

Tamás Nótári

LAW, RELIGION AND RHETORIC IN CICERO'S PRO MURENA

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## FOREWORD

Marcus Tullius Cicero delivered his speech in November 63 B.C. in defence of Lucius Licinius Murena, an applicant for the office of the next year's *consul*, who was charged by his competitors with election fraud, *ambitus*. The condemnation of Murena would have broken not only the commander's political career, it would have driven the Republic into serious danger. So, it was not only the honesty of a member of the Roman political elite but the stability of the Roman State Cicero was destined to defend, as he clearly states it in his *oratio*. In his statement of defense, it is not primarily the personal merits of the competitors, Licinius Murena and Sulpicius Rufus that the orator compares, it is their career, the commander's, the jurist's activity that he puts on the scales of public good, and provides a fairly humorous, witty assessment of these. The outcome of the lawsuit is known, the court acquitted Murena, who thus was able to start his service as a *consul*, and take over the office from the previous year's *consul* and his own counsel for defense, Cicero.

The present book aims to explore the legal, historical and rhetorical background of *Pro Murena*, and to analyse two paragraphs – para. 26 and para. 27 – of the *oratio* in terms of law, religion and the history of rhetoric. In the literature of the past few *decennia*, Cicero's *Pro Murena* was last time made the subject of in-depth study in his monograph by Alfons Bürge, who provided a detailed analysis of the paragraphs of the *oratio* covering *contentio dignitatis* called *Juristenkomik* by him. Given such prefiguration, it is not an easy task to examine either the legal history or rhetorical aspects of the same speech. In the process of research the author made an effort to keep in view the criteria of building primarily on sources. Owing to the interdisciplinary approach applied, the scope of subject and objectives of this monograph is narrower, on the one hand; and broader and more diverse, on the other, than the themes of Bürger's monograph. It is narrower because after the general passages in chapter one, which discusses the historical and legal background of *Pro Murena*, and presents the theoretical and practical aspects of Cicero's humour, it is not the entire *oratio*, neither the whole *contentio dignitatis*, but only paragraphs 26 and 27 of the speech that it analyses. And then it is broader since it examines these parts not only and strictly in terms of the content of the text but through addressing all the questions that this text raises.

The core of paragraphs 26 and 27 to be discussed in chapter two is the formal conservatism of the law of the archaic age depicted by Cicero – perhaps in accordance with the rhetoric situation rather than his own conviction – as a trait to be mocked at. More precisely, its rigid insistence on the text of legal acts, sometimes opposing real conditions of life and *ius* meant to implement the idea of justice. While searching for

the reasons of this rigidity, which is intensely present everywhere in Roman mentality, and examining Cicero's relation to literal and equity based legal interpretation, this paper makes detours at several points to a wide range of subject areas that belong to religion and literary history rather than to stricto sensu legal history examination. However, the analogies that can be outlined and the conclusions that can be drawn from them might lead to better understanding of the structure of specific legal and religious institutions, and the way they are embedded in antique thinking and imagination. That is why the themes and methodology of this paper is more diverse; yet the threads that seemed to run apart during work meet in a synthesis.

Gábor Hamza



## PREFACE

At this stage, an explanation must be given for the title “*Law, religion and rhetoric in Cicero’s Pro Murena*”. The speeches of Cicero had practical motivations. The lessons that can be drawn from them concerning law and order and the legal procedure of the given age are necessary consequences, and the legal themes outlined in them are the means rather than the aims of the *orator*. When examining these speeches, one cannot make a strict separation between legal and philological questions. Favouring one aspect exclusively to the detriment of the other would mean destroying the organic and structural unit of the source, and this approach would also oppose the thinking of Cicero, who always aimed at complexity. In Rome, especially the Rome of the archaic age, legal and sacred beliefs formed an organic structure. According to today’s terms, it would be justified to draw a distinction between the two, but the dangers present in the unjustified application of these modern categories in the Antique Age could hardly be avoided. If we try to accept this complexity, we might come closer to the thinking of the Romans, who made almost no distinction between religion and politics. This is especially true in light of the fact that the examples cited in Cicero’s *Pro Murena* – which refer to the moments of the *legis actio sacramento* and *coemptio* – originate from the organic unit of the *ius* and the *sacrum*. At many points of our work, we could not aspire to process all related literature because in the case of certain topics. Moreover, considering that our aim was not to present every institution at full length, this seemed unnecessary.

It is worth giving an explanation for connecting the three elements, law, religion and rhetoric included in the title. Cicero’s *orationes* were drafted from practical considerations. The deeper understanding of the legal and religious order of the age that can be gained from them are necessary consequences; the legal subjects expounded in them are the orator’s means rather than targets. When examining these speeches one cannot strictly separate the legal and philological questions raised; to enforce exclusively a particular aspect at the expense of the other would impair the organic wholeness, structural unity of the source, an approach contrary to Cicero’s thinking, who always attempted to achieve complexity. In Rome, especially in Rome of the archaic age, legal and sacral images constituted an organic unity; to separate them could be justified by our present methodological concepts but it would be difficult to avoid the danger of projecting the categories used by us with no reason and artificially back to the antiquity. Perhaps it is easier to come close to Roman thinking that considered religious and political activities almost identical, if one tries to accept this complexity.

In chapter one the historical background of the speech delivered in 63 B.C. will be described, then, the structure of the *oratio* will be presented. In view of the fact that charges against Murena was made on the grounds of *lex Tullia de ambitu*, it is necessary to outline the development of *quaestiones*, and the regulation of election fraud. In addition to the career of Lucius Licinius Murena, it is worth casting a glance on what part Cicero attributes to war and military glory for in *contentio dignitatis* it is not only the persons of the candidates for *consul* but the activities pursued by them that the orator compares. Cicero and Servius Sulpicius Rufus, the most excellent jurist of the last period of the Republic, who otherwise maintained a good friendly relation, were confronted in the lawsuit as opponents, and only by giving a brief account of the life and works of the *iuris consultus* can it be made clear that it was merely the rhetoric situation that made Cicero to put the life work of Servius Sulpicius behind that of the commander. This is organically connected to the issue of the position of jurisprudence in *Corpus Ciceronianum*, and the relation between the orator's views on *iurisprudentia*, which can be read in his other works, and the statements made in *Pro Murena*. As in several cases, in *contentio dignitatis* it is the orator's career rather than that of the soldier that Cicero compares to the jurist's career, it does make sense to examine the theory on the training of *perfectus orator* summed up in *De oratore*, and, more specifically, the *orator's* attitude to each specific field of arts and science. In *Pro Murena* the orator turns in several cases to the weapon of humour and irony; against Servius Sulpicius and the formalism of *iurisprudentia*, on the one hand; and against Cato minor's stoicism, on the other. After having surveyed key sources on the theory of humour and irony in antique rhetoric and especially in Cicero's theoretical works, his delicately witty loci relevant in terms of *contentio dignitatis* will be looked at and commented upon.

In paragraph 26 of *Pro Murena* Cicero quotes the text of the ritual of *manum conserere*, that is, the act of the procedure *legis actio sacramento in rem* applied in the *vindicatio* of land, and makes its formalism ridiculous by making humorous comments. The procedure *manum conserere* is a peculiar manifestation of Roman mentality, consequently of the well-known formal conservatism of Roman law. First, it is our intention to compare Cicero's description with relevant loci from Gaius and Gellius, and to draw some conclusions regarding the *vindicatio* of land. *Legis actio sacramento in rem* has ever been and continues to be one of the most debated issues in the literature on Roman law; the books and papers written on it have now amounted to a complete library. The aim in this paper is not more than to highlight the possibility – mostly based on sources – to blend the motifs of the sacred and private fight in the structure of *legis actio sacramento in rem* as organically and mutually supplementing rather than contradicting components. The sacred character of the procedure is proved by close to neurotic insistence on the words to be spoken; the same is demonstrated by parallels and explained by some examples. Gaius points out that in the procedure the rod was used instead of the spear as it were to symbolise lawful property since it was what they

had taken from the enemy that they considered their own the most. It is in harmony with Gaius's view when Verrius Festus asserts that the spear is the symbol, embodiment of supreme power. The traces of private fight and the act of taking the law into one's own hands are shown by the origin of the term *vindicatio* and the act of using the rod instead of the spear in the procedure, all the more as this is explained also by Gaius that it was mainly what they had taken from the enemy, that is, obtained by fight that the Romans considered their own. The publicly known close connection between the spear and Mars cult will be investigated from the following aspects: the structural connections of Mars's *numen* and spear adored with religious respect, and the appearance of *hasta Martis* in various rites. *Ius fetiale* regulating the rights of war and peace in the archaic age is a manifest example of how religious and combating elements were intertwined. The structure of *rerum repetitio* and *clarigatio* is in many points similar to *legis actio sacramento in rem*, all the more as it is organically related to *devotio* described earlier and to the symbolic realm of the spear. In Plautus's comedy entitled *Casina* decision is made by divine judgment followed by ritual fighting on who is entitled to the right of disposal over the slave girl in the title role, in this procedure there are striking similarities to *vindicatio* known from Gaius.

In paragraph 27 Cicero makes certain institutions of marital law, in particular, two subtypes of *coemptio* the subject of his criticism, on the one hand; and depicts the recitation of "*ubi tu Gaius, ego Gaia*" performed during the ceremony of marriage taken out of its original context as a textbook example of empty formalism with piercing irony, on the other. As Cicero draws his *exempla* from this category, the investigation that follows is confined to marriage with *manus*, and will cover the following issues in detail. First, the engagement, then, the ways the marriage is entered into, and *manus* is obtained; divorce, and the forms of terminating *manus*, and the relation of *uxor in manu* to *agnatio*. The reason for giving a more extensive description of the institutions related to marriage, more specifically, the husband's and father's power, is that in this paragraph Cicero refers not only to the subtypes of *coemptio* and a segment of the ceremony of the conclusion of marriage but addresses the issue of the *status* of women being under power in a more general scope. At the same time, Cicero declares that although lawyers had kept the words themselves in the entire *ius civile*, they had abandoned *aequitas*. The remark "*aequitatem reliquerunt, verba ipsa tenuerunt*" is fully in harmony with the *proverbium*, quoted also by Cicero, widely used in the period of the Republic, and having been preserved until now in the very formulation transferred by him: *Summum ius summa iniuria*, i.e., *law enforced to the greatest extent will lead to injustice of the greatest extent*. One can find several examples of both literal and equity based legal interpretation in *Corpus Ciceronianum*; therefore, a brief outline of the development of the concept of *interpretatio* itself and changes in its meaning will be given; then, the occurrences of "*Summum ius summa iniuria*" as a legal interpretation principle will be taken into account in the sources of Roman literature, focusing on Cicero's *locus*. The meaning of *summum ius* should be surveyed focusing on the rela-

tion between the thought *ars boni et aequi* and the concept of justice / equity in texts of legal sources and Cicero.

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# LEGAL AND RHETORIC BACKGROUND OF THE SPEECH

## I. The historical background and structure of the speech

### I. 1. The historical background of the *oratio*

In 63 B.C., Lucius Licinius Murena and Decimus Iunius Silanus were elected *consules* for the year of 62. Apart from them, however, Lucius Sergius Catilina and Servius Sulpicius Rufus, the most excellent jurist of his age also applied for this office. Before the election, M. Porcius Cato made an oath that he would charge anybody who had won the election with *ambitus*, except for his brother-in-law, Silanus,<sup>1</sup> which later fulfilled threat was primarily aimed at Catilina, but also affected Murena, who was elected together with Silanus. The losing party, Servius Sulpicius had started to collect evidence on his rival's illicit profiteering before the election during the campaign.<sup>2</sup> In Rome it was far from being a rare thing to charge the *magistratus* elected with *ambitus*. In 66 both *consules designati*, P. Cornelius Sulla and P. Antonius Paetus were actually condemned, and in 54 none of the four applicants managed to avoid the proceedings taken due to *ambitus*.<sup>3</sup> The act of condemning a *consul designatus*, as a matter of fact, was likely to shake the stability of the *res publica* to a considerable extent.<sup>4</sup> The fact that the charge made by Sulpicius and Cato went far beyond the usual extent of the possible danger to the *res publica* was justified by the events taking place in the year of 63. The delivery of *Pro Murena* can be dated to November 63; that is, one of the periods burdened with the greatest crisis of the Roman Republic. The year of 63 – when Marcus Tullius Cicero and Caius Antonius Hybrida became *consules* – saw the second Catilina plot.<sup>5</sup> What follows is a brief summary of the key events of the conspiracy.<sup>6</sup>

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<sup>1</sup> Plut. *Cato min.* 21, 3.

<sup>2</sup> Cic. *Mur.* 43–46.

<sup>3</sup> Adamietz 1989. 1.

<sup>4</sup> Cic. *Mur.* 79. *Magni interest, iudices, id quod ego multis repugnantibus egi atque perfeci, esse Kalendis Ianuariis in re publica duo consules.*; 82. *Sperant sibi D. Silanum, clarum virum, sine collega, sine te consule, rem publicam sine praesidio obici posse.*

<sup>5</sup> See Meier 1968. 61. sqq.

<sup>6</sup> Drexler 1976. 124. sqq.

Imre Trencsényi-Waldapfel assumes that Catilina probably did not have a definite program, except for seizing power.<sup>7</sup> Others, for example, László Havas can identify a more definite, clearly describable political concept in Catilina's movement.<sup>8</sup> With his skills Catilina was able to win few noble citizens to take his side.<sup>9</sup> After Catilina was defeated in the election of *consules* held in the summer of 63, he saw no other possibility to obtain power than brute force. To this end, he made arrangements for armed actions.<sup>10</sup> Cicero learned of Catilina's plans from one of the supporting characters of the conspiracy, Quintus Curius's lover, Fulvia.<sup>11</sup> Of all this and the assassination against the *senatores* scheduled for 28<sup>th</sup> of October Cicero gave an account in the *senatus* on 20<sup>th</sup> of October. On 21<sup>st</sup> of October the *senatus* ordered state of emergency with *senatus consultum ultimum*, by that vesting the *consules* with full powers to take any action necessary to ensure the safety of the State.<sup>12</sup> Since the *senatus* had received news that on 24<sup>th</sup> of October Manlius started armed actions, and that commotion was observed among the slaves in Capua and Apulia, L. Aemilius Paulus Lepidus brought a charge of *vis* against Catilina,<sup>13</sup> who in turn offered to place himself under the free custody of a leading politician, but nobody was willing to take him.<sup>14</sup> During the night from 5<sup>th</sup> to 6<sup>th</sup> of November, Catilina called his accomplices to M. Porcius Laeca's house, and there announced that he would join Manlius, and assigned the roles for triggering armed conspiracy. The only problem he had was that beforehand he had to kill Cicero.<sup>15</sup> To set Catilina free from this problem, two men, *senator* L. Vargunteius and C. Cornelius

<sup>7</sup> Trencsényi-Waldapfel 1959. 38.

<sup>8</sup> Havas 1977. 11. sqq.; Havas 1978. 191. sqq.; Havas 1988. 33. sqq.

<sup>9</sup> Cic. *Cael.* 14. *Me ipsum, me, inquam, quondam paene ille decepit, cum et civis mihi bonus et optimi cuiusque cupidus et firmus amicus ac fidelis videretur, cuius ego facinora oculis prius quam opinione, manibus ante quam suspicione deprehendi.*

<sup>10</sup> Giebel 1977. 41.

<sup>11</sup> Sall. *Cat.* 23, 3–4. *Erat ei cum Fulvia, muliere nobili, stupri vetus consuetudo. ... At Fulvia insolentiae Curi causa cognita tale periculum rei publicae haud occultum habuit, sed sublato auctore de Catilinae coniuratione quae quoque modo audierat compluribus narravit.; 26, 3. Namque a principio consulatus sui multa pollicendo per Fulviam effecerat, ut Q. Curius, de quo paulo ante memoravi, consilia Catilinae sibi proderet.*

<sup>12</sup> Cic. *Cat.* 1, 3. *Habemus senatusconsultum in te, Catilina, vehemens et grave ... non deest rei publicae consilium neque auctoritas huius ordinis.*

<sup>13</sup> Sall. *Cat.* 31, 4. *At Catilinae crudelis animus eadem illa movebat, tametsi praesidia parabantur et ipse lege Plautia interrogatus erat ab L. Paulo.*

<sup>14</sup> Cic. *Cat.* 1, 19. *Quid, quod tu te ipse in custodiam dedisti, quod vitandae suspicionis causa ad M. Lepidum te habitare velle dixisti? A quo non receptus etiam ad me venire ausus es atque, ut domi meae te adservarem, rogasti. Cum a me quoque id responsum tulisses, me nullo modo posse isdem parietibus tuto esse tecum, quia magno in periculo essem, quod isdem moenibus contineremur, ad Q. Metellum praetorem venisti. A quo repudiatus ad sodalem tuum, virum optimum, M. Metellum, demigrasti, quem tu videlicet et ad custodiendum diligentissimum et ad suspicandum sagacissimum et ad vindicandum fortissimum fore putasti.*

<sup>15</sup> Cic. *Cat.* 1, 9. *Confirmasti te ipsum iam esse exiturum, dixisti paulum tibi esse etiam nunc morae, quod ego viverem.*

from the order of the *equestres* undertook to murder Cicero during the morning *salutatio*.<sup>16</sup> Cicero learned of this plan too; and he did not let the two assassins who appeared in the morning on 7<sup>th</sup> of November into his house which was now protected by armed guards. After that he immediately convened the *senatus* to the Iuppiter Stator temple where Catilina also appeared to everybody's great astonishment.

It was on this occasion, on 8<sup>th</sup> of November when Cicero delivered the first *Catilinaria*. He exposed Catilina's intrigues<sup>17</sup> and called him to leave Rome.<sup>18</sup> Catilina suddenly realised that he was completely left alone, he ran out of the *senatus*, and left the city during the same night. He pretended to go into exile; he joined Manlius actually. Next day, on 9<sup>th</sup> of November, in his second speech against Catilina Cicero communicated to the people what had happened so far. In mid November it became public knowledge that Catilina took over the control over Manlius's army, so he was declared *hostis populi Romani*. Catilina had left quite a number of his accomplices in Rome, whose presence and functions Cicero learned of from Fulvia, but for lack of any evidence they were not able to take any action against them. At this point, chance was of help to Cicero: what happened was that the conspirators contacted foreign delegates staying in Rome, and tried to win them to join the plot.<sup>19</sup> Having become aware of this, Cicero put forward the proposal to obtain written evidence on the conspirators, what was accomplished.<sup>20</sup> Cicero took hold of this evidence through an attack taking place at the Pons Mulvius house.<sup>21</sup>

At the session of the *senatus* under the weight of these evidences, the leaders of the plot having stayed in Rome were forced to make confession. Of these actions Cicero gave an account in the evening of the same day (on 3<sup>rd</sup> of December) to the people that gathered on the *forum*. It was on this occasion when the so-called third *Catilinaria* was

<sup>16</sup> Cic. *Cat.* 1, 9. *Reperti sunt duo equites Romani, qui te ista cura liberarent et sese illa ipsa nocte paulo ante lucem me in meo lectulo interfecturos esse pollicerentur.*

<sup>17</sup> Cic. *Cat.* 1, 1. *Patere tua consilia non sentis, constrictam iam horum omnium scientia teneri coniurationem tuam non vides?*

<sup>18</sup> Cic. *Cat.* 1, 10. *Quae cum ita sint, Catilina, perge, quo coepisti, egredere aliquando ex urbe, patent portae, proficiscere. Nimum diu te imperatorem tua illa Manliana castra desiderant. Educ tecum etiam omnes tuos, si minus, quam plurimos, purga urbem. Magno metu me liberabis, dum modo inter me atque te murus intersit. Nobiscum versari iam diutius non potes, non feram, non patiar, non sinam.*

<sup>19</sup> Cic. *Cat.* 3, 4. *Itaque, ut comperi legatos Allobrogum belli Transalpini et tumultus Gallici excitandi causa a P. Lentulo esse sollicitatos, eosque in Galliam ad suos civis eodemque itinere cum litteris mandatisque ad Catilinam esse missos, comitemque iis adiunctum esse T. Volturcium, atque huic esse ad Catilinam datas litteras...*

<sup>20</sup> Cic. *Cat.* 3, 6. *Interim tertia fere vigilia exacta cum iam pontem Mulvium magno comitatu legati Allobrogum ingredi inciperent unaque Volturcius, fit in eos impetus, educuntur et ab illis gladii et a nostris... Litterae, quaecumque erant in eo comitatu, integris signis praetoribus traduntur, ipsi comprehensi ad me, cum iam dilucesceret, deducuntur.*

<sup>21</sup> Sall. *Cat.* 45, 1. *His rebus ita actis, constituta nocte qua proficiscerentur Cicero per legatos cuncta edoctus L. Valerio Flacco et C. Pomptino praetoribus imperat, ut in ponte Mulvio per insidias Allogrogum comitatus deprehendant.*

delivered. The fourth *Catilinaria* was addressed on 5<sup>th</sup> of December at the Concordia temple<sup>22</sup> where decision had to be made on what to do with the conspirators having been taken into custody. Iunius Silanus proposed to impose the severest, capital punishment, and he was supported by the majority. However, Caesar<sup>23</sup> voted for confinement for life, and he was supported by a few. Here Cicero intervened, and in the fourth *Catilinaria* summing up the opinions expressed so far, he asked the *senatores* if they accepted the proposal of Silanus or Caesar; and then the scales seemed to tilt in favour of Caesar. Then Marcus Porcius Cato rose to speak, who demanded death sentence for the traitors,<sup>24</sup> and the *senatus* voted for it. In the evening of the very same day the sentence was executed in Tullianum. Cicero was celebrated by the people and the *senatus* unanimously as Rome's saviour,<sup>25</sup> and Q. Lutatius Catulus greeted him as *pater patriae*, which title Cicero was proud of until the end of his life. Catilina and his troops were defeated in 62 at Pistoria in a battle, and the commander of the army died there too.<sup>26</sup>

On the grounds of the above, an attempt can be made to place *Pro Murena* in time.<sup>27</sup> Catilina's accomplices were not taken into custody yet, and Cato had not started his activity as a popular tribune, as it was referred to by Cicero too.<sup>28</sup> On the other hand, Catilina's leaving from Rome can be defined as *terminus post quem*, for the speech gives an account of it as an event that had already taken place.<sup>29</sup> Furthermore, Cicero expresses his wish that Antonius should take armed action against Catilina; the relevant order was adopted in a few days after Catilina had left.<sup>30</sup> On the grounds of the above, the delivery of the speech can be dated to the last days of November 63.<sup>31</sup>

The lawsuit involved four prosecutors (Servius Sulpicius Rufus, M. Porcius Cato, S. Sulpicius Rufus junior and a certain C. Postumius not specifically known) and three counsels for defense (Q. Hortensius Hortalus, M. Licinius Crassus and Marcus Tullius Cicero). The proceedings were terminated with the acquittal of Murena.<sup>32</sup>

<sup>22</sup> Plut. *Cic.* 21.

<sup>23</sup> Sall. *Cat.* 51, 1–43.

<sup>24</sup> Sall. *Cat.* 52, 2–36.

<sup>25</sup> Giebel 1977. 45; Trencsényi-Waldapfel 1959. 40.

<sup>26</sup> Sall. *Cat.* 57, 5. sqq.

<sup>27</sup> Drexler 1976. 154. sqq.

<sup>28</sup> Cic. *Mur.* 81. *Iam enim hesternam contione innotuit vox perniciose designati tribuni, conlegae tui.*

<sup>29</sup> Cic. *Mur.* 6. *Negat esse eiusdem severitatis Catilinam exitium rei publicae intra moenia molientem verbis et paene imperio ex urbe expulisse et nunc pro L. Murena dicere.; 78. Non usque eo L. Catilina rem publicam despexit atque contempsit, ut ea copia quam secum eduxit se hanc civitatem oppressurum arbitraretur.*

<sup>30</sup> Sall. *Cat.* 36, 3. *Praeterea decernit, uti consules dilectum habeant, Antonius cum exercitu Catilinam persequi maturet, Cicero urbi praesidio sit.*

<sup>31</sup> Adamietz 1989. 3.

<sup>32</sup> Cic. *dom.* 134. *Viderat ille Murenam, vitricum suum, consulem designatum ad me consulem cum Allobrogibus communis exitii indicia adferre, audierat ex illo se a me bis salutem accepisse, separatim semel, iterum cum universis.*



## I. 2. The structure of the *oratio*

The structure of the speech can be outlined as follows.<sup>33</sup> First (1–10) Cicero replies to the reproaches addressed to him for having undertaken defense. In antique rhetoric it is not rare for the counsel of defense to apply the strategy to clear himself first. His style is solemn right in the first sentence both in terms of vocabulary and rhythm, the use of *creticus*.<sup>34</sup> In the main part (11–83) he follows the disposition of the charge divided into three parts.<sup>35</sup> In the first very short part, he refuses the charges brought against Murena's conduct of life (*deprehensio vitae*). In the second part (15–53) he deals with the chances of the election of the two competitors. This was required because the charge subsequently stressing the point that Murena had no chance intended to prove that he had won owing to nothing else but dishonest means: that was what Cicero wanted to reply to. He emphasises that the origin and the office obtained through it are equal in the case of both parties (15–17); by virtue of this none of them could overcome the other. Murena obtained esteem with his career till then and achieved victory for himself by using this esteem (18–21). He compares the glory of the orator's and the soldier's career to the lawyer's career (22–30), in which competition (*studiorum atque artium contentio*) – as the rhetoric situation required – as a matter of fact the *eloquentia* and the *res militaris* become the winner. After that, however, Cicero puts forth more compelling reasons to support Murena: (37–42) for example, the ceremonial games that he arranged as *praetor*.<sup>36</sup> The fact that, contrary to Sulpicius Rufus,<sup>37</sup> he undertook to administer a *provincia*,<sup>38</sup> and finally that his election was supported also by commander Lucullus and his troops, who returned from the third war with Mithritades to Rome. Then he launches an attack against Servius (43–52): he criticises the tactics followed by him, in particular that instead of advancing his own victory Sulpicius prepared the evidence of the charge of *ambitus* against his enemies right from the outset, and by that involuntarily drove those who were afraid of Catilina's victory to Murena's camp.<sup>39</sup> It is in the third part (54–83) where he comes to the actual charges. First, he replies to the charges brought by Cato, and the consideration thereof (61–66), since it was Cato's excessively exercised firmness that made him support the charge.<sup>40</sup> As earlier pettiness and certain out-of-date institutions of *iurisprudentia*, now he makes the sometimes exaggerating strictness of Stoic ethics the subject of scorn.<sup>41</sup> This charge is followed by

<sup>33</sup> Fuhrmann 1970. 293. sqq.; Classen 1985. 124. sqq.; Adamietz 1989. 83. sqq.

<sup>34</sup> Quint. *inst.* 9, 4, 107.

<sup>35</sup> Fuhrmann 1970. 293.

<sup>36</sup> Cic. *Mur.* 38.

<sup>37</sup> Cic. *Mur.* 42.

<sup>38</sup> Cic. *Mur.* 42.

<sup>39</sup> Cic. *Mur.* 52.

<sup>40</sup> Cic. *Mur.* 64.

<sup>41</sup> Classen 1985. 163. sqq.; Adamietz 1989. 203. sqq.

his factual but rather narrow and not too convincing disproof (66–77). Emphasis is laid not so much on production of evidence but on the assertion that the lawsuit itself is a highly false step and that anyone who wanted to attain through it that next January only one *consul* should enter office would deliver the *res publica* in the hands Catilina and his accomplices.<sup>42</sup> Thus, his aim is to protect the State and his citizens.<sup>43</sup> In the epilogue (83–90) he calls the judges' attention to the point that in their decisions they should keep public interest in view.<sup>44</sup>

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<sup>42</sup> Cic. *Mur.* 78.

<sup>43</sup> Cic. *Mur.* 78.

<sup>44</sup> Cic. *Mur.* 86.