

## CICERO AND SALLUST: DEBATING DEATH\*

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*Abstract:* This paper argues that the fate of the imprisoned Catilinarian conspirators was discussed not only at the famous meeting of the senate on 5 December 63 BC but also at an earlier meeting held on the previous day. The hypothesis of an earlier discussion seems to explain both the seemingly problematic nature of Cicero’s Fourth Catilinarian and the transmitted text of Sallust’s introduction to the famous debate.

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Everyone knows that after a debate in the senate on 5 December 63 BC—the ‘famous Nones of December’ (Cic. *Att.* 1.19.6; *Ep. Brut.* 1.17.1)—the Catilinarian conspirators were condemned to death and executed. Of the various authors who have left some account of events,<sup>1</sup> only Cicero and Sallust were actually alive at the time; and, of these two, only Cicero as consul was an actual participant in the proceedings, of which the Fourth Catilinarian constitutes his principal account.

### I

Scholars believe they know when and how Cicero’s Fourth Catilinarian reached the reading public. In early June three years later Cicero wrote to his friend Atticus that he was putting together a collection of the speeches he had delivered during his consulship (*Att.* 2.1(21).3):

Oratiunculas autem et quas postulas et pluris etiam mittam, quoniam quidem ea quae nos scribimus adolescentulorum studiis excitati te etiam delectant. fuit enim mihi commodum, quod in eis orationibus quae Philippicae nominantur enituerat cuius ille tuus Demosthenes..., curare ut meae quoque essent orationes quae consulares nominarentur.

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<sup>1</sup> They are usefully listed by Berry (2020) 166 n. 8.

As for my speechlets, I shall send both those you ask for and more in addition, since the things that I write when roused by enthusiastic youngsters give pleasure to you as well. That is to say, because Demosthenes, that fellow citizen of yours, sparkled in those of his speeches which are called ‘Philippics’..., I have found it nice to ensure that there should be speeches of mine too which could be called ‘Consular’.

Cicero then begins to enumerate the twelve speeches in question, concluding as follows:

... septima, qua Catilinam emisi; octava, quam habui ad populum postridie quam Catilina profugit; nona in contione quo die Allobroges in <senatum> uocati sunt;<sup>2</sup> decima in senatu Nonis Decembribus. sunt praeterea duae breues, quasi ἀποσπασμάτια legis agrariae. hoc totum σῶμα curabo ut habeas; et quoniam te cum scripta tum res meae delectant, isdem ex libris perspicias et quae gesserim et quae dixerim.

... the seventh, by which I despatched Catiline; the eighth, which I delivered to the people the day after Catiline fled; the ninth in a *contio* on the day when the Allobroges were called into the senate; the tenth in the senate on the Nones of December. There are two short ones besides, cuttings from the agrarian law. I shall ensure that you get the whole corpus. And because both my writings and my achievements give pleasure to you, you will see from the same books both what I did and what I said.

Much has been made to depend on this passage of Cicero’s letter. ‘The whole tenor’, says Dyck, ‘is hard to explain unless these speeches are so far unpublished.’<sup>3</sup> For Lintott the passage is evidence that, when published, the Catilinarian speeches ‘have been carefully edited’.<sup>4</sup> Like some other scholars, Berry believes that, in the case of the Fourth Catilinarian, such editing

<sup>2</sup> *in <senatum> uocati sunt* is my suggestion for the corrupt *inuocarunt*. Dyck (2008) on Cic. *Cat.* 3.8 says that ‘*introduco* is regularly used for bringing a non-member before the senate’, as at 4.9: ‘*introduci ... Galli*’, but for *uocare* cf., e.g., Liv. 32.1.14; 42.26.4: ‘*Illyrii uocati in senatum*’; 45.3.3.

<sup>3</sup> Dyck (2008) 10.

<sup>4</sup> Lintott (2008) 17. The question whether, or to what extent, Cicero revised his speeches for publication has been much discussed: see esp. Levene (2004), with extensive bibliography; also Berry (2020) 56–9.

included the incorporation of substantial amounts of later material.<sup>5</sup> As can be seen from the text of the letter, however, Cicero makes no reference to editing, careful or otherwise, and it seems intrinsically improbable that he would wait three years before issuing the most important speech of his life.<sup>6</sup> The improbability of such a scenario is in fact indicated by the letter itself. Cicero begins his letter by acknowledging receipt of a ‘commentarium consulatus mei Graece scriptum’ (*Att.* 2.1(21).1): although Atticus had personal experience of the events of 5 December 63,<sup>7</sup> it seems unlikely that he would have written an account of his friend’s consulship without having read the Catilinarian speeches, still less that he would then have sent such an account to the great man himself.

Although publication in the ancient world is notoriously difficult to define, Cicero’s allusion to *adulescentulorum studiis* shows that, contrary to what modern readers of his letter seem to believe, he is not referring to a general dissemination of hitherto unpublished speeches. Cicero was responding to the demands of a particular group by arranging a selection of his consular speeches specially for them: just as he was modelling himself on Demosthenes, so he himself was the model for the admiring young men.<sup>8</sup> Since he knew that the same selection of speeches would please Atticus,<sup>9</sup> he was planning that a set be sent to him. There is nothing in Cicero’s letter to indicate that the Catilinarians were not already available. The letter concerns selection (‘hoc totum *σῶμα*’), not ‘publication’. If we are to try to understand what Cicero said on the famous Nones of December, we must do so on the speech’s own terms and without drawing inferences from a letter which Cicero wrote three years later.

<sup>5</sup> Berry (2020) 76–9, 164, 176–7, referring to the work of Fuchs (1959) and Winterbottom (1982); the proposed later material consists of §§1–3, 11b–13 and 19–24 (see further below, n. 25). In another letter (*Att.* 1.13(13).5) Cicero mentions the additions which he has made, or will make, to certain of his speeches.

<sup>6</sup> It would be ‘an unparalleled case of publication three years after delivery’ (La Bua (2019) 29); a similar position is taken by Cape (1995) 258–9, but Berry (2020) maintains that the speeches can be read ‘entirely as productions of 60 BC’ (88), and this indeed is an essential element of his reading strategy (see pp. 87–9).

<sup>7</sup> To provide security for the meeting of the senate, Cicero had drafted a group of *equites* under the leadership of Atticus (*Att.* 2.1(21).7: ‘*equitatus ille quem ego in cliuo Capitolino te signifero ac principe collocaram*’).

<sup>8</sup> The comparison with Demosthenes is repeated at *Tac. Dial.* 37.6, where the Catilinarians are listed amongst ‘the speeches that won Cicero the greatest fame’; their presence in the list is ‘hardly surprising, coming as they do at the summit of Cicero’s political career’ and taking up ‘a firm place in the classroom curriculum’ (Keeline (2018) 80–1, 153).

<sup>9</sup> The letter makes it clear that some of the speeches had been asked for by Atticus (‘*quas postulas*’), although on the present hypothesis the Catilinarians were not amongst them.

## II

Because our various sources differ in details, it is difficult to know the exact sequence of events in the senate on that December day in 63 BC.<sup>10</sup> Nevertheless the broad outlines are regarded as clear and uncontroversial. No one disputes that Cicero as the presiding consul will have opened the debate by placing before the assembled fathers the motion (*relatio*) to be discussed,<sup>11</sup> and he no doubt took the opportunity to deliver some appropriate sentiments at greater or lesser length. It was the convention that one of the consuls designate would speak first on the motion, a responsibility which our sources attribute to D. Junius Silanus, who proposed that the Catilinarian prisoners be put to death. Subsequent speakers agreed with him, until Julius Caesar, as praetor designate, proposed imprisonment and confiscation of property. He too met with agreement from the members, but a speech from M. Porcius Cato, tribune designate, shifted opinion decisively in favour of the death penalty.

Modern scholars have difficulty relating the Fourth Catilinarian to this scenario not only because it is thought to contain material added some years later but also because it is regarded as a *composite* production and hence as incapable of being delivered at any *single* point in the debate.<sup>12</sup> For such scholars the speech is ‘an imaginative fiction’,<sup>13</sup> whose heterogeneous character is agreed to be on clearest display towards the beginning of the speech in §§6–7:

... <sup>5</sup>Haec omnia indices detulerunt, rei confessi sunt, uos multis iam iudiciis iudicauistis, primum quod mihi gratias egistis singularibus uerbis et mea uirtute atque diligentia perditorum hominum coniurationem patefactam esse decreuistis, deinde quod P. Lentulum se abdicare praetura coegistis, tum quod eum et ceteros de quibus iudicastis in custodiam dandos censuistis, maximeque quod meo nomine supplicationem decreuistis, qui honos togato habitus ante me est nemini; postremo hesterno die praemia legatis Allobrogum Titoque Volturcio dedistis amplissima. Quae sunt omnia eius modi ut ii qui in custodiam nominatim dati sunt sine ulla dubitatione a uobis damnati esse uideantur.

<sup>6</sup>*Sed ego institui referre ad uos, patres conscripti, tamquam integrum, et de facto quid iudicetis et de poena quid censeatis. Illa praedicam quae sunt consulis. Ego*

<sup>10</sup> For a possible reconstruction see Berry (2020) 165–73.

<sup>11</sup> C. Antonius, the other consul, was away from Rome, pursuing Catiline (Sall. 36.3).

<sup>12</sup> Syme (1964) 106 n. 12: ‘a composite product’; see also, e.g., Dyck (2008) 208: ‘The speech combines material from various moments in the debate’; Berry (2020) 192: ‘it contains separate speeches that patently come from different points in the debate’.

<sup>13</sup> Berry (2020) 173 (cf. 87, 150 n. 40, 177, 191–2); likewise Lintott (2008) 17, 147.

magnum in re publica uersari furorem et noua quaedam misceri et concitari mala iam pridem uidebam, sed hanc tantam, tam exitiosam haberi coniurationem a ciuibus numquam putauī. Nunc quicquid est, quocumque uestrae mentes inclinant atque sententiae, statuendum uobis ante noctem est. Quantum facinus ad uos delatum sit, uidetis. Huic si paucos putatis adfines esse, uehementer erratis. Latius opinione disseminatum est hoc malum: manauit non solum per Italiam uerum etiam transcendit Alpes et obscure serpens multas iam prouincias occupauit. Id opprimi sustentando aut prolatando nullo pacto potest; quacumque ratione placet, celeriter uobis uindicandum est.

<sup>7</sup> *Video duas adhuc esse sententias, unam D. Silani, qui censet eos qui haec delere conati sunt morte esse multandos, alteram C. Caesaris, qui mortis poenam remouet, ceterorum suppliciorum omnis acerbitates amplectitur ...*

After Cicero has summarised the events of 3 and 4 December by way of a foil (§5), the wording of §6 clearly enunciates how he will proceed on the present occasion. As scholars agree, he first states the motion to be discussed (‘ego institui *referre* ad uos ... et de facto quid iudicetis et de poena quid censeatis’) and then says that in his role as consul he will make some preliminary observations (‘*Illa praedicam quae sunt consulis*’). The problems arise with what Cicero says next. Only a few sentences later, readers of §7 find that Silanus and Caesar—hitherto entirely unmentioned—have already made their proposals and that Cicero is about to recapitulate and discuss the main points which both these speakers have made. In other words, there seems to be a blatant inconsistency between §6 and §7. In §6 the debate has not yet even begun, but in §7 the debate is already half-way through. Berry, who thinks that the core of the Fourth Catilinarian is based on a speech which according to Plutarch (*Cic.* 21.3) was delivered by Cicero mid-way through the debate,<sup>14</sup> regards §6 as the troublesome section. ‘This looks very much like carelessness on Cicero’s part’, he says. ‘When considering the speech as a whole, readers will find it easiest ... to suspend their critical faculties when reading §6’ and will be obliged to ‘avoid thinking too deeply’ about sentences such as *Illa praedicam quae sunt consulis*.<sup>15</sup>

<sup>14</sup> Berry (2020), who believes (p. 164) that the Fourth Catilinarian in its present form is too long to have been delivered in mid-debate, identifies this core as §§7–11a and 14–18, much of the rest being later additions (see above, n. 5); but it seems absolutely inconceivable that, midway through a debate in which the sole topic of discussion was the two proposals, Cicero could have said ‘I see that there are still two proposals’ (7: ‘*Video duas adhuc esse sententias*’), as if he had snoozed through the first half of the debate and, on waking up, realised that the terms of the debate remained unchanged. (Plutarch alone is responsible for the notion that Cicero gave a speech mid-way through the debate, a notion which he may of course have derived from the speech itself.)

<sup>15</sup> Berry (2020) 174–5. Contrast n. 8 above.

This is an astonishing conclusion. Cicero as consul had almost single-handedly thwarted a conspiracy aimed at destroying the state to which he had devoted his whole life: as he knew at the time and repeated constantly later, it was the high point of his career. Is it conceivable that, when publishing the speech which he purportedly delivered on that critical day, Rome's greatest ever orator would have been so 'careless' about the resulting version that readers are obliged 'to suspend their critical faculties' when reading it? We shall come back to this matter shortly (below, §IV).

### III

We may now turn to the other contemporary author, Sallust, whose account of the debate on 5 December is likewise not straightforward. It begins as follows (50.3–5):

Consul ubi ea parari cognouit, dispositis praesidiis ut res atque tempus monebat, conuocato senatu refert quid de iis fieri placeat qui in custodiam traditi erant. Sed eos paulo ante frequens senatus iudicauerat contra rem publicam fecisse. <sup>4</sup>Tum D. Iunius Silanus, primus sententiam rogatus quod eo tempore consul designatus erat, de iis qui in custodiis tenebantur et praeterea de L. Cassio, P. Furio, P. Umbreno, Q. Annio, si deprehensi forent, supplicium sumundum decreuerat; isque postea permotus oratione C. Caesaris pedibus in sententiam Ti. Neronis iturum se dixerat, qui de ea re praesidiis additis referendum censuerat. <sup>5</sup>Sed Caesar, ubi ad eum uentum est, rogatus sententiam a consule huiusce modi uerba locutus est.

50.4 dixerat *codd.*: dixit *Bussmann, Roscher*

In his first sentence Sallust records the *relatio* which Cicero placed before the senate. In the second sentence, as is made clear both by the adverbial phrase *paulo ante* and by the pluperfect tense of the main verb *iudicauerat*, Sallust inserts a parenthetical flash-back to an earlier meeting at which a crowded senate formally outlawed the imprisoned Catilinarians:<sup>16</sup> no other source mentions

<sup>16</sup> *contra rem publicam facere* is a legal expression (cf. Cic. *Fam.* 8.8.6). Since Cicero uses the same phrase (*Red. Sen.* 27: 'decreuistis ne quis ulla ratione rem impediret; qui impedisset, ... illum contra rem publicam ... facturum, et ut ad uos de eo statim referretur') of a measure which elsewhere he describes in terms of outlawing (*Pis.* 35: 'de me senatus ita decreuit ... ut si quis impedisset reditum meum, in hostium numero putaretur'), such a verdict is perhaps equivalent to declaring someone a *hostis*; this, however, is denied by Allély (2012) 58, for whom the prisoners are not *hostes* (62). *Contra*, Rice Holmes (1923) 273, who states that 'the conspirators in custody were declared public enemies'. See also n. 17.

such a measure, and Drummond thinks that Sallust is either mistaken or has invented the item entirely,<sup>17</sup> but Vretska, McGushin and Mariotti in their commentaries accept the suggestion of D. H. Garrison that Sallust is referring to the meeting of 4 December at which L. Tarquinius was imprisoned for giving false testimony and rewards were decreed to the Allobroges.<sup>18</sup> Since Sallust's two following sentences also have their main verbs in the pluperfect (*decreuerat*, *dixerat*), there arises the question of how this temporal sequence is to be interpreted. Is it more likely that the flashback continues for another two sentences, before the main narrative is resumed, as often, by *Sed* at §5?<sup>19</sup> Or is it more likely that the flash-back comprises only the second sentence, that the main narrative is resumed immediately with *tum*, that *decreuerat* despite its tense is part of the main narrative, but that *dixerat* has to be emended to *dixit* to preserve chronological consistency?<sup>20</sup> If the matter is presented in these terms, it seems fairly obvious that the former hypothesis is the more plausible; yet this involves the conclusion that there had been an earlier meeting of the senate at which Silanus, Nero, and Caesar had made their respective proposals, a scenario which most modern scholars are not prepared to contemplate. 'Strictly Sallust's text can be so read', says Drummond in his discussion of the passage, 'but if so, he is certainly in error.'<sup>21</sup>

#### IV

Sallust's text, as transmitted, is therefore no less problematic than that of Cicero, yet each of them explains the other, as the following hypothetical reconstruction will make clear. On an earlier occasion the Catilinarian prisoners were declared *hostes* at a crowded meeting of the senate (Sall. 50.3: 'paulo ante frequens senatus'), presumably the same 'crowded meeting' which we know to have taken place on 4 December (Sall. 48.6: 'frequens senatus'),<sup>22</sup>

<sup>17</sup> Drummond (1995) 22, although it should be noted that Cicero in the Fourth Catilinarian seems to recognise the prisoners' outlawed status (4.10: 'qui autem rei publicae sit hostis, eum ciuem esse nullo modo posse') and that Sallust is also our only source for the declaration of Catiline and Manlius as *hostes* (36.2; cf. 44.6), an item which scholars generally accept.

<sup>18</sup> See Garrison (1962). For L. Tarquinius see Sall. 48.3–9 and 50.1; for the Allobroges see Sall. 50.1 and Cic. *Cat.* 4.5 and 4.10, who on both occasions supplies the date.

<sup>19</sup> For the resumptive use of *sed* see *OLD* 2b.

<sup>20</sup> Kurfess (1957) in the Teubner edition prints *dixit* as though it were the transmitted reading.

<sup>21</sup> Drummond (1995) 23 n. 2. He discusses the passage on pp. 23–7. See further §VI below.

<sup>22</sup> These are the only two occasions on which Sallust uses the expression *frequens senatus*, and it seems reasonable to assume that the instance at 50.3 is reference back to its earlier appearance at 48.6. *paulo ante* could in theory refer to an earlier (and otherwise unattested)

and on that occasion (Sall. 50.4: *tum*), as would be natural if the prisoners had just been outlawed, D. Junius Silanus took the opportunity of saying that they and their fellows deserved the death penalty;<sup>23</sup> but then, after a speech from Julius Caesar, he said that he would now vote for the proposal of Ti. Claudius Nero, who had suggested that, after security had been increased, there should be a formal motion on the matter (Sall. 50.4: ‘*praesidiis additis referendum censuerat*’).<sup>24</sup> After the tightening of security, this formal motion was duly put at the debate on 5 December (Sall. 50.3: ‘*consul ... dispositis praesidiis ... refert quid ... traditi erant*’). In putting the motion (*Cat.* 4.6: ‘*Sed ego institui referre ... quid censeatis*’), Cicero, who perhaps had said very little on the previous occasion, announced that he would introduce the debate by saying what it was his task as consul to say (*Cat.* 4.6: ‘*Illa praedicam quae sunt consulis*’), and, since Nero’s proposal of a formal debate was already being acted upon in the current session, Cicero as part of his introduction was able to remind the senators that they still had the two remaining proposals—of Silanus and Caesar—before them (*Cat.* 4.7: ‘*Video duas adhuc esse sententias, unam D. Silani, qui censet eos qui haec delere conati sunt morte esse multandos, alteram C. Caesaris, qui mortis poenam remouet*’).<sup>25</sup> The transition from 4.6 to 4.7, so far from being evidence of ‘carelessness’ and requiring readers to ‘suspend their critical faculties’, is simply an accurate reflection of the debate on 5 December, which was obliged to proceed in the light of the earlier debate. After Cicero’s introductory speech, which is in effect the whole of the Fourth Catilinarian,<sup>26</sup> Caesar’s point of view (Sall. 51)

debate on 5 December itself, but it seems simpler to assume a reference to a debate for which there is evidence.

<sup>23</sup> ‘Debates did not always follow a straightforward course ... speeches might range far beyond the matter in hand ... What frequently resulted from these situations was a demand from the floor of the senate for a *relatio*’ (Lintott (1999) 80–1, with examples). This is similar to the scenario envisaged here (n. 24).

<sup>24</sup> Nero’s proposal mirrors that concerning Tarquinius in the same debate (48.5: ‘*deque ea re postulant uti referatur*’): see n. 23. It is clear both from *Cic. Cat.* 4.7 and from *Att.* 12.21(260).1 that Silanus’ support for Nero’s proposal did not imply the abandonment of his own original proposal. According to Appian (*BC* 2.5), Nero’s proposal was that the prisoners should be kept under guard until Catiline was defeated in battle and the situation became more clear: since this version of Nero’s proposal is very similar to Caesar’s own proposal, as has been recognised (e.g., McGushin (1977) 239; Ramsey (2007) 204), it seems very likely that in Appian’s account the one has mistakenly influenced the other.

<sup>25</sup> If Cicero’s speech is regarded as introductory, as proposed here, *Video* may be interpreted as a *façon de parler*: cf. *Leg.* 2.8: ‘*hanc igitur uideo sapientissimorum fuisse sententiam*’, which, as Dyck (2004) ad loc. remarks, is a reference back to Book 1.

<sup>26</sup> Scholars who regard the Fourth Catilinarian as too long for a speech in mid-debate (above, n. 14) will *a fortiori* regard it as too long for an introductory speech by the presiding consul; on the other hand, Cicero was something of a law unto himself, and the Nones of December was an occasion of unique gravity. Lintott (2008) 17, who thinks that almost



attracted considerable support (Sall. 52.1); but it was countered by Q. Lutatius Catulus, the consul of 78, and M. Porcius Cato, tribune designate, each arguing that the prisoners should be put to death. Cato's speech (Sall. 52.2–36) was so powerful that it persuaded the majority in favour of the death penalty, and the prisoners' fate was sealed (Sall. 53.1).

It may seem odd that Caesar, after delivering a speech powerful enough to have an effect on Silanus on 4 December (Sall. 50.4), should deliver on the following day another powerful speech in which he addresses Silanus' original proposal (Sall. 51.16–24). Yet we know from the Fourth Catilinarian (*Cat.* 4.7) that on 5 December Silanus' proposal was still on the table, and, although we should perhaps not dismiss out of hand the possibility that Caesar delivered two such speeches on successive days (see below, §VI), it is at least as possible that Sallust has transferred to 5 December his version of the speech which Caesar delivered the previous day. It seems reasonable to assume that on 5 December Caesar was asked if he was still of the same opinion as on the previous day and that he briefly confirmed his position, thereby speaking twice in all; if so, Sallust, by transferring the influential speech of 4 December to the following day, has contrived a dramatic confrontation between Caesar and Cato—the two contemporaries whom, as we know (53.6), he most admired.<sup>27</sup>

The hypothesis that the fate of the prisoners was debated on two occasions rather than simply one receives support from the end of the Fourth Catilinarian (4.19–24). Some scholars believe that these sections can have formed no part of the original speech but were added later when the speech was edited for publication in 60.<sup>28</sup> We have already seen reason to doubt the allegation of publication in 60 (above, §I), but, even if §§19–24 were added later,<sup>29</sup> it is clear from the very first sentence of the Fourth Catilinarian that it

everything from §7 onwards is '*ex post facto* invention', believes that even the first six sections of the speech are too long as an introduction: strangely, he supports this belief by referring to Lintott (1999) 77, where he quotes Cic. *Att.* 12.21(260).1 as his evidence that for a presiding magistrate 'a *longer* oration was also permissible' (emphasis added).

<sup>27</sup> Even on the conventional view of matters Caesar made a second speech in response to the speeches of Catulus and Cato (Plut. *Cic.* 21.5).

<sup>28</sup> Since much of the phraseology of §18 is repeated in §§19 and 24, it is argued that 18 was the original ending and mistakenly failed to be omitted when the speech was transcribed for publication; §§20–3 were added at the same time as §§19 and 24 (so Fuchs (1959); Berry (2020) 73–5).

<sup>29</sup> The sentiment at the very end of §21 strongly resembles a remark which Pompey evidently made to Cicero on his return from the east in late 62 BC (cf. Cic. *Off.* 1.78). Who is echoing whom? Berry (2020) 79–80 is convinced that Cicero is 'echoing' Pompey: so too Dyck (1996) 210, although Dyck (2008) 236 seems more agnostic.

was important to Cicero that the speech maintain the appearance of having been delivered on the Nones of December.<sup>30</sup> At 4.19–20 Cicero says this:

Atque haec, non ut uos qui mihi studio paene praecurritis excitarem, locutus sum, sed ut mea uox, quae debet esse in re publica princeps, officio functa consulari uideretur. Nunc, antequam ad sententiam redeo, de me pauca dicam.

And I have said these things not to rouse you, who almost run ahead of me in enthusiasm, but so that my voice, which ought to be the leading voice in the commonwealth, should be seen to have fulfilled its consular duty. Now, before I turn to the vote, I shall say a few words about myself.

The words *officio functa consulari* form a closural ring with *Illa praedicam quae sunt consulis* at §6 and indicate that Cicero, having spoken at length since the start of §7, is coming to the end of his introductory remarks as consul, while *antequam ad sententiam redeo* warns that it will soon be the point at which it is the senators' opportunity to speak.<sup>31</sup> That opportunity comes in the penultimate sentence of all (24): 'decernite diligenter, ut instituistis, ac fortiter'. The imperative *decernite* makes it clear that the debate is now about to start, but *ut instituistis* ('as you began/have begun to do') can only refer back to a previous occasion, since in this debate the only speaker hitherto has been Cicero himself.<sup>32</sup>

This account of the Fourth Catilinarian both explains and is supported by an obscure passage in a letter which Cicero wrote to Atticus almost twenty years later. With reference to the events of 5 December, Cicero mentions the praise he has received from Brutus (*Att.* 12.21(260).1):

Me autem hic laudat quod rettulerim, non quod patefecerim, cohortatus sim, quod denique antequam consulerem ipse iudicauerim.

As for me, he praises me because I put the motion, not because of my disclosures or my encouragement or, in a word, because I passed my own judgement before I consulted [sc. the senate].

<sup>30</sup> I agree entirely with Dyck (2008) 208 that §§1–3 'originated on the spot' rather than at some later date when Cicero was revising.

<sup>31</sup> For the meaning of *redeo* see Berry on Cic. *Sull.* 35. Dyck (2008) explains *ad sententiam* as 'before he calls for a vote'. The clause is translated as 'before I turn to ask your opinions further' by Lord (1937), 'before I start again to ask you for your views' by MacDonald (1977), and 'before I ask you once again for your views' by Berry (2006).

<sup>32</sup> I understand *decernite* here to be equivalent to *sententiam dicite* or similar (again at Sall. 50.4): see, e.g., Dyck (2008) on *Cat.* 4.10.

The clause *antequam consulerem* refers to Cicero's putting the motion on 5 December,<sup>33</sup> but to what do the words *ipse iudicauerim* refer? Shackleton Bailey comments as follows:<sup>34</sup>

The *guilt* of the conspirators having been already established at the meeting of 3 December, after which they were put into custody, *iudicauerim* presumably refers to the question of their sentence. The published version of Cicero's speech to the people that evening (*Catil.* iii) has nothing to say about their ultimate fate, but something may in fact have been said. He may also have indicated his own view when putting the question to the House..., though *antequam consulerem* suggests an earlier occasion.

Although this comment is itself not entirely clear, Shackleton Bailey appears to offer two possible interpretations of Cicero's words. The first, which he favours, is that the question of the prisoners' fate may have been raised by Cicero in a preliminary fashion at the senate meeting of 3 December,<sup>35</sup> although any reference to the question was suppressed when Cicero reported to the people on the evening of that day in the Third Catilinarian. The alternative interpretation, which in Shackleton Bailey's view is less probable, is that Cicero 'may have indicated his own view when putting the question to the House'. Shackleton Bailey evidently believed that we do not know what Cicero said when he put the question to the assembled senators: that is because, like most other scholars, he assumed that the Fourth Catilinarian represents a speech which Cicero delivered in the *middle* of the debate on 5 December.<sup>36</sup> But if the Fourth Catilinarian constitutes the speech with which Cicero *opened* the debate on that day, as has just been argued, then the words *quod ... antequam consulerem ipse iudicauerim* in the letter to Atticus exactly reflect the fact that Cicero did indeed pass his own judgement before he placed the matter in front of the senate for discussion (4.7: 'illa *praedicam* quae sunt consulis' ~ 4.24: '*decernite diligenter, ut instituistis, ac fortiter*').

<sup>33</sup> For this meaning of *consulere* see *OLD* 1b.

<sup>34</sup> Shackleton Bailey (1966) 317.

<sup>35</sup> If this hypothesis is combined with what is said by Appian about 3 December (*BC* 2.5: ὁ δὲ Κικέρων ἕκαστον ἐς τὰς οἰκίας τῶν στρατηγῶν διαθεὶς ἐπανήλθεν αὐτίκα καὶ ψήφον περὶ αὐτῶν ἐδίδου, 'Cicero put each of the conspirators under arrest at the houses of the praetors, and returned directly to put the matter concerning them to the vote'), it is possible to infer that there had indeed been some discussion of the prisoners' fate in the senate that day. (The translation is adapted from that of the Loeb edition; for the expression ψήφον ... ἐδίδου see MacDowell on Dem. 21.87, a reference which I owe to C. H. George.)

<sup>36</sup> See Shackleton Bailey (1971) 34.

## V

The ‘most complete ancient account of the debate’ is that of Plutarch, which begins as follows (*Cic.* 20.4):<sup>37</sup>

Τῆ δ’ ὑστεραία γιγνομένων ἐν συγκλήτῳ λόγων περὶ τιμωρίας τῶν ἀνδρῶν, ὁ πρῶτος ἐρωτηθεὶς γνώμην Σιλανὸς εἶπε τὴν ἐσχάτην δίκην δοῦναι προσήκειν, ἀχθέντας εἰς τὸ δεσμοπήριον, καὶ τοῦτῳ προσετίθεντο πάντες ἐφεξῆς μέχρι Γαίου Καίσαρος.

On the following day, when there were discussions in the senate about the punishment of the men, the first to be asked his opinion, Silanus, said that it was proper that they should be taken to the prison and pay the supreme penalty. All agreed with him, one after the other, up to Gaius Caesar. [Trans. Moles]

Moles notes in his commentary that by ‘the following day’ Plutarch means 4 (not 5) December.<sup>38</sup> In whatever way this date is to be explained,<sup>39</sup> one possible explanation stands out: Plutarch may assign the debate to the 4th because there actually was such a debate on that day. Moles himself is sympathetic to this view: Plutarch ‘may be right to put the *start* of the debate about punishment on Dec. 4’, thereby conflating two days of debate into one and assigning the conflation to the first of the two days rather than (as in Sallust’s case) the second.<sup>40</sup> Hence, although Plutarch is responsible for the mistaken view that Cicero’s Fourth Catilinarian represents a speech from the middle of the debate, as we have seen (above, §II), nevertheless his chronological evidence, when combined with Sallust’s text and Cicero’s speech, is sufficient to question the traditional view of events and to give credence to the suggestion that the Nones of December was not the first occasion on which the fate of the imprisoned Catilinarians was debated.

## VI

In a very brief discussion more than thirty years ago, Heyworth and Woodman defended the transmitted *dixerat* in Sallust’s text (50.4) and, by comparing Cicero’s statements in the Fourth Catilinarian, which they accepted as a

<sup>37</sup> Berry (2020) 166 n. 8.

<sup>38</sup> Moles (1988) 168. This does not seem to have been grasped by Drummond (1995) 12.

<sup>39</sup> Brief discussion in Pelling (2002) 91.

<sup>40</sup> Moles (1988) refers also to Dio 37.36.1–2 as evidence of an earlier meeting; it may be so, but the Greek is difficult to interpret.

composite speech, they put forward the hypothesis that there had been two debates on the fate of the Catilinarian prisoners.<sup>41</sup> As they pointed out, the hypothesis brings Sallust's narrative closer to Thucydides' Mytilene episode, on which it is generally agreed to have been modelled.<sup>42</sup> Thucydides briefly refers to a first debate (3.36.2), at which Cleon proposed putting the Mytilenaeans to death (3.36.6) and was opposed by Diodotus (3.41), and then records (3.36.4) that on the next day (τῆ ὑστεραία) there was a second debate, at which the two principal speakers both spoke again, their speeches being rendered in long passages of direct speech (3.37–40, 42–8). This is precisely the situation which Sallust envisages in the case of the Catilinarian prisoners, except that at the meeting of 5 December the speech in favour of the death penalty is given not to Silanus, its original proposer, but to Cato, whose intervention is agreed to have been decisive.

A close relationship between the two pairs of life-versus-death debates is self-evidently attractive, but Briscoe described the argument of Heyworth and Woodman as 'totally mistaken' and raised a series of objections to it.<sup>43</sup> In the first place, he said, their argument 'involves holding that Silanus did not change his mind, but merely supported a procedural motion from Nero.' Yet we know from the above letter of Cicero (*Att.* 12.21(260).1) that Silanus did *not* in fact change his mind: he voted for the death penalty. Silanus was indeed shaken by Caesar's speech, as Sallust says (50.4: 'permotus oratione C. Caesaris'), and according to some other sources alleged that he had never intended to propose the death penalty in the first place;<sup>44</sup> but his terminological wriggling is perfectly compatible with his support for Nero's proposed adjournment. 'What is more', adds Briscoe, 'it is not at all clear that Nero's proposal was merely for a brief adjournment. Appian (*BC* 2.5), wrongly placing Nero's speech before that of Caesar, says that he proposed that the conspirators should be kept in custody until Catiline was defeated and accurate information available.' Yet, if there were two meetings and Caesar spoke at both, Appian's placing of Nero's speech before that of Caesar was in fact correct.

Briscoe next objects to a point which Heyworth and Woodman did *not* make, namely that, when Cicero follows the words *institui referre ad uos* with the phrase *tamquam integrum* (*Cat.* 4.6), he is implying that he had already put the motion at a previous meeting;<sup>45</sup> Briscoe says that, on the contrary, *tamquam*

<sup>41</sup> Heyworth and Woodman (1986).

<sup>42</sup> See Scanlon (1980) 102–8, with reference to very many earlier scholars (233 n. 224).

<sup>43</sup> Briscoe (1987) 50.

<sup>44</sup> Cf. Plut. *Cic.* 21.3; *Cat. Min.* 22.6; Suet. *Iul.* 14.1. Silanus was no doubt relying on the ambiguity of the term *supplicium*.

<sup>45</sup> It is not clear to me why translators conventionally translate *institui* as 'I have determined' or 'I have decided'; I assume the verb has the meaning it usually has when

*integrum* needs to be interpreted in the light of the preceding paragraph (*Cat.* 4.5), where the summary of the senate's decisions on 3 and 4 December amounts to 'a judgement on the actions of the conspirators: Sallust's *indicauerat* [he means *iudicauerat*] *contra rem publicam fecisse* makes the same point.' The matter is more complicated than Briscoe realised, however, and perhaps not to his advantage. It will be remembered that Cicero begins *Cat.* 4.6 as follows: 'Sed ego institui referre ad uos, patres conscripti, tamquam integrum, et de facto quid iudicetis et de poena quid censeatis'. *tamquam integrum* ('as if undecided') does indeed relate to the previous section, where Cicero by way of a foil says that the senate's decisions on 3 and 4 December amounted to a condemnation of the prisoners ('ut ... a uobis damnati esse uideantur'); but Cicero's present motion is two-fold (*et ... et ...*), concerning punishment as well as condemnation, and in §5 there is no reference at all to punishment: since *tamquam integrum* applies to *both* elements of the motion, it is possible that here too we have evidence of an earlier meeting at which the punishment of the Catilinarians was discussed.

Briscoe objects thirdly to the scholarly doubts about procedural matters to which Heyworth and Woodman refer. This third objection is essentially tangential to the main question and does not affect it, but, before we pass on, we should note that, when Pelling considered the procedural matters implied by the conventional scenario, he was compelled to conclude that 'All this is very unusual' and that one possible solution is the assumption of two debates.<sup>46</sup> Briscoe's fourth objection seems equally tangential. He says that Cicero 'could hardly have used' the 'vague language' about security in §14 of his speech if at an earlier meeting the senate had already voted for increased security, as Sallust implies (50.4: 'praesidiis additis'). But the two authors are talking about different things. It is clear from *ad ea quae uos statueritis hodierno die transigenda* that Cicero is referring to security around the senate house, while Sallust's phrase *praesidiis additis* is to be seen in the light of *dispositis praesidiis* earlier (50.3), which, as is clear from the context, refers to security for the prisoners under house arrest.<sup>47</sup>

As his final point, Briscoe attempts to explain the sequence of three pluperfect tenses in Sallust's account. He first remarks that 'Sallust was particularly fond of using pluperfects where perfects might have been expected', as if this were the explanation for the tenses of the three verbs. Nevertheless, he continues, *decreuerat* [which he again gets wrong: he means *iudicauerat*], as we have seen, is a straightforward pluperfect referring to the decisions taken on 3

combined with an infinitive (*OLD* 5b), 'I have started', and refers to the fact that Cicero is now five sections into his speech. Dyck (2008) offers no comment on the word.

<sup>46</sup> Pelling (2011) 167–8, though ultimately not favouring the hypothesis of two debates.

<sup>47</sup> Briscoe (1987) 51 denies that Sallust's two references to *praesidia* are to be seen in the light of each other: 'Verbal repetitions of this sort are commonplace in Latin.'

and 4 December'. In other words, *iudicauerat* is a true pluperfect, as indeed it is. *decreuerat*, he continues, 'is explained by the fact that Sallust's focus is on Caesar's speech, to which Silanus' proposal was antecedent': it is true that the pluperfect could be explained in this way, although *decreuit* would have been much more natural.<sup>48</sup> Briscoe more or less admits this by implication when he turns his attention to *dixerat*, which he acknowledges is 'more difficult'. Since he is reluctant to consider the emendation *dixit*, perhaps because it would imply a weakness in his case, he writes off *dixerat* 'as a piece of carelessness', which seems even weaker.<sup>49</sup>

In short, there is little or nothing in Briscoe's response which undermines the argument made by Heyworth and Woodman. Nevertheless Briscoe's paper is referred to with seeming approval by Drummond, who, as we have seen, supports the traditional interpretation of events: Sallust's account, he says, 'becomes hopelessly disjointed and obscure if *dixerat* of the MSS is retained and given its full pluperfect force'.<sup>50</sup> But the account reads even more disjointedly if it is interrupted by only the single sentence *Sed eos paulo ante ... fecisse*; and, as for obscurity, Drummond's reading requires that *oratione C. Caesaris* and *Sed Caesar ... locutus est* (4–5), which are *contrasted* with each other (*Sed*), refer to the same speech on the same occasion, which seems impossible. Since *dixerat* is the transmitted reading, the onus is upon those who wish to change it in the face of a perfectly reasonable explanation for its presence, but of course Drummond denies that there is *any reason at all* for its presence: as we have already seen (above, §III), he believes that Sallust's flash-back sentence (50.3: 'Sed eos paulo ante ... fecisse') is fictional or mistaken and refers to a meeting which never took place and at which Junius Silanus and Claudius Nero therefore cannot have spoken. This no doubt explains why, when Drummond objects to Heyworth's and Woodman's proposal by saying that '*D. Iunius Silanus, primus sententiam rogatus quod eo tempore consul designatus erat* has to be divorced

<sup>48</sup> See n. 53 below.

<sup>49</sup> Ramsey (2007), who does not mention *dixit*, tries at least to defend *dixerat*, which he follows Ernout (1958) in printing: 'The participial phrase *permotus oratione C. Caesaris* in conjunction with *dixerat* makes it clear that the point of reference is not Caesar's speech, as we might have expected from the order in which these events are reported, but rather the final vote (*discessio*), since Silanus altered his opinion after Caesar's speech, and Nero ... apparently spoke after Caesar' (192). But it seems impossible that the tense of *dixerat* at 50.4 is to be understood in relation to *fit* more than eight OCT pages later at 53.1; besides, as we have already observed, Silanus *maintained* his opinion after Cato's speech, which was delivered last of all. As for other editors, Vretska (1976) 507 dismisses *dixit* (which he wrongly gives as *dicit*) as 'überflüssig'; McGushin (1977), following Kurfess (1957), prints *dixit* without seeming to notice that it is an emendation; Reynolds (1991) prints *dixit*; Mariotti (2007) 550 prints and defends *dixit*.

<sup>50</sup> Drummond (1995) 23 n. 2. In his bibliography Berry (2020) lists Briscoe's paper but not the paper of Heyworth and Woodman which gave rise to it (see also n. 55 below).

from its natural antecedent (*consul ... refert ... quid de iis fieri placeat qui in custodiam traditi erant*), he misleadingly omits from his quotation the very word (*tum*) which refers back to Sallust's mention of an earlier meeting in the previous sentence.<sup>51</sup> Drummond's further objection ('the reference to an earlier speech by Caesar is left tantalisingly unexplained') is self-evidently groundless, since it is perfectly obvious from the context that Caesar will have attacked the position of Silanus. Drummond's final objection is that, 'most remarkably, Caesar himself makes no reference either to his own previous contribution or to Silanus' change of stance'. But the former omission is surely dictated by the needs of the narrative: as everyone agrees, Sallust is focussing on the debate of 5 December. As for the omission of 'Silanus' change of stance', we have already seen that in the end Silanus did not change his stance at all, something which Sallust, writing Caesar's speech with the benefit of hindsight, knew perfectly well. We might remember that, if it were not for Sallust, we would not know of Claudius Nero's proposal—and hence of Silanus' temporising—at all.<sup>52</sup>

## VII

It is generally accepted that the tralaticious paragraphing of Greek and Latin texts as found in standard editions can be misleading, and Heyworth and Woodman suggested that Sallust's text could be paragraphed in such a way as to clarify the articulation of the narrative:

... Consul ubi ea parari cognouit, dispositis praesidiis ut res atque tempus monebat, conuocato senatu refert quid de iis fieri placeat qui in custodiam traditi erant.

Sed eos paulo ante frequens senatus iudicauerat contra rem publicam fecisse. Tum D. Iunius Silanus, primus sententiam rogatus quod eo tempore consul designatus erat, de iis qui in custodiis tenebantur et praeterea de L. Cassio, P. Furio, P. Umbreno, Q. Annio, si deprehensi forent, supplicium sumundum decreuerat; isque postea permotus oratione C. Caesaris pedibus in sententiam Ti. Neronis iturum se dixerat, qui de ea re praesidiis additis referendum censuerat.

Sed Caesar, ubi ad eum uentum est, rogatus sententiam a consule huiusce modi uerba locutus est.

<sup>51</sup> Drummond's quotation of *Consul ... traditi erant* is also misleading.

<sup>52</sup> Appian is the only other author who mentions Nero, to whom he attributes a quite different proposal (above, n. 24).



... When the consul heard of these developments, he deployed guards as the situation and moment suggested and, having summoned the senate, put before it a motion as to what its decision was concerning those who had been handed over into custody.

A little before, the crowded senate had pronounced that they had acted against the commonwealth. On that occasion D. Iunius Silanus, asked for his opinion first because at the time he was consul designate, had declared that reprisal should be exacted from those who were being held in custody, and from L. Cassius, P. Furius, P. Umbrenus, and Q. Annius besides, should they be caught; and afterwards, affected by a speech from C. Caesar, he had said that he would go over to the opinion of Ti. Nero, who had proposed that, after adding guards, there should be a motion on the matter.

When Caesar's turn came, he was asked by the consul for his opinion and spoke words of this type.

Such an arrangement makes it clear that *Tum* refers back to the immediately preceding sentence rather than to the sentence before that,<sup>53</sup> and it is likely that, had the text always been paragraphed like this, few would ever have questioned it.

Such an arrangement is typical of Sallust. Thus the text immediately preceding ours reads as follows (49.4–50.1):

... ut nonnulli equites Romani, qui praesidi causa cum telis erant circum aedem Concordiae, seu periculi magnitudine seu animi mobilitate impulsi, quo studium suum in rem publicam clarius esset, egredienti ex senatu Caesari gladio minitarentur.

[50] Dum haec in senatu aguntur et dum legatis Allobrogum et T. Volturcio conprobato eorum indicio praemia decernuntur, ...

... that several Roman equestrians who were on guard with weapons round the shrine of Concordia, induced either by the magnitude of the danger or by the volatility of their dispositions, threatened Caesar with their swords as he left the senate, so that their enthusiasm for the commonwealth should be more conspicuous.

[50] While this was going on in the senate, and while rewards were being decreed to the legates of the Allobroges, ...

<sup>53</sup> For this sense of *tum* see *OLD* 1. If *Tum* is thought to refer to the last sentence but one, not only is its insertion extremely odd (we should expect no adverb at all, as at App. *BC* 2.5) but its combination with the pluperfect *decreuerat* seems almost impossible after the words *Consul ... refert*.

The meeting of the senate which led to Caesar's being attacked (49.4) is assumed by scholars to be that of 5 December (cf. Suet. *Iul.* 14.2; Plut. *Caes.* 8.2), whereas commentators agree that *Dum haec in senatu aguntur* refers not to that meeting—as might have been expected from the phrase *ex senatu* at the end of the immediately preceding sentence—but to the meeting of 4 December, which Sallust had described a paragraph earlier at 48.3–6.<sup>54</sup> The whole of 49.1–4 is in effect parenthetical. Of course it might be argued that, if the prisoners' fate really had been debated at a meeting on 4 December at which Caesar spoke, the attack on him could have followed this earlier meeting. Such an argument would restore chronological ordering to Sallust's narrative but would support the existence of an earlier meeting.

### VIII

It may be asked why, if the fate of the Catilinarian prisoners was debated on 4 December, the reference to such a debate is implicit (§7) rather than explicit in the Fourth Catilinarian, where Cicero twice refers to a meeting 'yesterday' (§§5, 10). Yet neither does Cicero explicitly mention the outlawing of the conspirators, which had also taken place the previous day. Besides, it was on 5 December that the motion was formally put and, as in the case of Thucydides' Mytilenean episode, it was this second debate which was designed to seize readers' attention. Cicero was convinced, and published the Fourth Catilinarian with this conviction, that it would be far more dramatic, and would redound far more to his reputation, if the death of the Catilinarian prisoners were associated with a single debate on a single day rather than a debate which dragged on from one day to the next. He spoke about 'the famous Nones of December' for the rest of his life (*Att.* 1.19.6; *Ep. Brut.* 1.17.1). This presentation of events explains why, with the exception of Plutarch, none of the later authors gives any clear indication of there having been an earlier meeting.

Cicero has persuaded modern scholarship too. 'It has even been suggested', writes Levick in a recent study, 'that there were two debates, on successive days, but it is hard to believe that Cicero would have allowed discussion of the proposed sentences to drag out; he wanted crisp action.'<sup>55</sup> It is true that on 5 December Cicero argued eloquently for 'action this day', but remarks such as Levick's take no account of the gravity of the decision with which the senate was faced, once the conspiracy had been revealed and the

<sup>54</sup> See Vretska (1976) 495, McGushin (1977), Ramsey (2007), and Mariotti (2007) ad loc.

<sup>55</sup> Levick (2015) 80, but without reference to who made the suggestion. Dyck (2008) also makes no mention of Heyworth and Woodman. Remarks such as Levick's can be turned on their head: if the matter was so pressing, why did Cicero not utilise the relative availability of 4 December?

ringleaders imprisoned; and from the repercussions of the senate's decision it is possible to see in retrospect exactly how momentous that decision was. It is more rather than less likely that the question of the prisoners' fate had already started to be discussed before the debate at which the decision was taken.

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