolled in a small number of tribes, ensuring that their weight in tribal electoral assemblies would be slight. The tribune P. Sulpicius was opposed by both consuls for 88, Sulla and Q. Pompeius Rufus, in his plan to distribute the Italians throughout the thirty-five Roman tribes. Sulpicius, backed by armed followers, allied himself with the old general C. Marius, whose support he gained by promising the military command against Mithradates VI of Pontus. That king had begun hostilities in Asia Minor in 89 and coordinated the slaughter of 80,000 Romans and Italians in early 88. The senate had already given this command to Sulla. Threatened with physical violence, Sulla left Rome to join his army at Nola. The soldiers supported Sulla and marched on Rome, the first time in Roman history that a general had used a military command to attack his political enemies. Sulpicius was killed and many others fled, including Marius. Sulla then left with his army for the eastern campaign.

The consuls for 87, Cn. Octavius and L. Cornelius Cinna, again fell out over the newly enfranchised Italians, and Cinna was driven from the city and replaced as consul by L. Cornelius Merula, the flamen dialis. Aided by many others including Marius, Cinna captured Rome. A series of murders and suicides ensued as the two took revenge on their enemies. Marius, elected consul for the seventh time, died early in 86, but Cinna and his allies retained control of the political system until 84. Sulla, although declared a public enemy by the government in Rome, successfully prosecuted the war against Mithradates. In 84 Cinna was killed by his soldiers and the next year Sulla made peace with Mithradates and returned to Italy, determined to regain his position without

compromise. After over a year of fighting, Sulla took control of Rome late in 82. Elected dictator by the people, Sulla spent the next year or more reworking the Roman political system in favor of senatorial control and removing anyone who appeared to be a threat.

Both to ensure political stability and to find the resources to pay off his soldiers, Sulla undertook a purge of the upper classes. One of his innovations was to post lists of those whom he had condemned: the first proscription lists in Rome. Anyone on the list could be killed with impunity and without a trial; his killer could claim a reward. The proscribed person's property was confiscated and his immediate descendants were barred from participation in public life. From late 82 through mid-81 Sulla continued to add names; the proscribed were men of wealth and standing. Sulla occasionally acquiesced in his supporters' addition of names to his lists because of personal enmity or for financial gain, and it is possible that some deaths had to be accepted after the fact, or took place without the dictator's prior consent. There are no contemporary accounts of these events, save allusions in Cicero's orations, but Plutarch's *Life of Sulla* 31 and Appian's *Civil Wars* 1.95–96 preserve some of the details.<sup>1</sup>

## Death of Sex. Roscius and Prosecution of His Son

The proscription lists were closed on 1 June 81. Some time later, Sex. Roscius the elder was murdered in Rome. While it was agreed that the defendant was not in Rome at the time of the murder, the prosecution argued that he must have hired someone else to do the deed for him, but neither produced nor named the assassin. After the death of the elder Roscius, his property was confiscated and sold at auction; the buyer was Chrysogonus, an influential freedman of the dictator. Although other explanations are possible, it would seem from Cicero's account that the victim's name was entered retroactively into the proscription lists so that his property could be confiscated and sold. If this is true, Roscius would not be the only person to have been proscribed after his death, whether he was murdered for his property or whether someone merely took advantage of his demise.

Cicero attempts to show that the guilty parties are T. Roscius Capito and T. Roscius Magnus, the latter present at the trial on behalf of the prosecution. Cicero claims that the two T. Roscii made a deal with Chrysogonus to get the property by having the dead man retroactively proscribed. When the son protested and tried to regain the property he was due to inherit, he was accused of his father's murder as a means of getting him out of the way.

There are three possibilities:

1. Sex. Roscius the younger had his father killed.
2. The T. Roscii had him killed.
3. The murder was committed by person or persons unknown, either randomly or for reasons about which we can know nothing.

Kinsey 1980: 178–179 writes that the T. Roscii could profit only after the murder had occurred, and since the arrangement with Chrysogonus about the property followed the murder, they would have had no way of knowing in advance that

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<sup>1</sup> See Hinard 1985a.

elimination of the man would have gotten them anything. Dyck 2003 also describes the case against the accused and adds other evidence of Sex. Roscius' guilt, e.g., the absence of townspeople in support of him or of family members whom Cicero would have pointed out if they had been there,<sup>2</sup> the clear motive entailing the property. These are excellent arguments, which hold, however, only if one accepts other information from Cicero — for example, that the T. Roscii did not make a deal with Chrysogonus prior to the murder — and if one disallows the possibility that the T. Roscii could have planned to take advantage of the proscriptions in just this way, whether or not they knew Chrysogonus, as others had done. It may be that no one named Roscius had any part in the murder.<sup>3</sup>

## The Pleading

### Cicero and Sulla

Several scholars have analyzed what Cicero said about Sulla over the years to see if it is possible to tell what he actually thought of the dictator. But whatever Cicero said about Sulla later cannot affect the sincerity or value of this early defense speech.<sup>4</sup> There is no consensus that statements about Sulla in the *Pro Roscio* reveal Cicero's true opinion, and one cannot gauge precisely to what extent defending Roscius presented a danger to Cicero, despite Plutarch's account (*Cic.* 3).<sup>5</sup>

In *De Officiis* 2.51 Cicero states that the patron's task is to defend, even when this involves what is *verisimile* rather than *verum*: "It is proper to defend even the guilty ... especially because to undertake a defense gains one reputation and *gratia*, the more so when the accused be an apparent victim of some powerful person's resources; I have done this on many occasions and when I was young did so on behalf of Sex. Roscius against the resources of L. Sulla when he was in power." This is a description of defense strategy: an advocate derives an extra measure of glory from defending a person who appears to be beset by a person of superior strength.<sup>6</sup>

Many scholars have reproduced the version of events that Cicero gives, even if they do not believe that the T. Roscii are guilty,<sup>7</sup> although the contrary opinion has surfaced as well, especially in recent years. It is difficult to believe beyond a doubt that Roscius was not guilty, or that his innocence was not immediately apparent, since without the intervention of the T. Roscii and Chrysogonus he would have benefited from his father's death (see the commentary to §6). Guilty or innocent, it was the task of his *patronus* to bring forward plausible arguments to secure his acquittal. Stroh 1975: 79 praised the rhetorical arrangement of the oration, with the emphasis from the beginning

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<sup>2</sup> But he did, although without fanfare: see §49 where Cicero says *his propinquis eius* and uses the first-person demonstrative.

<sup>3</sup> For several possible assessments, see Keaveney 1982a: 152 and 176 and 1982b: 515 and 537.

<sup>4</sup> For two different views, see Diehl 1988: 219 and Buchheit 1975b: 570–576.

<sup>5</sup> See David 1992: 255.

<sup>6</sup> Cf. *Quinct.* 1–2, 5, 7–9. In *Off.* 2.51 Cicero does not state the obvious, that a jury is likely to be sympathetic to a defendant portrayed as a victim.

<sup>7</sup> Stroh 1975: 57 observed the same phenomenon. Often the same scholars doubt the sincerity of parts of the oration other than the *narratio*.

on the misleading *cui bono* argument.<sup>8</sup>

The recent past was essential to Cicero's defense; his task was to exploit this past without directly implicating Sulla in the specific case at issue. To elicit emotional support, Cicero refers frequently to the civil war, yet finishes by blaming abuse of Sulla's victory by people such as the T. Roscii and Sulla, not the victory itself.

## The Court

The Roman term for criminal court was *quaestio*: inquiry. The first standing court at Rome was established in 149 BCE to hear accusations of misconduct by Roman provincial governors. Sulla had instituted permanent *quaestiones* to cover a variety of crimes, including poisonings (*de veneficis* or *de veneficiis*) and assassinations (*de sicariis*). There may have been no permanent court for the latter until Sulla's time: cf. Gruen 1968: 261–262, Keaveney 1982a: 176. Certainly murder cases of all sorts had been heard and decided: Lintott 1978, Nörr 1986. The discussions of Höbenreich 1990, Ferrary 1991 and Cloud 1994 are the most recent and include bibliography and sources. For descriptions of the setup and procedure of criminal trials, see Greenidge 1901 and Strachan-Davidson 1912.

The court for Roscius' trial was presided over by M. Fannius, who was praetor in 80; the jurors were all senators. The prosecutor spoke first to set forth the charges, and the defense patron responded in a continuous speech. Next the court heard testimony from witnesses or other evidence; the prosecutor did not share his evidence with the defense prior to the trial, and only the prosecutor could compel a witness to appear in court. Cicero refers during the speech to testimony not yet heard (§§21, 84, 101). After the prosecutor had brought forward the witnesses, the defense counsel might engage in a question and answer session (*altercatio*) with the prosecutor, not the witnesses. Finally the jurors voted by previously marked tablet: A (*absolvo*) or C (*condemno*). A third possible outcome was *non liquet* (not proven), but no special tablet for it; evidently at the time of this trial jurors could mark NL on the wax. The number of jurors being even, a tie vote resulted in an acquittal. The judge presiding over the court immediately announced the verdict and, if the defendant was found guilty, the punishment, fixed by law, was exacted. At any time before the verdict was pronounced, a person of sufficient means could leave the court and the city and go into voluntary exile.

The penalty for parricides<sup>9</sup> was to be sewn up in a sack and drowned (see §§30, 70–72). Neither in this oration nor at *Inv.* 2.149 does Cicero say that the sack was to contain other creatures. The word *culleus* appears in Latin either in an agricultural context or as a means of punishment. Justinian's *Digest* 48.9.9 preserves a late account: in accordance with the custom of the ancestors the parricide is beaten then sewn into a sack with a dog, rooster, viper, and monkey and thrown into the deep sea — but only if the sea is nearby. Otherwise the parricide is to be thrown to the beasts. Other than this passage in the *Digest*, when later authors mention the sack, they usually neglect to name

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<sup>8</sup> Hinard 1985a: 149 is in agreement.

<sup>9</sup> The word *parricidium* does not mean *patris caedes*, but an especially heinous killing of a person, especially but not only a parent or other close relative. It can also be used of treason.

the animals. Juvenal *Sat.* 8.213–214 is an exception. For discussions see Radin 1920, Robinson 1995: 46–47.

### **Dramatis personae**

**Sex. Roscius** the victim (called Roscius maior in the commentary). He was prosperous (§15) and well connected. Harris 1971: 100 believes from Cicero's description that the elder Roscius and other citizens of Ameria had not had citizenship before the Social War. His *gratia* would have depended upon the nature and extent of his relationship with his noble patrons and possibly with the support that he had displayed for Sulla's side. Standing in his own community counted too, if he was in a position to deliver votes. See Hellegouarc'h 1963: 202 on *gratia* and elections, Wiseman 1971: 34–37 for how various aspects of *hospitium*, *amicitia*, and *clientela* worked out in practice.

**Sex. Roscius** the defendant (called Roscius in the commentary). He was the surviving son, at least forty years old in 80 (§39). Roscius' brother predeceased him and was said to have been the father's favorite (§42). The defendant took care of his father's numerous farms and according to Cicero preferred country life to visits to Rome or anywhere else.

**C. Erucius** the prosecutor, first named in §35 but without his praenomen, given in §38 (see Dyck 2004: 758). David 1992: 762 suggests that Erucius may be the officer of Sulla mentioned by Plutarch *Sulla* 16.11 and 18.1, Ἐρύκιος in Plutarch; Ziegler's text numbers these passages *Sulla* 16.15 and 18.1. See also Dyck 2003: 241. Somewhat later Erucius prosecuted L. Varenus for murder and Cicero defended but lost the case: see Crawford 1994: 7–18.

**Caecilia Metella** was an old friend of Roscius' father; she took him in after he had been dispossessed of his property. Scholars do not agree on her identity, as the family was a large one, and the text of the oration differs in the two places where Cicero mentions her (§§27 and 147). The most recent discussion of her identity is Kragelund 2001: 62–63, who believes that she was a spinster and the same Caecilia, daughter of Metellus Balearicus, who had a vision of Juno Sospita at the outbreak of the Social War (Cicero *Div.* 1.4 and 99).<sup>10</sup> Gelzer<sup>11</sup> believed that she had married App. Claudius Pulcher, consul in 79 (the year after the trial), and become the mother of six children, but had to have been divorced by the time of the trial because Cicero referred to her by her own name, not her husband's.

**T. Roscius Capito** A relative of the deceased, according to Cicero, as was **T. Roscius Magnus**. They first appear in §17. Capito was one of the town councilors of Ameria (§26) and may have appeared later to give testimony (§84). Cicero refers to him as Capito or T. Capito. Magnus (whom Cicero calls T. Roscius) was in court sitting with the prosecutor (§87).

**Sulla** L. Cornelius Sulla was one of the consuls in 80 and possibly still dictator.

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<sup>10</sup> This is the latest identification with the unmarried sister-in-law of App. Claudius Pulcher, one previously championed by Carcopino 1931: 172–181, Lanzani 1936: 2322–223, Gruen 1968: 266 with n. 52, Desrosiers 1969: 33.

<sup>11</sup> Gelzer 1969: 19 n. 17 to Caecilia Metella. Many other scholars accept this identification.

**Chrysogonus** L. Cornelius Chrysogonus, first named in §6, was one of Sulla's freedmen. He purchased the farms of the elder Roscius for an absurdly low price. There is no record of Chrysogonus other than this speech or a subsequent work that uses it as a source. According to Plutarch (*Cic.* 3.4–5), Roscius bought the estate of Roscius for 2000 drachmas and when the deceased's son announced the estate was worth 250 talents, Sulla engineered the prosecution in anger, and let Chrysogonus manage the case. Treggiari 1969: 183–184 argues that Plutarch's understanding is substantially correct.

**Other supporters of Roscius** sat with the defense but did not speak; in §77 Cicero names P. Scipio and a Metellus, whose first name is uncertain. Gruen 1968: 266 and Gelzer 1969: 21 n. 31 believe that Scipio is the man later known as Metellus Scipio. David 1992: 234 identifies him as Scipio Nasica. The Metellus may be a M. Metellus (so van Ooteghem 1967: 244 and Gelzer 1969: 21 n. 32), a son of M. Metellus Caprarius, while Gruen 1968: 266 reads Q. Metellus and identifies him as probably the son of Nepos, either Celer or Nepos. David 1992: 234 identifies him as Q. Caecilius Metellus Creticus. See the note to §15 *Metellis etc.* See note to §149 for M. Messala.

## Outline of the oration

### 1–14 Exordium

Ancient commentators defined the case as *genus admirabile*, or *genus turpe*: a case that elicits revulsion, or a sense of injustice, so it is a wonder that anyone undertakes the defense (cf. *Inv.* 1.20). The *genus admirabile* is difficult to defend because the charge is so shocking. Cicero introduces a new reason for the trial.<sup>12</sup>

### 15–34 Narratio

Cicero's version of the events surrounding the crime: the actual killing and what happened beforehand (in a setting of the civil war) and afterward. One cannot assume that his entire narrative is factual, although it would have been impossible to lie about certain things: the death of Roscius the elder on the street in Rome, the seizure of the property, the deputation sent from Ameria to Sulla's camp. When Cicero retells the story of events (beginning at §95), he adds further arguments to convince the jurors that Magnus was responsible for the death. The attentive reader will notice discrepancies between the two narratives, but differences would have been harder to detect in an oral performance.

### 35–36 Partitio

This should comprise the topics or arguments that a speaker will address, yet in the defense of Roscius Cicero enumerates obstacles to his client and addresses each in turn.

### 37–82 Argumentatio

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<sup>12</sup> At §148 Cicero says again that the many men who ought to be Roscius' supporters do not dare to defend him; he adds there that some of them were not willing to be present in support. Cf. Gruen 1968: 267 and Gelzer 1969: 21. On the other hand, Kinsey 1980: 183–188 believes that the case was not important enough to engage the attention of prominent men, who may have directed younger family members to attend in support, and that Cicero exaggerates Chrysogonus' *potentia* for his own purposes. Dyck 2003: 236 agrees for the most part.

Cicero speaks at length about Roscius' lack of motive, means, or opportunity, but not the possibility that the dead man was killed after being proscribed. Sedgwick 1934 suggests that the victim's proscription was known as a fiction by the time of the trial and could not have served as a basis for defense. Alexander 2002: 163–166 suggests that the jurors might have felt so much revulsion at the thought of a man killing his own father, even if the latter had been proscribed, that they would have voted him guilty; he gives three other reasons why Cicero would not have wanted to discuss proscription prior to the killing: (1) to discredit the accusers, (2) to establish a legal precedent to reclaim the property in future, (3) to allow the jury to think of this contradiction on their own. Butler 2002: 20–22 believes that the elder Roscius may never have been proscribed at all but that his property was offered for sale (literally, "proscribed" or posted up) under some other legal action.

### 83–124 Anticategoria (Counteraccusation)

Cicero argues at length to implicate the T. Roscii in the murder.

### 124–149 Chrysogonus

During continued discussion of how the property was able to be sold, Cicero accuses Chrysogonus of using his position as Sulla's associate to profit from the crime, and describes the Greek freedman in the most prejudicial way possible, playing upon the sympathies of his senatorial jury. See Buchheit 1975a.

### 150–154 Peroratio

The summation of the argument usually involved an emotional appeal. As in this early defense, later in his career Cicero often presented criminal cases as tests of the Roman republic.

Bayer 1963: 172 advises that for the purposes of instruction one can remove §§37–123 without losing any of the oration's overall form or political character. Although much of the *argumentatio* involves excessive detail, it demonstrates how Cicero handled, or avoided handling, the substance of the accusation. The counteraccusation, on the other hand, while entertaining for the use of insinuation, might be omitted if necessary, especially §§109–123, the legation from Ameria to Sulla and Capito's abuse of the *mandatio* entrusted to him and to his fellow town councilors. The attack on Chrysogonus offers a contemporary perspective from the point of view of a man who cherished traditional values and was most unhappy with changes to Roman society and *mores*.

## Aims of This Commentary

Commentaries should offer elucidation of a text to a reader: grammatical, lexicographical (including normal and unusual constructions), historical, or technical; notes also reflect the interests of the commentator. I am especially intrigued with peculiarities of Cicero's language in this work, both in elements representative of the orator at all periods and in those particular to his earlier years: compounds, creation of vocabulary, vulgar language, links to comic poets. References to the *Pro Quinctio* are fairly frequent because it is the only speech earlier than the *Pro Roscio* and in that pleading Cicero used several of the same types of language and argument, especially political terms and loaded words such as *potentia*. Cicero knew rhetorical treatises and composed one himself when he was a young man, yet he deviated from standard

advice in the interest of best arguing a case. He employs tactics in the *Pro Roscio* that will become familiar later; it is instructive to see his development as a pleader. While some of his rhetorical flights are characterized by youthful excess, it is clear that even at this date he could construct clever arguments, employ misdirection to good effect, display a variety of emotions, and package the whole in forceful language that sounded exactly the tone he wanted to convey.

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### **Texts, Commentaries, and Translations**

This commentary is based upon the 1905 Oxford Classical Text of A. C. Clark. An essential commentary is that of G. Landgraf, *Kommentar zu Ciceros Rede Pro Sex. Roscio Amerino*. Leipzig-Berlin 1914. Reprint Hildesheim 1966.

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