

## REVIEW-DISCUSSION

A. Drummond: *Law, Politics and Power: Sallust and the Execution of the Catilinarian Conspirators*. Pp. 136. Steiner, 1995. DM 64.

The issues which D. expresses his intention of addressing are the 'interaction of law and politics and the protection of individual liberties'. This involves him in seeking answers to a number of questions concerning the nature and purpose of S.'s account, most of them centred on the relevance (or not) of the *scu*. Was there debate about the legality of the executions under the *scu* and/or under normal law? Was Caesar's speech directed against the *scu* in general or in this particular case, did Cato claim that the *scu* legitimated the executions, or was the *scu* irrelevant to the debate? What is the purpose of the *syncretis* of Caesar and Cato?

D. first examines the setting for the debate. The account of Cicero's vacillations in *BC* 46.2 is unflattering, but its accuracy is confirmed by Plut. *Cic.* 19.5-20.3. D. rightly says (11ff.) that for Cicero to bring the issue of the punishment of the guilty to the senate so soon after the revelation of the conspiracy was at the very least to invite a vote for execution. But S. is here not primarily concerned with the nature or justification of any punishment. His point is more basic: that the imposition of any penalty, regardless of its nature, the procedures adopted and their legality, would bring *invidia* upon Cicero. (In passing D. makes a good case against identifying the absentee of *Cic. Cat.* 4.10 with Crassus; either Nepos or Bestia is to be preferred.)

S.'s account (*BC* 46.3-47.4) of the senate meeting of 3/12 strikingly omits any reference to the scepticism of many senators towards Cicero's revelations. Everything is presented as undisputed fact; it is therefore impossible even to enquire what was alleged, much less what was proved, on that day. In discussing (18ff.) the consequences of the meeting (*BC* 48.1-49.4) D. rightly stresses that the most important factor was the immediate revulsion of popular feeling against the conspiracy. But his argument that even earlier popular support had been less than is sometimes assumed is not wholly convincing. He makes a better case (20f.) for his claim that all the attempts to implicate Caesar postdate his stance in the senate on 5/12.

Turning to the immediate context of the debate of 5/12 (*BC* 50.1-3) D. argues that the possibility of an attempt to rescue the conspirators was never a serious consideration. S.'s account proceeds logically, in a manner consistent with his position in 46.3ff.: the reference to the decree that the conspirators had acted *contra rem publicam* again implies that the senate had already judged them guilty and that the only question still to be decided was the penalty. D. then jumps from this point, with the silence of *Cic. Cat.* 4.5 as his

springboard, to the suggestion that S. invented the decree. That is possible, but hardly certain. The senate was alarmed and no doubt somewhat confused; its actions may not have been dictated by strict logic or a concern for the convenience of future historians.

On the preliminaries to Caesar's speech (*BC* 50.3-5) D. first confronts the question of Nero's motive (24). He argues strongly in favour of the view that Nero was urging only a brief delay, not the postponement of proceedings until after the defeat of Catiline (as App. *BC* 2.5). This, as he says, is plausible, but as a response to Caesar's speech, not where S. places it. But S., to give added force to the clash between Caesar and Cato, completely ignores the course of the debate between their respective contributions.

D. rightly prefers S.'s version of Silanus' second thoughts to that of Plutarch and Suetonius. He then turns (28ff.) to Caesar's refutation of Silanus (*BC* 51.1-24). Caesar claims that security is irrelevant, but does not make a good case, for his argument neglects the situation outside Rome. His essential point is that the law always offers exile as an alternative to execution, but he never denies the conspirators' guilt and makes no attack on the legality of execution without trial, whether in the name of *prouocatio* or of the *lex Sempronia*. D. concludes (32) that Caesar is concerned chiefly or wholly with the historical modification of judicial penalties. But his point may perhaps have been rather simpler: since Silanus was prepared to ignore one set of laws, why not the *lex Porcia* as well?

Caesar's reflections on the dangers of a *nouom exemplum* (*BC* 51.25-36) involve some special pleading concerning *indemnati*. He cites the execution of *indemnati* by the Thirty, but does not bring out this aspect of the Sullan proscriptions. The distinction lies in the fact that at Athens execution after trial was commonplace. That Caesar should nevertheless pair the Thirty and Sulla suggests, as D. argues, that he was more concerned with the abuse of the ruling power's right to execute than with its victims' right to trial. D. also makes a strong case (33f.) against identifying the decree of *BC* 51.36 with the *scu*; it must rather be something comparable with the present proposal of Silanus. His disparaging remarks on the imprecision of the alleged parallels with the actions of Octavian in 43 are also cogent, and his point that these words are relevant rather to the general situation in 63 is correspondingly well taken. It might have been worth mentioning here the accusations of falsifying the record brought against Cicero by Torquatus (*Cic. Sull.*4off.)

The continuing stress throughout the account of Caesar's own proposal (*BC* 51.37-43) on the perils of a *nouom consilium* refers again, as D. rightly contends, to the possibility of a new form of penalty, not to the possibly extra-legal circumstances of its application. Caesar himself is proposing a penalty, not just a remand in custody, but legality is central to his argument (37). This

is undoubtedly true, but it comes as something of a surprise to see it firmly stated here, given the thrust of D.'s argument so far.

So much for S.'s account of Caesar's speech and proposal. D. next attempts to assess its historicity. He suggests that transcripts may have been taken on 5/12, as they had been two days before, but that these were perhaps intended chiefly for Cicero's personal archive. This is a surprising suggestion; those taken on 3/12 were on Cicero's own account intended for the widest circulation (Cic. *Sull.* 42). However, his conclusion (39f.), from the standard rhetorical flavour of the speech, the Sallustian character of its themes (true also of the speech of S.'s Cato) and the weakness of its arguments, that it is a free composition can hardly be challenged.

D. then goes beyond his self-imposed brief of merely interpreting S. by wondering if there is any possibility of coming close to what Caesar actually said. He examines the fourth *Catilinarian*, delivered between the speeches of Caesar and Cato and probably not the subject of drastic rewriting between delivery and publication. His conclusion (43f.) is pessimistic but prudent: S. may have used Cicero, but there is no proof that Cicero used Caesar. (He is perhaps, however, wrong to suggest that the argument that the conspirators had made themselves *hostes* by their actions did not outlive its author; a form of it recurs at Amm. 29.5.23 adjacent to an appeal to the authority of Cicero.)

On Cato's speech and its call to action (*BC* 52.2-35) D. notes the parallels with the Mytilene debate in Thucydides, with Caesar as Diodotus and Cato as Cleon, but he rightly emphasises (52f.) that there are also significant differences. The crucial claims are pragmatic: the very existence of the *res publica* is at stake, and the execution of the conspirators is essential to ensure the defeat of Catiline in the field. Cato's proposal too (*BC* 52.36) seems tailored to justify the execution itself; it does not appear concerned with the issue of execution without trial. D. argues (60ff.) against the idea that *manifesti* and *confessi* were regularly punished without trial. The argument in the case of *manifesti* is relatively simple and convincing. In civil law confession did bring matters to a conclusion, provided it was made in proper legal form and unconditional. But in criminal cases the tendency was rather to abandon the case or keep silent. Cato seems to be claiming that *confessi* should be executed like *manifesti*, but he may not be telling the truth. Certainly, as D. remarks (72), a justificatory analogy was highly desirable given the dubious nature of the conspirators' alleged confessions, on which he makes pertinent observations (75).

Like Caesar's, Cato's speech must be dismissed as largely unhistorical, composed with an eye to future *popularis* criticism and exhibiting the speaker's own future persona. The wording of the motion is also Sallustian. D. then rejects the conventional view that Cato emerges superior from the

debate and subsequent *syncrasis*. His argument (77) is that both speakers achieve significant success, because Cato makes a concession over the four absentees. But it is hard to see this as anything more than a consolation goal for Caesar at the end of a crushing defeat.

D. now turns to the *scu*, beginning with S.'s account of it. The general assumption, as he says, is that S. regarded the judgement and execution of the conspirators as legitimised by the *scu* and that his account of the debate of 5/12 rests on this view. D. admits that this is possible, though S. would in that case have been wrong, but prefers an alternative interpretation, for which he presents a cogent case: namely that the *scu* should be seen as the culmination of what has gone before, rather than as the formal justification of what follows. Its significance as a turning-point is thus limited. Up to that point Cicero has been acting alone; thereafter, he at least has the senate's support.

But S. cannot be absolved of misrepresentation. He attempts to present as specific constitutional prerogatives powers that were in fact entirely contingent on political consensus in an individual situation. D. bolsters this conclusion with pertinent observations on the relative importance at Rome of inherited practice as against formal statute, though inherited practice was always liable to change and adaptation. In passing he delivers himself of sound views (84f.) on the nature of Labienus' case against Rabirius and Cicero's attempt to distort it. (To the instances cited at 85 n. 37 of Cicero's practice of claiming for an event a wider political significance than it in fact possessed might be added *Rosc. Am.* 7, 11, 14 from the outset of his forensic career and *Deiot.* 3, 30 from its twilight.) He is also good (85ff.) on the reasons why individual court cases did not play a major role in modifying constitutional norms, while rightly insisting that the successful assertion of a 'constitutional norm' itself depended on the achievement of a consensus.

D. moves further from S. to consider other aspects of the *scu*. It did not indicate what powers magistrates might use. Nor, he claims, did it name those whose actions threatened the *res publica*. This is uncertain. *Cic. Cat.* 1.3 may well be regarded with suspicion, but *Sall. Hist.* 1.77.22M (the proposal of the *scu* by L. Marcius Philippus) does specify Lepidus and his activities as the ground for the decree. Its very generality made it attractive, but also laid it open to challenge. Hence the desire of those who had recourse to it to demonstrate the endorsement of their course of action by the more reputable elements of society. The public interest or the wishes of the senate could always be cited in court as possible good grounds for ignoring the letter of the law, but they might not be deemed sufficient or binding for the future, and the *scu* did not change that. For instance the acquittal of Opimius in 120 did not establish the right of future consuls armed with the *scu* to ignore *prouocatio*.

Thus in the present case the real questions to be asked are whether prior practice justified Cicero's assumption that the *scu* entitled him to inflict the death penalty and whether that view won general acceptance. The answers, as D. says, are clearly no and no. There was no valid precedent for Cicero's action. The characters concerned were upper class, guilty of no open violence, and the *scu* had been passed a considerable time before - well before, one might add, the alleged activities of Lentulus and company were known about.

Indeed the *scu* seems to have played little part in discussion at the time or later. Cicero's argument that the conspirators had made themselves *hostes* is not linked to the *scu*; it clearly does not rest on any theory that the *scu* could somehow cause automatic forfeiture of citizen rights. The doctrine, for what it is worth, is more likely to derive from the spate of *hostis* declarations that began in 88. (D. draws a maliciously apt parallel with Ti. Gracchus' claim that Octavius deserved deposition for betraying the function of the tribunate, while stressing that this claim had required confirmation by the people.) A parallel can justly be drawn (99) between Cicero's conduct here and his later advocacy of flagrant disregard of the laws whenever his own conception of the interests of the *res publica* demanded it. But neither now nor later did Cicero's arguments have any chance of winning acceptance; D. rightly cites the senate's resistance to his efforts to have Antony declared a *hostis*, likewise the attitude of Brutus.

D. emphasises that the *scu* did not provide the justification that Cicero wanted and needed. It conspicuously left to the consuls the choice of the methods to be employed in saving the state from harm, whereas Cicero wanted to present himself as the instrument of the senate's will. This would protect him against accusations of personal vendetta, cruelty and tyranny by giving political authority to his decision. He knew that he could not evade responsibility; indeed, he sometimes claims the credit for a triumph in the cause of *senatus auctoritas* and *concordia ordinum*. Had he been brought to trial, there were various lines of argument he might have pursued, in which both the *scu* and the senate's vote of 5/12 might have figured. But again D. does well to highlight the fact that there was no 'legal position' in any simple sense.

Valuable though D.'s treatment of S. is, he is at his best when the exegesis of his author inexorably leads him on to wider issues. Whatever disagreements of detail his views may provoke, his approach is always fundamentally sound, for it never loses sight of the essential fact that what men did and said was dictated by their perception of what was politically possible in a specific but not necessarily stable situation, not by abstract theories of constitutional law.

*University of Liverpool*

ROBIN SEAGER