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A. D. LEEMAN

THE TECHNIQUE OF PERSUASION IN CICERO'S PRO MURENA

1. *Introduction : the status of the published text*

In June 60 B.C. Cicero wrote a letter to Atticus (*Att.* II 1), then on his way back from Greece, where he had been staying since the end of 62. In this letter he promised to send, at Atticus' request, the corpus (σῶμα) of his *orationes consulares* (II 1, 3). He had published them *adulescentulorum studiis excitatus*, and poses as a Demosthenes, who in his *Philippics* had turned from the *genus iudiciale* to the *genus deliberativum*—*ut* σεμνότερός τις *et* πολιτικώτερος *videretur*. Cicero lists ten consular orations (and two 'apospasmata'), ending with the four *Catilinarians*, but he does not mention the *Pro Murena* (Nov. 63 B.C.), apparently because it was not a political speech in the technical sense. On the other hand, he does mention the *Pro Rabirio*, apparently because he did not consider it as a judicial speech in the technical sense—the defendant having been accused by the tribunes before the *populus* [1]. The only other speech from 63 B.C. omitted in the corpus is the *Pro Pisone*, a judicial speech like the *Pro Murena*.

[1] For the procedure see now Th. M. MITCHELL, *Cicero. The Ascending Years* (New Haven/London 1979), 205 ff. (with lit.).

This leaves us with the problem of the date of publication of the *Pro Murena*. Apparently the consular orations had been published shortly before June 60: otherwise Atticus would have requested them before. It is possible that the *Pro Murena* had been published earlier, in 62 or 61 B.C., though it seems equally possible that Cicero published it after his political speeches. E. Rosenberg, in 1902 [1], opted for 62 and found reflections of a changed political situation, especially an estrangement between Cicero and Cato, in alleged alterations made in the published text. Similar arguments, now in favour of publication in 61-60 B.C., were put forward by A. Boulanger in 1940 [2]; he connected an example of Stoic rigidity in *Mur.* 62 (*petunt aliquid publicani*, etc.) with the conflict between Cicero and Cato concerning the letting of taxes to the *publicani* in Asia Minor (*Att.* I 18, 7; II 1, 11).

Both theories are based on the double assumption that Cicero made alterations in his published text and that those alterations reflected the political situation at the time of publication. Though it cannot be denied that Cicero did not feel bound to his delivered text and was not inhibited from publishing texts he had not delivered at all (*In Verrem actio II*) or improved up on his delivered speeches (*Pro Milone*; *Catil.* IV), I emphasize that later alterations for political reasons are a different matter, unless they concerned vital questions like the defence of his treatment of the Catilinarians. In the case of the *Pro Murena* this argument does not work. And on the other hand we happen to know for certain that in Nov. 63 Cicero did make fun of Cato sharply enough to prompt the latter's reaction *ridiculum consulem habemus*; we shall return to this later.

Scholars have often wondered about a seeming discrepancy between the serious situation of Nov. 63, reflected in the very

[1] E. Rosenberg, *Studien zur Rede Ciceros für Murena*, Programm Hirschberg 1902, 1-17.

[2] A. Boulanger, "La publication du Pro Murena", in *REA* 42 (1940), 382-7.

solemn and urgent appeals of Cicero in various parts of the speech, especially towards the end, and the light tone of his jokes at the expense of the jurisconsultus Sulpicius and the Stoic Cato. This discrepancy was used by Jules Humbert in support of his famous theory of the 'plaidoyers écrits' and the 'plaidoiries réelles' [1]. In the case of the *Pro Murena*, Humbert argues that the published speech amalgamated two different 'tours de paroles', one delivered at the beginning, when Cicero was still in high spirits after Catiline's departure (on the evening of 8th Nov.) and in its optimistic spirit akin to the *2nd Catilinarian*, the other delivered in the last stage of the trial, under the influence of new and alarming developments in Etruria and in Rome, where Catiline had left his *equus Trojanus* (*Mur.* 78). In accordance with his theory, Humbert suggested that Cicero felt entitled to publish a composite speech, in which traces of the atmosphere at the beginning of the process are found in the jocular extravagances directed against Sulpicius and Cato, whereas the sobering influence of recent news is supposed to be reflected e.g. in the epilogue [2]. Paradoxically, what is supposed unacceptable in a speech as delivered, is at the same time supposed possible in a published speech. I will not go into Humbert's theory in general, as in my opinion Wilfried Stroh has disposed of it in a very efficient and persuasive manner [3]. Stroh did not, it is true, take account of the *Pro Murena*. In this instance, apart from the paradox just mentioned, it may be observed that Cicero gives indirect proof of the documentary character of the published speech by indicating a lacuna by the *titulus* of § 57 DE POSTUMI CRIMINIBUS, DE SERVI ADULESCENTIS, which Pliny, *Epist.* I 20, 7 proves to be authentic. If here he deviates from the text as delivered, Cicero implies that elsewhere he basically does not.

[1] J. HUMBERT, *Les plaidoyers écrits et les plaidoiries réelles de Cicéron* (Paris 1925).

[2] J. HUMBERT, *op. cit.*, 119-42.

[3] W. STROH, *Taxis und Taktik. Die advokatische Dispositionskunst in Ciceros Gerichtsreden* (Stuttgart 1975), 31-54.

In my opinion, the apparent discrepancies in mood within the speech should be accounted for in quite a different way—by taking account of Cicero's versatile persuasive technique. In preparing his case, Cicero must have felt confronted by a formidable difficulty, namely the conflict between his own view of the political situation and the view held by his two opponents Cato and Sulpicius, men of the highest authority in the state, and no doubt in the court. Whereas Cicero himself considered the offences committed by Murena against the laws on *ambitus* negligible in comparison with the political consequences of a condemnation—only one consul on Jan. 1st 62 B.C.—, his opponents, especially Cato, saw in Murena's scandalous behaviour a threat to the moral foundations of the state; on the other hand, they, perhaps rightly, considered Catiline's political and military chances to be practically non-existent (cf. 79 *Quaeris a me, ecquid ego Catilinam metuam*). I emphasize from the very beginning that Cicero's only reason for defending Murena against his friend Sulpicius, whom he had supported throughout his campaign, can have been his fear of Catiline—an understandable reason, if one considers the strain and the suspense under which Cicero had lived during the last few months. As a matter of tactics, Cicero felt obliged to put full emphasis on the seriousness of the Catilinarian threat, while on the other hand his only way to deal with his very dangerous and authoritative opponents was to undermine their authority in the present case. He could not undermine their personal authority without the risk of offending two allies who had been and would continue to be dispensable. Thus he was compelled to undermine the authority of their professions and convictions. Accordingly, he praises the personalities of Sulpicius and Cato abundantly in his speech; but he points out that Sulpicius' profession, his *ars*, is too futile and formal in view of the present need for a person of a sweeping energy and in possession of the *ars militaris*; Cato's *ars*, Stoic philosophy, on the other hand, is shown to be too pedantic, too highminded and too unrealistic for his position in the

case to be taken quite seriously. As we all know, the best weapons against authority were and are satire and wit, which bring the public to a state of irrational feeling and upset its accepted system of values. Cicero knew the rhetorical impact of humour better than anyone and he was to devote many pages of his *De oratore* to this subject, usually neglected by the rhetoricians. Thus the discrepancy between seriousness in the 'Catilinarian' parts of the speech and humour in the parts directed against Cato and Sulpicius reflects something basic to the case itself. What risks Cicero ran is shown by the way in which Cato struck back...

Oratory is not an expressive art, reflecting moods and feelings of the speaker, but an art of persuasion. Of course, it could be objected that, however true this may be of a speech as delivered, a published speech could also be intended as an 'epideictic' performance, or as an historical document, or as a political pamphlet. What exactly was the status of a published speech? And specifically, what was and is the status of the *Pro Murena* as a published speech?

Let us return to Cicero's letter about his *orationes consulares*, where he adduces three reasons for their publication—the demands of the *studiosa iuventus*, the delight Atticus took in his speeches, and the example of Demosthenes, who wanted to appear as a serious politician in his *Philippics*. Cicero wished his consular orations to appear in the same light as the *Philippics*—as political peformances and memorable historical documents. In Rome, the Elder Cato had set an example of the practice of publication by incorporating a number of his politically important speeches in his *Origines*. In the case of the *Pro Murena*, however, the political importance of the speech was slight. Politically speaking the case was only a transient and minor disturbance—partly, it is true, because of Cicero's successful defence [1].

[1] In Mitchell's book (see p. 193 n. 1), in which Cicero's consulate occupies some

Atticus' delight in Cicero's speeches (*te etiam delectant*), the second reason adduced, seems to emphasize the literary, 'epideictic' aspect of a published speech. A thing of beauty is a joy (*delectatio*) forever. To what extent does the *Pro Murena* give that pleasure (*dulce*)—together with usefulness (*utile*)—to the reader, and to what extent does it transcend the momentary situation of the trial of November 63? In classical rhetoric *persuadere* was achieved by the threefold manipulation of *docere*, *delectare* and *movere*, and each of the three can be said to have, in a way, an independent, 'literary' aspect. Cicero prided himself on the 'philosophical', general content of his speeches, in which he endeavoured to generalize each hypothesis into a thesis [1]. In the case of the *Pro Murena*, we happen to know from Quintilian (II 4, 24), that it even provided the theme for a school-exercise (*thesis*) *iuris periti an militaris viri laus maior*. At the same time, the *Pro Murena* provides, e.g. in the prologue, an undeniable stilistic pleasure to the reader—even the modern reader; and the pathos of his emotional appeal towards the end still moves us by the sincerity of its patriotism. Though literary qualities might in themselves have constituted a sufficient reason for its publication, especially with regard to the elder generation of his readers like Atticus, we should, I think, rather pay attention to the third argument, that of the *adulescentulorum studia*, in Cicero's letter. I agree with Wilfried Stroh [2] that pedagogical reasons and the setting up of *exempla artis oratoriae* were Cicero's primary motivation for publishing his speeches, especially his judicial speeches. Even oral delivery could have this function: in 79 B.C., Cicero assisted at the daily *contiones* of Sulpicius, though he detested his politics; and in *Brutus* 126 he advises the study of the speeches of C. Gracchus for no other than

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65 pages, the Murena-case is only mentioned in one note (p. 236 n. 125)—less than it deserves, but illustrative of its limited political significance.

[1] See *De orat.* III 120; *Orat.* 45-46; *Nat. deor.* I 6.

[2] W. Stroh, *op. cit.*, 52-4.

didactic reasons. At the same time, I agree with Stroh, that this purpose is a strong argument for the documentary character of a published speech, which is intended to show learners, how the act of persuasion is to be performed in a specific situation. In the next generation, a man like Asconius Pedianus helped later readers to re-enact these specific situations.

For these reasons I feel entitled here to ascertain, with the help of the published text, by what means the process of persuasion, persuasive manipulation, is performed in the *Pro Murena* as delivered in specific circumstances for a specific audience. As for method, I shall follow the steps of scholars like Neumeister [1], Classen, and Stroh in so far as my analysis will transcend the purely rhetorical point of view, which is in itself too formal and sterile, and consider the speech as a document of progressive manipulation. For however much Cicero wanted to minimize the persuasive aspect of the art of speaking, even substituting *bene dicere*—a literary quality—for *persuadere* throughout his idealistic *De oratore* [2], the fact remains that the only aim of an orator in a given case was to win over his audience, and a main reason for publication was to enable his young readers to study his means in achieving it.

Quintilian discusses the relations between an original, oral speech and a published speech in XII 10, 49 ff. First he states that certain orators consider the special demands of the reader as different from those of the listener; in other words, they do indeed consider the published speech as a literary work. Quintilian, however, gives his personal opinion as follows: *mihi unum atque idem videtur bene dicere ac bene scribere, neque aliud esse oratio scripta quam monumentum actionis habitae* (51). In my opinion, this holds good for Cicero as well, in spite of exceptional cases

[1] Chr. NEUMEISTER, *Grundsätze der forensischen Rhetorik gezeigt an Gerichtsreden Ciceros* (München 1964).

[2] See A. D. LEEMAN/H. PINKSTER, M. Tullius Cicero. *De oratore libri III. Kommentar*, Band I (I, 1-165) (Heidelberg 1981), 134 f.

like the *Pro Milone* [1]. In the following, I shall treat the *Pro Murena* as we have it as a *monumentum actionis habitae*, though we must of course reckon with the possibility of minor alterations, as did Quintilian (XII 10, 55).

First, a few words to recall the circumstances and chronology of the trial. It appears from § 78 that Catiline had left Rome; this he did in the night of 7/8 November, leaving his associates behind. In the middle of the month, it had become clear that he was not going into exile at Massilia, but to Etruria and Manlius' troops. Catiline and Manlius were declared *hostes publici*. Cicero's colleague left for Etruria, Cicero stayed in Rome (§ 84). So much for the *terminus post quem* of the speech. By the time Cicero delivered his oration, the Allobroges and the Catilinarians in Rome had not yet been arrested; so the *terminus ante quem* for the trial is 2/3 December. Sulpicius, who together with Cato had been preparing the case for a long time (§ 43), could bring their accusation only after Catiline's departure, when everything seemed safe; but when the trial began—at least a few days later—the situation was already beginning to darken. There cannot have been much more time for the trial than the two last weeks of November, and it took place under conditions which were favourable to the defence from the start.

2. *The Prologue (1-10) : its ethos and aims*

The exordium of the *Pro Murena* is of an unusual character, not only because of its length, but also because of its contents. After two paragraphs of a religious—or rather pseudo-religious—character, there follows a kind of *oratio pro se*, an elaborate argument in defence of Cicero's appearance for Murena against Cato and Sulpicius (3-6 and 7-10). As we shall see, this reflects the unusual, and indeed risky, situation, in which Cicero found

[1] Cf. Asconius *in Milonianam* with Dio Cass. XL 54; and Cic. *Att.* I 13, 5; XIII 20, 2.

himself, and which forced him to enlarge and transform the traditional topic of *benevolum parare a nostra persona* [1].

The first two paragraphs of the prologue already serve this purpose in a highly unusual way. The normal periodic style of the prologue here assumes a character which recalls the style of traditional Roman prayers (*carmina*) with their rhythmic succession of cola and clusters of synonyms (the best example is ch. 141 of Cato's *De agricultura*). Cicero here presents a kind of amplification of his own *sollemne carmen precationis* pronounced on the day of the elections, when Murena was appointed consul. It appears from Livy XXXIX 15, 1, that such a *carmen* was usually pronounced by magistrates before they addressed the *populus Romanus*. The first page of the *Pro Murena* is in fact our main source for the formula of this prayer [2], which can be reconstructed with the help of the last colon of the first half of the first period (*ut ea res* etc.); but the spirit and rhythm of this prayer spreads over all three periods of this page. However, Cicero carefully avoids praying in the proper sense: he does not address the *di immortales*, but only tells the *iudices* that he prays. It is a pseudo-prayer, which nevertheless transfers the solemn atmosphere of the *comitia* to the court and provides Cicero the counsel for the defence with something of the aura of Cicero the consul presiding at the *comitia*. From the start he presents the case of Murena in a political light. As we shall see, he needed this device because of the legal weakness of the case itself.

[1] In the *Pro Sulla* (62 B. C.), Cicero's self-defence for appearing as a counsel for the alleged Catilinarian Sulla occupies an even larger part (3-35, one third) of the speech; here too the *lenitas*-theme (*Mur.* 6) plays an important part.

[2] See Th. MOMMSEN, *Römisches Staatsrecht* III 1 (Leipzig 1887), 369 ff.; G. APPEL, *De Romanorum precationibus*, Religionsgeschichtliche Versuche und Vorarbeiten 7, 2 (Giessen 1909). There is only one Ciceronian speech with a comparable beginning —the *Post reditum ad Quirites*. According to Servius *Aen.* XI 301 it was customary for the *maiores* to begin every speech with a prayer to the gods (cf. Plin. *Paneg.* 1) and he goes on to say that all speeches of Cato and Gracchus began in this way. In my opinion this must refer to political, not to judicial speeches.

It cannot be a mere coincidence that among Demosthenes' speeches there is also one that begins in this way. I of course refer to the *De corona* (*Or.* XVIII) 1 πρῶτον μὲν, ὦ ἄνδρες Ἀθηναῖοι, τοῖς θεοῖς εὔχομαι πᾶσι καὶ πάσαις, ὅσην εὔνοιαν ἔχων ἐγὼ διατελῶ τῇ τε πόλει καὶ πᾶσιν ὑμῖν, τοσαύτην ὑπάρξαι μοι παρ' ὑμῶν εἰς τουτονὶ τὸν ἀγῶνα, κτλ. Here, too, the actual situation is that of a trial in a legally weak case, magnified and elevated to the political level with the help of a solemn (pseudo-) invocation of the gods. It seems probable that the example of Demosthenes suggested to Cicero the idea of re-enacting his own prayer at the *comitia* with the same purpose.

As I pointed out, the religious bias spreads over the whole of the first page. This passage consists of three long periods very similar in structure and formulation [1]. The progress in thought can be described as follows: first Cicero states that he now addresses the same prayer to the gods (*idem precor*) as he had pronounced at Murena's election; then he states that his prayer at the *comitia* had even then implied (*idem ego sum precatus*) Murena's present situation; finally he concludes (*quae cum ita sint*) that the fate of Murena is now in the hands of the jury, whose duty it is to execute the divine will as shown at the *comitia*. The trick is performed by pure verbal magic. He would have spoiled it by addressing the gods themselves in a real prayer. Cato would not have hesitated to protest loudly against such sacrilege.

The appearance in court of men like Cato and Sulpicius against Murena was Cicero's most serious handicap. He had to deal with this handicap first; but he could not do so right away. First the religious atmosphere had to evaporate a little.

[1] The characteristic rhythm of a roman *carmen* is incorporated within the oratorical rhythm of three carefully balanced periods, each consisting of two parallel halves, the second half beginning with idem. There is also a lavish use of *clausulae*. A. Weische, *Ciceros Nachahmung der attischen Redner* (Heidelberg 1972), 72 refers to Nic. Caussinus, *De eloquentia saeva et humana* (Lugduni 1643) for an elaborate comparison with Demosthenes' prologue.

This he effects by a transition, the last sentence of § 2, whose rhythm carries on that of the preceding periods, while at the same time the tone sobers down. Then he passes on to the objections *extra causam* to his defending Murena.

Surprisingly, he first answers Cato, and only then the main prosecutor, Sulpicius. However, Cato's objections were of a political character and could be refuted best immediately after the 'prayer'. Moreover, Cato, in spite of his youth (35 years old), appears throughout as the more formidable opponent, and he also dominates the end of the *argumentatio*, before the politically orientated epilogue. As the *tribunus plebis* designate, he occupied a key-position, comparable to that of Drusus in 91 B.C. (cf. *De orat.* I 24).

Cato had formulated three objections to Cicero's defence: the fact that he was consul, the fact that he himself had proposed the bill against *ambitus*, and thirdly the discrepancy between the moral severity of his general behaviour as a consul and his present leniency towards Murena. The first objection surprises a little, because it was not unusual for a consul to appear in court [1]. Cicero's self-defence is again partly based on verbal magic: *a quo tandem, M. Cato, est aequius* (!) *consulem defendi quam a consule?* In an unusually elaborate and impressive simile, which was to be cited by an admiring Quintilian (V 11, 23), he suggests that it was the duty of the outgoing consul to pave the way for the incoming consul. Here again Cicero takes a political instead of a legal point of view, and announces that later he will show *quantum salutis communis intersit duos consules in republica Kalendis Ianuariis esse* (4). This he will do only at the end of the *argumentatio* (79).

Cato's second objection is refuted with the help of rigorous logic: if Murena were guilty of *ambitus*, Cicero would not have the right to defend him, even if somebody else had proposed the bill; as Murena is not guilty, why should not Cicero defend

[1] Cicero himself had already defended Rabirius and Piso; as a praetor in 66 B. C. he had defended Fundanius, Cluentius and Cornelius.

him, even though he had proposed the bill? Here Cicero gives away his general line of defence—rhetorically speaking the *status causae* he will adopt. We shall return to the question of *status* later, when Cato's objection will be mentioned again in connection with it (§ 67). The *lex Tullia de ambitu* will play a different role in § 46, where Cicero blames Sulpicius for demanding a stricter renewal of the *lex Calpurnia:* thereby Sulpicius has shown his lack of confidence as a candidate; Cicero only proposed his *lex* to humour him.

Cato's third objection is of a more general character and enables Cicero to emphasize that his general attitude of leniency was only temporarily suppressed by the need for severity against Catiline. This also paves the way for Cicero's attack on Cato's Stoic rigidness as opposed to the *humanitas* Cicero himself advocates.

Thus all three preliminary refutations of Cato's objections are preparatory to the *refutatio* proper and closely connected with the general line of defence.

General principles of moral behaviour also dominate Cicero's defence against Sulpicius, who had complained that Cicero, his supporter during the campaign, was now taking a stand against his friend. We know indeed from the *Laelius*, how important *fides* and *constantia* were in friendship. Cicero's argument shows how eager he is not to offend Sulpicius, whose friendship he apparently valued highly. Above all, the jury should not be under the impression that Cicero was an unprincipled weathercock, as his enemies loved to depict him; this would greatly impair his prestige as a counsel for Murena—rhetorically speaking, his ethos in the case. Again he alleges higher principles of human conduct, as he will treat them later in his *De officiis* [1].

[1] *Off.* II 49-51; Cicero very often mentions the moral obligation to defend in court, cf. *Div. in Caec.* 4-5; *Cluent.* 157; *Phil.* VII 7; *Inv.* I 5; *De orat.* I 169; 202; *Tusc.* I 1; see also W. Kroll, ad *Orat.* 141; W. Steidle, "Einflüsse römischen Lebens und Denkens auf Ciceros Schrift De or.", in *MH* 9 (1952), 28; W. Neuhauser, *Patronus und orator* (Innsbruck 1958), 12.

Defence in court is a high moral obligation, and we should even undertake it for strangers accused by our friends (§ 8). In the present case Murena, too, is his friend—indeed a friend in need; it would be shameful not to defend him. But he will do so in a spirit of the utmost friendship, and even brotherhood, towards Sulpicius.

It cannot be denied that Cicero sounds convincing, both on the political level in his refutation of Cato, and on the personal level in his refutation of Sulpicius. By these unorthodox additions to his prologue, he must have strengthened the *benevolentia* of the jury toward his own person. It was indeed very worthwhile to go out of his way to achieve this, especially because the case itself presented formidable difficulties. Moreover, the other counsels for the defence, the *consulares* Hortensius and Crassus, who spoke before Cicero (48), cannot have dealt with these particular points [1].

On the other hand, the *narratio*, which does not occur in Cicero's speech, had probably been handled by Hortensius—if a self-contained *narratio* was desirable at all in a case like this; after all, what story is there to be told in an *ambitus*-case, the campaigning and the elections having been a public affair [2].

3. *Confutatio (11-83); A : reprehensio vitae (11-14); B : contentio dignitatis (14-53)*

At § 11, Cicero—in a *partitio* admired by Quintilian (IV 5,12)—divides his *confutatio* into three parts, based on three aspects of the accusation: *reprehensio vitae*, *contentio dignitatis* and *crimina*

[1] A curious problem is raised by Quintilian *Inst.* IV 1, 75 where Cicero's excuse to Sulpicius is described as a prologue-like part of the *probatio*. Does Q. take 7-10 as a sub-prologue within the *argumentatio* ? Why does he not mention the excuse to Cato, 3-6, which cannot be detached from that to Sulpicius ? Was Q. bewildered by the great difference in mood between 1-2 and 3-10 ?

[2] Quint. IV 2, 9-10; 14-15 discusses narration in an *ambitus*-case, deemed unnecessary by rhetoricians like Celsius. His own idea appears from 15 *an reus ambitus*

ambitus. It is natural to assume that Sulpicius, the prosecutor proper, had spoken first and Cato, the trump-card of the prosecution (58 *firmamentum ac robur totius accusationis*), last, with the minor figures of C. Postumus and Servius Sulpicius junior speaking in between [1]. It appears from Cicero's *refutatio* that Cato had dealt with the moral aspects, especially with the *reprehensio vitae* and with certain aspects of the *crimina ambitus* and their reflection upon public morals (54), whereas Sulpicius had taken charge of the *contentio dignitatis*, another general aspect of the case. The prosecution had left the technical side of the *crimina ambitus* to Postumus and the younger Sulpicius. Thus we may conclude that Cicero in his *confutatio* rearranged the case in his own way, first answering Cato's *reprehensio vitae*, then Sulpicius' *contentio dignitatis*, finally the *crimina* of the minor counsels and, to end up with Cato's major points concerning *ambitus*. In this way he created an extremely varied and lively, yet logical, speech with numerous apostrophes and great variety in tone and spirit—*non partem aliquam causae, sed de tota re* (48).

From the first part, *reprehensio vitae*, it appears that Cato had concentrated on Murena's behaviour in Asia in the Mithridatic war of 83-81 B.C. under his father's command and that he had made light of the young man's military energy. Apparently, he had foreseen that Cicero would enlarge upon the need for the defendant's military capacities and energy in his consulate. The defence (11-14) is mock-serious, probably mimicking,

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male narrabit quos parentes habuit, quem ad modum ipse vixerit, quibus meritis fretus ad petitionem descenderit ? In the *Pro Murena* however such topics are treated in the *argumentatio* (*vita ante acta, contentio dignitatis*).

[1] A plausible reconstruction of the trial was given by A. W. ZUMPT, *Der Criminalprocess der römischen Republik* (Leipzig 1871), 222-3. If there were two *actiones*—which is very doubtful and only attested for a *quaestio de repetundis*—1-3 constituted the *actio prima*. The sequence probably was the following: 1) Sulpicius; 2) Hortensius; 3) witnesses; 4) Postumus; 5) Sulpicius *adulescens*; 6) Crassus; 7) witnesses (?); 8) Cato; 9) Cicero. Our main sources are *Mur.* 48 and 54.
See also R. W. HUSBAND, "The Prosecution of Murena", in *CJ* 12 (1916), 102-18; D. M. AYERS, "Cato's speech against Murena", in *CJ* 49 (1953-54), 245-53.

in the pseudo-logical argument of § 13 (syllogism), Cato's way of reasoning. He counters in a similar way Cato's satire on the clownish behaviour of Murena (*saltatorem appellat L. Murenam Cato*). He ends this part with an ironical word of thanks to the prosecution for their implicit confession that Murena was an honourable man (14).

There is a sudden change of tone in the next part, devoted to *contentio dignitatis* (15-53), which occupies a surprisingly large part—almost half of the surviving part of the *confutatio*. A comparison with the other Ciceronian speech in an *ambitus*-case, the *Pro Plancio*, shows that comparison of the *dignitas*, i.e. the chances and claims of the parties when candidates, was an important feature for the prosecution in such cases. It constituted a strong reason for suspicion of foul play if the candidate with the best claims was nevertheless defeated in the elections. Such arguments, based on suspicion rather than proof, were easier for a skilful counsel to manipulate than the *crimina ambitus* themselves, and Cicero exploits that. It is easy to overlook his tricks.

In my opinion, his major trick is performed in the first paragraphs (15-17). Apparently, Sulpicius, in the course of his *contentio*, had stated that the Roman electorate was strongly impressed by patricians as candidates. Nevertheless, he, a *patricius* himself, had been defeated. The truth of this statement is confirmed by the considerable number of patricians in the *fasti consulares* of the first century B.C. Cicero, however, takes this as if Sulpicius had prided himself on his patrician descent, which Cicero interprets as anachronistic class-consciousness: « must we have a new *secessio plebis*? Did not we have one four centuries ago? » No doubt the great majority of the *iudices* were of plebeian descent and Cicero adroitly plays upon their feelings. But worse is to follow. « Murena, too, has illustrious, though plebeian, ancestors, and his praetorian father all but rose to the consulate, leaving it to his son to make the final step. By the way, what have your ancestors been doing? Your family is descended from the ranks of nobility, to which it was entitled,

since according to the old history-books a Sulpicius seems to have been a *tribunus militum consulari potestate* in the 5th century. Your father, however, was only of equestrian rank, like mine. Therefore I consider you, like myself and Murena, as *homo novus*. It is your personal *virtus industriaque* which constitute your claims to the consulate. Shame on you to despise *homines novi* ! I thought I had at least overcome that kind of prejudice by my own consulship, to win which I had to defeat two patricians, Catiline and Galba. » Thus Sulpicius, a patrician descending from *nobiles*, is reduced to the same starting position and *dignitas* as his opponent Murena !

It is illuminating to compare Asconius' introduction to Cicero's oration *In toga candida*, delivered in the senate during his campaign in 64 B.C. Here, Asconius enumerates the seven candidates in the order of the *dignitas* of their social status. There were 2 patricians and 5 plebeians, 2 of whom were *nobiles*, whereas 2 others were not the first in their family to hold a *magistratus curulis* (but apparently not the consulate itself); Cicero was the only one who was the first in his family to reach any *gradus* in the *cursus honorum* at all and the only one *equestri loco natus*.

From this text it becomes clear that Cicero manages to transfer the worthy Sulpicius from the highest category of *dignitas* in Asconius, the patricians, to the lowest category, that of the *homines novi*. The undeserving Sulpicius must have been furious at this stage, and must have wondered if Cicero's « brotherly treatment » amounted to making him into a fellow *homo novus*. We might wonder if Cicero's tactics had not gone too far. Of course Sulpicius was right; it appears from Asconius that, surprisingly enough, patrician prestige still carried much weight in the status of a candidate—even in the sixties B.C. It also helped Caesar a lot. In my opinion, however, Cicero's *tour de force* at the start of his *contentio dignitatis* served a special purpose, which will become visible in the rest of this part of the *confutatio*.

From § 18 onward, Cicero reacts to Sulpicius' comparison of his own career with that of Murena. Cicero quotes « *quaesturam una petiit et sum ego factus prior* » (18) and *atenim in praeturae petitione prior renuntiatus est Servius* (35). In the last part of this section (43-53), Cicero will give his own alternative explanation why Sulpicius had finally failed as a candidate for the consulship in spite of his earlier successes.

With § 19 a new and important theme in the *contentio dignitatis* is introduced. Sulpicius had alleged that his constant presence (*assiduitas*) in Rome as a *iurisconsultus* constituted a more favourable *omen* for electoral success than Murena's absence in the 3rd Mithridatic war in the period between his quaestorship (75 B.C.) and his—and Sulpicius' own—praetorship in 65 B.C. In this connection, Sulpicius might have referred to Cicero's own experience, as exemplified in the amusing story of *Pro Plancio* (64-66), which taught him that the fame of his quaestorship in Lilybaeum was illusory and that the only way to political success was *habitare in foro*. Now, however, Cicero takes a different point of view: « don't you realise, Sulpicius, how people sometimes get sick of our constant presence? It is good to be absent for a while ! »... Then follows a clever antithetical comparison of the activities of a soldier and a lawyer (22), which is twice quoted by Quintilian (IX 2, 14; IX 3, 32-33), and which must have warned Sulpicius that his profession was in for some more devastating criticism. The conclusion is, that « our own » civil activities—Cicero again sugars the pill by putting himself « like a brother » side by side with Sulpicius—can only flourish thanks to the protection of the military. Again, we are inclined to remark that Cicero was soon to give voice to quite another view in his *cedant arma togae* ... [1].

[1] Cf. *Off.* I 77, where he defends this much criticized verse, adding that Pompey himself had declared that he would have had no where to celebrate his triumph if Cicero had not saved Rome. The same idea is found already in *Catil.* III 26, pronounced only a few days after the Murena trial. It is interesting to contrast *Fam.* V 7, 3, where he complains about the chilly reaction of Pompey to his long report about his actions against the Catilinarians. Cf. *Pro Plancio* 85 with Grimal's note.

After these preparatory remarks Cicero passes on to a devastating description of Sulpicius' « favourite hobby, which he cherishes like his own darling daughter » (23-29). I will not go into the details of this « Juristenkomik » [1] here, only pointing out with Quintilian (XI 1, 68-72) how nevertheless Cicero carefully observes decorum: *quam decenter tamen Sulpicio, cum omnes concesserit virtutes, scientiam petendi consulatus ademit*. Indeed Cicero is careful to combine abundant praise of his personal qualities (23) with a virulent satire of his *ars*. His claims to the consulate lie in his qualities, but certainly not in his activities. The pill is gilded again, but nonetheless bitter, or rather, he gilds the pill in order to be able to make it the more bitter. Happily Cicero had not yet written his *De oratore*, where he was to express his real feelings about the *scientia iuris*: they could easily have been used against his disparaging remarks in the *Pro Murena*.

Why was it necessary for Cicero to attack his friend in this way? As we have seen, the humour was certainly not an expression of his exultation about Catiline's removal from the city. It was purely a means of persuasion. In a case weak from the legal point of view, as was that of Murena, the counsel for the defence has to be very careful and reserved in presenting rational arguments. Pathos—emotional appeal—and a skilful shifting from the moral to the utilitarian aspects of the case were his only trumpcards. Pathos is indeed to be found in the patriotic tones at the end of the speech, as we have found it already, in a different way, in the lofty religious tones at the beginning. The opposite, equally persuasive forms of pathos are humour and satire. Sulpicius had challenged the credibility of a Cicero, who had suddenly turned against his old friend. After having wiped out that blemish on his blazon as Murena's defender, he counterattacks in an endeavour to impair the authority of the prosecutor, based on his patrician status and his rare respectability as a *iurisconsultus*. Later in the speech, in his final refutation of Cato, he will use the same weapon.

[1] See A. Bürge, *Die Juristenkomik in Ciceros Rede Pro Murena* (Zürich 1974).

Up to now, Cicero had put his own civil *ars* and that of Sulpicius, as opposed to the *ars militaris*, on a line. From § 30 onward, however, he also has to differentiate between Sulpicius' legal profession and his own *ars oratoria*. After all, this very *ars* had brought him the consulate: *Duae sint artes igitur, quae possint locare homines in amplissimo gradu dignitatis, una imperatoris, altera oratoris boni* (30); of these two, the *imperator* has the greatest claims. Is Cicero right in asserting that military and oratorical fame are the two means to reach the consulate? If we consult the list of the consuls in the last decades, we find indeed a number of generals (Marius, Sulla, Lucullus, Pompey etc.) and a number of great orators (the elder Crassus and Antonius, Marcius Philippus, Cotta, Hortensius, Cicero etc.), but the great majority of the consuls were men of neither military nor oratorical distinction. Several of them were *iurisconsulti* like Scaevola Augur, of whom Cicero himself declares *is oratorum in numero non fuit* (*Brut.* 102); Scaevola Pontifex was indeed *iuris peritorum eloquentissimus* (*Brut.* 145), but that was not saying a lot. The most distinguished name among the *consulares* was that of M. Aemilius Scaurus, *princeps senatus* from 115 till 89 B.C., who was no *orator*, no general and not even a *iurisconsultus* [1]. Apparently, there was another way to the consulate, viz. to belong to the high nobility, to be « nourri dans le sérail », to be a skilful, tactful and impressive nobleman with managerial qualities; Cicero calls such a man a *bonus senator* in *De orat.* I 8. It should also be borne in mind that Sulpicius himself did reach the consulate after all in 51 B.C.; and Cicero was to describe him in *Brut.* 155 as a man who at least possessed the minimum of oratorical faculties *ad obtinendam consularem dignitatem*.

Our only conclusion can be that Cicero's two ways to the consulate are there to serve his cause. Yet it cannot be called a deliberate lie; after all a Roman jury could not be fooled as

[1] It is instructive also to compare what Cicero has to say about the election of L. Calpurnius Piso, *Pis.* 1-3.

easily as that. Now, in the first section of the *Commentariolum petitionis* (2 ff.) [1] Quintus Cicero discusses his brother's handicap as a *homo novus*, and reassures him by pointing out that his lack of *nobilitas* is compensated by the *virtus* of his oratorical faculties. In the case of the *Pro Murena* the comparison is between the *homo novus* Murena and Sulpicius, whose being a patrician and a *nobilis* Cicero has just rejected as claims to *dignitas*, leaving him only with the *virtus* of a sort of *homo novus*. Thus for him, just as for Murena, there were but two ways up to the consulate, and the legal profession was not one of them.

Apparently, not only Sulpicius but also Cato had dealt with Murena's claims as a military man in his section on *vita ante acta*. In Cicero's corresponding section he had treated Murena's service under his father in the first Mithridatic war of 83-81 B.C. Now he answers Cato at some length on the topic of Murena's behaviour in the Mithridatic war of 74-63 B.C., when he served under Lucullus. Cato's satirical tone is to be gathered from § 31 *bellum illud omne Mithridaticum cum mulierculis esse gestum*—compare the section *vita ante acta*, § 12 *saltatorem appellat L. Murenam Cato*. Apparently, the prosecution foresaw that Cicero would make much of Murena's military abilities in a situation largely dominated by military factors: the threat of Catiline's army in the north, war in the east under the great Pompey, the presence at the trial of Lucullus. Cato had resorted to satire in dealing with Murena the soldier. The prosecutors were paid back in their own coin. Cato's satire on Murena's profession must have been a godsend to Cicero: it morally entitled him to make fun of the profession of Sulpicius, and Stoicism into the bargain. They had been asking for it!

[1] I see little reason to doubt the authenticity of the *Commentariolum*, in spite of L. WAIBEL, *Das Commentariolum petitionis. Untersuchung zur Frage der Echtheit* (Diss. München 1969). On the problem see J.-M. DAVID / S. DEMOUGIN / E. DENIAUX / D. FEREY / J.-M. FLAMBARD / C. NICOLET, "Le 'Commentariolum petitionis' de Q. Cicéron", in *Aufstieg und Niedergang der röm. Welt* I 3 (Berlin 1973), 239-77; C. NICOLET, *Le métier de citoyen dans la Rome républicaine* (Paris 1976), 401 ff.

There was one snag. After Murena's military exploits in Asia and Sulpicius' juridical activities in the forum, it was Sulpicius who had had the upper hand in the elections for the praetorship of 65: *prior renuntiatus est Servius* (35). Well, there was always the topic of the *ventosae plebis suffragia*, with plenty of historical *exempla* at hand, which was to come to Cicero's rescue also in the *Pro Plancio* 9. *Nihil est incertius vulgo, nihil obscurius voluntate hominum, nihil fallacius ratione tota comitiorum* (36). An impressive and sweeping comparison with a stormy sea (35) again paved the way for the weak logic of this argument.

There was one more snag—the undeniable fact that Cicero had supported Sulpicius during his campaign for the consulate, implicitly judging him a desirable consul for 62 B.C. He could not say « I was wrong in supporting you », so he had to say « you were wrong; you bungled your chances and I warned you ». In §§ 37-53 he deals extensively with the matter of Sulpicius' misdirected campaign. Very cleverly, he finds fault with the very fact that during his campaign Sulpicius had prepared his prosecution—with the support of Cato, who had publicly announced that he would drag any man guilty of *ambitus* before court (Plut. *Cato Min.* 21). The blamelessness of Sulpicius' own *petitio* and his severity towards his ruthless *competitores*, are turned against him. *Petere consulatum nescire te, Servi, persaepe tibi dixi* (43): he should have read the *Commentariolum petitionis*, we are inclined to say... In the last paragraph of this illuminating text, indispensible for a right understanding of the *Pro Murena*, Quintus warns his brother against his *competitores*: lest they corrupt the electorate into obliviousness of *virtus* and *dignitas*, you must be a constant threat to your competitors: *esse te qui iudicii ac periculi metum maximum competitoribus* [he is thinking of Catiline and Antonius] *afferre possis* [1]. However, you must avoid *ut videare accusationem iam meditari*, implying that an apparent lack of confidence weakens one's standing as

[1] *Comm. pet.* 55 ff.

a *petitor*; as Cicero puts it in the *Mur.* 43, *simul atque candidatus accusationem meditari visus est, (ut) honorem desperasse videatur.* Cicero profited from his brother's lessons in an unexpected way! On the other hand, we should realize that because of the scandalous behaviour of some candidates, the elections had been postponed from July to August—perhaps even September [1]—and that there was not much time left for the preparation of a prosecution before the 1st of January.

Cicero goes so far as to turn his own *lex Tullia*, which had constituted a major argument in Cato's speech, against Sulpicius. He, Cicero, had reluctantly complied with Sulpicius' demand for a new law, though the *lex Calpurnia de ambitu* was severe enough already. By this demand Sulpicius had, because of the anachronistic severity of the new law, given offence to many people and even to many men of senatorial rank (46-47)—a telling indication of the extent to which bribery was considered acceptable by large numbers of the electorate and of the candidates.

Cicero makes it clear in § 48 that Hortensius and Crassus had covered the same ground—Sulpicius bungling his chances by preparing his accusation—before Cicero. We may conclude that the three counsels for the defence thought the point, countering the suspicion of bribery by Murena, important enough to be treated repeatedly, though Cicero does apologize for it to the jury.

Cicero saved his strongest point for the end of his *contentio dignitatis* and his answer to Sulpicius. He devotes section 48-53 to a frightening picture of a Catiline who *Sulpicium accusatorem . . . numerabat, non competitorem* (49), and who had answered Cato's threats of an accusation with the terrifying words that he would extinguish that fire not with water but with ruins (51). That did it, argues Cicero: everybody who feared Catiline and saw you neglecting your campaign flocked to Murena and made

[1] See M. Gelzer, in *RE* VII A 1 (1939), 874.

him consul (52). For the first time in his speech, Cicero directly refers with the greatest emphasis to the Catilinarian menace. He will do the same at the end of the third and last section of the *confutatio*, dealing with the *crimina ambitus* proper. The difference in function of the two passages is again typical of the flexibility of Cicero's argument: the latter passage concerns the future, the first is introduced adroitly as an explanation of Sulpicius' defeat in the elections.

4. *Confutatio : crimina ambitus (54-83) ; the status causae*

We would have liked to be in full possession of all the arguments, both for the prosecution and for the defence, concerning the intricate question of *ambitus*. No doubt the material was painful for Murena and for Cicero, and it must have been for this reason that Murena had asked Cicero to return to this essential point of the accusation for the third time, after Hortensius and Crassus had both treated it (54). This may also have been the reason why Cicero chose not to publish the part of his speech in which he reacted to the very concrete material put before the jury by C. Postumus and the younger Sulpicius, who had spoken *de divisorum indiciis et de deprehensis pecuniis* and *de equitum centuriis* respectively (54). As we have seen earlier, Pliny speaks of only one other instance of a deliberate lacuna in a Ciceronian speech (but cf. *Font.* 20 and R. G. Austin ad *Cael.* 19). We know from the *Pro Cluentio* 140, that a great orator like the elder M. Antonius used to declare *idcirco se nullam unquam orationem scripsisse, ut si quid aliquando non opus esset ab se esse dictum posset negare dixisse*. Some arguments do not stand up to a quiet pondering of a written text... That Cicero had left out this part of his speech « als minder interessant » seems to me to be a rather naïve assumption of K. Halm-G. Laubmann (Introd. § 15). Cicero wanted to be admired and studied, not to be found out—at least not as easily as that.

There is another curious feature of this section, viz. that it starts with a kind of fresh prologue *a reo* in the style of a *commiseratio* of his client (55-57): the emotional appeal at a moment when Cicero is expected to deal with concrete points confirms our suspicion.

Let us turn to the remaining part of Cicero's section concerning the *crimina ambitus*. Here he answers Cato, *firmamentum ac robur totius accusationis*, saved up for the end (58-83). Cicero fears his *auctoritas* more than his *accusatio*, and begins by conjuring the *iudices* not to let the *auctoritas* of the accuser carry any weight in the case (58-60). Then, rather illogically, but very efficiently, he passes on to weaken this *auctoritas* by attacking his philosophical convictions. He can afford to discuss philosophy, he says, because he is not speaking *aut in imperita multitudine aut in aliquo conventu agrestium* (61). It is amusing and illuminating to compare Cicero's excuse, in *Fin.* IV 74, for having spoken satirically about Cato's philosophy in the *Pro Murena*: *apud imperitos tum illa dicta sunt, aliquid etiam coronae datum; nunc agendum est subtilius*. Note how Cicero in the *Pro Murena* adroitly combines apology and flattery of the *iudices*. As is well known, Cicero then ridicules Stoic paradoxes and rigidness, and contrasts with them the *lenitas* and human understanding which a more realistic, less pedantic approach to life demands: « if you were more like your ancestor Cato Censorius, you would not be more excellent, but certainly more *iucundus* » (66).

At this moment must have occurred the incident twice recorded by Plutarch [1]. When the iudices laughed at Cicero's witticisms, Cato smiled at the others and remarked ὦ ἄνδρες, ὡς γελοῖον ὕπατον ἔχομεν. These words have been misunderstood by German scholars like Gelzer and Büchner. The first comments « selbst Cato musste lächeln », the second « dass selbst der *ad absurdum* geführte Cato sich schliesslich eines gezwun-

[1] Plut. *Cato Min.* 21; *Compar. Dem. et Cic.* 1, 5 (=*Cic.* 50, 5).

genen Lächelns nicht entwehren konnte und sagte: was haben wir für einen witzigen Konsul »[1]. This interpretation can be refuted with the help of Plutarch's quotation found in his *syncrisis of Cicero and Demosthenes*, in a passage quoting instances of Cicero violating τὸ πρέπον in his humour. Moreover Plutarch here adds, that Cato smiled ἡσυχῇ which characterizes his remark as dry humour. A consul cracking jokes was against the *decorum* of the highest Roman magistrate, and Cato in his turn weakens Cicero's authority by his interruption. Plutarch's Greek should in my opinion not be translated back into *facetum consulem habemus*, but into *ridiculum consulem habemus*—with appropriate ambiguity in the term *ridiculus*, both « witty » and « ridiculous », just like γελοῖος. The whole story shows the importance of the concept of *decorum* in ancient social life, not only in the theory of the *De officiis*. In the case of the *Pro Murena*, Cato had alleged the ἀπρεπές (*negat fuisse « rectum »*—the stoic term) of Cicero the consul, the author of the *lex Tullia* and the stern upholder of public discipline, now appearing in defence of Murena. Cicero had struck back by portraying Cato's Stoicism as an « improper » means of judging political realities. Finally Cato rose to the occasion by exposing the *ridiculus consul*—an oxymoron in Roman eyes[2].

However, at § 67 Cicero could no longer avoid answering Cato's specific charges of *ambitus*[3]. He does so as briefly as possible in 67-73, returning in 74-77 to Cato's rigid philosophy, and in 78-83 to the political aspect of the case. It is not easy fully to understand 67-73. Cato had quoted the paragraphs of the *senatusconsultum* which led to the *lex Tullia*. It seems that in

[1] M. GELZER, in *RE* VII A 1, 881; K. BÜCHNER, *Cicero* (Heidelberg 1964), 187-8.

[2] Cicero is certainly not overdoing the humorous part of his defence; it occupies about 10% of the speech, against about 20% of serious pathos.

[3] On *ambitus* see A. W. ZUMPT, *Das Criminalrecht der römischen Republik* (Berlin 1865-9), esp. 2, 1; L. M. HARTMANN, in *RE* I 2 (1894), 1800-3 (*s.v.* ambitus); C. NICOLET, *Le métier de citoyen dans la Rome républicaine*, 401-18; W. KROLL, *Die Kultur der Ciceronischen Zeit* (Darmstadt ²1963), 50-5.

these paragraphs four activities were specified as illegal under the *lex Calpurnia* (67 B.C.), which apparently had not been so specific itself. The four points are different in character from the *crimina* dealt with by Postumus and Sulpicius junior. Whereas these constituted cases of direct bribery of the electorate (54), Cato's *crimina* concern what can be called indirect bribery, aiming at an ostentatious and impressive way of campaigning. Cato could easily adduce such practices as tokens of the decay of public morality. Not only Cicero but also Cato took a political view of the Murena-case: *te ad accusandum res publica adduxit*, Cicero remarks in this connection (78).

As we are left in the dark about the *crimina* concerning direct bribery, I only need to recall that the *divisores* in § 54 were the agents who took care of the distribution of the money promised by the candidate in the case of his election. This money was in the meantime deposited with so-called *sequestres* (*deprehensis pecuniis*) [1]. The votes of the *centuriae equitum* played a decisive rôle in the elections, so it was important to secure their support—if necessary by bribery. Thus in 44 B.C., two candidates promised ten millions of *sestertii* to the *praerogativa* in case of their election (*Ad Q.fr.* II 14, 4).

Direct bribery had naturally been forbidden by the law at a very early stage. Indirect bribery was less easy to define, and, even if forbidden, difficult to prove. As early as the 4th century whitening one's *toga* was forbidden, but the term *candidatus* itself shows how ineffective this interdiction was. In 358 B.C., shortly after the *leges Liciniae Sextiae*, *homines novi*, unknown to the populace, were handicapped in their campaigns by a law forbidding the candidates to travel around in Italy [2]; the term *ambire*, synonymous with *petere*, again shows its futility, though *ambitus* (as different from *ambitio*) still retains its original meaning. We know little about later legislation concerning in-

[1] Cf. *Planc.* 38; 45; 48.

[2] Liv. VII 15, 12-13.

direct bribery. At any rate a *quaestio de ambitu* functioned from the year 116 B.C. onward [1], and it must have had a very busy time indeed in the 1st century [2].

The four points defined by Cato and refuted by Cicero were the following: the hiring of people to function as a welcoming crowd at a candidate's return to Italy; the hiring of *sectatores*, lower class people who flocked around a candidate as soon as he appeared in public; the *tributim* distribution of free seats at the *ludi gladiatorii;* and lastly, the organizing of dinner-parties for large crowds. It is illuminating again to scan the *Commentariolum petitionis* for such practices. The general advice *tota petitio cura ut pompae plena sit,... ut popularis sit* (52) is made specific in a number of items. *Salutatores* (35) and *deductores* (36) were friends and clients and could scarcely be forbidden; but a third category, the *assidua adsectatorum copia* (37) correspond to the constant companions attacked by Cato. Many of these people acted thus for services rendered or services to be expected—thus they are described by Quintus Cicero—, but this category could not be easily distinguished from the *mercede conducti*. Under the heading *benignitas* Quintus records *convivia, quae fac et abs te et ab amicis tuis concelebrentur et passim et tributim* (44), apparently considering this to be a legal and acceptable practice in 64 B.C. His brother's *lex Tullia* however forbade it explicitly in 63 B.C.: the borderline between *ambitio* and *ambitus* was not only a floating one in the verbal sense.

How does Cicero defend his client against Cato's four charges? First he returns to the point made in his personal defence in the prologue (5): *me reprehendis quod idem defendam quod lege puniverim; punivi ambitum, non innocentiam* (67). He dissociates himself again from his own *lex Tullia*, which he pretends

[1] See E. S. GRUEN, *Roman Politics and the Criminal Courts, 149-78 B.C.* (Cambridge, Mass. 1968), 124.

[2] See L. M. HARTMANN, in *RE* I 2, 1800 ff.; e.g. both consuls elected for 65 B. C., P. Cornelius Sulla and P. Autronius Paetus were condemned for *ambitus*.

to have proposed under the pressure of the candidates (68), apparently in the first place the anxious Sulpicius (cf. 46). It looks as if the new law was unpopular (47), and Cicero now declares that it was superfluous in view of the existing *lex Calpurnia*. Why? Probably with a view to the jury, several of whom may not have been happy with the law. We must never forget that every word in a judicial speech is intended for the jury or the judge. The apostrophes to Cato and Sulpicius, which occur on almost every page of the *Pro Murena*, tend to create the impression that they are no more than apostrophes—temporary asides—, instead of being primarily intended for the jury. E.g. in § 62 the example *petunt aliquid publicani : cave ne quicquam habeat momenti gratia*, reflecting the Stoic convictions of Cato, has been used as an indication of publication at a time when Cato took a stand against the *publicani* [1]. However, we should remember that many non-senatorial members of the jury probably had personal relations or business interests among the *publicani*.

The question arises whether the four points of the *sen. cons.* were not more or less *ad hominem*, in fact *ad Murenam*. The first point does indeed look personal, as it was Murena who had returned from his province and had been welcomed by an exceptionally large crowd on the Campus Martius (68-69). But were they *mercede corrupti*? Cicero does not return to this point (except 69 *gratuitam*), but admits that many of them had been invited (*rogatos*) and dwells on the composition of the crowd in order to explain its size.

The second point, which concerns the *adsectatores*, is answered by a *doce mercede ; concedam esse crimen* (70). As we have seen, this was difficult to prove. Cicero defends the practice as such: « don't rob the common people of this, their only way to show us their gratitude and attachment » (71); but that was not the point.

[1] See p. 194 with note 2.

The answer to the other two items raises an interesting rhetorical problem, that of *status*. There were normally three « rational » statusses, or lines of defence—the *status coniecturalis*, in which it was denied that the alleged act took place at all, the *status finitionis*, in which the fact itself was admitted, but defined in a way different from the definition of the prosecution, and thirdly the *status qualitatis*, in which the fact and its definition were admitted, but excused, e.g., by special circumstances. The question of *status*, which occupies an important place in all rhetorical treatises under the heading of *inventio*, is discussed e.g. in Cicero's *De oratore*. In II 105 Cicero remarks that most criminal cases *infitiatione defenduntur*, i.e. along the lines of the *status coniecturalis*. In the case of an accusation *de repetendis*, the only way out for the defence is flat denial, for extortion is extortion. In the case of *ambitus*, Cicero goes on, *raro illud datur, ut possis liberalitatem ac benignitatem ab ambitu atque largitione seiungere* : the normal defence is, here again, along the lines of the *status coniecturalis* ; it is only seldom that the defence can define the act committed as *benignitas* (*status finitionis*).

These theoretical remarks in *De oratore* throw light upon Cicero's defence of Murena. Here, he was compelled to keep to the *status coniecturalis*, which is defined in *De orat.* I 139 as *factumne sit*. In § 5 already, Cicero had announced this, and here he repeats it in connection with the *crimina ambitus* : *factum sit necne, vehementer quaeritur* (67). However, in refuting Cato's third and fourth point (72), a new element creeps in: *etsi hoc factum a Murena omnino, iudices, non est, ab eius amicis autem more et modo factum est... sive ambitio* [!] *est, sive liberalitas*. Cicero here keeps to his 'conjectural' defence of Murena himself, but withdraws to the second line of defence, *finitio*, as far as Murena's friends are concerned. In 64 B.C. Quintus had advised his brother, as we have seen, both to organize *large convivia et passim et tributim* himself, and to have them organized by his friends (*Comm.pet.* 44, under the heading of *benignitas*). This practice had been forbidden meanwhile by the *lex Tullia*, though, as Cicero states, it

had been a long-established custom (72). And even then, the objection was only to the scale on which such practices occurred: *tributim, vulgo*. What is *vulgo invitare*? *Universos*, he defines rather arbitrarily (cf. Quint. VII 3,16), *quod non*... Cicero's overall conclusion is categorical and paradoxical: as Murena is not guilty of these practices, he is in a way even defended by the *senatusconsultum* [1]. Cicero is just bluffing, and seems to push his adoption of the *status coniecturalis*, as far as Murena himself is concerned, to extremes. Nor can his friends be considered guilty, as they only fulfilled their *officia necessariorum*, he adds (73).

Cicero was wise enough not to leave it at that. Cato had directed violent satire at the modern, glamorous style of campaigning as practised by Murena. Cicero quotes from it in § 74: *utrum lenocinium... a grege delicatae iuventutis an orbis terrarum imperium a populo Romano petebas*?, that staunch upholder of traditional Roman *decorum* had exclaimed. *Horribilis oratio*, Cicero answers! It is you yourself who ignore the *maiorum instituta*, with their fair distribution of *voluptas* and *labor* (74). *Odit populus Romanus privatam luxuriam, publicam magnificentiam diligit* (76), as was demonstrated by the *perversa sapientia* of the strict Q. Aelius Tubero (75). In the most personal attack of the whole speech, he points out that Cato himself, in his recent campaign for the tribuneship, had made some remarkable concessions to his principles... (76-77). However, he tactfully abstains from mentioning that Cato had not prosecuted his brother-in-law Silanus, whose campaign as a successful *competitor* of Murena and Sulpicius had also been far from blameless [2] (but I wonder if he is not meant by the anonymous *viri primarii*, who are said to have hired whole stands in the Circus during their campaign, § 73). Finally, when this renewed attack on Cato's unrealistic and somewhat hypocritical Stoic

[1] Cicero is fond of reversing arguments put forward by his opponents; e.g. 3 *consul a consule*; 16 Sulpicius is himself a *homo novus*; 21 *assiduitas* is boring. It reflects his life-long habit of *disputatio in utramque partem*.

[2] Plut. *Cato Min.* 21.

principles is over, Cicero feels free to view the campaign of Murena in the light of permissible gentlemanlike behaviour. Somewhat to our amazement, we read in § 77 that the lower classes have a traditional right to be entertained with *ludi*, *gladiatores* and *convivia*, and that the candidates themselves have a right to *benignitas*, which should be defined, Cicero adds, as *liberalitas* rather than as *largitio*. Cicero now cleverly—if not logically—withdraws to the second line of defence, *finitio*, which in *De oratore* he describes as a rare possibility in *ambitus*-cases: *liberalitatem ac benignitatem ab ambitu atque largitione seiungere* (II 105). In this case, it was the ridicule of Cato's convictions that enabled him to take this course, if only after the bluff of his flat denial.

I believe that Cicero could only venture on such an almost ludicrous defence, because he had established a kind of understanding with the jury. A few years later, in his *Pro Flacco* 98, Cicero could state: *nemo illorum iudicum, clarissimis viris accusantibus, audiendum sibi de ambitu putavit, cum bellum iam gerente Catilina omnes me auctore duos consules Kal. Ian. scirent esse oportere.* The *iudices* were prepared to condone the extravagance of Murena's campaign; but of course Cicero had to say something against the accusations. The arguments he used must have provoked some smirks from the jury.

From § 78 on, the *crimina ambitus* are forgotten, and so are the jokes and the innuendoes. The last part of the answer to Cato is all seriousness. The transition is made via a statement about the political background of Cato's prosecution: *at enim te ad accusandum res publica adduxit* (78): I believe you, but you are mistaken in your ideas about politics. My own motivation is the real welfare of the state—*pax otium concordia libertas; salus, vita denique omnium nostrum.* In the very first, solemn sentence of the prologue Cicero had told the jury that he prayed that Murena's acquittal would bring *vobis populoque Romano pacem tranquillitatem otium concordiamque.* In this last section of his *confutatio* of Cato (78-83) he makes a sustained emotional

appeal to Cato himself and to the *iudices* in quick alternation. The pathos is visible, e.g., in *audite, audite consulem* (78); *cives, cives inquam* (80); *te, te appello, Cato* (81). Cicero speaks as a consul responsible for the welfare of the state rather than as counsel for the defence, and he addresses Cato as the man who was to enter office as a *tribunus plebis* within a month, effectively using the traditional formula of the *appellatio* to the tribunes (*te appello, Cato*), rather than addressing him in his capacity as Murena's *prosecutor*. He appeals to Cato for help and for joint action against the Catilinarian menace, one of whose first victims would no doubt be Cato himself. On the political level Cicero and Cato will need each other. This part of the speech has a very sincere ring and no doubt expresses Cicero's deepest convictions. It is far above the level of rhetorical tricks, and nevertheless—or for this very reason—the most persuasive passage of the whole speech. Its principal aim is to convince the *iudices* of the great importance of having two consuls on the 1st of January (79). Murena's acquittal is only a means to this end.

5. *The Epilogue (83-90); the genus causae*

The epilogue proper follows in § 83. Not Cato but the *iudices* have to decide the case; it is their *potestas*. In the prologue the *iudices* had been warned that in this case *omnis deorum immortalium potestas* had been transferred to, or shared with them (2). Now he exclaims: *totam rem publicam vos in hac causa tenetis, vos gubernatis* (83): the *iudices* are acting as responsible magistrates rather than as a jury. Again Cicero points to the dangers of the Catilinarian menace, before passing on to the traditional *commiseratio* and *commendatio* of his client (86-90) and ending up with a last appeal to save Murena for the *res publica—consul consulem . . . commendo* (cf. 3 *consulem . . . a consule*). The final words *promittam et spondeam* contain his solemn personal guarantee and again reflect the spirit of the prologue. Demosthenes, too, had, in the final sentence of his *De corona*, returned to his appeal to the gods.

Looking back upon the *Pro Murena*, Quintilian concludes (VI 1, 35) that Cicero's most powerful argument was that he persuaded the *iudices nihil esse ad praesentem statum rei publicae utilius quam duos Kal. Ian. ingredi consulatum* (apparently Quintilian remembered Cicero's own words in the *Pro Flacco* 98, quoted earlier [1]. The term *utilius* may open our eyes to an important rhetorical aspect of Cicero's handling of the case. Each of the three *genera causarum* had its own telos, that of the *genus iudiciale* being *aequum* or *iustum*, and that of the *genus deliberativum utilitas*. Both in the *Pro Flacco* and in Quintilian, it is *utilitas* which, in a way, is said to constitute the telos of the *Pro Murena*. In the prologue the *salus communis* already takes the central place: in § 4 Cicero announces that he will demonstrate in due course *quantum salutis communis intersit duos consules in re publica Kal. Iun. esse*. In the end, in § 79, this promise is fulfilled. At the beginning and at the end of the speech he speaks as a *consul*, and addresses the *iudices* as if they were a political assembly, making decisions for the future. And it is with future actions that the *genus deliberativum* is concerned, whereas the *genus iudiciale* is concerned with past actions [2].

Of all rhetorical and other persuasive manipulations in the *Pro Murena*, the manipulation of the *genus causae* itself is his master-stroke. Yet he did not incorporate the speech among his collection of political *orationes consulares*. He preferred to keep up appearances.

6. *The Aftermath*

That Cicero could successfully deliver the *Pro Murena* in the form of our published text is a tribute not only to Cicero's oratorical skill and versatility, but also to the *souplesse* of Roman

[1] Compare Quint. VI 1, 35 *accusantibus clarissimis viris* with *Flacc.* 98 *clarissimis viris accusantibus*.

[2] For *utilitas* see now G. ACHARD, *Pratique rhétorique et idéologie politique dans les discours 'optimates' de Cicéron* (Leiden 1981), 446 ff.

social relations. In court, Romans who were normally good friends could feel free to deal blows at one another without risking damage to their human relations. The rules of the game can be gathered from Cicero's speech: the freedom within these rules was considerable, though not unlimited. There is a remarkable sportsmanship both in the dealing and in the acceptance of blows. We should realize that Cato and Sulpicius had not spared Cicero either in their speeches, and Cicero is going out of his way to defend himself before striking back—but not under the belt.

Only a few days after Murena's acquittal, Cato came to the rescue of Cicero, when he was staggered by Caesar's opposition in the senate on the Nonae Decembres. Cicero had Cato's speech multiplied and distributed (Plut. *Cato Min.* 23). A month later Cato hailed Cicero as *pater patriae* (Plut. *Cic.* 23,6): the anti-Catilinarian front was unimpaired. Even Murena could avail himself, during his consulship, of Cato's help and good counsel (*ibid.*, 21,9). There was, it is true, never an intimate friendship between Cato and Cicero, but there was a great personal respect, despite temporary divergencies in their political attitudes, until Cato's end, which it became Cicero's historical task to celebrate [1].

Sulpicius' relations with Cicero were much closer and more personal. Already in 59 B.C., Cicero tells Atticus that Sulpicius planned to stand again for the consulate (*Att.* II 5, 2); but Caesar stood in his way. Only in 51 B.C. did he reach his goal (*Fam.* IV 12). During the Civil War he found himself in much the same position as Cicero, whereas Cato stood firmly against Caesar. In 45 B.C. he wrote the famous letter of consolation to Cicero after Tullia's death—one of a considerable number of

[1] On Cato and his relations with Cicero see M. GELZER, "Cato Uticensis", in *Kleine Schriften* II (Wiesbaden 1963), 257-85; F. MILTNER, in *RE* XXII 1 (1953), *s.v.* Porcius, Nr. 16; E. S. GRUEN, *The Last Generation of the Roman Republic* (Berkeley 1974), s. ind.; W. E. HEITLAND (comm. Cambridge 1914), 15: "Cato and Sulpicius, two intimate friends" is not correct with regard to Cato.

letters exchanged between the two friends. After his death in Febr. 43 B.C. it was Cicero again who honoured him in the senate (*Phil.* IX) [1].

Cicero's client Murena did not prove a great success as a leading politician [2]. In the days following the trial—perhaps even during the last stage of it—he played a certain *rôle* in bringing the Allobrogian ambassadors, who had been approached by the Catilinarians, to Cicero (*Dom.* 134), and Allobroges may also have been among the *hospites atque amici* who had come from Gaul to congratulate Murena on his election (*Mur.* 89). The main *rôle* in this vital development was played, however, by their patron Q. Fabius Sanga (Sall. *Catil.* 41, 4). About Murena's presence in the session of the Nonae Decembres we only gather that in his *sententia* he followed that of his fellow-*designatus* Silanus, who proposed the *supplicium ultimum* for the Catilinarians—later, when intimidated by Caesar's speech, interpreting this as life-imprisonment, to the horror of his brother-in-law Cato (Plut. *Cato Min.* 21). There was no need, after all, for Murena's military capacities, as the Catilinarian forces were disposed of by Cicero's colleague Antonius Hybrida early in 62 B.C. During his consulate he gave protection to Cato when he was attacked by his fellow-tribune Metellus Nepos (Plut. *Cato Min.* 28,3). His name is connected with the *lex Licinia Iunia*. After 62 B.C. he all but disappears into oblivion, though he was still alive in 45 B.C. (then about 60 years old) and apparently still a rich man, as Cicero (*Att.* XIII 50,4) mentions his house as a possible *hospitium* for receiving Caesar.

Did Murena really 'deserve' Cicero's defence? In connection with his being a *legatus* to his kinsman Lucullus in the Mithridatic war (*Att.* XIII 6,4), Plutarch judges him to be far below the standard of *kalokagathia* of Lucullus himself. His main

[1] On Sulpicius and his relations with Cicero see F. MÜNZER, in *RE* IV A 1 (1931), *s.v.* Sulpicius, Nr. 95; E. S. GRUEN, *The Last Generation...*, s. ind.

[2] On Murena see F. MÜNZER, in *RE* XIII 1 (1926), *s.v.* Licinius, Nr. 123.

claim to the consulate seems to have been his riches and the energetic way he exploited them. There is not even a trace—apart from the doubtful assertions in the *Pro Murena* (e.g. 8)—that he was ever Cicero's friend. Most probably, Cicero's sole purpose in defending him was literally to secure *esse Kal. Ian. in re publica duos consules* [1].

[1] I wish to thank drs. J. A. R. Kemper, from whose expert-knowledge of rhethorical status I profited in Section 4 C (*Mur.* 77; *De orat.* II 105).

DISCUSSION

M. Winterbottom: With the prayer in *Mur.* 1, compared by M. Leeman with Dem. XVIII (*Cor.*) 1, we may compare also *Rab. perd.* 5 (*dis deabusque*) corresponding to Demosthenes' τοῖς θεοῖς ... πᾶσι καὶ πάσαις. This is clearly relevant to the matter of Cicero's use of Demosthenes in 63 which I raised after M. Stroh's paper. The prologues of *Mur.* and *Rab.perd.* are further linked by the allusion to the *potestas* held by the jury (*Rab.perd.* 5 ~ *Mur.* 2). It is certainly strange that the *Rab.perd.* but not the *Mur.* was included in Cicero's *corpus* of consular orations, especially in view of Cicero's stress on his magistracy in *Mur.* 1 etc.

M. Classen: The prayers in other speeches never occur where Cicero addresses a *quaestio*: *In Catilinam* I, *Pro Rabirio perduellionis reo*, *De domo sua*, etc.; the *Actio secunda in Verrem* is a special case as it was never actually delivered, and the prayer at the end of the fifth book is to be seen in the light of the special role assigned to the gods in this book.

M. Rüegg: Die Bemerkung, dass es das *genus deliberativum* mit zukünftigem Handeln zu tun hat und *Pro Murena* mit seiner Ausrichtung auf die *salus communis* Charakterzüge des *genus deliberativum* trägt, bringt mich zur Frage, ob dies nicht eine Erklärung für die Anrufung der Götter bieten könnte. Entscheidungen unter Unsicherheit zu erleichtern ist seit jeher eine wichtige Funktion der Religion, und bei Griechen wie Römern sind gerade öffentliche, politische Entscheidungen mit kultischen Prozeduren verbunden. Könnte die "unusual and indeed risky situation in which Cicero found himself and which forced him to enlarge and transform the traditional topic of *benevolum pervenit a nostra persona*" nicht auch für die beiden ersten an 'religiöse' Gefühle appellierende Paragraphen verantwortlich gemacht werden?

M. Michel : Je félicite vivement M. Leeman pour son exposé si attique. J'approuve en particulier son interprétation du mot de Caton, qu'on pourrait traduire en français du XVIIe siècle : « nous avons un plaisant consul ». Je suis frappé aussi par l'analyse qu'il présente des *status* (délibératif et judiciaire quand il s'agit des causes, conjectural ou lié à la définition quand il s'agit des questions générales). Nous sommes entre le *De inventione* et le *De oratore*, qui s'annonce déjà, tant il est vrai que la pratique, chez notre orateur, précède largement la théorie. Enfin, une question se pose au sujet des paradoxes stoïciens : Cicéron, dans la suite de son œuvre, les a quelquefois défendus, notamment dans les *Paradoxa Stoicorum*. Faut-il penser à une évolution ?

M. Classen : With reference to the remarks you have made above, I should like to suggest that Cicero answers Cato first, because he had attacked Cicero's *auctoritas* as a consul and he wanted to restore his authority to give his defence more weight. However, I am inclined to think that Cato had not criticized Cicero for defending Murena while being consul. I would rather assume that Cato had merely pointed out that it was not right for Cicero to defend Murena, though he had initiated the *lex Tullia de ambitu* as consul, and that Cicero is exploiting such a purely descriptive phrase and that he is making it an additional point of Cato's attack (*et consulem et legis ambitus latorem et tam severe gesto consulatu*) in order to show how unreasonable Cato's objections are.

M. Calboli : Desidero fare solo una osservazione. L'argomento posto alla fine dell'orazione, la necessità cioè di fare fronte contro i Catilinari e di non colpire un uomo come Murena che fu un pilastro della lotta del console Cicerone contro Catilina è, direi, l'argomento più forte. Allora la sua collocazione alla fine in che rapporto sta con la τάξις ? Qui, secondo me, si ha la disposizione omerica di cui tratta lo stesso Cicerone, *De orat.* II 314 ; *Orat.* 50 ; all'inizio si ha la preghiera agli dei, la parte centrale, più debole per Cicerone, è sciolta in parte col riso, e alla fine ecco nuovamente l'argomento forte. Che cosa pensa di questo problema ?

M. Ludwig: Interessant war in der Analyse der Rede *Pro Murena* auch zu sehen, wie Cicero sich abwechselnd des *status coniecturalis* und des *status finitionis* bedient. Gehört diese Flexibilität in der Verwendung des für den Fall in Frage kommenden *status*, das Wechseln von einem *status* zum andern, zu den für Cicero charakteristischen Strategien der Prozessführung?

M. Stroh: Cicero verteidigt tatsächlich, wie schon Quintilian bemerkt hat, seinen Klienten öfter in doppeltem *status*. Dabei muss man aber zwei Typen unterscheiden. Beim ersten stehen die *status* nebeneinander, um sich zu stützen, z.B. (vgl. Quint. *Inst.* III 11,17): « Milo hat in Notwehr und damit zu Recht getötet » (*Mil.* 30-71: *status qualitatis* in Form der *relatio criminis*), und « selbst wenn er nicht in Notwehr gehandelt hätte, wäre seine Tat aus politischen Gründen verdienstvoll » (*Mil.* 72 ff.: *status qualitatis* in Form der *comparatio* bzw. *compensatio*). Beim anderen Typ wird der eine *status* auf den andern reduziert, was sich ebenfalls an der *Miloniana* zeigen lässt (Quint. *Inst.*, *ibid.*): die Fragestellung der *relatio criminis* führt hier mit Notwendigkeit auf die Frage, ob eine Notwehrsituation vorgelegen habe, was in den *status coniecturalis* gehört und in der Tat mit seiner Topik durchgeführt wird. (Die spätere rhetorische Theorie spricht hier von *status principalis* und *status incidens;* s. jetzt L. Calboli Montefusco (ed.), Consulti Fortunatiani *Ars rhetorica* (Bologna 1979), 337 f. zu *Rhet.* I 28.).

M. Classen: The use of more than one *status* is common. We find it also in *Pro Rabirio perduellionis reo* : Cicero argues briefly that Rabirius did not kill Saturninus; and he adds he wishes that he had killed, for in this case he could justify him and his intention, as, in fact, he then does.

M. Calboli: A me sembra che in quello che ha osservato il Leeman sia senz'altro vero che al § 65 della *Pro Murena* si ha l'impiego dello *status coniecturalis*. Al § 72 c'è invece, per il Leeman, la *definitio*, il *quale sit*, come dirà poi Cicerone in *De orat.* II 104. Io però mi chiedo quale fosse il rapporto tra questo ὅρος e gli altri *status*. Infatti

in *Inv.* I 17 Cicerone aveva dato, dopo la *causa definitiva*, di *Inv.* I 14, un altro *genus definitivum* nelle *controversiae*, mentre la *Rhet. Her.* I 19, pone la *definitio* (ὅρος) nella *constitutio legitima*, comunque pone la *definitio* sotto uno *status* più ampio. Non viene qui sfruttata questa sottile e complessa disposizione degli *status* nei loro sottostati per i giochetti e, si può ben dire, gli imbrogli che Cicerone fa in questa orazione? Io lo penso.

M. Michel: Je souhaite intervenir dans le même sens que M. Calboli. Les *status* sont aisément subordonnés les uns aux autres, dans une cohérence que le discours doit à sa dialectique. La philosophie est ici utile à l'orateur, non pour qu'il la propose aux auditeurs (des *imperiti*), mais pour lui garantir sa rigueur à ses propres yeux. Comme le montre surtout le *Pro Milone*, il s'agit souvent d'une amplification du raisonnement *in utramque partem*, tel que les philosophes le préconisaient depuis Aristote et Platon: voir tous les aspects, même contradictoires, d'une argumentation pour montrer que, dans tous les cas, on arrive au résultat voulu: que Milon ait tué ou qu'il n'ait pas tué (il n'y a pas d'autre possibilité), il n'est pas coupable. Dans la première partie, on plaide le droit (définition ou qualité), dans la seconde, le fait. On aboutit ainsi à une vision des vraisemblances qui est globale et probable. Le recours à la terminologie philosophique n'est pas inutile parce qu'il nous permet, dans la 'flexibilité' cicéronienne, de déceler la cohérence. Cela est visible dans le *Pro Murena*, comme l'a montré M. Leeman: Murena n'a point pratiqué l'*ambitus* en fait (conjecture). Il a plutôt recours à la *benignitas* (définition) ou même à la *bona benignitas*. Ainsi par la diversité ordonnée des points de vue devient possible un art de la nuance qui fait de ce discours un chef-d'œuvre: c'est le seul texte de Cicéron où tout le monde a raison. La politique le veut: il faut assurer le *consensus bonorum*. Cicéron sait bien que Caton ou Sulpicius ont raison à leur manière, quoique lui-même n'ait pas tort. Le *De finibus* et les *Tusculanes* insisteront plus tard sur la part de *consensus* qui existe entre le Portique et l'Académie. Le dialogue fondamental s'esquisse ici dans l'action.

M. Winterbottom: It seems to me that we are being too solemn over the matter of the shift in *status*. Cicero contrives to have it both ways (Murena is not guilty of *ambitus*, but certain strictly illegal practices are in fact excusable or even admirable); was he necessarily thinking in technicalities at all?

M. Stroh: Wie immer man *Mur.* 72 im Lichte der Statuslehre beschreiben will, auf keinen Fall — hier möchte ich Herrn Michel widersprechen — hat eine dort praktizierte Vermengung der *status* etwas mit der von Cicero ja öfter beschriebenen *disputatio in utramque partem* zu tun. Bei dieser wird (ohne Standpunktwechsel im Sinne von *status*) für und gegen eine Ansicht argumentiert.

Im übrigen ist vielleicht die Rede *Pro Murena* nur wenig typisch für den Redner Cicero, wie ihn Herr Classen vorgestellt hat. Sie ist insgesamt doch recht trickarm. Cicero macht aus seiner Methode der Verteidigung ja kein Geheimnis. Gleich in § 4 kündigt er an, dass er sich letztlich vor allem auf die politisch-militärische Brisanz der Lage stützen will, was er dann auch tut. Und dass er sonst vor allem der grossen moralischen Autorität seiner Gegner entgegenwirken musste, war ebenfalls klar. So findet man eigentlich nichts von den Abschweifungstechniken, die Herr Classen an anderen Reden eindrucksvoll demonstriert hat: dass die technischen *crimina ambitus* hinter die Behandlung von *reprehensio vitae* und *contentio dignitatis* zurückgestellt werden, entspricht dem ja offenbar üblichen Schema der Ambitusreden, wie es auch *Pro Plancio* zugrundeliegt. Wichtig scheint mir in diesem Zusammenhang besonders Herrn Leemans Hinweis auf Cic. *Flacc.* 98: auch die Zuhörer interessierten sich an diesem Tag nicht vor allem für die technischen *crimina*.

M. Classen: Auch die Rede *Pro Murena* zeigt Ciceros Überredungskunst, selbst wenn der Aufbau weniger raffiniert erscheint; denn das Mass an Flexibilität, die Nutzung der durch den Fall gegebenen besonderen Möglichkeiten ist nicht geringer als in anderen Reden, und die Aufgabe war für Cicero hier auch nicht leichter,

da der Ausgang des Prozesses keineswegs sicher war angesichts der Vertreter der Gegenseite.

M. Michel : L'expression *disputatio in utramque partem* (ou ἑκατέρως) se trouve chez les rhéteurs et chez les philosophes. Chez les premiers, il s'agit seulement de présenter les arguments *pro et contra*. Le philosophe, qui fait intervenir le jugement dialectique et qui cherche à progresser vers le vrai, tire les conséquences d'une telle confrontation, qui est nécessaire dès qu'il s'agit d'une notion seulement vraisemblable, à partir de laquelle on peut porter des jugements contradictoires. Ainsi, à propos de Milon, Cicéron utilise successivement les hypothèses opposées en montrant qu'elles vont toutes dans son sens. Donc, j'insiste sur les points suivants à propos de la *disputatio in utramque partem :*

1. Elle existe et distingue les discours de la déclamation.

2. Cicéron déclare expressément à son propos qu'il suit les philosophes.

3. Il se réfère alors à Carnéade et Aristote et montre ainsi que sa dialectique se situe dans une sagesse. Il faut naturellement souligner qu'une telle méthode n'a rien de scolastique et qu'elle aboutit simplement à concilier dans la persuasion la souplesse et la rigueur (cf. *De orat.* III 107 sqq.). Chez Cicéron, elle ne vise pas à atteindre simultanément des fins opposées, mais à atteindre une même fin par des arguments opposés ou complémentaires.

M. Rüegg : Ich möchte Herrn Strohs Einwand gegen Herrn Michels Verwendung des Begriffs der *disputatio in utramque partem* unterstreichen. Eine solche sieht voraus, dass die Argumente für oder gegen einen bestimmten Streitgegenstand gleichgewichtig von beiden Seiten, wenn möglich sogar durch zwei verschiedene Repräsentanten vertreten werden. In *Pro Murena* verwendet Cicero an einer Stelle, die, wie Herr Leeman sagte, "rather illogically but very efficiently" Catos Stoizismus angreift, den Begriff des *disputare* (61). Es ist inhaltlich eine *disputatio in utramque partem* über den Gegenstand der *studia humanitatis* und insbesondere über die richtige

sapientia. Es werden einander gegenübergestellt auf der einen Seite Cato und Zeno als Vertreter eines moralischen Rigorismus mit dessen lächerlichen Konsequenzen (ist nicht hier statt am Ende der ganzen *disputatio* der Zwischenruf Catos über den γελοῖον ὕπατον anzunehmen?), auf der andern Seite die von Plato und Aristoteles beeinflussten *moderati homines et temperati* Scipio und Cato maior, die als Modelle einer von *gratia*, *mediocritas*, *humanitas* und *comitas* durchwirkten *sapientia* Cato mit dessen *gravitas* und *severitas* vor Augen geführt werden. Da jedoch die *disputatio* in indirekter Rede erfolgt und Catos Standpunkt lächerlich gemacht wird, kann von einer echten *disputatio in utramque partem* nicht gesprochen werden.

M. Calboli: Devo intervenire dopo le osservazioni del collega Winterbottom mettendo in chiaro la mia posizione. In merito alla presenza della dottrina degli *status* in Terenzio io ho avanzato una ipotesi nella quale si può credere o anche non credere. Personalmente io ci credo, ma sono tutt'altro che privo di dubbi e ho avanzato tale ipotesi, perché credo che la filologia sia fatta, oltre che di fatti esattamente raccolti e verificati, anche di ipotesi coraggiose che alcuni potranno anche distruggere. Ma nel caso della *Pro Murena* devo per onestà affermare che la presenza della dottrina degli *status* è infinitamente più sicura, perchè l'espressione *factum sit necne* di § 67 è proprio degli *status*, come attesta Quint. *Inst.* III 6, 45 per gli *status* di Antonio, e lo stesso Cicerone, *De orat.* II 113. Devo quindi dire che la certezza del prof. Leeman non è confrontabile con la mia ipotesi.

M. Leeman: I do not think I have to go into the question of the 'prayer' again after the interventions of Winterbottom, Classen and Rüegg.

En ce qui concerne la question d'une évolution de Cicéron sur les paradoxes stoïciens (intervention de M. Michel), je souligne que, dans un discours, Cicéron ne donne pas sa propre opinion, mais qu'il ne parle que pour les besoins de la cause.

I thank Professor Classen for his suggestion that the separation of Cato's first point (*et consulem*) is to be explained as another little trick.

Professor Calboli mentions the point of τάξις. I fully agree that it plays a major part in the structure of the *Pro Murena*, too. How clever he is in this respect I tried to show on p. 206 and in other parts of my paper.

As far as the question of the two statusses is concerned (interventions by Ludwig, Stroh, Calboli, Winterbottom, Classen), it is indeed also to be found in murder trials (*Pro Milone*, *Pro Rabirio*). Here, however, the argument is "my client has not killed, but even if he had, he should be praised for it in this case". In the *Pro Murena* he could not argue "my client has not committed bribery, but if he had, it would have been *liberalitas*". He has to perform a trick to be able to retire to the second line of defence and he does it by first confessing that his friends showed *liberalitas*; only after conjuring up again an image of Cato as a Roman without a feeling for the old Roman tradition of the grand and liberal style of life, he goes as far as interpreting Murena's actual behaviour during his campaign as an instance of his grand style: *benignitas*! It is of course difficult to prove that Cicero consciously moved from the *status coniecturalis* to the *status finitionis*, but in this case the terminology he employs is technical enough to believe this to be the case. I agree on this point with Calboli. I doubt, however, whether this shift of *status* can be dealt with under the leading of *in utramque partem disputare* (Michel), in which two opposite ends, not one end of two opposite arguments, are implied (Stroh, Rüegg).

Dass *Pro Murena* eine 'trick-arme'-Rede wäre (Stroh), muss ich bestreiten. Ich habe zu zeigen versucht, dass sie als Ganzes einen grossartigen Trick darstellt und auch in allen ihren Teilen mit Tricks arbeitet. Recht hat Professor Stroh, wenn er feststellt, dass die Rede fast keine von den fast infamen Tricks enthält, die Professor Classen registriert hat. Die Tricks der *Pro Murena* sind spielerischer, ironischer, erfreulicher, weil Cicero es sich hier leisten kann, unter Freunden er selbst zu sein, aber trotzdem sind sie vorhanden. Auch darf man die Schwierigkeiten der ganzen Lage und den Takt, der von Cicero gefordert wurde, nicht unterschätzen.