

Caesar prophesies the future: Sallust *Catiline* 51.35-6. An exercise in historiography*

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* Martin Stone died suddenly on 14 December 2015. He had been for many years a senior lecturer in the Department of Classics and Ancient History at the University of Sydney, and remained an active researcher following his retirement in 2006. The following text, for the most part left in its original form, represents the paper delivered at the Ancient Literary and Visual Representations of the Roman Civil Wars of the 40s and 30s BC conference at Margherita di Savoia, Italy, in September 2012. The footnotes and bibliography are the creation of his colleagues and friends: Kathryn Welch, Kit Morrell, Eleanor Cowan, and Andrew Pettinger. John Ramsey kindly and usefully read and improved the penultimate draft, as did the anonymous reader for *Hermathena*. We thank them and Dr Richard Westall for their assistance in preparing the paper for publication.

Martin was fond of using footnotes for developing ancillary arguments, as enlightening as they were extensive. We have tried only to list the sources and, where relevant, direct the reader to relevant modern scholarship. Various conversations with Martin suggest that he had reconsidered many of the arguments here put forward, particularly as he came to think more deeply about the events of 43 and 42 BCE. We nevertheless feel strongly that the paper as he left it deserves a wider audience.

Martin left no bibliography or footnotes. What follows is a reconstruction of what we think Martin probably read as well as our own knowledge of relevant scholarship. It is by no means exhaustive. It is worth noting, nonetheless, that Martin's argument is original. Despite being relevant to the question of how the character of Caesar was used in the wake of his assassination, Sallust's prophecy appears, for the most part, to be absent from works on Caesar or the civil wars. Nor does it figure prominently in works on the Catilinarian affair or its treatment by Sallust, although Caesar's speech obviously does. The paper therefore offers new avenues of inquiry on issues fundamental to our understanding of the Late Republic. Two works, however, deserve special mention. Benjamin Straumann (2016) quotes the prophecy on page 131 and notes the 'distinct echoes of Sallust's time of writing (44/43 BC)'. Straumann's objective, however, is to reveal a general attitude toward *provocatio* in the Late Republic. He does not engage with the purpose of the passage or treat it as an artefact of Sallust's politics. L. A. Mackay (1962) does not cite the prophecy but argues nonetheless that the paired speeches of Caesar and Cato were a commentary on the late 40s BCE. Indeed, for Mackay, Caesar's speech was a '...warning against extreme policies that could precipitate disaster...' On Martin's reading, Sallust was writing after, not before, the 'disaster', but the similar approach is worth noting all the same.

I.

Sallust has incorporated in his monograph on the Catilinarian conspiracy a speech attributed to C. Caesar, *pontifex maximus* and praetor designate. That Caesar delivered a speech in the Senate on 5 December 63 BCE is historically attested, as is its general line of argument against executing the arrested conspirators.¹ The case for clemency (failing due process) won temporary success with its senatorial audience before its eventual rebuttal by a junior senator M. Cato, tribune designate. On Cato's motion the Senate voted and the consul Cicero carried out an immediate execution of the five arrested men. Is Sallust's text in Chapter 51 a faithful representation of Caesar's argument?²

In this version of the speech there is a section (51.25-36) reminding senators of two historical episodes that should serve as a warning against execution without due process in the current case:³

(25) 'at enim quis reprehendet quod in parricidas rei publicae decretum erit? tempus, dies, fortuna, quousque lubido gentibus moderatur. (26) illis merito accidet quicquid evenerit; ceterum vos, patres conscripti, quid in alios statuatis considerate. (27) omnia mala exempla ex rebus bonis orta sunt; sed ubi imperium ad ignaros eius aut minus bonos pervenit, novum illud exemplum ab dignis et idoneis ad indignos et non idoneos transfertur. (28) Lacedaemonii devictis Atheniensibus triginta viros inposuere qui rem publicam eorum tractarent. (29) ei primo coepere pessimum quemque et omnibus invisum indemnatum necare. ea populus laetari et merito dicere fieri. (30) post, ubi paulatim licentia crevit, iuxta bonos et malos lubricinose interficere, ceteros metu terrere; (31) ita civitas servitute oppressa stultae laetitiae gravis poenas dedit. (32) nostra memoria victor Sulla quom Damasippum et alios eius modi, qui malo rei publicae creverant, iugulari iussit, quis non factum eius laudabat? homines scelestos et factiosos, qui seditionibus rem

¹ Cic. *Cat.* 4.7, 9-10; Cic. *Att.* 12.21.1 SB 260; Drummond 1995, 36-47; Pagán 2012, 94-7.

² For an extended treatment of the speech, Drummond 1995, 23-50. For a different view of its possible historicity, Tannenbaum 2005, 210-3.

³ Trans. Rolfe. For references and scholarship, Drummond 1995, 32-6.

publicam exagitaverant, merito necatos aiebant. ⁽³³⁾ sed ea res magnae initium cladis fuit; nam uti quisque domum aut villam, postremo vas aut vestimentum aliquoius concupiverat, dabat operam ut is in proscriptorum numero esset. ⁽³⁴⁾ ita illi quibus Damasippi mors laetitiae fuerat paulo post ipsi trahebantur, neque prius finis iugulandi fuit quam Sulla omnis suos divitiis explevit. ⁽³⁵⁾ atque ego haec non in M. Tullio neque his temporibus vereor; sed in magna civitate multa et varia ingenia sunt. ⁽³⁶⁾ potest alio tempore, alio consule, quoi item exercitus in manu sit, falsum aliquid pro vero credi; ubi hoc exemplo per senatus decretum consul gladium eduxerit, quis illi finem statuet aut quis moderabitur?

⁽²⁵⁾ 'But, you may say, who will complain of a decree which is passed against traitors to their country? Time, I answer, the lapse of years, and Fortune, whose caprice rules nations. ⁽²⁶⁾ Whatever befalls those prisoners will be deserved; but see that you consider, Members of the Senate, how your decision will affect other criminals. ⁽²⁷⁾ All bad precedents have originated from good measures; but when power comes to those inexperienced in exercising it or to men not so virtuous, that new precedent is transferred from those deserving and fit for such punishment to the undeserving and unfit. ⁽²⁸⁾ The Spartans, after they had conquered the Athenians, set thirty men over them to administer their state. ⁽²⁹⁾ Those men at first began to put to death without a trial the most wicked and generally hated citizens. The people rejoiced at those executions and declared that they were carried out deservedly. ⁽³⁰⁾ But afterward, when their license gradually increased, the tyrants slew good and bad alike at their pleasure and intimidated the rest. ⁽³¹⁾ Thus the nation was reduced to slavery and paid a heavy penalty for its foolish rejoicing. ⁽³²⁾ Within our own memory, when the conqueror Sulla ordered the killing of Damasippus and others of that kind, who had become prominent to the detriment of the state, who did not commend his deed? People asserted that criminal intriguers, who had disturbed the country with civil strife, had deservedly been put to death. ⁽³³⁾ But that act was the beginning of great bloodshed; for whenever anyone coveted a man's house in Rome or the countryside, or in short even a man's cup or clothing, he contrived to have him enrolled among the proscribed. ⁽³⁴⁾ Thus those who had exulted in the death of Damasippus were themselves a little afterward dragged off to execution, and there was no end to the killing until Sulla glutted all his followers with riches. ⁽³⁵⁾ For my own part, I fear nothing of this kind in Marcus Tullius or in these circumstances, but in a great community of citizens there are many different

natures. It is possible for something false to be believed true at another time, when someone else is consul who may likewise have an army under his control. ⁽³⁶⁾ When the consul, on the basis of this precedent, shall draw the sword in obedience to the senate's decree, who will limit or who restrain him?

The speaker adverts first to the execution without trial (*indemnatum*) of all the worst and most unpopular figures at Athens by the regime imposed there by Sparta in 404 BCE (the notorious 'Thirty Tyrants').⁴ The People rejoiced (*laetari*) and said the victims deserved (*merito*) to die.⁵ But the new oligarchy moved on to indiscriminate killing and general terror, and the enslaved citizenry paid a heavy penalty for its stupid rejoicing (*stultae laetitiae*).⁶ The second monitory episode comes from the recent past and dates to nineteen years before (*nostra memoria*). On his victory in 82 BCE, L. Sulla put to death malefactors like the praetor L. Junius Brutus Damasippus.⁷ Again people said it was well deserved (*merito*).⁸ But under cover of this widely approved beginning, a great disaster was wrought, and anyone might be proscribed at the instance of those who wanted property. Those who had rejoiced in Damasippus' death (*illi quibus Damasippi mors laetitiae fuerat*) were dragged away to death themselves, and there was no limit put to the carnage (*neque prius finis iugulandi fuit*) until the dictator Sulla had glutted his followers with riches.⁹ These, then, are two outstanding cases of natural justice without due process (*merito*) and a rejoicing without regard to consequences (*laetari, laetitiae*)

⁴ Sall. *Cat.* 51.28.

⁵ Sall. *Cat.* 51.28.

⁶ Sall. *Cat.* 51.30-1.

⁷ Sall. *Cat.* 51.32.

⁸ D. Iunius Brutus Damasippus (pr. 82), acting on orders from the Younger Marius, had put Q. Mucius Scaevola, P. Papirius Carbo Arvina, L. Domitius, P. Antistius and other leading senators to death just prior to L. Sulla's victory in 82 BCE. He was executed by Sulla soon after the Battle of the Colline Gate (App. *B Civ.* 1.92; Cass. Dio 30-5, fr. 109.4; Broughton *MRR*², 67; Seager 1994, 192.

⁹ Sall. *Cat.* 51.34.

that they should have realised would follow (*stultae*) – to themselves as well.

The logic of these two episodes has a clear bearing on the current situation in December 63 BCE. The *plebs* had already manifested rejoicing (*gaudium atque laetitiam agitabat*) over the arrests and a purge atmosphere was developing (48.1): the informer L. Tarquinius had already named the ex-censor M. Crassus (48.3-5), while two ex-consuls Q. Lutatius Catulus (*cos.* 78, ex-censor and the leading senator at the time) and C. Piso (*cos.* 67) had tried to induce Cicero to name Caesar (49.1). An equestrian guard had been posted to protect – and intimidate – the Senate (49.4). This is the context within which Caesar's plea for clemency must be placed. He acknowledges the guilt of the arrested men and proposes their imprisonment as a security measure. This is historical, and so are his examples: the suspension of due process in manifest cases deserving death leads rapidly to the same treatment of doubtful cases and the summary execution of innocent people. It is an inescapable inference that the excesses of the Thirty and of Sulla are a warning of an *impending*, not remote, expansion into a purge at the end of 63 BCE.

The warning was just: Caesar himself was nearly lynched later that day, and was soon to be publicly named by Cicero's chief informant (Plut. *Caes.* 8). In the event, the purge was tightly controlled: a number of associates in the conspiracy would be tried in court *de vi* and exiled in 62 BCE (that is, by a form of due process); Crassus and Caesar were not brought before any court; P. Sulla was defended by the ex-consul Cicero himself and acquitted.¹⁰ And yet the purge-atmosphere was exploited by P. Sulla's prosecutor when he accused Cicero of tyranny for his very moderation.¹¹ It was reasonable for a speaker on 5 December 63 BCE to envisage the imminent prospect of a dangerous beginning (*initium cladis*), executions *merito*, stupid

¹⁰ Stone 1999, 69-72.

¹¹ L. Manlius Torquatus the younger accused Cicero of implementing *regnum* in 63 BCE (Cic. *Sull.* 21; Stone 1999, 65 n. 62).

rejoicing (*stulta laetitia*), and a purge without defined limits (*neque ... finis iugulandi*). So far Sallust's report of Caesar's argument reflects the real interest of the historical Caesar and probably reproduces part of his speech.¹² What follows does not.

II.

Sallust's Caesar moves on from the compelling historical parallels with a sharp disjunction boldly covered by *atque*, for he now denies the applicability of these to the present situation. And yet was not their applicability the point? '*atque ego haec non in M. Tullio neque his temporibus vereor; sed in magna civitate multa et varia ingenia sunt. potest alio tempore, alio consule, cui item exercitus in manu sit, falsum aliquid pro vero credi. ubi hoc exemplo per senatus decretum consul gladium eduxerit, quis illi finem statuet aut quis moderabitur?*'¹³ In Sallust's version of the speech, Caesar is not, after all, concerned for the current situation so vitally affecting himself, nor about any purge Cicero might initiate. He looks to a future remote from the present crisis.

Thus the Thirty Tyrants and Sulla's dictatorship are not, it now appears, being adduced as precedents relevant to 5 December 63 BCE. And indeed Sallust's readers (and we) know that Cicero did not rely on Sulla as precedent but on episodes of *limited* purge. The future crisis projected by Sallust's 'Caesar' is not anchored in legal precedent but in moral typology: capital punishment may sometimes be inherently just; it may, however, lie outside strict legality; once justice is imposed illegally it may easily and rapidly move to injustice; at that stage, with legality and justice in abeyance, it is difficult to restore the norms of civil society.¹⁴ Unless carefully managed, the situation in December 63 BCE could easily have fitted this template. Since in the event it did not, 'Caesar's' concern can be shifted to the plane of

¹² Syme 1964, 122-3. Syme sees the links but draws different conclusions from them.

¹³ Sall. *Cat.* 51.35-6.

¹⁴ On ancient views of capital punishment see Bauman 1996, 45-9 and 141-60.

generality. But that is not what Sallust does: the future conceived of is *specific*.

The historian Sallust did not agree with Caesar that Cicero was acting illegally; he held that due process was suspended by the *senatus consultum ultimum*;¹⁵ he also considered the executions of 5 December warranted, specifically in the case of P. Lentulus Sura; he actually applauds Cicero's moderation.¹⁶ But he did share the disapproval attributed to Caesar of the Sullan episode because, like the Terror under the Thirty, the illegality of procedure led to acts of substantive injustice, and these on an unlimited scale.¹⁷

What episodes within Sallust's adult lifetime can be characterised as substantively unjust capital punishment on an unlimited scale? The question answers itself: the proscriptions instituted at the end of 43 BCE.¹⁸ No other episodes qualify. The unjust exile of Cicero in 58 BCE employed the forms of law, but radically denied in its very terms the appropriateness of his execution and did not lead to a purge. The veritable purge carried out by Pompey as sole consul in 52 BCE was strictly conducted through the courts — any injustice was the work of incorruptible juries — and involved no executions.¹⁹ The high-handed procedures of Caesar as dictator took the form of exile and confiscation but eschewed death without trial except in the aftermath of battle. The consuls Antony and Dolabella in 44 BCE each perpetrated executions without trial and appeal; but the deaths of the pseudo-Marius and his supporters and of the centurions at Brundisium were a response to insurgencies and did not amount to an unlimited purge.²⁰ None of these episodes

¹⁵ Drummond 1995, 79-107.

¹⁶ Stone 1999, 74-5.

¹⁷ Sall. *Cat.* 11.4.

¹⁸ Syme 1939, 187-201; Hinard 1985.

¹⁹ 'Purge': Asc. *Mil.* 55-6C; Stone 1980, 103-6. Incorruptible juries: Asc. *Mil.* 38C; cf. Cic. *Mil.* 21, 105. Also App. *B Civ.* 2.24 (although his grasp of the detail is loose); Cass. Dio 40.54.1, 40.55.1.

²⁰ Amatius ('Marius'): Frisch 1946, 67-8; Matijević 2006, 88, 98-100; Cowan 2009. Antonius at Brundisium: Matijević 2006, 179-95.

involving consuls with armies sees the Senate involved *per senatus decretum* in a purge with executions; finally, none except Cicero's exile (and arguably Milo's) has a falsehood credited as truth.

The concern expressed in Caesar's speech about a possibly remote future that resembles the massacre under the Thirty and the proscriptions of Sulla looks forward to the proscriptions under the Triumvirate, that is, the circumstances of Sallust's present, or at the least a recent past, at time of writing. Caesar's actual protest is remodelled to that end, and Caesar is co-opted as prophet. That has often been seen; the degree to which the historical Caesar has been enlisted as a literary character in Sallust's service has not.

III.

Sallust has dropped several clues to what he wishes readers to understand in the way that *he* does. Caesar has not been simply enlisted to disapprove of proscriptions: he is made to indicate what it is about the proscriptions that commenced at the end of 43 BCE that he finds abhorrent. That is to say, of course, this 'Caesar' will condemn what his author Sallust most deplors.

1. Caesar foresees intervention by a consul. Why not a proconsul or dictator or any other *imperator* or group exercising or seizing command? It is as if he is carefully excluding any term that might cover a Triumvirate, which seems at first sight self-defeating!

2. He envisages an army. This detail, of course, restricts even more than by denial, which might be ironic, any parallel that might be seen with Cicero's conduct in December 63 BCE. Though the consuls commanded the armed forces, and Cicero's colleague C. Antonius had taken command outside Rome, Cicero himself proudly acted *togatus* without introducing an army into the City.

3. There is insistence on a falsehood credited as truth. Certainly the Thirty and Sulla had moved on to acting on false accusations in the second stage. The actual guilt of the arrested

men in December 63 BCE was publicly conceded by the historical Caesar as well as by Sallust's 'Caesar': hence his proposal in the Senate to continue their detention as a security measure. But in the envisaged future, a false charge seems to *initiate* the proceedings.

4. A senatorial decree is, of course, the essence of the situation in 63 BCE. On 5 December, Cicero seeks from the Senate a specific condemnation of the arrested men; the *senatus consultum ultimum* passed in October is not enough. 'Caesar' in prophetic mode emphasises this aspect of the future he abominates, having, as we see, disjoined the future from the present in the matters of the consul in arms and the falsehood. A role for the Senate is part of the prophesied future as well as the actuality of December 63 BCE.

5. Caesar envisages a drawn sword as the mechanism of death. None of the traditional forms of execution at Rome involved the sword: scourging with rods and beheading with the axe, *fustuarium* in the army, casting from the Tarpeian Rock, and strangulation in prison (the method of punishment approved by the Senate in 63 BCE) are among recognised procedures.²¹ At this stage of Rome's history the sword was used against citizens in situations of civil war. They became *hostes* liable to slaughter as in battle. And in so carefully written a section that is what we must conclude is envisaged. It should not be passed off as a loose metaphor for violent death, since we know how the proscriptions were carried out: by the sword.²²

This brings us back to the issue of the function of these two sentences. The hypothetical items of the consul, the army, the false allegation believed, the Senate's decree and the drawn sword are designed to specify certain features of one episode in

²¹ Beness 2000, 3-6; cf. Cantarella 2005², 187-8.

²² Appian's long excursus on the proscriptions (*B Civ.* 4.16-51) overwhelmingly stresses the sword as the preferred weapon of the executioners. His descriptive use of *σφαγείς* ('throat-cutters') further emphasises the means of death. For an extensive discussion of this vocabulary, see Welch in this volume.

Sallust's adult life: the initiation of a bloody purge without limits at the end of 43 BCE.²³

The role of prophet is always ironic in sophisticated literary practice. The second proscription was enacted into law by a Caesarian regime, ostensibly to avenge Caesar's death.²⁴ If this is the content of the prophecy, Sallust has moulded Caesar's protest against execution without due process in 63 BCE into a ringing denunciation of his own successors acting in his name. But the most famous of the victims of this procedure by proscription was Cicero.²⁵ The moment it occurred it immediately became a trite example of ironic reversal that Cicero, the executioner of 63 BCE, was himself executed without due process in 43 BCE. Sallust has remodelled Caesar's protest against Cicero in power in 63 BCE into a protest by anticipation against the powerless Cicero's death at the hands of a regime acting in the Caesarian name in 43 BCE. But this does not exhaust the irony or the horror that Sallust has perceived in the unfolding events late in 43 BCE.

IV.

What was the structure of politics after Caesar's assassination? At first everyone was bewildered. The killers included old followers of Caesar and ex-Pompeians who had taken high office under Caesar; it was the dictator's very inclusiveness that enabled many different interests to organise his elimination at the headquarters of government. It was, of course, impossible by removal of the leader to persuade the armies which had won the civil war that they had lost it. The future government could not but be in some sense Caesarian, and yet many Caesarians agreed with the ex-Pompeians that their leader had become a tyrant. A deal must

²³ All authors introduce the proscriptions in revealing ways: Vell. Pat. 2.66-7; Plut. *Cic.* 47-8; *Ant.* 20; Suet. *Aug.* 27.1-2; Flor. 2.16.3-6; App. *B Civ.* 4.6; Cass. Dio 47.3-14; Hinard 1985, 303-12; Welch (2018).

²⁴ App. *B Civ.* 4.5-6.

²⁵ On the death of Cicero in later literature, Levi 1933, 2.207-14; Roller 1997; Wright 2001; Osgood 2006, 78. On Cicero's reputation in the Julio-Claudian period, A. Wright 1997 (2008).

be put in place promptly to forestall anarchy at Rome and a renewal of civil war throughout the Empire.²⁶

On 17 March, two days after Caesar's death, a self-denying compact was put in place. There was to be no Republican new start: the government was to remain Caesarian in accordance with the dictator's arrangements; in 44 BCE it would be under the presidency of the consuls Antony (in office) and Dolabella (designated), and in future years remain Caesarian under consuls designated by Caesar (including, paradoxically, two of the leading tyrannicides). No one wanted free elections, and the ideological point was thus conceded at the very outset by the 'Republicans'. In Cicero's *Philippics*, we see that Republicanism has come down to senate meetings, due process (sometimes), and security of property. In return for the confirmation of Caesar's *acta*, the tyrannicides were to continue the careers marked out for them by the dictator; in Cicero's vocabulary, alluding like Caesar in Sallust's *Catiline* to the situation at Athens in the years following the surrender to Sparta in 404 BCE, there was to be an *amnesty*, and no charges *de vi* were to be laid against those who had applied force to the supreme magistrate. The agreement took the constitutional form of a decree of the Senate.²⁷

No choice of new government, no access to the courts – it was a strange liberation! On the one hand, the late dictator was a tyrant, and thus lawfully put to death; on the other, he was a lawful magistrate whose acts were valid and now ratified after his death by this agreement. Again, his killers were liberators restoring *res publica* to their fellow citizens and yet bound to the tyrant's acts and pursuing their own careers under them. The author of the compromise was Cicero, but the party leaders all agreed to it and observed it more or less faithfully throughout 44 BCE and well into 43 BCE. The deal put politics back into gridlock. But Sallust, as we shall see, regretted the eventual

²⁶ Welch 2012, 121-30.

²⁷ Cic. *Phil.* 2.58.4; Cass. Dio 44.34.1; Ramsey 2003, 2-3, 86; Welch 2012, 121-30.

jettisoning of this amnesty. It was more civilised to live with the problem than the solution.

The deal did produce some strange deformities. It was in the interest of professed Caesarians to avenge their leader; above all it was in the interest of the late dictator's adoptive son. Vengeance was his *raison d'être*. Why else was an inexperienced teenager with nothing going for him but the name of 'Caesar' the appropriate front-man for a group of investors in the Regime?²⁸ On the other side, it was in the interest of the Liberators' chief publicist to reintegrate them into public life and to validate any action they might take to secure this and so reverse the outcome of the civil war. Cicero took on this role with enthusiasm.

And yet Antony's self-protective manoeuvres brought the two extremes together precisely under the banner of the amnesty. Slowly and reluctantly Cicero moved to recognise the younger Caesar and give public legitimacy to his raising a private army; the young Caesar, perhaps with similar hesitations, recognised one of his father's killers as tribune of the *plebs* and agreed to co-operate militarily with another.²⁹

The compact under the amnesty broke down under the stress of its own contradictions. It had offered something to everyone, but once *anyone* important had no further vested interest in it, it would become an embarrassment for all. As Antony was excluded from the improbable alliance linking the Liberators with the younger Caesar via Cicero, it was Antony who had to find a way of breaching the amnesty. The decisive moment was Antony's publicised and joyful recognition of Dolabella's execution of the tyrannicide Trebonius as an ideological act restoring authenticity and loyalty to the Caesarian party.³⁰ This exposed the younger Caesar (and all professed Caesarians), who could not afford to appear less

²⁸ The younger Caesar's backers: Syme 1939, 72-3, 502; Alföldi 1976, 31-54; Malitz 1987; Welch 1990.

²⁹ Syme 1939, 131, 141-2; Welch 2012, 136-42.

³⁰ Cic. *Phil.* 13.22.

Caesarian than Antony and Dolabella. The initially tactical, but increasingly cordial, bond between Cicero and the younger Caesar could not survive the threatened removal of the younger Caesar's *raison d'être* as Caesar's heir and natural avenger. Throughout his life Augustus would prefer not to break with friends, but would do it if he had to.³¹ The deaths of the consuls at Mutina provided the surviving victor, the younger Caesar, with an opportunity to deal himself back into the Caesarian game.

In April 43 BCE, Cicero was similarly trapped by success. He had, it appeared briefly, eliminated one Caesarian leader and co-opted the other: as Antony fled, Cicero sought to heap new rewards on the younger Caesar. But unless he maintained an authentic stance for liberation and the cause of the tyrannicides, Cicero would dwindle into a pseudo-Republican – indeed, objectively Caesarian – power-broker: for his role would be at best to pick and choose between Caesarian bosses. He must sail under the colours of the free Republic and back the assassination to the hilt, the one thing the younger Caesar found it increasingly impossible to accommodate. Personal goodwill between Cicero and the younger Caesar foundered not on 'betrayal' of one by the other but on the rocks of the structure of politics.

After Mutina, just over a year after the compact of 17 March 44 BCE, its provisions had become an embarrassment to all stakeholders.

1. The dictator's *acta* became null and void, not because Antony played fast and loose with them, but when Republican leaders unilaterally seized provinces and took over armies in defiance of Caesar's provisions for the government of the empire for a five-year period.

2. The amnesty was a dead letter as soon as the Caesarian leaders Antony and the younger Caesar turned their rivalry for

³¹ As the quick abandonment of Q. Salvidienus suggests: [Liv.] *Per.* 127; Vell. Pat. 2.76.4; Suet. *Aug.* 66.1-2; App. *B Civ.* 5.66; Cass. Dio 48.33.1-3; Syme 1939, 220-1.

power into a competition in loyalty to Caesar's memory and initiated a programme to kill off the tyrannicides.

V.

It is now possible to answer the question why Cicero had to die.³² That it was an inevitable consequence of personal *inimicitia* with Antony and personal betrayal by the younger Caesar and Lepidus can be dismissed as naïve. Cicero's name stood at the head of the proscription list for a more serious reason than a tyrant's savage whim. Long before the amnesty was breached, Antony began to put in place the potential for such a breach. He marginalised and downgraded the Liberators and began to accuse Cicero of actual complicity in the assassination. In the second *Philippic*, a pamphlet purporting to be a response to Antony's denunciation of him in the Senate on 19 September 44 BCE, completing the rupture of *amicitia* commenced on 1 September, Cicero devotes several chapters to Antony's charge *Caesarem meo consilio interfectum*. Cicero denies complicity in the assassination in language that heaps true glory on the actual *societas* of the perpetrators; Brutus' naming him at the moment of consummation is no evidence of collaboration, Cicero claims, but was designed to draw a parallel between Brutus' own treatment of Caesar and Cicero's treatment of the arrested conspirators nearly two decades before in 63 BCE. Both executions were necessities of State.

For the time being the amnesty held good: Cicero could not be prosecuted, therefore, but neither could he rebut the charge in court. Defending a charge sometimes clears the air. Rumours ran rife. It was awkward for Cicero to be *patronus* of the Liberators while denying that he was of their number before the fact. Antony's allegation of September 44 BCE was a time-bomb. How long was the fuse?

The spark took its time. It was only in April 43 BCE (after Mutina) that the younger Caesar began to be free to be

³² On the death of Cicero, Wright 2001, 436-52.

Caesarian and endorse the movement to deify his father and punish his killers. Not until August 43 BCE was he in a position to implement policy at Rome as successor to one of the vacant consulates with his elderly relative Q. Pedius in the other.

The scene is now set for the fulfilment of the prophecy. With the younger Caesar's coup, a consul with an army at his command is in charge at Rome. His colleague Pedius legislates to establish a special court to try those who applied force to the late dictator: the situation is ripe for *falsum aliquid*. What of the senatorial decree? We have evidence of the Senate's compliance with the younger Caesar's *coup d'état*, but not specifically of an enabling decree recommending a special *quaestio*. And yet there must have been one: although the *lex Pedia* would legally override the *senatus consultum* instituting the amnesty, it was not in the younger Caesar's interest to override the amnesty and acknowledge a divided community, but rather to rescind the amnesty and 'unite' the community behind the Caesarian cause. Only a *senatus decretum* nullifying the amnesty could do this. The *lex Pedia* must, therefore, have logically been preceded by a *senatus consultum* that united 'Senate' with 'People' in common cause: the avenging of Caesar's death.³³

The special court proceeded swiftly: many were interdicted from fire and water in absentia without a hearing. Unlike most *Pompeiani*, Cicero was present in Rome and well placed to defend his case, elicit sympathy, even divide or win over the jury. It was best not to charge him, and Antony's allegation of complicity a year before still hung fire. What was really needed was some procedure under which Cicero could not present a defence. To deal with notoriously innocent figures like L. Caesar (*cos.* 64) and L. Aemilius Paullus (*cos.* 50) as well as Cicero, the renewal of Sulla's proscription procedure was inescapable. Under such an approach *falsum aliquid* could be acted on *pro vero* without the publicity and unpredictability of even a

³³ On the *lex Pedia*, see Vell. Pat. 2.69.5; Livy *Per.* 120; Plut. *Brut.* 27.3; Suet. *Aug.* 10.1; *Ner.* 3; *Galb.* 3.2; App. *B Civ.* 3.95.392-3; 4.27.117; 5.61-2; Cass. Dio 46.48; 47.12.2; Welch 2012, 169-72; Welch (in this volume).

managed trial by jury. The inadequacies of the *quaestio Peditiana* in dealing with senior statesmen on the other side were remedied under a process not requiring evidence to be tested in court. This is what Antony, Lepidus, and the younger Caesar implemented in December 43 BCE.

Under the law of proscription, it was possible to execute out of hand (with the *sword*, wielded by officers of the Triumvirs' army) those manifest tyrannicides already found guilty in the special *quaestio* and with them those never charged but alleged to have been in the conspiracy against Caesar. Cicero had, after all, publicly approved of the assassination, which was now specifically defined as a crime under the *lex Pedia* and the law of proscription. He was, at the very least, complicit after the fact. Some of his published words amounted, perhaps, to validation and encouragement before the fact of private initiative to remove any magistrate that he called tyrant.

What was in the legislation anyway? A crime framed to convict those *quorum opera vis adlata est magistratui summo C. Caesari contra rem publicam*? Were Antony's allegations of September 44 BCE now picked up and covered by the law of proscription: *quod consilio Ciceronis...*, *quod Cicero in ea societate fuerit*, *quod Cicero laetatus sit morte Caesaris*, perhaps also *quod hortatu Ciceronis...*? Some such clauses as these would have covered L. Aemilius Paullus and L. Caesar, too. It was part of the obscenity of the Caesarian takeover in August–December 43 BCE that they, like the Nazis in and after 1933, proceeded according to forms of law with precedents.

VI.

Sallust shares the general horror Romans felt about the second set of proscriptions. Whose fault were they? Some blamed this or that Triumvir more than his fellows. But the surrender of a close friend or relative has damned all three forever, as Shakespeare saw. Intimate betrayal in each case! But Sallust does not sentimentalise; he is concerned about the massacre as a public

event and wishes to attribute blame for it where it lies in the area of public policy.

No allusion is made to the Triumvirate. Twice in successive sentences he refers to a consul: in the first the consul is in command of an army; in the second the consul draws the sword to initiate a procedure which has no fixed conclusion. Why is this consul, namely the younger Caesar, made responsible for the whole thing? The *lex Pedia* is certainly his work; but the law of proscriptions is shared with his fellow Triumvirs, and the younger Caesar has ceased to be consul. Sallust clearly subsumes the second under the first and singles out the younger Caesar for unique opprobrium. In doing so, he contradistinguishes the younger Caesar from Antony and assimilates the younger Caesar to Sulla as his language shows.

When Sallust wrote *ubi... consul gladium eduxerit, quis illi finem statuet aut quis moderabitur?*, he deliberately evoked a sentence in the fifth *Philippic*: *quo die... caedis initium fecisset a me; sic enim statuerat; cum autem semel gladium scelere imbuisset, nulla res ei finem caedendi nisi defetigatio et satietas attulisset*.³⁴ But this is not about the younger Caesar; it is Antony whom Cicero accuses of intending to make a beginning of unlimited killing on 19 September 44 BCE; once he had dipped his sword in crime, nothing would have brought an end to the killing but satiation and exhaustion. And yet the consul Antony did not do this.

Sallust corrects the usual linear development from September 44 BCE to December 43 BCE projected by Cicero and essentially accepted ever since: namely, that what Cicero attributed as intention to Antony in September 44 BCE was carried out in earnest by Antony in December 43 BCE. That was the view in antiquity and ever since. Sallust draws a different line of development: the breach of the amnesty at Rome that Cicero attributed to Antony as intention in September 44 BCE

³⁴ Cic. *Phil.* 5.20: 'On that day ... he would have launched a massacre beginning with me; so he had determined. And when once he had dipped his blade in crime, nothing but weariness and satiety would have made him stop the slaughter.' (Trans. Shackleton Bailey)

was actually carried through just under a year later by *the younger Caesar*. The law of proscriptions is simply the next stage in a logical progression initiated by the consul with the army who drew the sword in August 43 BCE. The undefined *finis* of the second proscription takes up the undefined *finis* of the first. But the *initium* of the second is worse than the *initium* of the first: Sulla had started by executing manifest wrongdoers like Damasippus; the second springs from *falsum aliquid*. The cancellation of the amnesty in, or rather prior to, the *lex Pedia* is what exposes Cicero to destruction; Antony's savage hostility was unleashed by that act, but it was the work of the younger Caesar. Sallust believed, it emerges, that the amnesty was the basis of civil society in the aftermath of Caesar's death, and it was appropriate to bring on the literary device of 'Caesar' to make the point and denounce the future Caesarian regime that would kill his current opponent Cicero and make him a martyr under a procedure that Caesar and 'Caesar' deplored in Sulla's case.

The Divine Augustus saw it differently, of course, in his published *Res Gestae*. He had avenged his 'father's' death through the courts; the memory of the proscriptions had been suppressed like the memories of those who died under them.³⁵ He drew a sharp distinction between the procedure under the *lex Pedia* and the nameless thing that followed.³⁶ Sallust's family was to make its peace with the younger Caesar and to produce a pillar of the developing autocracy. In the *Catiline*, Sallust aligned himself with Cicero, saviour of the Republic in 63 BCE and martyr to it in 43 BCE, delicately correcting, on Cicero's behalf, Cicero's own errors of fact and judgement.³⁷

Cicero saw Antony's hot-blooded rage as the chief threat to his life; Sallust analytically interpreted cold-blooded cancellation of the amnesty by the younger Caesar as the efficient cause of

³⁵ *RGDA* 2.1. On the absence of any mention of proscription, Hinard 1985, 293-5; Ridley 2003, 166; Biava 2004, 338; Lange 2009, 15-7.

³⁶ For a different interpretation, see Welch (in this volume).

³⁷ On Sallust's attitude to Cicero, Stone 1999.

Cicero's downfall. Sallust was the experienced witness of a game of chess in which the pieces removed from the board were live flesh. His 'Caesar' is made to have predicted the progress of the game. Through him Sallust comments on all such games. His 'hypothetical' is History. And as a practitioner of historiography, Sallust manifests as subtle and committed and tendentious a mastery, above all in speeches, as the master historian Thucydides himself.

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