

# IULIUS VICTOR ON CICERO'S DEFENSES *DE REPETUNDIS*

This note has two objectives: to clarify the original provenance of a Ciceroian fragment preserved by the rhetorician Iulius Victor and to establish the status of a particular political argument in Cicero's defenses *de repetundis*.

In *pro Fonteio* Cicero argues that an acquittal is demanded on national security grounds. If provincial governors have to worry too much about a potential prosecution *de repetundis* after their term in office, then their authority in dealing with supposedly subject peoples will be fatally weakened (Font. 16–17, cf. 33–6, 49). In principle the defense could have made this claim in virtually any case *de repetundis*, and it has been suggested that in practice it may have been a commonplace. In particular it has been claimed that, in addition to its use in *pro Fonteio*, Cicero also employed it in *pro Flacco* as well.<sup>1</sup> If so it would have fallen somewhere in the lacuna between sections 5 and 6 of the latter speech. The evidence is a passage of the rhetorician Iulius Victor in the section *de principiis* of his *Ars Rhetorica*:

*Licet etiam principales quaestiones in principio praecerpere, sed praecursu solo atque tactu, ut de his quaeri videatur, quomodo pro Flacco et (pro)<sup>2</sup> Fonteio Marcus Tullius, 'nihil agi illo iudicio, nisi ut magistratus*

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1) Alexander Kurke, *Theme and Adversarial Presentation in Cicero's pro Flacco*, diss. University of Michigan, Ann Arbor 1989, 160–1.

2) Ordinary Latin usage would seem to demand Mai's supplement of *(pro)*, and the textual tradition (largely dependent, as here, on a single MS) leaves out

*in provinciis non audeant imperare sociis, quod ex usu rei publicae sit.*<sup>7</sup>  
(p. 70.12–15 G-C = 423.10–12 H)

The question is whether to take *nihil . . . sit* with just ⟨*pro*⟩ *Fonteio* or with both speeches. Nowhere else does Victor give two citations followed by a single example, so there are no direct parallels to consider. His usual practice is to give a rule, then (optionally) a citation, then one or more examples. In the two other cases where there are multiple citations (24.26–8, 93.13–4 G-C), there are no examples. In cases where there are multiple examples following a single citation (e.g.: 35.13–19, 75.7–13 G-C), the examples are not necessarily all from the cited source. Thus there need not be a tight connection between citations and quotations. While the segment that the most recent editors, Giomini and Celentano, put within quotation marks is not a direct quotation of any surviving passage of Cicero, Victor commonly paraphrases whole sections of a Ciceronian oration into one or two sentences of indirect discourse.<sup>3</sup> In such a paraphrase, the singular *illo iudicio* points to a single speech, not both.

Thus one might be inclined to accept Müller's suggestion that this passage is a paraphrase of *pro Fonteio* 17 and only of that passage:<sup>4</sup>

*Dubitabit etiam diutius, iudices, quin illud quod initio vobis proposui verissimum sit, aliud per hoc iudicium nihil agi nisi ut M. Fonteio oppresso testimoniis eorum quibus multa rei publicae causa invitissimis imperata sunt, segniores posthac ad imperandum ceteri sint, cum videatis eos oppugnare quibus victoribus populi Romani imperium incolume esse non possit?*

More likely, however, is the view of Schneider that the fragment is a paraphrase of a passage from the beginning of the speech (now lost), and that that passage is the lost segment to which § 17 claims to refer (*quod initio vobis proposui*).<sup>5</sup> Since Victor is discussing *principia* not only in this specific passage but in the entire section (pp. 67–71 G-C), and since § 17 itself refers back to the beginning of the speech, this

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individual words quite frequently. It might be argued that in the only potential parallel passage in Iulius Victor (105.22 G-C) the second preposition is ellipsed: *in epistolis Tullianis ad Atticum et Axiium*. However, it could also be claimed that *ad Atticum* and *ad Axiium* are not true titles and thus not true parallels. Neither reading seems to bear directly on the argument here.

3) Examples include 12.6–8 G-C (≈ Mil. 87, 92), 34.18–19 (≈ Caec. 24), 35.21–2 (≈ Verr. 2.2.18), 36.7–9 (≈ Marc. 6), and 69.22–3 (≈ Caecil. 1).

4) C. Müller, *Zu Ciceros Fragmenten*, *Philologus* 20 (1863) 519 makes the claim without argument, and T. B. L. Webster's edition of *pro Flacco* (Oxford 1931) ad 4.3 accepts Müller's claim, again without comment. Giomini and Celentano's edition of Victor (Leipzig 1980) p. 70 asserts that it is unbelievable that Cicero should have used the same words in two different speeches. But if, as seems clear, this is a paraphrase, then that argument is less powerful: Cicero does use highly similar versions of the same *topos* (e.g. Mur. 35–6 ≈ Planc. 12; Planc. 68 ≈ Red. Pop. 23 ≈ de Off. 2.69). The singular *iudicio* perhaps provides a better argument. Halm suggests that the passage reflects lost portions of the *pro Fonteio* and *pro Flacco*.

5) A. Schneider, *Quaestionum in Ciceronis pro M. Fonteio orationem capita quattuor*, diss. Leipzig 1876, 42–3. Schneider is followed by Fr. Schoell in his edition of *pro Fonteio* (Leipzig 1923) p. 23b. Giomini and Celentano incorrectly attribute Müller's view to Schoell.

solution must be correct.<sup>6</sup> In this case § 17 and the earlier passage would presumably share similar wording. In either case Victor's paraphrase would be of *pro Fonteio* only; *pro Flacco* would only fit under the general rubric of speeches whose *principia* hinted at their later themes. Furthermore, the argument never appears in the extant portions of *pro Flacco*, not even in the conclusion. Thus there is no internal reason to suspect that it was used at all in that speech.

Taking a broader view of the argument, we may take brief notice of the few other passages which might also make fear a policy issue. Among Cicero's other *repetundae* defenses – *pro Scauro*, *pro Rabirio Postumo*, or *pro Flacco* – I have found only three, and all make a far different point than Font. 16–17. In *pro Scauro* Cicero says (§ 17): *Agmen tu mihi inducas Sardonum et catervas et me non criminibus urgere, sed Afrorum fremitu terrere conere?* His immediate object, of course, is a sweeping attack on the credibility of the Sardinians; Cicero goes on to suggest a conspiracy in section 20. It is just possible that *Afrorum fremitu terrere conere* could also look to an argument about the authority of provincial governors. However, the intended target of fear is Cicero himself (*me*). This interpretation is confirmed later in the speech (§ 21): *quae [fundamenta defensionis] si erunt . . . posita et constituta, nullam accusationis partem pertimescam*. That is, the alleged fear is (in both cases) Cicero's anxiety over being defeated by the prosecution. This is not a question of public policy. Earlier in the same speech, Cicero refers to fear produced by the conviction of P. Rutilius Rufus, but there it is the equestrian jury that is at issue (§ 2). This is a policy question, but it has nothing to do with *res repetundae* or provincial government. Thus the argument of *pro Fonteio* that an acquittal is necessary to maintain Roman authority appears to be an isolated instance.

The relative rarity of this argument is particularly striking since, as we have noted, it is in principle universally applicable. The problem may be that its universal applicability is too obvious, and this reduces its persuasive force. The Romans tend to avoid the “reverse argument from probability,” apparently for the same reason.<sup>7</sup> That is, any time the opposition makes an argument from probability (e.g. “You must have started the fight for you are the stronger”) a counter-argument like “As the stronger party, I would not have started the fight, for I would have known that I would be the logical suspect” is automatically available. Nonetheless Cicero does not use reversals of this sort. This, we may suspect, was because the audience knew as well as he did that such an argument would always be available. Similarly, Cicero also denies the validity of universal racial arguments in *pro Scauro* (§ 39): *neque ego Sardonum querellis dico moveri nos numquam oportere*. In this speech he does in fact attack the credibility of the Sardi as a group (§§ 42, 44–5), but he undercuts his own argument by making qualifications like this one. Again the explanation must be that a transparently universal argument is unpersuasive; hence Cicero must claim (falsely) that he could not employ the racial argument in just any case involving the Sardi. Neither absolute racial arguments nor reverse arguments from probability nor the governor's-authority argument are persuasive since all can clearly be employed in virtually any case.

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6) We have only fragments (albeit some large ones) from various sources for the beginning of the speech (up to § 11). Cicero is already arguing the case in some detail at the beginning of the first long fragment (§ 1), so we seem to have lost virtually all of the *principium*.

7) See A. M. Riggsby, *Appropriation and Reversal as a Basis for Oratorical Proof*, CPh 90 (1995) 253.