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The Spectre of Contradiction in Cicero's Orations

A Study Based on His Conception of *iurisprudentia*
and Some Other Speeches (*)

by Ludovico V. CIFERRI

(Pavia - Dublin)

*Nemo doctus umquam mutationem
consilii inconstantiam dixit esse
(Att. 16.7)*

CONTENTS. 1.0 Presentation of the Plan of the Work :
Division (of the Orations) Into Two Groups. 1.1.1 *Pro Caecina*.
1.1.2 *Pro Murena*. 1.2.1 *Pro Cluentio*. 1.2.2 *Pro Fonteio*,
Pro Flacco and *Pro Scauro*. 1.2.3 *Interrogatio in Vatinius* and

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(*Pro*) *Vatinio*. 1.2.4 *Pro Caecina* and *Pro Cluentio*. 1.3
Conclusion : *Reiectanea sunt*.

1.0 PRESENTATION OF THE PLAN OF THE WORK : DIVISION (OF THE ORATIONS) INTO TWO GROUPS

The Ciceronian orations form a whole body of documents not to be ignored by anyone interested in the study of the Roman Republic : the man of letters, the philosopher, the historian, the jurist, all will have recourse to it. It is not easy, though, to understand how much value is to be attributed to these sources, because sometimes Cicero himself tells us not to believe what we read in the orations (1).

Taking therefore due precautions and with certain reservations, let us now tackle their study, which will certainly prove to be both interesting and surprising.

We can pick out two different groups of orations which seem to be of some help for our research : *Pro Caecina* and *Pro Murena*, on one hand ; *Pro Fonteio*, *Pro Flacco*, *Pro Scauro*, (*Pro*) *Vatinio*, and *Interrogatio in Vatinium* on the other hand. Such a division is made according to whether Cicero explicitly mentioned the concept of *iurisprudentia* in any of the passages of the text. The orations belonging to the latter do not : but they

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1.1.1 *Pro Caecina*

As regards the early orations, *Pro Caecina* and *Pro Murena*, the former was written about seven years before the latter. It is believed that *Pro Caecina* was written in 69 B.C., while *Pro Murena* was written in 62 B.C., the year following Cicero's consulship. Seven years are not really a long period, but those were the years during which Cicero was - first - a praetor, in 66 B.C., and then a consul, in 63 B.C., and during which time we can establish his intense activity as an orator.

Let us now analyze the *Pro Caecina* oration. Aulus Caecina reclaims his right to the property of an estate occupied by Sextus Aebutius. When Caecina tries to take, -not to retake- possession of it, (we will see later the importance of this distinction), Aebutius stops him by force. Then, Caecina gets an *interdictum* from the praetor, which says : *Unde tu, Sex. Aebuti, A. Caecinam vi hominibus coactis armatis deiecisti, restituas.*

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The *interdicta* were orders issued by a praetor in conformity with forms displayed in the *Edictum* upon an applicant's request (or upon any citizen's request, in cases of public interest), in order to prescribe some obligations (2). This kind of order - which was always addressed to one or more clearly defined persons - did not, however, presuppose the previous corroboration either of the legitimacy of the applicant's request or of the opposite party's ability to satisfy it; as a matter of fact, the text of an *interdictum* was so abstract, that the addressee would not consider himself actually affected by it, unless his conduct was definitely contrary to that required by the praetor.

Now, the *interdictum* obtained by Caecina was '*recuperandae possessionis*' of the kind '*vi armata*', against which it was not possible to set the *exceptio vitiosae possessionis* (3). However, since Caecina had never had the possession of the estate, Aebutius did not think he was right: that is to say, it seems that the previous possession of the estate would have been necessary, and Caecina did not have it.

It is not easy, in retrospect, to judge the relevance of such a regulation, especially when we are not even sure whether the regulation was a norm, during that period. According to Gaius, it was, and his *Institutiones* are the work on which scholars base their interpretation; see in particular 4.143-155.

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However, *a contrario*, we can infer from the way in which Cicero dealt with this case, that it was a rather difficult one. Actually, he devoted most of his argument to a subtle, almost captious, distinction concerning the word '*unde*' ('from where'), maintaining that in the text of the *interdictum*, it could mean both '*a quo loco*' ('from neighbourhood') and '*e quo loco*' ('out of'). Such a distinction, once accepted, would have resulted in the enforceability of the *interdictum* against Aebutius, in so far as it would have proved the existence of the condition Caecina was asked to satisfy. In other words, it would have resolved the case.

Twenty years after *Pro Caecina*, Cicero went back to this case and to the distinction above mentioned in *Orator* 102 asserting that his treatment of the case was good, particularly because it was almost completely hinged on the word *interdictum*; because it threw light on obscure passages by explaining the definitions they contained; also because it made distinctions between obscure words; and finally because it praised *ius civile*. He was not the only one who thought like that: all jurists after him adopted his definitions of '*eiectio*' and '*vi*' (4).

Nevertheless, the proper legal point of the case has not yet been clarified. We do not know with absolute certainty who won. But if we consider the letters between Cicero and Caecina in *ad Familiares* 6.5-8, which witness how they continued to be

4) Cf. H. GROSE HODGE, *Cicero. Pro Caecina*, Cambridge Mass. & London, 1979, p. 88.

on good terms with each other, and the favourable words of Cicero himself about this case in *Orator* 102, then we can assume that Caecina was the winner (5).

There have always been many different opinions about the soundness of Cicero's arguments.

The French school, beginning with Armand GASQUY, attaches great importance to the issue of possession (6). According to this school, in Cicero's time there were two different kinds of *interdicta*. The first one, called ordinary injunction (I think it was the *interdictum recuperandae possessionis de vi*), provided for the case of simple violence (*vi*), and specified that the person requiring the restoration of the '*a quo*' situation should have the ownership of the property at the moment of the eviction. The second one, (I think it was the *interdictum recuperandae possessionis de vi armata*), provided for the case of armed violence, *vi armata*, but it did not mention possession at all. On these grounds, the French School claimed that the issue of possession was insignificant in Caecina's trial. This means that the French School acknowledged that Cicero's arguments were well-founded from a legal point of view.

This relaxed attitude towards Cicero's inaccuracy has always been rejected by the German school. According to the critics belonging to it, the distinction introduced by Cicero is based upon an unfounded interpretation, if not actually an unfounded

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judgement: in fact, we know from Ulpian that possession was considered necessary for both *interdicta*.

As regards the English school, the critic ROBY (7) claims that it is not a question of distorted or false interpretation of the second *interdictum*, but rather the misunderstanding of the text of the first *interdictum*. According to his proposal, the point was not actually the applicant's possession -because that was taken for granted- but the continuity of possession. Besides, in the second *interdictum* the possession must have been of the kind "expected and continuous", otherwise it would not have been necessary to mention armed violence (8). ROBY believes that Cicero deliberately stressed the apparent difference between the texts of the two injunctions, because it was in the client's interest; he unduly emphasized the first one in order to be able to object to the lack of it, (continuity of possession), in the second one.

As already stated, however, the question is rather confused; Gaius's mention of mutual violence in *Institutiones* 4.170 makes it even more complicated.

On the other hand, what is plain and accepted by all scholars is that in *Pro Caecina*, Cicero engages in a highly subtle disquisition, whose nature should be legal but is, in fact, semantic. In order to be legal, it should have been supported by

7) H.R. ROBY, *Roman Private Law*, vol. II, Appendix; and: H. GROSE HODGE, *Op. Cit.*, pp. 88-9.

8) The second part of the reasoning is mine, it is a consequence of the first part, but ROBY does not mention it.

precedents and strengthened by doctrine and interpretative analogies. But these elements are taken into little account by Cicero in his argument. We have no way of knowing whether this was because Cicero could find no such support, or did not trouble to do so, or because the only authorities were actually in the opposite direction. It would be useful, though, to know, because then we could establish whether or not Cicero focused attention on *minutiae legis* in his defence. Judging from what we know, we have to agree with André BOULANGER that the Ciceronian argument is not a technical one ; it is compelling, but not based on legal foundations (9).

If we think of *Pro Caecina* in this way, we are led to consider the passages from 64 to 79 (those which cause *Pro Caecina* to be analyzed in the most detailed way among the orations of the second group) with a certain perplexity.

The first passage is 77-78, which contains the eulogy of the juriconsult Caius Aquilius Gallus (ca. 111 - ca. 44) who was praetor with Cicero. The friendship between the two lasted for a long time : it is witnessed, for example, by the following passage from *De Officiis* 3.60 : *nondum enim C. Aquilius, collega et familiaris meus, protulerat de dolo malo formulas*. His knowledge of jurisprudence was deep, his judgment was fair, his sense of equity was so remarkable that he was often sought as a judge in cases of *iudicia privata*. He specialized in drafting procedural *formulae* and it is known that it was he who first

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proposed a form for the *actio doli* (10). Apparently, then, Cicero never changed his mind during these years: this must lead us to judge him favourably. This long eulogy begins at the end of paragraph 64 with a preamble which ends in paragraph 65; it praises civil law as one of the foundations of social life; then there is an interruption to explain how dangerous it would be to accept the other side's thesis. Then, again, in paragraph 76 Aquilius Gallus is praised; this continues through paragraphs 77 and 78 where Aquilius Gallus is described as a man so just and good that he seems to be a jurist by nature rather than by training. Aquilius Gallus was considered such an authority in his field that even Cicero had to dispute with Piso about a quotation from Aquilius Gallus which both of them wanted to use in their own favour. It seems that there are no flaws in Cicero's eulogy; some doubts could be derived from the translation of "*in cavendo*" in paragraph 78 (11). According to Plautus '*cavere*' means "*qui consulte, docte atque astute caverit*" (12) but it can also mean "who protected Roman citizens with his wisdom" (13); on the other hand, according to André BOULANGER's translation, he was a man who was renowned among the Roman people because of his knowledge of jurisprudence, which allowed him to help them with *responsa/consilia*, and because he never

10) *Nat.* 3.74: *quod C. Aquilius familiaris noster protulit ...*

11) *Quapropter hoc dicam, numquam eius auctoritatem nimium valere, cuius prudentiam populus Romanus in cavendo, non in decipiendo perspexerit.*

12) Plaut., *Rudens* 4.7.14 (1240).

13) H. GROSE HODGE, *Op. Cit.*, p. 175 (Adapt.).

deceived them (14). But however translated, the sentence "*in cavendo*" contains basically a favourable judgement.

Finally, it must be said that these sentences are part of the *narratio*. According to Cicero, the *narratio* is "*rerum gestarum aut ut gestarum expositio*" (15); according to Quintilian, it is "*rei factae aut ut factae utilis ad persuadendum expositio*" (16); it can probably be described as the convincing account of how an action was performed, or how it is supposed that it was performed.

In conclusion, we have to decide how we should assess the favourable judgment of *iurisprudentia* that Cicero expresses through Aquilius Gallus's eulogy.

We have already stated that, as far as we know, Aquilius Gallus was just an acquaintance of Cicero, so there was no close friendship which could possibly influence his words. Besides, his judgement is part of the *narratio*, which is, in theory, an impartial account of facts. We can therefore accept Cicero's judgement bearing in mind, however, that here Cicero talks as an advocate, rather than as a jurist, and that he seems to carefully avoid all kinds of *minutiae legis*. In other words, we can accept the judgement in itself, but we must remember that it is given from the point of view of defence counsel, which must recommend caution.

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1.1.2 *Pro Murena*

In *Pro Murena*, written in 62, we will consider mainly paragraphs 15-53 because they contain some remarks (whose tone becomes biting in paragraphs 19-30) which are of great interest for us. Let us consider first the facts and the nature of the charge.

Cicero is consul, the consular election of the year 62 -which was to take place in July- is postponed on the initiative of Cicero himself, who hopes, in this way, to have the Senate intervene against Catiline. A special Senate session is held, but no action against Catiline is resolved, and the election takes place later in that same month.

Then, Cicero decides to assist Murena, who was elected consul after defeating both Servius Sulpicius Rufus and Catiline, when they -along with Cato- accuse him of *ambitus*. Cicero, Quintus Hortensius Hortalus and Marcus Licinius Crassus undertake Murena's defence: Murena's possible guilt, if proved, would have been punished according to a law Cicero had promoted the year before, in place of a law which had been sponsored by Servius Sulpicius Rufus and was considered too mild.

Cato and Servius Sulpicius Rufus act to eradicate *ambitus* in Rome. Cato, in particular, seems troubled only by the moral aspects of the matter, while Servius Sulpicius Rufus's action is probably caused also by his suspicious attitude towards Murena, whom he considers an energetic consul willing to continue the same policy as Cicero; in fact, both Murena and Cicero were

homines novi. Cato, nevertheless, shows little political foresight or sense of the State in his oration, when he runs up against the Mithridatic war (17). Conversely, Servius is seriously determined to put the sensational defeat right by mean of legal action.

Hortensius, an excellent orator, and Crassus, who was not as good an orator but more important as a politician, were engaged in Murena's defence with Cicero. It is not easy to say why Cicero agreed to do it. Murena was a *homo novus*, he was very important and his patrons, the *optimates* Hortensius and Lucullus, were the same people who helped Cicero to become consul. Their caste knew perfectly that a possible return of Pompey would be more dangerous to their interests than Catiline.

So, Cicero's sense of the state in his attack upon Catiline combines with the interests of the *optimates*; other less important reasons were added to these and, in the end, Cicero could not refuse to undertake Murena's defence.

The legal issue seems to be of secondary importance in this oration: Cicero's colleagues tackle the problem from a technical point of view; as for him, his speech is both legal and political (18); he always speaks as a consul, and this is the reason why he is the last one who speaks. It is the consul who is speaking in the *exordium* as well as at the moment of the peroration and of the last *promittam* and *spondeam* for which he,

17) Cf. *Mur.* 31-4, Cicero's reply.

18) A. BOULANGER, *Cicéron, Discours : Pour L. Muréna*, Paris, 1957, p. 15.

homines novi. Cato, nevertheless, shows little political foresight or sense of the State in his oration, when he runs up against the Mithridatic war (17). Conversely, Servius is seriously determined to put the sensational defeat right by mean of legal action.

Hortensius, an excellent orator, and Crassus, who was not as good an orator but more important as a politician, were engaged in Murena's defence with Cicero. It is not easy to say why Cicero agreed to do it. Murena was a *homo novus*, he was very important and his patrons, the *optimates* Hortensius and Lucullus, were the same people who helped Cicero to become consul. Their caste knew perfectly that a possible return of Pompey would be more dangerous to their interests than Catiline.

So, Cicero's sense of the state in his attack upon Catiline combines with the interests of the *optimates*; other less important reasons were added to these and, in the end, Cicero could not refuse to undertake Murena's defence.

The legal issue seems to be of secondary importance in this oration: Cicero's colleagues tackle the problem from a technical point of view; as for him, his speech is both legal and political (18); he always speaks as a consul, and this is the reason why he is the last one who speaks. It is the consul who is speaking in the *exordium* as well as at the moment of the peroration and of the last *promittam* and *spondeam* for which he,

17) Cf. *Mur.* 31-4, Cicero's reply.

18) A. BOULANGER, *Cicéron, Discours : Pour L. Murena*, Paris, 1957, p. 15.

as a magistrate, solemnly assumes the responsibility (19). Here, the political problems are what the speech is really about. To request the acquittal of the accused because of the services he gave -and could give again- to his country, is not an unusual kind of defence. But while writing *Pro Murena*, Cicero realizes how dangerous the situation is, so that three years later he writes in the *Pro Flacco* 98: "Even though his prosecutors were men of distinction, not one member of that jury thought that he should listen to a charge of electoral corruption; for Catiline was already in the field and I ensured that they all realized that two consuls were required on the 1st of January" (20).

Our attention must now be directed to Cato and Servius, the two most important interlocutors. Let us consider the figure of Cato (95-46), grand-nephew of Cato the Censor. He had a difficult personality, but he was sincere in his faithfulness to a mixture of Stoicism and Roman traditional principles (21). Two years after the long exhaustive evaluation of Cato's figure given in *Pro Murena* par. 58-83, Cicero confirms his dislike for Cato by describing him in a rather unfavourable way in *Ad Atticum* 2.1.8 (22). He does it by attacking the Stoic doctrine, which is quite strange, because in *De Finibus* it is Cato himself who

19) *Mur.* 41-90.

20) *Mur.* 98; trans.: C. MACDONALD, *Cicero. Pro Murena*, Cambridge Mass. & London, 1977.

21) C. MACDONALD, *Op. Cit.*, p. 176.

22) *Nam Catonem nostrum non tu amas plus quam ego: sed tamen ille optimo animo utens et summa fide nocet interdum rei publicae: dicit enim tamquam in Platonis, non tamquam in Romuli faece sententiam.*

supports the Stoic thesis, in the II and particularly in the III Book. It is even stranger that, after attacking him and jeering at him as a disciple of the Stoic doctrine in its strictest sense (though he also acknowledged in him a *virtus* which only the ancient Romans had (23)) Cicero wrote and dedicated his *Cato* to him after his death : this work involved him in a literary controversy, because Caesar wrote *Anticato* in reply. Also one must consider the personal relationship involved : Brutus, after divorcing, married Cato's daughter, so when Brutus praises Cato in *Brutus* we should consider the personal reasons he had for doing so (24).

It does not seem, at least from a practical point of view, that the attack upon Cato is connected with his kinship with Cato the *Censor* : Cato the *Censor*, who killed himself in 149, could not trouble Cicero. His reputation and his work were of the past : Cato could not reply. So Cicero was free to judge him without worrying about the hostility that this could stir in any of the lobbies. Cato was nevertheless a prominent figure in Roman history ; he was considered one of the fathers of the country ; Cicero in *Brutus* praises his qualities as an orator but also points out his lack of forensic style.

23) Cf. G. CALBOLI, *Cicerone, Catone e i Neoatticisti, Ciceroniana. Hommages à K. Kumaniecki*, Leiden, 1975, pp. 51-104.

24) Cf. R. GNAUK, *Die Bedeutung des Marius und Cato maior für Cicero, Historische-Abhandlungen*, 61 (1936), pp. 94-5; and: G. CALBOLI, *Op. Cit.*, pp. 66-9.

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Basically, judging by what Cicero writes and hints at around 46, he was on good terms with Cato from Utica: there was no reason why he should suffer the consequences of his uncle's deeds; there were no personal reasons for dislike, there was no political rivalry. Still, as we have seen, the judgement on him in *Pro Murena* is extremely severe. The possible explanations for this fact are two: either the judgement in *Pro Murena* is unreliable, or something happened between 62 and 46 which caused Cicero to modify his opinion. Since there is no evidence that something of this kind happened, we are left with the first explanation. As a matter of fact, Cicero himself gives us proof of its likelihood, when in *De Finibus* 4.74, he writes that the time to jest is passed: there not only does Cicero admit that his judgement was untrue, but he also specifies that its purpose was simply to amuse the audience (25).

This judgement, however, does not seem to be considered important, since scholars avoid any discussion of it (26). This leads us to reject its validity as far as our study is concerned.

However, it also throws a shadow on what we are now going to investigate. Cicero's judgement on Servius Sulpicius Rufus, certainly the most well-known and esteemed jurist of his time, through whose description we are trying to understand

25) *Non ego tecum iam ita iocabor ut iisdem his de rebus cum L. Murenam te accusante defenderem. Apud imperitos tum illa dicta sunt: aliquid etiam coronae datum; nunc agendum est subtilius.*

26) Cf. G. CALBOLI, *Op. Cit.*, mentions it quickly at p. 66.

Cicero's opinion on *iurisprudentia*, seems to be undermined from its very beginning by the doubt about its reliability.

The reconstruction of Servius Sulpicius Rufus's figure is essentially based on Cicero's reply. But Cicero's speech seems a personal attack on Servius more than a reply to Servius's treatment of *contentio dignitatis*, almost as if Cicero wanted to counterbalance a similar attack made by Servius on Murena. And this is puzzling : it seems quite a strange thing that Servius, a great jurist, should concentrate on a personal attack on Murena rather than on a proper legal argument. Besides, there is another element of uncertainty. Servius is generally considered as the most important accuser : but in fact, he could have been an ordinary accuser as it is possible to infer from the reading of *Pro Murena* 56. Then, if Servius is just one among the *accusatores*, what is the reason for such harshness ?

Cicero begins his reply by reminding Servius that, during the elections, he did all he could to help him, both as a friend and as a consul, but after becoming an accuser, there was nothing which could force him to choose Servius rather than Murena ; not to mention the fact that Servius himself behaved in the same way, he gave opinions even to his friends' opponents when they consulted him upon a point of law (27). Besides, according to Cicero, Servius used to boast excessively about his origin. From what we know, Servius served in the *urbana militia*, and after that he began to study *ius civile*. The reason for this choice is

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27) *Mur.* 9.

not clear: it seems, however, that Servius used to ask for *responsa* for his own clients from Quintus Mucius Scaevola, the *Pontifex maximus*, who once scolded him because he could not remember a *responsum* he was given. By saying that such an incapacity was disgraceful for a patrician, a *nobilis*, and a lawyer, Quintus Mucius Scaevola probably stung Servius to the quick, and therefore he devoted himself to the study of *ius civile* (28).

Servius would obviously emphasize his legal merits and claim that they should be proved in the forum rather than on the battle-field, as in Murena's case. Cicero's reply is biting, despite the irony implied in the comparison between *iurisprudentia* and art of war, which is all to Murena's advantage (29). In paragraph 23 he writes: "Since you seem to me to be hugging your knowledge of jurisprudence as if it were a darling daughter, I shall not allow you to be so mistaken as to think that this whatever-it-is that you have taken such pains to learn is in any way remarkable" (30). Should we confine ourselves to what Cicero writes in these two passages on *iurisprudentia*, our study would soon be over, and the conclusion would not be gratifying for *iurisprudentia* either.

The reconstruction of Servius's figure could go on, but it is now less interesting for us: it is clear that Cicero provides the

28) On the importance of that knowledge, cf. *Dig.* 1.2.2.43; *Brut.* 41.151.

29) *Mur.* 22.

30) *Mur.* 23; trans.: see note 20.

central point for our research through the judgement contained in the above quoted passage. It is more important now to decide how to consider Servius's figure as it is presented by Cicero in *Pro Murena*. In order to do that, it is necessary to reconstruct briefly the relationship between Cicero and Servius in a diachronic way. Basically, we have to find out other judgements on Servius.

The picture of Servius emerging from *Pro Murena* is terrible, but it is not isolated. We can find something similar to it in *ad Atticum* 8.1, written in 49: *Quo ego in numero essem, si hos lictores molestissimos non haberem, nec me M'. Lepidi, L. Volcaci, Ser. Sulpici comitum paeniteret, quorum nemo nec stultior est quam L. Domitius nec inconstantior quam Ap. Claudius*. As well as in *ad Atticum* 10.14, written in the same year: *Sed redeo ad Servium. Distulimus omnino sermonem in posterum, sed tardus ad exeundum 'multo se in suo lectulo malle, quidquid foret'*, which really means: 'consider him a totally unreliable coward'; see also *ad Atticum* 10.15, again written in 49: *Servi consilio nihil expeditur. Omnes captiones in omni sententia occurrunt. Unum C. Marcellum cognovi timidiorum*; finally, in *ad Atticum* 15.7, written in 44: *Servius vero pacificator cum librariolo suo videtur obisse legationem et omnes captiunculas pertimescere*.

On the contrary, the judgement is favourable in *Brutus*, *De Officiis*, *De Legibus*, and in the *Oratio Philippica Nona* ⁽³¹⁾.

31) For the passage and the text of *Brutus* see below.

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31) For the passage and the text of *Brutus* see below.

Indeed, the judgment is largely favourable: Servius is described thus: *a multis claris viris, nunc ab uno summa auctoritate et scientia sustinetur* (32), or as the one who *cum is esset qui omnes superiores, quibus honore par esset, scientia facile vicisset* (33); he deserves a funeral oration which begins thus: *Vellem di immortales fecissent, patres conscripti, ut vivo potius Ser. Sulpicio gratias ageremus quam honores mortuo quaereremus* (34).

The same attitude is to be found in the correspondence between Cicero and Servius. Even if in February 49 Servius is described as the most foolish, in *ad Atticum* 8.1, in May that same year, Cicero writes in *ad Familiares* 4.2: *Quid enim est, quod audeam suadere tibi, homini summa auctoritate summaque prudentia?* Three years later, in *ad Familiares* 4.3 he acknowledges to Servius a "*sapientia prope singulari*", and he also praises him for having warned the Senate against the incipient civil war, even before he himself (Cicero) could realize how imminent it was. In *ad Familiares* 12.2, written in 44, he who made peace with his small library, becomes: *summa auctoritate et optime sentiens*.

Once again we are faced with a number of contradictory judgements. Before analyzing what BAUMAN, BONA and MICHEL write about them, we can make an observation. Servius

32) *Leg.* 1.17: the whole passage refers implicitly to Servius.

33) *Off.* 2.65-6: the whole passage refers implicitly to Servius.

34) *Phil.* 9.1.

appears in Cicero's works when he is his political rival : *Pro Murena* of 62 is a fine example ; but during the 50's Servius almost disappears, since he was politically inactive then and therefore not dangerous ; he appears again in the late 40's in a contradictory way, then finally in a most favourable way for the last 40's of his life.

It is not by chance that the relations between Cicero and Servius become definitely friendly after Servius's reconciliation with Pompey : we must remember that Cicero had to be forever grateful to Pompey for his return from exile.

First of all, we have now to establish what connection there is between the two groups of judgements, because this will help us to establish the nature of the relationship between Cicero and Servius. There are several different approaches to the study of this relationship, each one of them focusing on a particular aspect of it.

According to Richard BAUMAN the relationship between Cicero and Servius is not steadfast (35). As above stated, Cicero usually speaks well of Servius, apart from the two exceptions of *Pro Murena* and of some letters (36). BAUMAN attaches great importance to *Pro Murena*, maybe too much ; as for the letters, he agrees that they should be reconsidered. He also suggests that, perhaps, the two of them were acquaintances more than

35) R.A. BAUMAN, *Lawyers in Roman Transitional Politics*, München, 1985.

36) Letters : *Att.* ; for the references see above.

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friends : in fact -he points out- '*familiares*' does not necessarily mean "friends" (37). Moreover, the word '*familiares*' was used elsewhere by Cicero in its first meaning, so that the hypothesis of a "simple, casual friendship" seems acceptable. BAUMAN does not say much more : it appears to me that he implicitly suggests that in *Pro Murena* Cicero's point of view and his words about Servius are basically those of a politician. I would add that Cicero, just like a politician, used Servius on this occasion because he needed an *exemplum a contrario* : it is useless, then to expect an unbiased opinion from Cicero in this context.

Cicero's use of Servius Sulpicius Rufus introduces a new aspect of their relationship. Cicero, particularly in *Brutus*, might have used Servius in order to get ahead with his project of '*ius civile in artem redigere*'. BAUMAN is doubtful about this point, he asserts that he needs a deeper study of the subject before giving his opinion (38). Ferdinando BONA, instead, by means of a brilliant exegetic reconstruction leads us to believe that Cicero

Scaevola, and many others too, had great practical knowledge of the civil law ; Servius alone made of in an art. This he could never have attained through knowledge of the law alone had he not acquired in addition that art which teaches the analysis of a whole into its component parts, sets forth and defines the latent and implicit, interprets and makes clear the obscure ; which first recognizes the ambiguous and then distinguishes; which applies in short a rule or measure for adjudging truth and falsehood, for determining what conclusions follow from what premises, and what do not. This art, the mistress of all arts, he brought to bear on all that had been put together by others without system, whether in the form of legal opinions or in actual trials"" (40), which has been interpreted as a picture of Servius as the main orderer of *ius civile* according with the rules of rhetoric and from the point of view of '*ius civile in artem redigere*'. BAUMAN claims that it is possible to counter it with the passage of Pomponius in *Digestum* 1.2.2.41.

In BONA's work, the argument is definitely more complex. In his opinion in *Brutus* Cicero switches from a comparison between the characters of two famous orators, Lucius Licinius Crassus and Marcus Antonius (main interlocutors in *De Oratore*), to a comparison between the characters of a famous orator and of a famous jurist, Crassus and Quintus Mucius Scaevola ; and finally to a comparison between Quintus Mucius Scaevola and Servius Sulpicius Rufus. The reason for this series of

40) *Brut.* 152-3 ; trans. H.M. HUBBEL, *Cicero. Brutus*, Cambridge Mass. & London, 1939.

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40) *Brut.* 152-3; trans. H.M. HUBBEL, *Cicero. Brutus*, Cambridge Mass. & London, 1939.

comparisons -BONA continues- becomes clear while reading *Brutus*: Cicero is preparing the ground for self-praise; the fact that he praises Servius Sulpicius Rufus even more than Quintus Mucius Scaevola the *Pontifex* is linked with it. According to BONA, in *Brutus* 161 Cicero implicitly gives credit to himself for having provided Crassus with what he lacked to reach summum (41). Another passage, *Brutus* 162, reads like indirect evidence of such an explanation: *Erit, inquit Brutus, aut iam est iste quem expectas?* This leading question contains an obvious reference: indeed, there is such a person, it is Cicero himself.

It would be possible therefore to couple the various characters in a different way: as a result of the change between the two couples Quintus Mucius Scaevola the *Pontifex* - Lucius Licinius Crassus, and Servius Sulpicius Rufus - Marcus Tullius Cicero, the couple Quintus Mucius Scaevola the *Pontifex* - Servius Sulpicius Rufus could be replaced/placed side by side with the couple Lucius Licinius Crassus - Marcus Tullius Cicero (42). Cicero's dream of '*ius civile in artem redigendo*', could become true only with the help of such a deep knowledge of rhetoric as only an orator could have: he attributed it fictitiously to Servius, who, in this way, becomes the most important one. At least, this is what seems to emerge from *Brutus* 151-3.

41) Cf. F. BONA, *Op. Cit.*, p. 353.

42) Cf. F. BONA, *Op. Cit.*, p. 352.

But BONA writes : "Servius used the resources of dialectics to throw light just on a peculiar activity, the one described by the expression *agere et respondere*, within which many others acted *confuse* (43). By doing so, Servius does not fulfil Cicero's project of '*ius civile in artem redigere*'. It is evident, by now, how the placing of Servius above Quintus is instrumental to Cicero's purpose : it was necessary to exalt the only one who could have fulfilled the project. What the aim of such a project was, is quite another matter (44).

Once again Cicero makes use of somebody for his own ends : in this case, of Servius Sulpicius Rufus. If BONA is right, the man Cicero praises is a friend, an excellent jurist, but above all an instrument for Cicero's own ends. That is why, I presume, BONA mentions Cicero's presumption, by quoting the famous passage from *Pro Murena* in which Cicero boasts of how, no matter how busy he could be, he could become a jurist in three days (45). Here, BONA mentions Servius Sulpicius Rufus only marginally, though Servius too was against Cicero : I believe this is an implicit confirmation of the unreliability of Cicero's severe opinion on Servius in this work.

We have here, then, another example of how Cicero could use a person for motives different from those expressly mentioned. It is interesting to recall at this point, a famous

43) Cf. F. BONA, *Op. Cit.*, p. 354 ; trans. : ours.

44) See F. BONA, *Op. Cit.*, p. 378-382.

45) Cf. F. BONA, *Op. Cit.*, p. 378. *Mur.* 28.

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Ciceronian attack contained in the first Catiline oration : *quousque tandem, Catilina, abutere patientia nostra*. The apostrophe of this *exordium* is meant as a speech which is apparently addressed to someone different from the obvious audience ; this proves that there is a good deal of *peritia rhetoricae* in Ciceronian orations : they could lack *minutiae legis*, but never *minutiae rhetoricae*.

In conclusion, it seems to us that also BONA is inclined to consider Cicero's judgement on Servius Sulpicius Rufus in *Pro Murena* as untrustworthy. It is important to point out that BAUMAN's conclusion seems to be just the same, but while his point of view is an historical-political one, BONA's interests have a more literary character : he analyzes the figure of Servius in *Pro Murena* in order to decide how to consider his praising within the project of '*ius civile in artem redigere*'.

The instrumental character of Servius's praise is one of the cornerstones of Jacques-Henri MICHEL's interpretation (46). The conclusion MICHEL reaches, after supposing at the beginning of his study that Cicero wanted to ridicule a doctrine (in this case, the legal one according to which Murena should have been punished), is that the easiest thing to do was to ridicule the most famous of its representatives, that is to say, Servius Sulpicius Rufus (47). MICHEL analyzes several of the legal institutions

46) J.H. MICHEL, *Le droit romain dans le Pro Murena et l'oeuvre de Servius Sulpicius Rufus, Ciceroniana. Hommage à K. Kumaniecki*, Leiden, 1975, pp. 181-195.

47) J.H. MICHEL, *Op. Cit.*, pp. 181-2.

mentioned in the oration, particularly : the *actio finium regundorum* and the *actio aquae pluviae arcendae* ; the *legis actio in sacramento* ; some aspects of conditions for women and problems concerning the loss of protection. These are issues Cicero possibly discussed with Servius Sulpicius Rufus himself who certainly dealt with each of these issues at some stage. This is suggested by Brutus 156 : *audivi enim nuper eum (= Servium) studiose et frequenter Sami, cum ex eo ius nostrum pontificium, qua ex parte cum iure civili coniunctum esset, vellem cognoscere.*

Thus, Cicero finds himself in a case which seems lost from the start, since he has to refute and demolish a doctrine which is actually valid. He lets us understand that he is aware of being wrong, but still he attacks Servius Sulpicius Rufus in a grand manner. First, he plays down and eventually brings to nought Servius's juridical ability so that Servius's doctrine could not be called in question against Murena. In this way, Cicero gets rid of the part of his argument concerning jurisprudence and tackles it from a rhetorical-political point of view. At this point, Cicero can give Servius the finishing stroke : Cicero compares Servius's to Murena's ability in the art of war and to his usefulness for Rome. Servius's prestige is shattered : his *peritia iuris* seems nothing compared to Murena's *ars militaris*. Cicero, once he is in his sphere of action again, could destroy anybody : thus Servius's authority is ruined, he has been ridiculed if not humiliated.

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thing was to destroy him, so that Servius's doctrine could not prevail and Cicero could win. We can not forget that, despite what Cicero says in *Pro Murena*, at that time Servius Sulpicius Rufus was already a very influential jurist and his advice was esteemed.

MICHEL's observations, therefore, confirm once again the untrustworthiness of Cicero's opinion about Servius as it is given in *Pro Murena*.

Summing up the elements we have been gathering so far, we can say that there is some consistency in them: both the opinion on Cato and that on Servius Sulpicius Rufus are unreliable.

We still have to consider in which part of the oration Cicero chose to place the passages we are interested in. They are in the *refutatio*, the very heart of the persuasive speech, where Cicero resorts also to *artificiales*, which are proof by induction, or *exemplum*. This is also new evidence of Cicero's great *peritia rhetoricae*. But the description of a case, or the account of a fact, placed within an argument, can be considered as examples only when they confirm a rule. And they have to be indisputable in order to fulfil this function. A major question springs to mind immediately: did Cicero's *refutatio* respect this rule?

Finally, as a general comment on what has been said so far, we must mention one of Cicero's many contradictions: here in *Pro Murena* 61, answering Cato, he says: "Seeing, too, that I do not have to address an ignorant crowd or some gathering of rustics, I shall be a little more venturesome in discussing the liberal studies which are so familiar and agreeable to us

both" (48). While in *De Finibus* 4.74, he says, referring to *Pro Murena*: *Apud imperitos tum illa dicta ; aliquid etiam coronae datum: nunc agendum est subtilius*. His judgement is completely reversed : either one or the other is untrue. Here we have yet another proof of how untrustworthy the judgements contained in Cicero's orations are, and of how circumspect we must be reading them.

The analysis of the first group of orations (formed by *Pro Caecina* and *Pro Murena*) ends with the rejection of Cicero's judgements on *iurisprudencia* contained in it.

1.2.1 *Pro Cluentio*

These are the facts : in 66, Cicero undertakes Cluentius's defence. Cluentius is accused, among other things (and the following is just a minor charge) of having caused Oppianicus's unjust conviction in collusion with Junius. Junius was chairman of the criminal jury which sentenced Oppianicus : the names of those who formed the jury -drawn by lot- were incorrectly recorded in the special register by Verres, praetor in Sicily.

Cicero writes in *Pro Cluentio* 90-91 that Quinctius should have waited a few days before conducting his prosecution based entirely, not on the merits of his case, but on its circumstances, and on his own prerogative. Quinctius demanded a fine because Junius had omitted to take the official oath, and also because the

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record of the city praetor, (*the moral and scrupulous C. Verres*), which was produced, full of erasures, at the trial, contained no note of his having filled up a vacancy among the jurors. According to Cicero these were the trivial and unsubstantial reasons which led to the conviction of C. Junius, reasons which ought never to have been admitted before the court. Let us compare this passage with *Actio in Verrem Secunda* 1.157-158 where Cicero returns to this case describing the kind of precautions that Verres has learnt to take in these cases of 'collusion' : to take records, private and official, to insert what never happened and to erase what did, and always to scratch out or to alter or to interpolate something (49).

The quoted passages present two totally contrasting judgements on Verres.

In the *Verrine* Cicero accused him also for the following reason : he claimed that Verres had incorrectly recorded the names of those who formed the jury in Oppianicus's trial in collusion with Junius. It was certainly not a mere complaint about a formal irregularity, it was an actual accusation against Verres made by Quinctius, tribune of the people, and supported rather vehemently by Cicero : Verres was obviously accused of having introduced his confidence men in the jury, and of having arranged it with Junius. What is described in 70 as a serious offence, is turned into a simple oversight in 66, and Verres

49) See also *Actio in Verrem Prima* 29 and 39.

appears then as a “*sanctus*” and “*diligens*” man to Cicero's eye (50).

The incompatibility of two judgements expressed in different years is a problem to which we are used by now. But this time both the judgements belong to *orationes*: this makes it more difficult to establish which one is the most trustworthy.

There are three elements to be taken in account: the recurrence of the word ‘tempore’ in the passages quoted above; their belonging to a specific part of the oration; and the following judgement: “*C. Verres, praetor urbanus, homo sanctus et diligens*” (51).

‘*Tempore*’ recurs twice within a few lines in *Pro Cluentio* 90-91, while it is not present at all in the long accusatory passages in the *Verrine*. So, although the two situations are similar from a legal point of view, in one case the word does not occur at all, while in the other it is almost over-emphasized. The meaning of the word ‘*tempore*’ can also be related to the moral aspect of a period. This meaning of the word was certainly known by Cicero, who used it in the *Verrine*: “*summo reipublicae tempore*” (52). Now, it seems strange that Cicero did not mention it in the *Verrine*, in his accusation concerning Oppianicus's unjust conviction. It seems strange because this word is an essential factor in *Pro Cluentio*, in the formulation of

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the defence: 'tempus', then, could be a new element, or perhaps the only new element in Cluentius's defence.

As for the second element, not much information can be derived by considering the part of the oration in which the particular passage is placed. The passages quoted above from *Pro Cluentio* belong to a "first part", more precisely to a "discussion", maybe a *refutatio* (53). The passages from the *Verrine* belong to different parts of the oration; since the partition of it is not definite, it is hard to tell whether they are in the *narratio* (as it seems for *Actio in Verrem Secunda*) or in the *peroratio* (as it seems for *Actio in Verrem Prima*) (54).

Cicero's flattering judgement on Verres is translated by HODGE with these adjectives: "moral" and "scrupulous" (55); by BOYANCÉ with "homme respectable et consciencieux" (56): both of them are authoritative translations, but we can add some observations about the descriptive adjectives. 'Sanctus' refers to a character who is morally pure, righteous, innocent, just. Cicero uses this word in this sense in the same *Actio in Verrem Secunda* 5.49: *unum (hominem) praeter ceteros in publicis*

53) For the reconstruction of the 'speech analysis', cf. P. BOYANCÉ, *Cicéron, Discours: Pour Cluentius*, Paris, 1953, pp. 14-8. The last observation is ours.

54) For the reconstruction of the 'speech analysis', cf. H. DE LA VILLE DE MIRMONT, *Cicéron, Discours: Action contre C. Verres*, Paris, 1960, pp. 84, 119-20.

55) H. GROSE HODGE, *Cicero. Pro Cluentio*, Cambridge Mass. & London 1929.

56) P. BOYANCÉ, *Op. Cit.*

religionibus foederum sanctum ac diligentem. To be 'diligens' means to be attentive, diligent, scrupulous, conscientious in one's attitude towards an inanimate object; again, Cicero uses this word in this sense in *Verrine*, in *Actio in Verrem Secunda* 1.126: *Homo ... qui in re adventicia atque hereditaria tam diligens, tam attentus esset*. Among the many shades of meaning that these two adjectives can have, Cicero knew those above mentioned well (as is proved by the sentences quoted from the *Verrine*). They do not seem to suggest either a particularly favourable opinion or a particularly bad one. Most of Cicero's contemporary authors used them in this very sense, as can be verified by checking in any Latin dictionary or *index verborum*. This means that Cicero was perfectly aware of what he was writing, and consequently that his judgement on Verres did undergo a radical change.

Let us now concentrate on the following elements: on Verres's figure as it appears in *Pro Cluentio*: "*praetor urbanus homo sanctus et diligens*"; on the value of the accusation which caused Junius's conviction: "*levissimimis et infirmis-simis*" (57); and on 'tempore', since it seems to be the real cause for the conviction. If Cluentius's defence had been written before the accusation against Verres, it would have been possible to think that Cicero was not informed of Verres's wrong-doings, and that he changed his opinion on him only after knowing Verres's deeds. But this was not the case: Cicero delivered the *Verrine* four years before *Pro Cluentio*. Such a short period

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would not be enough to forget the severe accusations Cicero made, and the important orations which allowed him to triumph over Verres and against Hortensius (58).

So, there is a contradiction, and it is so serious that probably even the opposing patron noticed it.

Actually, it seems that T. Atticus alleged the results of the inquiry as they were presented during the trial by Cicero, in favour of the prosecution. Indirect evidence of this is possibly given by Cicero's obscure reply in *Pro Cluentio* 138: Cicero here pretends he forgot that he had delivered it, probably in *Actio Prima in Verrem* 38-40. Some more from *Pro Cluentio* 139: "If in fact I really did say anything of the kind, I was not speaking of a fact within my personal knowledge nor did I say it in evidence: my speech was the outcome rather of the exigencies of the moment, than of my deliberate judgement. In my capacity as prosecutor I had made my first object to work upon the feelings both of the public and of the jurors, and I was quoting, not from my own opinion, but from current rumour, every case that told against the courts, and I was therefore unable to pass over the case of which you speak, as it was then a matter of general notoriety. But it is the greatest possible mistake to suppose that the speeches we barristers have made in court contain our considered and certified opinions; all those speeches reflect the demands of some particular case or emergency, not the individual personality of the advocate. For if a case should speak

58) Cf. G. PUGLIESE, *Cicerone fra diritto ed oratoria. Studi in onore di A.C. Jemolo*, pp. 563-87.

for itself no one would employ a pleader. As it is, we are employed to express, not the conclusions warranted by our own judgement, but the deductions which can be made from the facts of the case. There is a story that the brilliant M. Antonius used to say that his reason for never having written any speech was that, should he have occasion to regret anything he had said, he might be able to deny having said it : as if indeed men do not remember anything we have said or done unless we have committed it to writing !" (59). At this point, this is no longer an obscure reply, but a description -a little pettifogging maybe- of the profession of a lawyer.

In the last quoted statement, not only does Cicero deny what he had previously said about Verres, but he also (though maybe not deliberately) casts a shadow on all the statements contained in his orations (60). Their trustworthiness is profoundly affected by it. Thus, the scholar is faced with a difficult problem, because even if that statement were false, this would not make all the others automatically true. Moreover, it is hard to tell what kind of arguments could prove that one statement is reliable and all the others are not. Above all, the above mentioned statement produces a *regressus ad infinitum* : if it were true, all the others would be false ; but since if itself is false -because it contains its own negation-, it is impossible to tell the false ones from the true ones.

59) *Cluent.* 139-40 ; trans. H. GROSE HODGE, *Op. Cit.*

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Finally, we have to analyze the most important passage for our research: *Pro Cluentio* 147-148. It contains a eulogy of the *ius civile*, and the defence of *exceptio legis*, on which -in the case in point- Cicero relied to have Cluentius acquitted. The passage itself could be important, but after what is mentioned above, it is difficult to consider it reliable (61). Besides, Cicero praises the law and at the same time he defends the *exceptio legis*; this may seem a contradiction in terms, but it is in fact a skilful rhetorical device. It is clear that this praise is instrumental to Cicero's end, that is the legitimating of *exceptio legis*.

In conclusion, we can say that the praise of *ius civile* contained in *Pro Cluentio* 147-148 is insincere. There are essentially three reasons for saying so. The first one is: the peculiarity of such praise is definitely its instrumental character. The second one is that it is extremely difficult to trust Cicero when we know that he could fall into as sensational a contradiction as the one involving Verres. The third one is that it would be pure tightrope-walking to prove that Cicero's orations are a reliable source for the reconstruction of his thought, especially after having read the passage *Pro Cluentio* 139, on orator's activity in the forum.

There is something else: the problem mentioned as the third one in the list above affects the whole body of Cicero's orations,

61) At this stage, it does not really matter to point out that this passage belongs to the *refutatio*.

we must bear this in mind during the analysis of the other orations.

1.2.2 *Pro Fonteio, Pro Flacco* and *Pro Scauro*

These orations are considered in order to show some of the inconsistencies or contradictions to which Cicero presumably was prone (62).

In *Pro Fonteio*, written in 69, the whole *refutatio*, fragment 13 - 18,40, is studded with attacks against the unreliability of Gauls as witnesses (63). See particularly 10 - 16,36, and above all 13, where Cicero says that Romans have faithful allies everywhere; all of them are faithful, the Greeks from Massilia included, except the Gauls. In the *peroratio* 41, the Macedonians' faithfulness is praised again. And then in 44 Cicero describes once again the Gauls' savage and unconscionable assault of barbarism and acknowledges the great loyalty and faithfulness of the Greeks.

It seems, though, that he was wrong there, since in 59, in *Pro Flacco* 11, he writes that when a Greek witness is in the box he acts as the most shameless and the fastest talker. Then, in this

62) Cf. G. PUGLIESE, *Op. Cit.*

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refutatio, Greeks become the most untrustworthy witnesses on earth (64).

But in 54, Greeks are no longer the worst witnesses: this title is now bestowed on Phoenicians and Sardis, descendants of the Greeks. In *Pro Scauro* 38 the witnesses' credibility is described as destroyed by their very unanimity, by their covetousness, and by their national character itself. And in *Pro Scauro* 42 the Sardis, who are sprung from the Poeni with an admixture of African blood, deserve to be considered like their ancestors the Phoenicians, the most treacherous of nations. In this *probatio* the Phoenicians - and the Sardis as their descendants - are now described as untrustworthy witnesses (65).

It is not impossible that the Greeks did prove themselves untrustworthy during the ten years between *Pro Fonteio* and *Pro Flacco*, and it is also not impossible that Phoenicians and Etruscans proved themselves even more untrustworthy than Greeks during the five years between *Pro Flacco* and *Pro Scauro*.

The peremptoriness of Cicero's statements is easily explicable if one considers their context and place, but still the

64) For the reconstruction of the 'speech analysis', see A. BOULANGER, *Cicéron, Discours: Pour L. Flaccus*, Paris, 1959, pp. 73-75.

65) For the reconstruction of the 'speech analysis' and its collocation in the *probatio* (a work based on the difficult reconstruction of the text by A. C. CLARKE) see P. GRIMAL, *Cicéron, Discours: Pour M. Aemilius Scaurus*, Paris, 1976, pp. 163-6. It seems to me, however, that this episode is an example of the excessively bold use of arguments. I can not see any contradiction with the previous statement on Greeks. *Contra*: G. PUGLIESE, *Op. Cit.*, pp. 579-80.

inconsistencies and contradictions are so frequent that it is really doubtful whether the orations can safely be or properly seen as a source for the study of Cicero's thought.

1.2.3 *Interrogatio in Vatinium and (Pro) Vatinius*

The *Interrogatio in Vatinium*, being an atypical oration (or rather an *interrogatio*), does not comply with the usual rules of rhetorical composition. Its lashing criticism, its declamatory tone, becoming questioning at the end, are particularly intense. It reads like a harangue centred on a comparison between two men's attitudes and careers (66). I would suggest the consideration of this as an example of "evidence by induction" (*exemplum*) (67). The judgement expressed in 42 (and it seems to belong to the *conclusio*) is really slanderous: *sed hoc quaero, num P. Sestium, qua lege accusandum omnino fuisse negas, ea lege condemnari putes oportere, aut, si te in testimonio consuli noles, ne quid tibi auctoritatis a me tributum esse videatur, dixerisne in eum testimonium de vi, quem negaris reum omnino de vi fieri debuisse.*

An oration on this subject does not exist, but we know that Cicero in 54, that is, two years after the *Interrogatio*, undertook

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Vatinius's defence; *Vatinius* was accused of rigging an election (68).

Even in this case, though, it would be hasty to speak of contradiction, at most Cicero's treatment of the subject could be blamed as too bold (69). But once again we must conclude by recommending caution when dealing with Cicero's thought as it emerges from the orations.

1.2.4 *Pro Caecina* and *Pro Cluentio*

We will conclude by considering the contrast between two opposite descriptions of *Fidiculanus Falcula*, contained in two already analyzed orations: *Pro Caecina* and *Pro Cluentio*. *Fidiculanus Falcula*, senator and substitute judge in the trial against *Oppianicus*, is accused of corruption (70). In *Pro Caecina* he appears as a witness, and Cicero depicts him thus 30: *nonne concedas interdum ut excusatione summae stultitiae summae improbitatis odium deprecetur?* after haranguing him by means of forceful arguments throughout the whole passage 28-30. Then, three years later, 59, in *Pro Cluentio*, we have the same Cicero and the same *Fidiculanus Falcula* has now nothing to do with whatever he used to be accused of, in fact those same

68) Presumably, it was a charge of *ambitus*, as in *Murena's* case. See above 1.1.2.

69) Cf. G. PUGLIESE (*Op. Cit.*) seems to be less indulgent.

70) A trial previously mentioned, 1.2.1, in relation to Cicero's change of opinion on *Verres*.

charges Cicero made against him in *Pro Caecina* to discredit him as a witness are forgotten. As a matter of fact, Cicero says, Fidiculanus was acquitted after all : he then becomes in *Pro Cluentio* a rehabilitated and totally reliable witness (71).

It is possible that the charge against him was dismissed at some point during the period between the two orations, but we do not know when exactly.

Nevertheless, this is minor evidence we have mentioned for the sake of being thorough but it is not very meaningful.

1.3. Conclusion: *Reiectanea Sunt*

The object of this work was the analysis of Cicero's orations in order to find out his statements or judgements on *iurisprudentia*, and more widely his consistency in using arguments to defend clients under trial. We began by pointing out some passages, mainly from *Pro Caecina* and *Pro Murena*, to a lesser extent from *Pro Cluentio*, which meet this requirement.

Then, we considered such passages in relation to the oration itself and to the context in which they appeared.

The results of such analysis are unfavourable to Cicero's judgements as they show them, at any rate as expressed in those passages, to be untrustworthy.

71) *Cluent.* 104 and 13.

charges Cicero made against him in *Pro Caecina* to discredit him as a witness are forgotten. As a matter of fact, Cicero says, Fidiculanus was acquitted after all: he then becomes in *Pro Cluentio* a rehabilitated and totally reliable witness (71).

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We added to this other unfavourable observations which emerge from the examination of a number of orations containing discrepancies, inconsistencies or contradictions.

These two facts reinforce our belief that in Cicero's orations reliable judgements on *iurisprudentia* are not to be found.