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THE *ACCUSATOR* AS *AMICUS*: AN ORIGINAL ROMAN TACTIC OF ETHICAL ARGUMENTATION[1]

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Ciceronian oratory employs argumentative themes and tactics which are not found in the Greek theory to which students of his day were regularly exposed, and which have no recognizable antecedent in the theory or practice of the Republic.[2] One such tactic, the use of the friendship of *accusator* and *patronus*, has not been properly recognized.[3] Yet it is used in a consistent manner in five of Cicero's judicial speeches, *pro Murena*, *pro Sulla*, *pro Caelio*, *pro Plancio*, and *pro Ligario*.[4] In each of these speeches, which differ widely in their circumstances, these elements recur: (1) the *accusator* is explicitly identified as a friend or connection of the *patronus*. (2) The orator addresses the prosecutor, adducing some habit, circumstance, or action which the two men have in common. (3) The *patronus* makes a distinction whereby he is shown to partake of this similarity in a way which is good or adept, while the *accusator* does so in a way which is malicious or inept. Since this tactic depends upon an emphasis upon the ethos of the *patronus* himself, it is clearly a Roman, perhaps a Ciceronian invention; advocacy, it will be remembered, was

[1] "Ethical" is used here in the sense of the *êthikê pistis*, the type of artificial proof which is based upon the persuasive power generated by the impression which the speaker gives of himself in the course of his speech (Arist. *Rhet.* 1355b35–56a13). Ethical arguments are, more broadly, the arguments of either side which augment or diminish the persuasive personal impression given by a speaker.

[2] For a good treatment of Roman education in this period, with the pertinent citations from primary sources, see S. F. Bonner, *Education in Ancient Rome from the Elder Cato to the Younger Pliny* (Berkeley 1977) 65–89.

[3] The only comprehensive attempt to collect all of the *loci* in Cicero's speeches, including those not represented in the Greek tradition, is the uneven (and unindexed) work of R. Preiswerk, *De Inventione Orationum Ciceronianarum* (Basel diss., 1905). Preiswerk takes no notice of the tactic which will be discussed here.

[4] The passing references to M. Plaetorius as *amicus meus* (*Font.* 36) and to C. Memmius as *meus familiaris ac necessarius* (*Rab. Post.* 32) are not broadly significant for the persuasive strategies employed.

the exception in Greece.[5] A review of the uses of this Roman device by Cicero will establish it within our range of expectations for his practice.

The treatment of Servius Sulpicius Rufus in the speech for Murena provides two excellent examples of this type of argumentation.[6] The first culminates in the famous lampooning of jurisconsults (esp. 23–30). First, the orator admits his *familiaritas* and *necessitudo* with Sulpicius (7).[7] The similarity which he explains to the *accusator*, in direct address, is that both have elected careers in the forum, careers which have kept them in the public eye at Rome (21). Then comes the key distinction: Cicero has been an orator, Sulpicius only a jurisconsult, and this latter avocation, as the orator/consul points out, hardly provides the prestige and influence which lead to a consulship (23–30).[8] This argument is a master stroke which alleviates one of Cicero's principal difficulties in the *contentio dignitatis* (15–42), which responds to Sulpicius' argument that he is so much Murena's superior in *dignitas* that Murena could not have defeated him without bribery.[9] Cicero himself, although completely a creature of the forum, and the present consul, must argue that the military career of Murena is more productive, at least as productive, of *dignitas* as is a career of civic duties. Thus the orator's warning to his friend about the damage done by *ista nostra adsiduitas* (21) is followed hard by the reflection that all of *haec nostra praeclara studia* depend upon military excellence, and so upon Murena's alleged expertise (22: *omnes urbanae res*). But it is

[5] See George A. Kennedy, "The Rhetoric of Advocacy in Greece and Rome," *AJP* 89 (1968) 419–36. On the meaning of *patronus* in a specifically judicial context, see esp. Michael C. Alexander, *Forensic Advocacy in the Late Roman Republic* (University of Toronto diss., 1977) 5–6, 133–56.

[6] The treatment of Cato, the most noteworthy *subscriptor*, esp. in secs. 58–66, 75–77, has much in common with Cicero's ostentatious tolerance towards Sulpicius, but must be excluded from present consideration because the orator does not explicitly emphasize this *amicitia*.

For *pro Murena* generally, the best introduction is still A. Boulanger, *Cicéron, Discours*, tome XI in the Budé series (Paris 1946) 9–25. For a more concise treatment, cf. George A. Kennedy, *The Art of Rhetoric in the Roman World* (Princeton 1972) 181–87. For a full attempt to reconstruct the arguments of the prosecution, see D. M. Ayers, "Cato's Speech against Murena," *CJ* 49 (1954) 245–54.

[7] On the nature of *necessitudo*, see R. J. Rowland, Jr., "Cicero's Necessarii," *CJ* 65 (1969–70) 193–98. It is fair to ask whether Cicero might exaggerate his relationship with a prosecutor for oratorical ends. In the case of Sulpicius (*RE* 95, Münzer), there is nothing in Cicero's other works which indicates that this bond is here overstated: against Cicero's occasional private criticisms (*Att.* 10.3a.2, 7.2, 15.2; 15.7) must be weighed the close personal relationship seen in his correspondence with the jurisconsult (*Fam.* 4.1–6, 12, and to a lesser extent 13.17–28a), as well as the esteem for Sulpicius shown especially in *Brutus* 150–57, and in Cicero's eulogy of him, *Phil.* 9.

[8] For this passage, and the four sections preceding, cf. the German translation and commentary by A. Bürge, *Die Juristenkomik in Ciceros Rede pro Murena* (Zürich 1974).

[9] For a treatment of the *contentio dignitatis* as a traditional part of *ambitus* trials, based on the *contentio* here and that in the *Planciana*, see Preiswerk (above, note 3) 42–44.

necessary both for the power of the *patronus*' self-presentation and for the credibility of the orator/consul to point out that of the three careers, that of soldier, orator, and jurisconsult, it is only the first two which pave the way to the consulship (esp. 30: *Duae sint artes igitur . . . oratoris boni*). Of the jurisconsults, on the other hand, Sulpicius is informed in open court, *dignitas in ista scientia consularis numquam fuit, quae tota ex rebus fictis commenticiisque constaret, gratiae vero multo etiam minus* (28).

This same technique finds a more audacious use in Cicero's explanation of the failure of Sulpicius' campaign, a campaign which, embarrassingly, Cicero himself had supported. Turning this unfortunate situation to profit, the orator reminds his friend of his support, and so defines the common ground (43). The distinction is based upon the fact that Cicero has been a successful candidate, while Sulpicius has not. So the orator, in the role of experienced political adviser, can explain to his *necessarius* that he lost the election because, against the express advice of Cicero himself, he instigated the prosecution of Murena:

> Petere consulatum nescire te Servi, persaepe tibi dixi. (43) . . . Sed tamen, Servi, quam te securim putas iniecisse petitioni tuae, cum populum Romanum in eum metum adduxisti ut pertimesceret ne consul Catilina fieret, dum te accusationem comparares deposita atque abiecta petitione? (48)

In the speech for the accused Catilinarian L. Sulla, the victim of Cicero's friendship is the *accusator* L. Manlius Torquatus. Cicero owns to his *necessitudo* with Torquatus (23), and, addressing his friend, draws a similarity in the opposition which both *accusator* and *patronus* had shown to Catiline's designs (34).[10] The key distinction, which the *parens patriae* is in a unique position to make, is the concerned observation that Torquatus' prosecution of the innocent Sulla may give the impression that he has changed sides:

> atque illud addam, ne forte incipiat improbus subito te amare, Torquate, et aliquid sperare de te, atque ut idem omnes exaudiant clarissima voce dicam. Harum omnium rerum quas ego in consulatu pro

[10] As for the *pro Murena*, the best introduction is A. Boulanger (above, note 6) 89–105. L. Manlius Torquatus (*RE* 80, Münzer) is mentioned seven times in Cicero's correspondence (*Quint. Fr.* 3.3.2; *Att.* 4.18.3; 7.12.4, 23.1; 8.11B.1; 9.8.1; 13.19.4), never in a way which gives a clear insight into his *necessitudo* with Cicero. In the *Brutus* (265), the orator offers this assessment: *Erant in eo plurimae litterae nec eae vulgares, sed interiores quaedam et reconditae, divina memoria, summa verborum et gravitas et elegantia; atque haec omnia vitae decorabat gravitas et integritas.* Perhaps a friend to Atticus as well as to Cicero (see D. R. Shackleton Bailey, *Epistulae ad Atticum* I [Cambridge 1965] 8), he became the exponent of Epicureanism in *De Finibus* I and II. As with Sulpicius, there is no reason to suppose that the claimed *necessitudo* is an oratorical exaggeration.

> salute rei publicae suscepi atque gessi, L. ille Torquatus, cum esset meus contubernalis in consulatu atque etiam in praetura fuisset, cum princeps, cum auctor, cum signifer esset iuventutis, actor, adiutor, particeps exstitit. (34) . . . Videsne ut eripiam te ex improborum subita gratia et reconciliam bonis omnibus? qui te diligunt et retinent retinebuntque semper nec, si a me forte desciveris, idcirco te a se et a re publica et a tua dignitate deficere patientur. (35)

The use of this structurally identical technique is all the more striking given the difference in tone which separates Cicero's treatment of Torquatus from his handling of Sulpicius in the earlier speech. While Sulpicius seems to have put Cicero on the defensive by implying that he was not a faithful friend (*Mur.* 7–10), Torquatus more aggressively, and more offensively, labels Cicero's influence as *regnum* (21). The orator, ostensibly hurt, can play the friend with less pretense to affection. This can be seen vividly by comparing the advice which the *patronus*, as campaign adviser, had given to Sulpicius with the hollow solicitude employed by the orator to counsel Torquatus that his demeaning of Cicero's municipal origins will hurt the prosecutor in the coming praetorian elections (23).

In the *Caeliana*, Cicero again makes a transparent show of solicitude for the prosecutor, the youthful Atratinus (7–8).[11] Here, however, the orator's tone is not one of injured affection, but of insufferable condescension. Atratinus is identified as a friend and, in the same breath, virtually forgiven for his role on account of his age:[12]

> Sed ego Atratino, humanissimo atque optimo adulescenti, meo necessario, ignosco, qui habet excusationem vel pietatis, vel necessitatis, vel aetatis. (3)

The common ground of the *accusator* and the *patronus* need not be made explicit; in Cicero's comments on Atratinus' speech, there is not only a hearty show of avuncular condescension, but the charitable judgment of the master orator upon a well-intentioned novice. Within the common arena of public speaking, the distinction between the two men is immediately salient. Cicero is, obviously and thus implicitly, the greatest

[11] Generally, the best commentary is that of R. G. Austin (Oxford 1960³). C. J. Classen, "Ciceros Rede für Caelius," *ANRW* I.3 (1972) 60–99, has good bibliographical notes. The treatment of Atratinus as the comic victim of Cicero's condescension, the victim of the conspiracy between the orator and his audience, fits nicely with the acute analysis of the persuasive chemistry of the speech in K. Geffcken, *Comedy in the Pro Caelio* (Leiden 1973) esp. 11–17.

[12] L. Sempronius Atratinus (*RE* 26, Münzer) is not mentioned by Cicero except in this speech. He might conceivably be considered a *necessarius* by virtue of Cicero's defense of his father, L. Calpurnius Bestia. See Austin 154–55. Still, for the orator to emphasize this mysterious *necessitudo* may well be overstatement for the sake of the tactic. Cf. Quintilian 11.1.68.

orator of his day. Atratinus is a blushing, and rather ineffective, neophyte:[13]

> Illud tamen te esse admonitum volo, primum ut qualis es talem te omnes esse existiment, ut quantum a rerum turpitudine abes tantum te a verborum libertate seiungas; deinde ut ea in alterum ne dicas quae, cum tibi falso responsa sint, erubescas. Quis est enim cui via ista non pateat, quis est qui huic aetati atque isti dignitati non possit quam velit petulanter, etiam si sine ulla suspicione, at non sine argumento male dicere? Sed istarum partium culpa est eorum qui te agere voluerunt; laus pudoris tui, quod ea te invitum dicere videbamus, ingeni, quod ornate politeque dixisti. (8)

Cicero's defense of Cn. Plancius on a charge of *ambitus* contains a more developed use of the technique, in which the common ground is shared by *accusator*, *patronus*, and *reus* alike. That common factor, as in the speech for Sulla, is in the activity or interest of Cicero himself. The orator proclaims his *amicitia* with the *accusator*, M. Iuventius Laterensis (5, cf. 72), by illustrating the great concern which Laterensis had felt for the welfare of the exiled orator.[14] Here is the common ground. Plancius, as the man who undertook to accompany and protect Cicero in his time of need, deserves the gratitude not only of the orator but of those who wish him well. The distinction, revealed again by the very fact of the prosecution, is that Cicero remains true to his feelings of gratitude for Plancius' services to the *parens patriae*, while Laterensis has renounced that gratitude:

> (Laterensis is addressed) . . . cum mihi esses amicissimus, cum vel in periculum vitae tuae mecum sociare voluisses, cum me in illo tristi et acerbo luctu atque discessu non lacrimis solum tuis sed animo, corpore, copiis prosecutus esses, cum meos labores et uxorem me absente tuis opibus auxilioque defendisses, sic meum semper egisti, te mihi remittere atque concedere, ut omne studium meum in Cn. Plancii honorem consumerem, quod eius in me meritum tibi ipsi gratum esse dicebas. (73)

The fact that so many of the arguments of Laterensis, and of his *subscriptor*, L. Cassius, are seemingly directed against the use of Cicero's *auctoritas* rather than against his client (esp. 4, 72–77, 83–104), renders this bizarre argument perfectly appropriate.[15]

[13] Austin on *agam lenius* in sec. 6 compares the treatment of Torquatus in *Sull.* 46.

[14] Since only *amicitia*, not the closer bond of *necessitudo*, is urged with M. Iuventius Laterensis (*RE* 16, Münzer), and Cicero, who mentions Laterensis nine times in the correspondence and once in another speech (*Att.* 2.18.2, 24.3; 12.17; *Fam.* 8.8.2–3; 10.11.3, 15.2, 18.2, 21.1 & 3, 23.4; *Vat.* 26), has left us no statement of emnity for this *accusator*, there is no reason to assume that Cicero is exaggerating the relationship for oratorical purposes.

[15] The treatment of L. Cassius arguably provides another example of a friendship turned to the *patronus*' advantage. In the same way in which Atratinus had been condescendingly

The last example of the *patronus*' friendship with the prosecutor is to be found in the defense of Q. Ligarius on a charge of treason, where it lies at the very heart of the argumentative strategy of the speech.[16] The *accusator*, Q. Aelius Tubero, is immediately identified as a *propinquus* (1). His father, who is supporting the accusation, is Cicero's *adfinis*, and shares *omnes necessitudines* with him (21).[17] The principal similarity which Cicero draws between himself and the Tuberones is the fact that all three had been fellow *Pompeiani* (esp. 10), a status he denies to Ligarius (2–3). The distinction is that Cicero, forgiven by Caesar, now asks the dictator to forgive again, while the Tuberones, likewise forgiven, would have Caesar condemn another of his former opponents (10, 16, 29, *et passim*). This device here becomes central to the argumentative strategy because it implies that one could do nothing worse than be a supporter of Pompeius, a crime which has already found forgiveness. Cicero simply, and deftly, ignores the distinction made by the Tuberones (cf. Quintilian 11.1.80) between those who fought at Pharsalis and those who, like Ligarius, continued to resist Caesar in Africa, allying themselves with King Juba *contra rem publicam*. In so doing, he holds out to Caesar the advisability of legitimizing his victory by exercising *clementia* (esp. 19), at the

criticized in the speech for Caelius, Cicero tells his *familiaris* (58), who had pointed to Plancius' lack of speaking ability as a proof that the electorate would not have preferred him without bribery, that Plancius has never pretended to be eloquent: *Quaeris num disertus? Immo, id quod secundum est, ne sibi quidem videtur* (62). The distinct implication is that the *subscriptor* is less aware of his own limitations than is Plancius. Similarly, Cicero seems to be giving Cassius a lesson when he concedes everything positive which the *subscriptor* has said about Laterensis—after all, it is praise of Cicero's friend, if completely irrelevant to the case—but finds fault with Cassius for being less effective an encomiast than he might be (63). So Cassius, a reader of Cicero's speeches (66), is given some instruction by his friend and teacher, at the expense of his credibility with the *iudices*.

[16] Since the *Ligariana* has received more attention from students of history than from students of oratory, it seems worthwhile to state that the argumentative strategy of the speech is significant; whatever one feels about the backstage machinery involved with this case, the speech must seem to be a persuasive attempt worthy of the dictator's acceptance. The best treatment of the speech from a rhetorical point of view is K. Kumaniecki, "Der Prozess des Ligarius," *Hermes* 95 (1967) 434–57. For a more concise treatment, see Kennedy (above, note 6) 260–64. Also of use is W. C. McDermott, "In Ligarianam," *TAPA* 101 (1970) 317–47.

[17] The nature of Cicero's connection with L. Aelius Tubero (*RE* 150, Klebs) and his son Quintus (*RE* 156, Klebs) is uncertain (Schol. Gronov. 292.11–12 St. wrongly states that the elder Tubero had married Cicero's sister). The elder Tubero had been a legate of Quintus Cicero in Asia (*Quint. Fr.* 1.1.10 and *Planc.* 100, where he is *meus necessarius*). The only other reference in the correspondence to a Tubero (whether father or son is uncertain) is *Att.* 13.20.2, in which Cicero states that he will not make certain additions to the published speech for Ligarius because (1) it has already been circulated, and besides, (2) Tubero is so sensitive. Cicero's ironic transformation of necessity into solicitude is consonant with the tone of the speech; despite his connection with the Tuberones, the rough handling which they receive in the *Ligariana* inclines one to think that the orator is again exaggerating the bond for oratorical ends, contributing to *divina illa pro Ligario ironia* (Quintilian 4.1.70).

same time using the Tuberones as implacable *Pompeiani*, foils to the proper attitude of Caesar, which has found the favor of heaven (19: *causa tum dubia* . . .).

We have seen that this extension of the rhetoric of advocacy to debilitate the ethos of the prosecutor may occur in a variety of environments.[18] Indeed, the extant speeches vary so much one from another that one is always wary of generalizations about the orator's techniques. Nonetheless, the use of friendship with the prosecutor, defined by the three characteristics listed above (p. 31), is a clearly demonstrable recurring tactic of Cicero's argumentation. It is a uniquely Roman tactic which finds no parallel in Greek theory or practice, and which has heretofore not been properly recognized.[19]

[18] Even when he is not playing the *patronus*, Cicero uses a tactic closely akin to the one discussed here. Thus he remarks to Caecilius, by way of introducing a list of educational inadequacies which would make his opponent the less effective prosecutor of Verres, *De te, Caecili,—iam mehercule hoc extra hanc contentionem certamenque nostrum familiariter tecum loquar,—tu ipse quem ad modum existimes vide etiam atque etiam, et tu te collige, et qui sis et quid facere possis considera* (*Div. Caec.* 37). So also the orator responds to Fufius Calenus, who has opposed legitimizing Brutus' Eastern command, *An vero hoc pro nihilo putas, in quo quidem pro amicitia tuam vicem dolere soleo, efferre hoc foras et ad populi Romani aures pervenire, ei qui primus sententiam dixerit neminem adsensum?* (*Phil.* 10.6).

[19] Thanks are due to Professor George Kennedy and to my colleague Professor David Tandy for helpful discussion of the idea presented here. For advice on its presentation, I must thank my colleague Professor Harry Rutledge and the Association's anonymous, and astute, referees. For what errors remain, I am of course solely responsible.