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## “KILLING A TYRANT” REMARKS ON CICERO’S MILONIANA\*

*Pro Milone* represents an exception in two aspects both among the speeches left to us as Cicero’s life work. On the one hand, this is the oratio whose original was delivered by the orator in a lost lawsuit, however, later on, guided by political considerations, he published its revised version. On the other hand, *Pro Milone* is the speech of which we exactly know that the version published by Cicero and left to us is different from the oration given before the court of justice not only in style and structure but in its essence. *Pro Milone* is an essential constituent part and source of Cicero’s philosophy of the state that produced hardly overestimatable impact on European thinking, that is, in them Cicero as an orator and a politician, trying in vain to get back to the summit of his former influence, formulates his concept on the theory of the state pointing far beyond the handling of the facts of the case and the rhetorical tactics as well as the rhetorical situation, which later on crystallised and constituted the subject matter in his theoretical works.

Key words: Cicero. *Pro Milone*. Court speeches. Discrepancy between delivered and published speech. Rhetoric. Asconius.

On 18 January 52, in Bovillae two emblematic figures of the *optimates* and the *populares*, Milo and Clodius clashed, and members of Milo’s followers killed Clodius. Milo’s defence was undertaken by Cicero; the final hearing was held on 8 April. Perhaps the weakest performance in Cicero’s career took place in this lawsuit: both the *Clodiana multitudo* and Pompey’s soldiers embarrassed him, clamours and shouting in stopped

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him short, made him irresolute, what is more, frightened him; he could not deliver the prepared speech with the planned *constantia*, he spoke flustered unable to collect his thoughts.<sup>1</sup> His delivered speech was taken down in shorthand as usual; and Asconius could still read the minutes that contained the speech and shouting in; it is, therefore, an indisputable fact that *Pro Milone* published later – as a matter of fact, apart from certain overlapping thoughts – is not fully identical with the *oratio* made on 8 April 52.<sup>2</sup> Afterwards, Cicero recalled this unsuccessful performance with indifference – whether pretended or real indifference it cannot be decided.<sup>3</sup> According to Dio Cassius's narrative, it was on this day that Milo tried to persuade Cicero to get out of his *lectica* only after the court of justice had appeared so that the soldiers and the heckled crowd should not increase his tension since he usually struggled with strong stage fright when he started his speeches as it is generally known.<sup>4</sup> Shops were closed on the day of the trial, the Forum was secured by Pompey's army; first, the accusers, Appius Claudius, M. Antonius and P. Valerius Nepos spoke, then, as the only defender, Cicero. Milo was convicted at a rate of thirty-eight/thirteen.<sup>5</sup> Approximately on 13 April, Milo went into exile to Masilia.<sup>6</sup>

In this paper, first, we outline the structure and legal background of Cicero's argument of defence. Then, we sum up the elements of philosophy of the state that appear in *Pro Milone*, and place them in the entirety of Cicero's state concept, paying special regard to the fact that *Pro Milone* is the first Ciceronian work in which the motif of killing the tyrant, which afterwards returns as a fully developed thought in *De re publica* and *De officiis*, appears as a right and obligation a responsibly thinking Roman citizen is entitled to and bound by.

## 1. HANDLING OF FACTS OF THE CASE IN *PRO MILONE*

M. Iunius Brutus – one of Caesar's later assassins, addressee of Cicero's history of eloquence entitled *Brutus* – voicing the conviction of several people, represented the view in his fictitious speech written in defence of Milo and published later that the assassination of Clodius constituted huge gain for the State.<sup>7</sup> According to Asconius, in his delivered

<sup>1</sup> Plut. *Cic.* 35, 2 5.

<sup>2</sup> Asc. 31.

<sup>3</sup> Cic. *opt. gen.* 10.

<sup>4</sup> Dio Cass. 40, 54, 2; 46, 7, 2. ff.

<sup>5</sup> Asc. 29 32.

<sup>6</sup> *Ibid.*, 33.

<sup>7</sup> *Ibid.*, 30.

speech Cicero took up the position that though a person might be convicted for the sake of the public but in the absence of lawful judgment or other statutory authorisation nobody should be killed by referring to the interest of the state.<sup>8</sup> So, it is unambiguously clear that it was only the version of the speech left to us, i.e., the not only extensively re-edited but re-written version representing a completely new argument at certain points (which was published for legitimisation purposes and was in circulation as a political pamphlet), into which Cicero built the train of thoughts that acknowledgement rather than punishment would be due to Milo for killing Clodius as thereby he had done immense service to *res publica*.<sup>9</sup> At the same time, it is possible to accept Lintott's view that, compared to Asconius's account, the rest of the arguments of the published speech and the delivered oration might have mostly overlapped.<sup>10</sup>

Obviously, Cicero could not argue differently – as it was an undeniable fact that Milo's slaves had killed Clodius – than by claiming that they acted in a situation of lawful defence as decent slaves ought to, that is, they protected their master.<sup>11</sup> As a key legal argument he uses the “*vim vi*” and “*arma armis repellere cuique licet*” principle.<sup>12</sup> Right at the beginning of his speech he makes it clear that he would base his argument on it as follows. The end of the *prooemium/exordium* contains the description of the legal question of the case (*stasis, status, quaestio, constitutio*). The possible forms of handling the case in accordance with Antique rhetorical theory are as follows: in the case of *status coniecturalis* it had to be clarified whether the suspect had committed the act, i.e., the question is aimed at the person of the perpetrator; *status definitivus* applied to the legal classification of the admitted act; in the case of *status generalis* or *qualitativus* they investigated if the committed act was subject to the scope of the given punitive statute; and in the case of *status translativus* they examined which law was to be applied and which court of justice was competent in the case. *Status generalis* can be taken more or less as the equivalent of the present-day reasons for excluding unlawfulness – for example, lawful defence, state of emergency, etc. Others argued that the case should be judged in terms of *status generalis*; more specifically, that killing of Clodius was not a crime because it served the interest of the state, thus, it occurred completely rightly. Cicero did not choose this path since he did not want to use either the tool of *deprecatio* (by which the accused admits his

<sup>8</sup> *Ibid.*

<sup>9</sup> Cic. *Mil.* 72–83. See also A. W. Lintott: “Cicero and Milo”. *Journal of Roman Studies* 64 (1974) 62–78., 74.

<sup>10</sup> A. W. Lintott (1974) 74

<sup>11</sup> Cic. *Mil.* 8–11. 29–31.

<sup>12</sup> Vö. Ulp. D. 43, 16, 1, 27.; J. Zlinszky: *Római büntetőjog. (Roman Criminal Law.)* Budapest 1991. 114. f. See also J. E. Gaughan: *Murder Was Not a Crime: Homicide and Power in the Roman Republic.* Austin 2010.

guilt and asks for pardon referring to his earlier merits) or the opportunity of *comparatio*, which presents the act as a deed performed for the sake of the state. In his argument he used the tool of *relatio criminis*<sup>13</sup> and wanted to prove that Clodius had intended to murder Milo, and Milo had acted in self-defence only. At the same time, it can be established that setting out from the stable legal and political grounds of reference to the situation of lawful defence he does not lay smaller emphasis on emotional impact and uses the tool of *comparatio*, that is, he presents Milo's act committed in self-defence as a deed beneficial to the State – the latter assessment was most probably not voiced in the delivered speech and was inserted in the published version only.<sup>14</sup>

The argument of the prosecution somewhat helped Cicero as the Appii Claudii argued that Milo set a trap for Clodius with premeditated malice to be able to murder him, which Cicero could easily refute.<sup>15</sup> The primary aim of the court of justice set up by Pompey must have been to punish the abettors – in this case Milo, who did not kill Clodius with his own hands – rather than the slaves and freemen belonging to the people of the house of Milo and Clodius who clashed on Via Appia. In accordance with that, the phrase “*dolo malo*” well-known from the *praetor's* edict<sup>16</sup> was in several cases adopted in the usage of *quaestiones de vi* too.<sup>17</sup> On the other hand, to distinguish voluntary homicide from involuntary homicide, the phrase “*dolo*” was used already in the *par(r)icida* definition attributed to Numa.<sup>18</sup> *Lex Cornelia de sicariis et veneficis* ordered to punish bearing of arms suitable for manslaughter and bearing of arms with intent to kill.<sup>19</sup> Taking all this into consideration, there are good chances for presuming that *lex Pompeia de vi* providing grounds for the proceedings against Milo also contained the phrase “*dolo (malo)*” and, accordingly, the accusers might have also wanted to prove that the act had been premeditated, prepared, which Cicero could easily refute.<sup>20</sup>

Accordingly, Cicero, responding to the usage of the prosecution, uses the phrases “*insidiae*” and “*insidiator*” several times;<sup>21</sup> however, he

<sup>13</sup> Cf. Cic. *inv.* 2, 78. ff.

<sup>14</sup> A. W. Lintott: *Violence in Republican Rome*. Oxford 1968. 23.

<sup>15</sup> Cic. *Mil.* 46. ff.

<sup>16</sup> Cf. Cic. *Tull.* 7. 24.

<sup>17</sup> Ulp. D. 48, 6. 10 pr. 1.

<sup>18</sup> Fest. 247. *si qui hominem liberum sciens morti duit, paricidas esto*.

<sup>19</sup> Cf. D. J. Cloud: *Parricidium: from the lex Numae to the lex Pompeia de parricidiis*. Zeitschrift der Savigny Stiftung für Rechtsgeschichte, Romanistische Abteilung 88 (1971) 1 66; W. Kunkel: *Untersuchungen zur Entwicklung des römischen Kriminalverfahrens in vorsullanischer Zeit*. München 1962. 65. ff.

<sup>20</sup> A. W. Lintott (1974.) 75. See also M. C. Alexander: *The Case for the Prosecution in the Ciceronean Era*. Ann Arbor 2003. 263. f.

<sup>21</sup> Cic. *Mil.* 10. 11. 14. 23. 28. 30. 31.

strives to refute that the point would have been that both Milo and Clodius had planned in advance to kill the other, and emphasises that the plan of the murder was formulated and became determination unilaterally in Clodius.<sup>22</sup> He convincingly refers to the opportunity provided by *ius naturale* that killing of the aggressor *insidiator* does not qualify an unlawful act.<sup>23</sup> Cicero endeavours to turn it to his and his defendant's advantage that the senate qualified the events taken place on Via Appia treason when he tries to prove regarding the clash that it was seemingly condemned but practically approved by the senate.<sup>24</sup> In the *narratio* the orator touches on lawful defence as well as stresses that the slaves killed Clodius not upon Milo's instructions.<sup>25</sup> Presentation of the situation of lawful defence bears a clear resemblance to the relevant locus in *Pro Sestio* where the orator describes Sestius's act as the only possible form of defence against Clodius.<sup>26</sup> Cicero, at least in the version of the speech left to us, elegantly disregards the point of the case most critical to Milo: the attacking of the inn, that is, the circumstance that even the most brilliant orator could not have presented as direct outcome or manifestation of lawful defence.

After the speeches had been delivered, both the prosecution and the defence repudiated and demanded expulsion of five senators, five knights and five *tribuni aerarii* from the members of the *quaestio*; so, a total of fifty-one jurors voted. According to Asconius, twelve senators, thirteen knights and thirteen *tribune aerarii* voted for Milo's guilt, and six senators, four knights and three *tribune aerarii* voted for his innocence; furthermore, Asconius describes that according to certain people Marcus Porcius Cato most certainly took a stand for acquitting the accused as he declared several times that Clodius's death was a great relief to *res publica*.<sup>27</sup> During the following days Milo went into voluntary exile to Masilia.

## 2. THE MOTIF OF KILLING THE TYRANT AS FURTHER DEVELOPMENT OF LAWFUL DEFENCE

Below it is worth investigating how the motif of killing the tyrant appears in the speech delivered in defence of Milo, more precisely, in the published speech left to us, and how it is reflected and more elaborately worked out in Cicero's later philosophical works. As a starting point it

<sup>22</sup> *Ibid.*, 23. 31. ff.

<sup>23</sup> *Ibid.*, 7–11.

<sup>24</sup> *Ibid.*, 12–14.

<sup>25</sup> *Ibid.*, 28–29.

<sup>26</sup> *Ibid.*, 88. ff.

<sup>27</sup> Asc. 32.

must be made clear that harmonisation of the defence of *dignitas* and legitimised application of *vis* – i.e., killing the tyrant as a category of public law/philosophy of the state – was integrated in Cicero’s philosophy only after Milo’s unsuccessful defence and publication of the re-written/re-edited version of the speech.<sup>28</sup>

There is a completely striking connection between the portrait of the tyrant in *De re publica*<sup>29</sup> and the formulation of the demand to eliminate the tyrant from public life<sup>30</sup> and the image of “Milo as *tyrannoktonos*”.<sup>31</sup> Accordingly, tyranny is created not through filling some office, position or dignity; the tyrant carries the core of tyranny in his personality, being, which is aimed at a single goal: *dominatio* over his fellow-citizens, and, eventually, at seizing *regnum*.<sup>32</sup> Thus, the *civis* who frees the State from the plague of tyranny is nothing else than *tutor et procurator rei publicae*, that is, healer of the community. In *Pro Milone* the contrast becomes sharp and clear: Clodius appears as *tyrannus*,<sup>33</sup> his death as killing the tyrant,<sup>34</sup> Milo as *conservator populi*, and through killing Clodius as *tutor et procurator rei publicae*.<sup>35</sup> As a historical example for *tyrannus* Cicero very often mentions Tarquinius Superbus, Sp. Maelius and Ti. Gracchus,<sup>36</sup> and refers to Verres from the recent past.<sup>37</sup> Cicero himself was several times called *tyrannus* by his political opponents and enemies.<sup>38</sup>

Cicero’s theory of killing the tyrant is primarily based on stoic philosophy,<sup>39</sup> at the same time, it is important to underline that this theory is not a direct philosophical transformation of the “*vim vi repellere licet*” principle that serves the legal postulate of defence in *Pro Sestio* and *Pro Milone*.<sup>40</sup> The stoic element of the motif of killing the tyrant can be

<sup>28</sup> M. E. Clark, J. S. Ruebel: *Philosophy and Rhetoric in Cicero’s Pro Milone*. Rheinisches Museum 128 (1985) 57–72., 72; A. Melchior: “Twinned Fortunes and the Publication of Cicero’s Pro Milone” *Classical Philology* 103 3/2008. 282–297., 283.

<sup>29</sup> *Cic. rep.* 2, 47. See also A. Lintott: *Cicero as Evidence. A Historian’s Companion*. Oxford New York 2008. 226. ff.

<sup>30</sup> *Ibid.*, 2, 51.

<sup>31</sup> In detail see K. Büchner: *Der Tyrann und sein Gegenbild in Ciceros ‘Staat’*. In: *Studien zur römischen Literatur, II*. Wiesbaden 1962. 116–147; R. Heinze: *Ciceros ‘Staat’ als politische Tendenzschrift*. *Hermes* 59 (1924) 73–94.

<sup>32</sup> K. Büchner 121; E. Meyer: *Römischer Staat und Staatsgedanke*. Zürich 1964. 345.

<sup>33</sup> *Cic. Mil.* 35.

<sup>34</sup> *Ibid.*, 80. 83. 89.

<sup>35</sup> *Ibid.*, 80. Cf. Büchner 1962. 138. f.

<sup>36</sup> Cf. M. E. Clark, J. S. Ruebel 59; A. W. Lintott (1968) 55. ff.

<sup>37</sup> *Cic. Verr.* 2, 3, 20.

<sup>38</sup> *Cic. Vat.* 23; *Sest.* 109.

<sup>39</sup> M. Pohlenz: *Die Stoa, I*. Göttingen 1964. 139. 185. 313.

<sup>40</sup> M. E. Clark, J. S. Ruebel 59.

demonstrated most clearly, what is more, in a form uttered by Cicero, in the third book of *De officiis* written in 44.<sup>41</sup> He declares that the element of killing the tyrant<sup>42</sup> is fully in harmony with stoic philosophy,<sup>43</sup> which also complies with *naturalis ratio*,<sup>44</sup> i.e., it is the ultimate conclusion of ethical consideration.<sup>45</sup> In view of the fact that the *tyrannus* ruins human community and places himself outside the rules of coexistence,<sup>46</sup> accordingly, these rules are not binding him either.<sup>47</sup> Cicero extends this principle to a wider scope, more specifically, he harmonises it with the norms of *ius naturale*, *ius gentium*, *ius divinum* and *ius humanum*.<sup>48</sup> The stoic sage acts in harmony with the laws of nature when he eliminates the tyrant from society, imitates the efforts of Hercules made for the sake of mankind.<sup>49</sup>

Cicero transforms the thesis of stoic moral philosophy into the legal thinking and concepts of the Romans.<sup>50</sup> His reasoning culminates in turning the right of killing the tyrant into the ethical/legal command of killing the tyrant: making common cause with the tyrant is excluded, he must be barred and removed from human community since he is nothing else than a beast having assumed human form.<sup>51</sup> Phalaris's case is Cicero's most favourite example, and by that he demonstrates that assassination is not only ethically fair but it is definitely a moral obligation (*honestum necare*), elimination of the tyrant from the community (*feritas et immanitas beluae segreganda est*). This again is in line with the identification of the *tyrannus* with *belua* also present in stoic philosophy, which is clearly formulated in *De re publica* too<sup>52</sup> in such form that the *tyrannus* is the most harmful species of animals, which is the most hateful subhuman being both to gods and humans, that is, it lives merely *in figura hominis*.<sup>53</sup> Thus, the key attributes of the tyrant can be described by the following concepts: *nulla societas*, *belua*, *genus pestiferum*, *exul*, *contra leges*, *contra naturam*; i.e., a being close to a subhuman form of exist-

<sup>41</sup> Cic. *off.* 3, 19 32.

<sup>42</sup> *Ibid.*, 3, 32.

<sup>43</sup> *Ibid.*, 3, 20.

<sup>44</sup> *Ibid.*, 3, 23.

<sup>45</sup> *Ibid.*, 3, 14. 19.

<sup>46</sup> *Ibid.*, 3, 21.

<sup>47</sup> *Ibid.*, 3, 32.

<sup>48</sup> *Ibid.*, 3, 23.

<sup>49</sup> *Ibid.*, 3, 23. 25.

<sup>50</sup> M. E. Clark, J. S. Ruebel 61.

<sup>51</sup> Cic. *off.* 3, 32.

<sup>52</sup> Cic. *rep.* 2, 48.

<sup>53</sup> M. E. Clark, J. S. Ruebel 61.

ence, whose assassination cannot constitute moral offence just as killing any harmful beast.<sup>54</sup>

In *Pro Milone* this train of thoughts and images can be clearly followed. Cicero devotes two paragraphs to Clodius's sexual debaucheries,<sup>55</sup> three to his religious offences,<sup>56</sup> and underlines his crimes committed against natural law and positive law.<sup>57</sup> All this properly substantiates the image depicted of Clodius's beastly nature: the net of laws, which served to catch Clodius, the beast, who wants to seize *regnum*,<sup>58</sup> and of which he slipped out several times, and the representation of the wild beast hiding in darkness creates the image of beastly existence.<sup>59</sup> The wild animal *topos* occurs several times in Cicero's *corpus* in the characterisation of both Clodius<sup>60</sup> and Antonius.<sup>61</sup> So, Clodius was nothing else than a *belua* upsetting the order of Roman *societas*, terrorising decent citizens, among others Cicero and Pompey,<sup>62</sup> who tried to carry through the seizing of *dominatio* by undermining laws (*legibus Clodianis*) too, as it is an immanent feature of every tyrant,<sup>63</sup> and in 58 Cicero himself almost fell victim to this legislation crushing the law, more precisely *lex Clodia de capite civium*.

When Cicero refers to the circumstance of the situation of lawful defence excluding unlawfulness with regard to Milo's defence,<sup>64</sup> on the one hand, he supports his argument by the terminology of the relevant passage of *lex Cornelia de sicariis*,<sup>65</sup> on the other hand, he does not refer to written law but to man's innate right derived from nature in order to prove Milo's act, for if an assassin, aggressor, robber or enemy attacks somebody by arms, then he can use every means to protect his life.<sup>66</sup> Consequently, in killing the *insidiator*, that is, Clodius, Milo followed the law of nature as the force of positive law does not prevail in such cases,

<sup>54</sup> *Ibid.*, 62.

<sup>55</sup> *Cic. Mil.* 55 56.

<sup>56</sup> *Ibid.*, 85 87.

<sup>57</sup> *Ibid.*, 44. 73. sk.

<sup>58</sup> *Ibid.*, 43. 76 78.

<sup>59</sup> *Ibid.*, 40 41.

<sup>60</sup> *Cic. Sest.* 16; *Mil.* 40. 85; *har. resp.* 5.

<sup>61</sup> *Cic. Phil.* 3, 28; 4, 12; 7, 27.

<sup>62</sup> *Cic. Mil.* 37 39.

<sup>63</sup> *Ibid.*, 89. Cf. *Cic. dom.* 43. ff.; *Pis.* 58.

<sup>64</sup> *Cic. Mil.* 10 11.

<sup>65</sup> R. Cahen: "Examen de quelques passages du Pro Milone". *Revue des Etudes Anciennes* 25 (1923) 119 138., 122. ff.

<sup>66</sup> *Cic. Mil.* 10. *haec ... non scripta, sed nata lex, quam ... ex natura ipsa adripimus*



for in war law is silent, and the assassin can be killed rightly.<sup>67</sup> With the aid of the basic principles of stoic philosophy, among others, Cicero extends the scope of lawful defence to a wide domain: educated persons were allowed by common sense, barbaric tribes by necessity, peoples by unwritten law and wild beasts by nature to drive back every attack of violence every time by every means.<sup>68</sup>

The orator, however, does not confine himself to prove lawfulness of Milo's act: it is not punishment at all but praise that he would deserve for killing Clodius since he did a great service to *res publica* so to say unselfishly because all of his acts were motivated – as Cicero asserts – by his commitment to public good.<sup>69</sup> It is in this spirit that he makes Milo speak: he makes him wish citizens and the State tranquil and undisturbed life even at the expense of his own exile.<sup>70</sup> He raises this train of thoughts and greatness of Milo's act to a divine-cosmic sphere and strikes a tone that he uses later in *Somnium Scipionis* when praising the merits of men who work for the public.<sup>71</sup> By that he opens a new dimension for the interpretation of the "*vim vi repellere*" principle as he distinguishes between two kinds of *vis*: baleful violence used by Clodius and the force that guarantees survival of Rome by which providence, i.e., *providentia* itself intervened as saviour through Milo in the fate of the State.<sup>72</sup> Therefore, in this sense, his defendant is no longer an independent doer but an agent who fulfils the prediction made by Cicero in 57 that Milo would kill Clodius,<sup>73</sup> that is, a means of *providentia* because divine providence, destiny had let Clodius stay alive so that it could fulfil his punishment at a given place, given time and under given circumstances by Milo's hands.<sup>74</sup>

All this is unambiguously reverberated in the relevant paragraphs of *De officiis*. *Providentia*, which is the form of appearance of stoic *fatum*,<sup>75</sup> that is, *heimarmenē*, is manifested through the *sapiens*, who is, on the basis of *naturae ratio*, not only entitled but obliged to kill the *tyrannus* that annihilates *coniunctio civium*.<sup>76</sup> So, in this respect, Milo is

<sup>67</sup> *Ibid.*, 11. *silent enim leges inter arma*; cf. Cic. *Sest.* 86; *leg.* 1, 19; 2, 8. 11; *fin.* 4, 25.

<sup>68</sup> Cic. *Mil.* 30.

<sup>69</sup> *Ibid.*, 6.

<sup>70</sup> *Ibid.*, 93.

<sup>71</sup> Cic. *rep.* 6, 13. ff.

<sup>72</sup> Cic. *Mil.* 83–84. Cf. K. Büchner 276; M. E. Clark, J. S. Ruebel 67.

<sup>73</sup> Cic. *Att.* 4, 5.

<sup>74</sup> Cic. *Mil.* 86.

<sup>75</sup> On the other aspects of *fatum* see W. Pötscher: *Das römische fatum – Begriff und Verwendung*. In: H. Temporini W. Haase (Hrsg.): *Aufstieg und Niedergang der römischen Welt*, II. 16. 1. Berlin New York 1978. 393–424.

<sup>76</sup> Cic. *off.* 3, 23.

nothing else than a manifestation of the archetype of stoic *sapiens*, who, having realised *naturae ratio*, fulfilled the order of *heimarmenē* and freed the State from the contagion poisoning the community. Law and statutes, i.e., state authority was not and would not have been able to bring the peril embodied by Clodius under control,<sup>77</sup> law and order of the State could not put proper tools into Milo's hands to act as avenger.<sup>78</sup>

It is known from Asconius that there are significant differences between the speech delivered in defence of Milo and the speech published, and before delivering the speech Cicero had rejected Brutus's proposal to refer to lawfulness of killing the tyrant in Milo's defence.<sup>79</sup> The fact that he did not achieve his goal, that is, he did not attain Milo's acquittal most probably made the orator change his tactics of argument in the re-written *Pro Milone* disseminated also as a political pamphlet.<sup>80</sup> Presumably, before making the speech, it was not for theoretical reasons that Cicero refused to accept Brutus's argument as in 63 he himself had several conspirators executed without judgment and undertook the defence of Rabirius charged with *perduellio* – the difference between these cases and Milo's case was that the latter was not backed by *senatus consultum ultimum*.<sup>81</sup> In 57, Cicero cherished hopes regarding Clodius's assassination by recalling the example of Scipio Nasica who killed Ti. Gracchus as *tyrannus*, but at that time he had not placed himself beyond the limits of positive law yet.<sup>82</sup> In the speech delivered he endeavoured to use the system of argument of positive law and was reluctant to resort to the tools of legitimisation of stoic philosophy – his efforts were not crowned by success. Afterwards, in the published version he used the system of argument of stoa, which he later on shaped into a structure of profound thoughts with respect to the idea of killing the tyrant in *De re publica*, *De finibus bonorum et malorum*, *Tusculanae disputationes* – in which he defined the time of the dialogue as the period of Milo's lawsuit – and in *De officiis*. He might have meant the oral pleadings, stylised into a paper on the philosophy of the state, which highlights Milo's unselfishness and self-sacrifice and which sets Milo as an example of the stoic sage, to provide *consolatio* for Milo.<sup>83</sup>

In what follows it is worth following Aislinn Melchior's train of thoughts that convincingly proves that in the version of *Pro Milone* left to

<sup>77</sup> Cic. *Mil.* 77.

<sup>78</sup> *Ibid.*, 88.

<sup>79</sup> Asc. 30.

<sup>80</sup> M. E. Clark, J. S. Ruebel 69.

<sup>81</sup> Cf. J. Ungern Sternberg v. Pükel: *Spätrepublikanisches Notstandsrecht*. München 1970. 12. ff.

<sup>82</sup> Cic. *dom.* 91; *Att.* 4, 3.

<sup>83</sup> M. E. Clark, J. S. Ruebel 72.

us Cicero consequently enforces the tendency in Milo's representation that he compares his defendant and his acts performed for the sake of *res publica* to his own merits obtained during suppression of Catilina's plot and identifies him with himself. All this might have primarily served a given political goal: as his own fate exemplifies the opportunity of returning/being called back from unlawful exile, he is hoping that Milo will be called back too, and that is what he wanted to advance by publishing the *oratio*.<sup>84</sup>

The key points of identifying the two persons, Cicero and Milo are as follows. Both did noble service to the State as they freed the community of the tyrant, however, the ungrateful crowd forced both of them into exile. These similarities should bring along the following as logical consequences: if Cicero was able to return home from exile triumphantly, then Milo should return home too. The enemies of Cicero and Milo embody an identical principium: in the identification Cicero represents Clodius as second Catilina, however, it is not *Pro Milone* where this image occurs for the first time. This identification emerges several times after his return from exile; for example, in *De domo sua* Clodius appears as *felix Catilina*.<sup>85</sup> In *Pro Milone*, identification of Clodius with Catilina is carried out by applying certain *appositiones* rather than by name. In this respect it is worth comparing the usage of *Pro Milone* with that of the speeches against Catilina. The key characteristics of both Catilina and the conspirators are *furor*<sup>86</sup> and *audacia*;<sup>87</sup> they appear as *latro*,<sup>88</sup> *insidiator*<sup>89</sup> and *parricida*.<sup>90</sup> Clodius and his adherents are also characterised by *furor*<sup>91</sup> and *audacia*<sup>92</sup> just as by the classifications *latro*,<sup>93</sup> *insidiator*<sup>94</sup> and *parricida*.<sup>95</sup> The identification of Catilina with Clodius develops most clearly at the point where the orator speaks about the causes of his own exile,<sup>96</sup> and in relation to it characterises Clodius as it were as the "legal successor" of Catilina who undermined the State.

<sup>84</sup> A. Melchior. 285. f.

<sup>85</sup> Cic. *dom.* 72.

<sup>86</sup> Cic. *Cat.* 1, 1. 2. 15. 23. 31; 2, 19. 25; 3, 4; 4, 12.

<sup>87</sup> *Ibid.*, 1, 1. 4. 7; 2, 3. 10. 27.

<sup>88</sup> *Ibid.*, 1, 23. 31. 33; 2, 7. 16. 22.

<sup>89</sup> *Ibid.*, 1, 11. 32; 2, 6. 10.

<sup>90</sup> *Ibid.*, 1, 17. 29. 33; 2, 7. 22.

<sup>91</sup> Cic. *Mil.* 3. 27. 32. 34. 35. 77.

<sup>92</sup> *Ibid.*, 6. 30. 32.

<sup>93</sup> *Ibid.*, 17. 18. 55.

<sup>94</sup> *Ibid.*, 6. 10. 11. 14. 19. 27. 30. 54.

<sup>95</sup> *Ibid.*, 18. 86.

<sup>96</sup> *Ibid.*, 36 37.

Accordingly, Cicero identifies Milo's role with his own, representing both of them as archetypal manifestations of real patriotism, who qualified the State for this role by undertaking the sublime task of killing the tyrant, that is, Clodius – in the case of Milo – and chasing away Catilina and having the conspirators executed – in the case of Cicero. Just as the great and the good of past times, C. Servilius Ahala who killed Spurius Maelius, Publius Scipio Nasica who did away with Tiberius Gracchus, Lucius Opimius who used the opportunities provided by *senatus consultum ultimum* and did away with Caius Gracchus, and Caius Marius who rendered L. Saturninus harmless.<sup>97</sup> In the first speech against Catilina the orator calls the example of exactly the same men to his audience's mind when he urges that Catilina should be rendered harmless.<sup>98</sup> In view of the fact that at the time of publishing *Pro Milone* the speeches against Catilina constituted *exempla* of Roman rhetorical training to be learned by heart, Cicero could certainly expect the readers of the oral pleadings to recognise the reminiscences implied by the enumeration without doubt and draw necessary conclusions from them with respect to the parallels between the roles of Milo and Cicero.<sup>99</sup>

The characters of Spurius Maelius and Tiberius Gracchus return in the second *sermocinatio* of *Pro Milone*, i.e., in the passage where the orator calls Milo as it were as a fictitious speaker,<sup>100</sup> which can be considered as a kind of reminiscence of the given locus of the fourth *Catilinaria* again where Cicero expounds that Catilina represents a danger to the State greater than any of the former subversive elements, the Gracchi and L. Saturninus.<sup>101</sup> Thereby the orator clearly demonstrates that Clodius, rendered harmless by Milo, also carried danger to *res publica* greater than former subversive elements, measurable only to the peril caused by Catilina. Just as Cicero mentions himself as *conservator civium*,<sup>102</sup> Milo also becomes *conservator populi*.<sup>103</sup> When he puts the statement into Milo's mouth that he fended off Clodius's dagger that he drove at citizens' throat,<sup>104</sup> it is a clear *allusio* to the passage of the third *Catilinaria* where Cicero tells the same about himself regarding Catilina's weapons.<sup>105</sup> It appears also as a parallel between Cicero and Milo that both of them

<sup>97</sup> *Ibid.*, 82.

<sup>98</sup> *Cic. Cat.* 1, 3 4.

<sup>99</sup> A. Melchior. 290.

<sup>100</sup> *Cic. Mil.* 72 73.

<sup>101</sup> *Cic. Cat.* 4, 4.

<sup>102</sup> On this topic see J. Paterson: *Self Reference in Cicero's Forensic Speeches*. In: J. Powell J. Paterson (eds.): Oxford 2004. 79 95.

<sup>103</sup> *Cic. Mil.* 73. 80.

<sup>104</sup> *Ibid.*, 77.

<sup>105</sup> *Cic. Cat.* 3, 2.

saved the State and peace of citizens at the expense of risking their own life and safety.<sup>106</sup> (At the same time, the orator makes use of the identification properly in other respects too: he opposes Milo's courage to his own fear,<sup>107</sup> and Milo's face and glance turned rigid as marble to his own tears<sup>108</sup>).

The identification of Milo with himself has further tempting opportunities in store: in the person of Milo who kills Clodius he can triumph over the dead primordial enemy.<sup>109</sup> In spite of the fact that no direct evidence is available to us that by publishing the speech Cicero wanted to attain that Milo should be called home from exile, all these parallels and identifications give us a good chance of presuming it.<sup>110</sup>

When Cicero forwarded a copy of the published speech – which is one of the masterpieces of both rhetoric and political pamphlets indeed – to Milo too, allegedly he made the only remark that if earlier Cicero had spoken before court like that too, then now he could not eat the superb fish that can be caught solely in Massilia.<sup>111</sup> Cicero was not wrong – this statement makes us discern: in a certain sense Milo was a stoic sage indeed.

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<sup>106</sup> Cic. *Mil.* 30. Cf. Cic. *Cat.* 4, 18.

<sup>107</sup> Cic. *Mil.* 1.

<sup>108</sup> *Ibid.*, 101. 105.

<sup>109</sup> A. Melchior. 293.

<sup>110</sup> *Ibid.*, 295.

<sup>111</sup> Dio Cass. 40, 54, 2.