

## Cicero's *humanitas* in forensic Speech: focusing on *Pro Roscio Amerino*<sup>1</sup>

JAEWON AHN

Seoul National University  
Coreia do Sul

ABSTRACT. Many investigations regarding this were already made that the idea *humanitas* originated directly from Greek New comedy and especially from philosophy of Plato and the Stoics but fundamentally from the Greek literatures like those of Homer. Regarding to this, however, the real birth and growth place of the idea of *humanitas* and the sub-ideas was not classroom but forum in which legal court or political assembly was held. The most significant evidences for this are Cicero's speeches, because it is not difficult to discover the fact that Cicero's speeches are usually disposed according to the idea of *humanitas* and are full of sub-ideas of it. As an example for this, I have tried to analyze Cicero's *Pro Roscio Amerino* which is the first *causa publica* for Cicero. Based on this, I would like to suggest that Cicero's speeches are to be emphasized also in the *humanitas*-studies. To this, it should be mentioned that there are some strong relationships between Cicero's speeches and his late theoretical texts. Thus, philologically seen, my concrete suggestion in this paper is to investigate the so-called 'intertextuality-problem' between Cicero's speeches and philosophical treatises.

KEYWORDS. Cicero; *humanitas*; *Pro Roscio Amerino*; forensic speech; *forum*; *Sulla*; *Chrysogonus*.

In *De oratore*, Cicero uses the term *humanitas* 18 times (1.27, 1.32, 1.53, 1.71, 1.106, 1.256, 2.40, 2.72, 2.86, 2.154, 2.230, 2.270-1, 2.362, 3.1, 3.29, 3.58, 3.94). According to my interpretation, *humanitas* always means *paideia* (liberal education). It shows that Cicero uses *humanitas* as a technical term. In my opinion, the statement of Gellius on this point is in part correct:

Email: numeniu@snu.ac.kr

Also member of the HK (Humanities Korea).

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Those who have spoken Latin and have used the language correctly do not give to the word *humanitas* the meaning which it is commonly thought to have, namely, what the Greeks call φιλανθρωπία, signifying a kind of friendly spirit and good-feeling towards all men without distinction; but they gave to *humanitas* about the force of the Greek παιδεία; that is, what we call *eruditionem institutionemque in bonas artes*, or 'education and training in the liberal arts'. Those who earnestly desire and seek after these are most highly humanized. For the pursuit of that kind of knowledge, and the training given by it, have been granted to man alone of all the animals, and for that reason it is termed *humanitas*, or 'humanity'. That it is in this sense that our earlier writers have used the word, and in particular Marcus Varro and Marcus Tullius, almost all the literature shows.<sup>2</sup>

However, Gellius' statement –

Those who have spoken Latin and have used the language correctly do not give to the word *humanitas* the meaning which it is commonly thought to have, namely, what the Greeks call φιλανθρωπία, signifying a kind of friendly spirit and good-feeling towards all men without distinction.

– is not acceptable because Cicero uses *humanitas* already in two meanings. Of course, Cicero uses *humanitas* as a technical term with which he comprises so-called all kinds of *bonae artes*<sup>3</sup>, to which belong Grammatik, Literature, Rhetoric, Dialectic, History, Music, Geometry, and Arithmetic among others.<sup>4</sup> However, Cicero formulates *humanitas* as the following:

<sup>2</sup> GELLIIUS *Noct. Att.* 13.17.1-2: *Sed 'humanitatem' appellaverunt id propemodum, quod Graeci paideian vocant, nos eruditionem institutionemque in bonas artis dicimus. Quas qui sinceriter cupiunt adpetuntque, hi sunt vel maxime humanissimi. Huius enim scientiae cura et disciplina ex universis animantibus uni homini datast idcircoque 'humanitas' appellata est. Sic igitur eo verbo veteres esse usos et cum primis M. Varronem Marcumque Tullium omnes ferme libri declarant. Quamobrem satis habui unum interim exemplum promere.*

<sup>3</sup> Cf. *De Orat.* 1.158: *Legendi etiam poetae, cognoscendae historiae, omnium bonarum artium doctores atque scriptores eligendi et pervolutandi et exercitationis causa laudandi, interpretandi, corrigendi, vituperandi, refellendi; disputandumque de omni re in contrarias partis et, quicquid erit in quaere re, quod probabile videri possit, eliciendum atque dicendum.*

<sup>4</sup> *De orat.* 1.187: *Omnia fere, quae sunt conclusa nunc artibus, dispersa et dissipata quondam fuerunt; ut in musicis numeri et voces et modi; in geometria lineamenta, formae, intervalla, magnitudines; in astrologia caeli conversio, ortus, obitus motusque siderum; in grammaticis poetarum pertractatio, historiarum cognitio, verborum interpretatio, pronuntiandi quidam sonus; in hac denique ipsa ratione dicendi excogitare, ornare, dispo- nere, meminisse, agere, ignota quondam omnibus et diffusa late videbantur.*

‘Indeed, the subtle bond of a mutual relationship links together all arts that have any bearing upon *humanitas*’<sup>5</sup>. The sense of *humanitas* in this passage means human-being or human-becoming which can be comparable to ‘Mensch-Sein oder Mensch-Werden’ in German<sup>6</sup> because *humanitas* means human-being itself as an object-idea for the liberal arts<sup>7</sup> on the one hand, and *studia humanitatis* are means and mediums for human-becoming on the other hand.<sup>8</sup> Regarding this, let us call to mind Cicero. For him *humanitas* means, in the concrete, *humaniter vivere*: ‘if I [Cicero] will have relaxed myself from this, I will certainly teach even you, who have studied nothing else for many years, what it is to live humanly’<sup>9</sup>. This comes to the conviction that Cicero uses the term *humanitas* as *to anthropeion* which does mean the human nature or mankind.

As for understanding of *humanitas* as *to anthropeion*, Rieck suggests that the idea of *humanitas* contains the following components<sup>10</sup>: *natura humana, conditio mortalis, natura hominis, natura generis humani, mansuetudo, cultus, doctrina, dignitas, pietas, fides, honestas, iustitia, gravitas, virtus, integritas, lepos, facetiae, elegantia, eruditio, urbanitas, hilaritas, iocositas, festivitas, sapientia, moderatio, modestia, aequitas, comitas, benignitas, clementia, misericordia, benevolentia, facilitas, mollitudo, liberalitas, munificentia*. There is no one who would not agree on this arsenal of the concept of *humanitas* in modern sense. A crucial question arises in relation to this arsenal; where did the idea of *humanitas* and the so-called sub-concepts come from? Many investigations regarding this were already made that the idea *humanitas* originated directly from Greek New comedy and especially from philosophy of Plato and the Stoics but fundamentally from the Greek literatures like those of Homer.<sup>11</sup>

<sup>5</sup> *Pro Archia 2: Etenim omnes artes, quae ad humanitatem pertinent, habent quoddam commune vinculum et quasi cognatione quadam inter se continentur.*

<sup>6</sup> Cf. F.I. NIETHAMMER, *Philanthropinismus-Humanismus*, Texte zur Schulreform, bearb. v. W. Hillebrecht, Weinheim-Berlin-Bassel, 1968, 79ß445 (Kleine Pädagogische Texte 29), apud J. CHRISTES, 1995, p. 3.

<sup>7</sup> As regards this, Fr. I. Niethammer suggests humanismus. For this Niethammer separated ‘den humanismus als das andere Erziehungsprinzip’ from the ‘sog. Philanthropinismus der von der Aufklärung geförderten Realschule’ in a School-program 1808.

<sup>8</sup> The humanismus idea of Niethammer originally comes from the ‘Humanitätsbegriff des wahren Menschseins’ of J.G. Herder. According to him, it is ‘Inbegriffs aller menschlichen Wesensvollendung, aller sittlichen, vernünftigen und ästhetischen Bildung’.

<sup>9</sup> *Ep. ad Fam. 7.1: quibus si me relaxaro, te ipsum, qui multos annos nihil aliud commentaris, docebo profecto quid sit humaniter vivere.*

<sup>10</sup> Cf. J. CHRISTES, 1995, p. 11.

<sup>11</sup> On this, see OSCAR E. NYBAKKEN, *Humanitas Romana*, APA 70, 396-413, 1939.

Regarding to this, I would like to argue in this paper that the birth and growth place of the idea of *humanitas* and the sub-ideas was not classroom but forum in which legal court or political assembly was held. In my view, the incubator of Cicero's thought of *humanitas* is not some theoretical text but his life itself. The most significant evidences for this are Cicero's speeches, because it is not difficult to discover the fact that Cicero's speeches are usually disposed according to the idea of *humanitas* and are full of sub-ideas of it. Cicero uses them as the basic argument in the construction of argumentation. Rhetorically seen, these phenomena are analyzed into pathos or ethos-argumentation. In order to corroborate it, I think, it is sufficient to give one single example. For this, I will give some details on Cicero's *Pro Roscio Amerino*, which is the first *causa publica* in which Cicero was engaged.

### 1. The argumentative structure of Cicero's speech *Pro Roscio Amerino*

One night, a man was murdered on the street of ancient Rome. This man was Sextus Roscius who was a wealthy and distinguished citizen of Ameria, a northern city of Rome. He was in good relationships with prominent Roman families such as the Metelli and Scipiones. Even though his son was in Ameria on that night, this son was accused of parricide. His name was Roscius Amerinus. According to Gellius (*Noctes Atticae* 15.28), Cicero defended this Roscius at the age of 27 in the year of 80 BCE during the dictatorship of Sulla. According to Cicero, there was a big feud about property between Roscius the father and the two Amerians, Titus Roscius Capito and Titus Roscius Magnus in the background of this murder. Politically seen, it is also noteworthy that Cicero undertook the defense of Roscius against Chrysogonus, a powerful henchman of Sulla. Any attack on Chrysogonus might thus naturally be interpreted as a criticism of Sulla's dictatorship (*De officiis* 2.14.51)<sup>12</sup>. However, Cicero has defended Roscius Amerinus effectively<sup>13</sup> and his client was victoriously acquitted.

<sup>12</sup> There are some debates on the question of whether Cicero delivered the speech originally under Sulla in 80 BCE, or he revised the text when he returned from Greece after Sulla's death, in 74 BCE. On this, see D.H. BERRY, *The Publication of Cicero's Pro Roscio Amerino*, *Mnemosyne* 57.1, 80-87, 2004.

<sup>13</sup> About this, D.H. Berry is in the opinion that 'as an essential part of his strategy, therefore, he (sc. Cicero) took great care to distinguish between Sulla and his minion, and blame, and blame only to the latter. Condemnation of Chrysogonus, he stressed, did not in anyway imply criticism of Sulla'. Berry's opinion is acceptable from the perspective of rhetorical strategy. However, I am in the opinion that Cicero's critical position on Sulla's dictatorship is indisputable. Cf. *ibid.*, p. 81.

This brought a great reputation to Cicero. Indeed, this victory may well have stimulated the wrath of Sulla, and perhaps influenced Cicero's decision to travel to Athens the following year.

Grosso modo, *Pro Roscio Amerino* is a typical judicial speech which is organized according to the instruction of School-rhetoric. It is divided into five parts. In the first part (chap. 1-14, *id est exordium*), Cicero explains the reason why he tries to undertake the defense of Roscius Amerinus. In the second part (chap. 15-34, *id est narratio*), Cicero reports on who was Sextus Roscius and how he was murdered and what happened after the murder. In the third part (chap. 35, *id est partitio*), Cicero summarizes what he has narrated before. According to him:

There are three obstacles by which Roscius Amerinus is faced with today; the accusation brought by his adversaries, their audacity and their power. The accuser Erucius has undertaken the fabrication of the charge. The Roscii have claimed the role of the audacious villains; but Chrysogonus, who has the greatest influence, uses the weapon of power against us.

In the fourth part (chap. 36-142, i.e. *argumentatio*), Cicero's argumentation falls into three branches according to the *partitio*. In the first branch (chap. 36-82), Cicero proves the accusations to be false, based on which a certain Erucius tried to put the charge of parricide to Roscius the son. According to Cicero, the charge is baseless because of the lack of valid evidence. First of all, Roscius the son has no motives to kill his father, because he neither wanted to kill his father nor he had any opportunity of doing so. And then, the son was also on good terms with his father who never intended to disinherit him. Finally, the son was not a bad man who dared to carry out such a parricide. Indeed, he is a man of excellent character who took charge of managing his father's property. In addition to this, the son had neither the means of committing such a crime, nor he had anyone else to help him. Based on this, in sum, Cicero concludes that the charge is groundless. In the second branch (chap. 83-123), Cicero makes a shift from defense to attack. Cicero tries to cast suspicion on Capito and Magnus. Cicero attempts to implicate Capito and Magnus partly from their life and character and partly from what happened after the murder. He shows that Magnus had many reasons and opportunities for murdering the Roscius the father. Cicero also claims that a conspiracy was formed between Chrysogonus and the two Roscii. In order to support this, Cicero asserts that Chrysogonus bought the property for 2,000 sesterces at the public auction although it was valued at 6,000,000 sesterces. Capito received three landed

estates as his share. Magnus who was Chrysogonus's agent took over the remaining ten estates of Roscius. Based on these, Cicero places the guilt for the murder of the elder Roscius directly on Magnus and Capito.

In the third branch (chap. 124-144), he directly attacks Chrysogonus. Cicero asks: 'Why has the property of an excellent citizen been confiscated, and sold so cheaply after the proscriptions<sup>14</sup> had ceased?' Cicero attempts to prove that Chrysogonus was the real author of Erucius' accusations. There follows textual *lacuna* at the end of chap. 132. In the final part (chap. 143-154, *id est peroratio*), Cicero begs the judges not to allow Chrysogonus to rob the name and life of the man whom he had already robbed of his fortune.

## 2. Some *loci humanitatis* of *Pro Roscio Amerino*

As I have promised in chapter 1, I will now attempt to give some answer to whether *Pro Roscio Amerino* is really disposed according to the idea of *humanitas* and its abundant sub-ideas and Cicero uses them as basic arguments in the construction of argumentation. Rhetorically seen, these *humanitas*-ideas are observed usually in the so-called pathos and ethos-argumentation. This is evident from descriptions of the related people, on the one side that Cicero emphasizes the excellent character of Roscius Amerinus, on the other side that Cicero describes the life of Chrsogonus as frivolous and extravagant to prove that Chrysogonus was the real author of the accusation. From this, in sum, it can be concluded that Cicero's argumentation is characterized by ethos and pathos *loci*, *id*

<sup>14</sup> This is a big question in the research history on *Pro Roscio Amerino*. On this, see W. B. SEDGWICK, *Cicero's Conduct of the Case Pro Roscio*, *The Classical Review* 48.1, 1934. Sedgwick regards it as a dilemma: 'If Roscius the father was proscribed, Roscius the son could not be prosecuted for his murder; if he was not proscribed, the property was illegally sold'. Sedgwick claims in his article that Cicero avoided addressing this dilemma because Chrysogonus had already removed Roscius the father's name from the proscription list. However, T. E. Kinsey calls this Sedgwick's suggestion into question (*A Dilemma in Pro Roscio Ameria*, *Mnemosyne* 19.3, 270-271, 1966). Regarding this, Kinsey distinguishes two different meanings of the word proscriptus, the 'strict sense' and the 'narrow sense'. The 'strict sense' referred to those whose names had actually been written on the *Lex de Proscriptione* at the time of its original publication and proclamation. Regarding the 'narrow sense' Kinsey proposes that after the publication of the original law of proscriptions, Sulla and his close supporters kept a running list of enemies both alive and dead who were not included in the original law. Kinsey suggests that many people had profited from the proscriptions and that Roscius the son was less likely to be acquitted if it meant the beginning of a long period of reprisal and restitution. Therefore, Chrysogonus along with anyone else who might have been nervous about Roscius the son's acquittal would be reassured.

*est topoi*. In relation to my analysis, however, I would like to accentuate that these *loci* are related directly to the sub-ideas of *humanitas*. For confirming this, I will examine the Cicero's speech in some deductive way. It means that I will use Rieck's *humanitas*-ideas mentioned in the above as the navigator of my exploration. The lists of *humanitas*-ideas which are to be checked in this paper are as follows: *natura hominis, conditio mortalis, natura generis humani, mansuetudo, cultus, doctrina, dignitas, pietas, fides, honestas, iustitia, gravitas, virtus, integritas, lepos, facetiae, elegantia, eruditio, urbanitas, hilaritas, iocositas, festivitas, sapientia, moderatio, modestia, aequitas, comitas, benignitas, clementia, misericordia, amicitia, benevolentia, facilitas, mollitudo, liberalitas, munificentia*. For brevity's sake, however, I will examine not all but some important ideas observed in the text of *Pro Roscio Amerino*.

### 2.1 *Amicitia (friendship) and benevolentia (goodwill)*

In the *exordium*, Cicero declares the reason why he dares to undertake the defense of Roscius Amerinus. Cicero says, it is because of *amicitia*. This is evident in the following.

*Accedit illa quoque causa, quod a ceteris forsitan ita petitum sit, ut dicerent, ut utrumvis salvo officio se facere posse arbitrarentur; a me autem ei contenderunt, qui apud me et **amicitia** et beneficiis et dignitate plurimum possunt, quorum ego nec **benivolentiam** erga me ignorare nec auctoritatem aspernari nec voluntatem neglegere debebam.* (4)

A further reason is this; while perhaps the way in which others were asked to speak on behalf of Roscius may have been such that they fancied that they were at liberty either to consent or refuse without violating their obligations, I [sc. Cicero] have been pressed to do so by men whose friendship, acts of kindness and dignity have the greatest weight on me, whose goodwill towards myself I was bound not to ignore, nor to disdain their authority, nor to slight their wishes.

As read above, the sub-ideas of *amicitia* and *benevolentia* are used in the building of argumentation. Cicero treats this later systematically in *De amicitia* like this.

It seems clear to me that we were created so that between us all there exists a certain tie which strengthens our proximity to each other. Therefore, fellow citizen are preferred to foreigners and relatives to

strangers, for with them Nature herself engenders friendship, but it is the one that is lacking in constancy. For friendship excels relationship in this, that goodwill may be eliminated from relationship while friendship it cannot; since, if you remove goodwill from friendship the very name of friendship is gone; if you remove it from relationship, the name of relationship still remains. Moreover, how great the power of friendship is most clearly realized from the fact that, in comparison with the infinite ties uniting the human race and fashioned by Nature herself.<sup>15</sup>

Othe related issue, I would like to add that the concept of Cicero's *humanitas* is principally based on his homo-definition. On this issue, scholars still show little interest in the relationship between Cicero's *humanitas*-idea and his homo-definition. In any case, Cicero gives us his homo-definition:

Man they deemed to be, so to say, a part of the state and of the human race as a whole, and they held that a man was conjoined with his fellow men by the partnership of humanity.<sup>16</sup>

As read, the principal feature of Cicero's homo-definition is concerned with 'the partnership of humanity' (*humana quaedam societas*). The partnership of humanity is indisputably based on the idea of friendship (*amicitia*). In relation to this Cicero says that it springs from nature: 'And of the objects in harmony with the plan marked out by nature from which sprang friendship and also justice and fairness'.<sup>17</sup> This nature is related with love (*amor*) which is unconditional. On this account, *amor* can be generous and liberal because it does not demand repayment. If someone puts first his desires for his own sake, it is not regarded as *amor*. The same is true with *amicitia*. This is why *amicitia* is desirable, not because someone is

<sup>15</sup> *Lael. de amic.* 19-20: *Sic enim mihi perspicere videor, ita natos esse nos, ut inter omnis esset societas quaedem maior autem, ut quisque proxime accederet. Itaque cives potiores quam peregrine, propinqui quam alieni; cum his enim amicitiam natura ipsa peperit, sed ea non satis habet firmitatis. Namque hoc praestat amicitia propinquitati, quod ex propinquitate benevolentia tolli potest, ex amicitia non potest; sublata enim benevolentia amicitiae nomen tollitur, propinquitatis manet. Quanta autem vis amicitiae sit ex hoc intellegi maxime potest, quo des infinita societate generis humani, quam conciliavit ipsa natura...*

<sup>16</sup> *Acad.* 1.21: *hominem esse censebant [sc. Academici] quasi partem quondam civitatis et universi generi humani, eumque esse coniunctum cum hominibus humana quadam societate.* (English translation is quoted continually from H. Rackham's text.)

<sup>17</sup> *Acad.* 1.21: *earum rerum quae erant congruentes cum descriptione naturae, unde et amicitia exsistebat et iustitia atque aequitas.*



influenced by the hope of gain, but because his entire gain is in love itself<sup>18</sup>. Also, according to Cicero, *amicitia* is based fundamentally on goodwill (*benevolentia*): ‘second, that our goodwill towards our friendship should correspond in all respects to their goodwill towards us’.<sup>19</sup>

## 2.2 *Natura hominis (human nature)*

In the center of the argumentation, Cicero uses the argument *natura hominis* which is pertaining to *pietas*, in order to refuse the accusation that Roscius the son had murdered Roscius the father, as the following.

*Magna est enim vis humanitatis; multum valet communitio sanguinis; reclamitat istius modi suspicionibus ipsa natura; portentum atque monstrum certissimum est esse aliquem humana specie et figura qui tantum immanitate bestias vicent ut, propter quos hanc suavissimam lucem aspexerit, eos indignissime luce privarit, cum etiam feras inter sese partus atque educatio et natura ipsa conciliet. (63)*

For the power of human feeling is great. The ties of blood are very strong. Nature herself cries out against such suspicions. It is undoubtedly an unnatural and monstrous phenomenon, that a being of human form and figures should exist so far surpassing the beasts in savagery as to have most shamefully defrauded of the light of day those to whom he is indebted for that sweetest of all sights, whereas even the beasts are united among themselves by the ties of birth, rearing, and of nature herself.

From the cited above, what is noteworthy is the remark ‘the power of human feeling is great’. According to Cicero, ‘human feeling’ is natural power which distinguishes human being from beasts. This kind of thought on *natura hominis* and *vis humanitas* was theorized and systemized by Cicero in the later opera like *De Finibus* (3.62). This confirms already the fact that the real incubator of Cicero’s *humanitas*-idea was the forum. In relation to the studies on Cicero’s *humanitas*-idea, I would like to suggest that Cicero’s speeches should be considered to be main texts for *humanitas* – idea in the sense of *to anthropeion*.

<sup>18</sup> Cf. *Lael. de amic.* 31.

<sup>19</sup> *Lael. de Amic.* 56: *alteram, ut nostra in amicos benevolentia illorum erga nos benevolentiae partier aequabiliterque respondeat.* Cicero explained the difficulty of the so-called quantitative-exact balance of credits and debits and reinforced the importance of goodwill.

### 2.3 Misericordia et sensus humanitatis (*sympathy or solidarity*)

In the end of his speech, Cicero inspired the sympathy of jury to confirm his winning. In this context, the feeling of sympathy does not refer to simple pity of human emotion but it relates to political solidarity. This is exposed clearly in the following.

*Homines sapientes et ista auctoritate et potestate praeditos qua vos estis ex quibus rebus maxime res publica laborat, eis maxime mederi convenit. Vestrum nemo est quin intellegat populum Romanum qui quondam in hostis lenissimus existimabatur hoc tempore domestica crudelitate laborare. Hanc tollite ex **civitate**, iudices, hanc pati nolite diutius in hac re publica versari; quae non modo id habet in se mali quod tot civis atrocissime sustulit verum etiam hominibus lenissimis ademit **misericordiam** consuetudine incommodorum. Nam cum omnibus horis aliquid atrociter fieri videmus aut audimus, etiam qui natura mitissimi sumus adsiduitate molestiarum **sensum omnem humanitatis** ex animis amittimus. (154)*

It belongs to wise men, furnished with the authority and power which you possess, to apply the most effective remedies to the evils from which the republic especially suffers. There is no one among you who does not know that the Roman people, who were formerly considered to be most lenient towards their enemies, are suffering today from cruelty towards its own citizens. Banish this cruelty from State, gentlemen. Do not allow it to stalk abroad any longer in this republic, for it not only involves this evil, that it has removed so many citizens by a most atrocious death, but it has also stifled all feeling of pity in the hearts of men generally most merciful, by familiarizing them with all kinds of evils. For when, every hour, we see or hear of an act of cruelty, even those of us who are by nature most merciful lose from our hearts, in this constant presence of pains, all feeling of humanity.

In the cited above, what is noteworthy is the relationship between *civitas* and *humanitas*. Regarding this, let us call to mind Cicero. For him *humanitas* means, in the concrete, *humaniter vivere*: ‘if I [Cicero] will have relaxed myself from this, I will certainly teach even you, who have studied nothing else for many years, what it is to live humanly’.<sup>20</sup> It may then be more meaningful if we formulate this question as the following:

<sup>20</sup> *Ep. ad Fam. 7.1: quibus si me relaxaro, te ipsum, qui multos annos nihil aliud commentaris, docebo profecto quid sit humaniter vivere.*

what is necessary for someone, if he wants to live humanly? For this, he must have *ius hominis*. In Roman law, *nullum ius* means *nullum caput*, and *nullum caput* is commonly used for slaves.<sup>21</sup> Thus, a slave in some sense was not a truly homo because he was treated just as a movable property. Moreover, if there is someone who lost his citizenship, it was also difficult to say in a sense that he was a homo<sup>22</sup>. Therefore, one must have the *ius* of *civis*, if he wants ‘to live humanly’ at least. So far, *civitas* was, then, a necessary condition for *humanitas* in Rome.

Regarding this, the whole argumentation of Cicero is indeed very simple. Roscius Amerinus is innocent. He is a Roman citizen. If an innocent citizen is in danger, it is natural that the sympathy as a human feeling arises in the heart of the whole Roman people. Here is clearly exposed the reason why Cicero stirs *miser cordia* in the heart of the jury. It is because a citizen or a human can unite together through this kind of feeling of sympathy. Through this feeling, *Roscius causa* is no more a *causa privata*, but it is a *res publica*. This is evident from Cicero’s postulation to ‘Banish the cruelty from the State!’

Based on the examined above, I conclude that the birth and growth place of Cicero’s *humanitas* is the Roman Forum where he spent his entire life on saving *Res Publica*. Regarding this, the Cicero’s speeches should be emphasized also in the *humanitas*-studies. In relation to this, it should be added that there are some strong relationships between Cicero’s speeches and his late theoretical texts. Thus, philologically seen, my concrete suggestion in this paper is to investigate the so-called ‘intertextuality-problem’ between Cicero’s speeches and philosophical treatises. With this, it is not difficult to find some liaison between *Pro Roscio Aemrino* and *De Officiis*. In order to live humanly, for example, Cicero puts emphasis on *officium* in *De officiis*. The reason why Cicero emphasizes the importance of *officium* is as follows: If some one has obtained *ius* from nature, then he must also have duty to follow the law of nature because this is a rule of *dare et accipere* (give and take), *id est iustitia commutativa*. Regarding this, Cicero says that ‘first of all, nature has endowed every species of living creature with the instinct of self-preservation...’<sup>23</sup> This is *oikeiōsis*

<sup>21</sup> GAIUS *Inst.* 1.16.4

<sup>22</sup> *Dig.* 48.19.2 pr.: *Rei capitalis damnatum sic accipere debemus, ex qua causa damnato vel mors vel etiam civitatis amisso vel servitus contingit.*

<sup>23</sup> *De off.* 1.11: *Principio generi animantium omni est a natura tributum, ut se, vitam corpusque tueatur, declinet ea, quae nocitura videantur, omniaque, quae sint ad vivendum necessaria anquirat et paret, ut pastum, ut latibula, ut alia generis eiusdem. Commune item animantium*

which gives the faculties and the *ius* to live humanly. On the other hand, Cicero requires responsibility for this *ius* as the following:

But since, as Plato has admirably expressed it, we are not born for ourselves alone, but our country claims a share of our being, and our friends a share; and since, as the Stoics hold, everything that the earth produces is created for man's use; and as men, too, are born for the sake of men, that they may be able mutually to help one another; in this direction we ought to follow Nature as our guide, to contribute to the general good by an interchange of acts of kindness, by giving and receiving, and thus by our skill, our industry, and our talents to cement human society more closely together, man to man.<sup>24</sup>

This is, I think, a definite view of Cicero about *officium*. Owing to his idea of *officium*, as read above, everyone has duty to nature itself, to state, to friends, to family, and finally to himself. On the other hand, because of this duty, one can get some position or some function as being in the society. Cicero calls this position *persona*. Thus, everyone has, according to him, at least four *personae*: *homo* (*persona universalis*), *civis* (*persona civitatis*), *persona familiaris*, and *persona propria*.<sup>25</sup> 'To live humanly' is then accomplished, if someone completes these duties attributed to each *persona*. These are *pietas*, *amicitia*, *iusititia*, *miser cordia*, etc., which Cicero uses very effectively in confirming his own argumentation or in refusing his opponent's statement in his speeches. Anyway, Cicero regards the completion of duties as *honestas*. In this sense, regarding the phrase 'to live humanly', *officium* is important for Cicero because *honestas* itself is the final object of *humanitas* or *humaniter vivere*, the state which one can reach with the help of *officium*. This is, in my view Cicero's final view on

*omnium est coniunctionis appetitus procreandi causa et cura quaedam eorum, quae procreata sint. Sed inter hominem et beluam hoc maxime interest, quod haec tantum, quantum sensu movetur, ad id solum, quod adest quodque praesens est se accommodat, paulum admodum sentiens praeteritum aut futurum. Homo autem, quod rationis est particeps, per quam consequentia cernit, causas rerum videt earumque praegressus et quasi antecessiones non ignorat, similitudines comparat rebusque praesentibus adiungit atque adnectit futuras, facile totius vitae cursum videt ad eamque degendam praeparat res necessarias.*

<sup>24</sup> *De off.* 1.22: *Sed quoniam, ut praeclare scriptum est a Platone, non nobis solum nati sumus ortusque nostri partem patria vindicat, partem amici, atque, ut placet Stoicis, quae in terris gignantur, ad usum hominum omnia creari, homines autem hominum causa esse generatos, ut ipsi inter se aliis alii prodesse possent, in hoc naturam debemus ducem sequi, communes utilitates in medium adferre, mutatione officiorum, dando accipiendo, tum artibus, tum opera, tum facultatibus devincire hominum inter homines societatem.*

<sup>25</sup> See to it, *De off.* 105-125.

*humanitas*-idea as *to anthropeion*. Anyway, what is interesting is that *Pro Roscio* is a speech in which Cicero did his best to save **humanitas**, while *De officio* is the text to instruct how to become human being or to reach at **humanitas**, meaning Mench-Werden in Germany. On this account, both texts seem to be two faces of the same medal. **Id est Humanitas**.

TÍTULO. *A humanitas de Cícero no discurso judiciário Pro Roscio Amerino*.

RESUMO. Muitas investigações sobre esse assunto já chegaram à conclusão de que a ideia de *humanitas* originou-se diretamente da Comédia Nova grega e especialmente da filosofia de Platão e dos estoicos, mas fundamentalmente de fontes literárias gregas como a de Homero. Em relação a isso, entretanto, o verdadeiro local de nascimento e desenvolvimento da ideia de *humanitas*, bem como das ideias dela derivadas, não foi a sala de aula, e sim o fórum, lugar em que tribunais de lei ou assembleias políticas eram realizados. Os discursos de Cícero constituem as evidências mais importantes disso, porque não é difícil descobrir o fato de que os discursos do arpinate estão normalmente ordenados de acordo com a ideia de *humanitas* e que estão repletos de ideias que dali derivam. Para exemplificar tal fato, procurei analisar o *Pro Roscio Amerino* de Cícero, que foi a primeira *causa publica* do famoso orador. Com base em tal asserção, procuro sustentar que os discursos de Cícero devem ter um papel de destaque também nos estudos acerca da *humanitas*. Para tanto, é preciso mencionar que há algumas sólidas relações entre os discursos de Cícero e seus últimos textos teóricos. Assim, de um ponto de vista filológico, minha proposta concreta neste trabalho é investigar o assim chamado ‘problema de intertextualidade’ entre discursos de Cícero e tratados filosóficos.

PALAVRAS-CHAVE. Cícero; *humanitas*; *Pro Roscio Amerino*; discurso jurídico; fórum; Sula; Crisógono.