

NOTES AND DISCUSSIONS

PROSOPOGRAPHY AND THE CAREER OF PUBLIUS MUCIUS SCAEVOLA

E. S. Gruen has recently presented Publius Mucius Scaevola, consul for 133 B.C., as a successful but unprincipled politician, who adroitly hopped across or sat upon the fences which separated the political factions of his time.¹ Using prosopographical assumptions and techniques, he develops the picture of a man who was early associated with the Scipionic group, but later abandoned it for an alliance with Tiberius Gracchus and the Claudian faction. After the death of Tiberius, however, and the failure of his partisans, the wily Scaevola temporarily suspended himself between opposing factions before aligning himself with the ascending Metellan coalition. This is not the only, nor even the most likely, interpretation of Scaevola's political career that the evidence allows: in fact, Gruen's procedure presumes rather than demonstrates his conclusion.

The sources give little support to the idea that Scaevola had much to do with the Scipionic circle in the decade or so before his consulship. While it is true that he was a legal expert and a cultivated man who dabbled in philosophy,² his sharing certain intellectual interests with members of the Scipionic circle provides no foundation on which to predicate a political alliance.³ It is hardly believable that every cultured Roman of the period took pleasure in the Scipionic company.⁴ Furthermore, the marriage tie between the daughter of C. Laelius, Scipio Aemilianus' most devoted ally, and Quintus Mucius Scaevola, a first cousin of Publius Mucius, represents far too distant a link for establishing a political nexus, especially since there is in any case no

evidence that Quintus shared his cousin's political allegiances at this time.

Scaevola's political activities in the period before his consulship are documented in connection with two events only, and neither episode justifies placing him in the Scipionic faction. During his tribunate in 141 B.C., Scaevola successfully sponsored a plebiscite which placed L. Hostilius Tubulus on trial on the charge of accepting bribes in his capacity as presiding officer of a *quaestio de sicariis* during his praetorship in the previous year.⁵ Hostilius preferred to go into exile rather than face the proceedings, thereby suggesting a guilt which became proverbial.⁶ Gruen proposes that Scaevola was engaged in partisan politics in bringing the charge, for Scipio Aemilianus was a known enemy of the Hostilii Mancini, and the Hostilii Tubuli might also have been associated in such enmity.⁷ Such a hypothesis is an example of the weakest of the prosopographer's techniques, the acceptance of names alone as evidence. There is no good reason to conclude that Scaevola was acting at Aemilianus' bidding, for not all who occupied themselves with criminal prosecutions were motivated by the interests of their political allies.⁸ Scaevola may well have brought the charge because, as a man of the law, he refused to allow a flagrant abuse of the office of the praetorship to go unchallenged.

In the course of his own praetorship in 136 B.C., Scaevola became involved in the famous Mancinus affair. Following the defeat by the Numantines of the Roman forces under the command of C. Hostilius Mancinus,

1. See E. S. Gruen, "The Political Allegiance of P. Mucius Scaevola," *Athenaeum*, XLIII (1965), 321-32; *idem*, *Roman Politics and the Criminal Courts, 149-78 B.C.* (Cambridge, Mass., 1968), s.v. "Mucius Scaevola, P." in index. For his career generally, F. Münzer, s.v. *Mucius* (17), *RE*, XXXI (1933), 425-28.

2. *Dig.* 1. 2. 2. 39-40; *Cic. Nat. deor.* 1. 115; *Brut.* 108; *De or.* 1. 212; *Leg.* 2. 47-57; *Quint. Inst.* 11. 2. 38.

3. As Gruen has begun to do, "Political Allegiance,"

p. 322; cf. *Criminal Courts*, p. 52.

4. See A. E. Astin, *Scipio Aemilianus* (Oxford, 1967), pp. 294 ff.

5. *Cic. Fin.* 2. 54, 4. 77.

6. *Cic. Fin.* 2. 54, 4. 77, 5. 62; *Nat. deor.* 1. 63, 3. 74; *Att.* 12. 5b; *Ascon.* 23C; *Gellius* 2. 7. 20.

7. Gruen, "Political Allegiance," pp. 322-23.

8. P. A. Brunt, "'Amicitia' in the Late Roman Republic," *PCPhS*, N.S. XI (1965), 15.

Tiberius Gracchus helped his commander to negotiate a treaty of surrender.⁹ When they returned to Italy, the senate refused to ratify the treaty, and Mancinus, who had earlier held consular rank, was turned over, naked and in chains, to the enemy who then refused to accept him. It was the legal opinion of Scaevola that, when Mancinus was surrendered to them, he permanently lost his citizen rights.¹⁰ While Scipio may have inspired, or at least been a party to, the charges brought against Mancinus,¹¹ Scaevola's legal opinion at this time surely cannot be held to prove that the jurist was working on behalf of Scipio's political group. Scaevola had been asked for a legal opinion and had given one, and it appears that he was not the only legal expert with this view.¹² He might have said that Mancinus forfeited Roman citizenship simply because he believed that the traditions of Roman law dictated such a verdict. Thus, the supposed links between Scaevola and the Scipionic faction are tenuous, and his alleged collusion with Tiberius Gracchus in 133 B.C., if indeed the sources suggest such collusion for that year, need not be seen as a change in allegiance.

It is commonly assumed that, while consul in 133 B.C., Scaevola was a supporter of Tiberius Gracchus and a member of the Claudian faction. The evidence, however, is suspicious. Cicero says only, "They say that the two very wise and distinguished brothers, Publius Crassus and Publius Scaevola, were the authors of Tiberius' laws, the former (as we see) openly, the latter (as is suspected) more covertly."¹³ This conjecture, that Scaevola was an adviser of Tiberius, possibly arose because of his brother's association with Tiberius and was probably encouraged by his reluctance as consul to intervene on behalf of the state during Tiberius' last assembly, as urged by Publius Cornelius

Scipio Nasica. Thus Plutarch may well be presenting as fact what Cicero, writing a century and a half earlier, was not sure of, and what ought to have remained suspicion, when he claims that "Tiberius did not, however, draw up his law by himself but took counsel with the citizens who were foremost in reputation and virtue, among whom were Crassus, the Pontifex Maximus, Mucius Scaevola, the jurist who was then consul, and Appius Claudius, Tiberius' father-in-law."¹⁴ In his refusal to take action against the tribune, Scaevola might have been motivated by a regard for legal propriety,¹⁵ and, since his was a cooler head which failed to prevail, what was merely his caution and neutrality was set down as support for Gracchus.

Even if Plutarch and Cicero are correct in suggesting that Scaevola helped to draft the law, it does not follow that he was a member of the Gracchan faction which planned and executed the tactics to be used against the recalcitrant tribune Octavius. Naturally there were different kinds of political involvement in republican Rome.¹⁶ Men were not simply in a faction or outside it, but sympathized in varying degrees with the issues, principles, and personalities that made up the political scene. Their sympathies must often have been affected by their assessment of the propriety of the approach being advocated to any given problem. It is at least possible that Scaevola thought Tiberius' ideas on agrarian reform were sound and decided to lend him his legal expertise in the preparation of the legislation. Gruen himself states at one point that the membership of the various political groups was constantly fluctuating. In fact, he writes that "if phrases like 'Scipionic circle' or 'Metellan *factio*' are employed, these must be understood for what they are: convenient and expedient terms to denote an assemblage of individuals and families co-operating for

9. Cic. *Har. resp.* 41 and 43; *Brut.* 103; Vell. Pat. 2. 2. 1; Quint. *Inst.* 7. 4. 13; Plut. *Ti. Gracc.* 5-7; Florus 2. 2. 2; Dio Frag. 83. 2; Auct. *Vir. Ill.* 59. 4, 64. 1; Oros. 5. 8. 3.

10. *Dig.* 49. 15. 4, 50. 7. 18.

11. Plut. *Ti. Gracc.* 7. 3.

12. Cic. *De or.* 1. 181 and 238; cf. 2. 137; *Dig.* 50. 7. 18.

13. Cic. *Acad. pr.* 2. 13: "Duos vero sapientissimos et clarissimos fratres P. Crassum et P. Scaevolam aiunt Ti.

Graccho auctores legum fuisse, alterum quidem (ut videmus) palam, alterum (ut suspicantur) obscurius."

14. Plut. *Ti. Gracc.* 9. 1.

15. See P. Fraccaro, *Studi sull' età dei Gracchi* (Città di Castello, 1914), p. 177. *Contra* see E. Meyer, *Untersuchungen zur Geschichte der Gracchen* (Halle, 1894), p. 26.

16. See C. Neumann, *Geschichte Roms während des Verfalles der Republik* (Breslau, 1881), pp. 198-99.

mutual political advantage. They need not necessarily imply strict continuity of policy and personnel."¹⁷ If this is so, it becomes increasingly difficult, if not at times impossible, to distinguish within these groups between the faithful and the occasional collaborators, between the artful statesman and the political chameleon. Gruen's seeing Publius Scaevola as a weathervane, C. Papirius Carbo as a renegade, and Quintus Scaevola as a man of principle, suggests that he expects more lasting loyalties than his modified definition of a faction provides for.¹⁸ Moreover, evidence of a man's collaboration with a political group on a single issue should not be assumed to establish a permanent allegiance, but Gruen, contrary to the implications of his own definition, constantly makes such assumptions in analyzing Scaevola's political actions. Scaevola may have had nothing to do with Tiberius' scheme. But even if one believes that he advised him on the *lex Sempronia's* legality, this alone is insufficient reason for placing him in the Claudian camp.

In the years after Tiberius' death, P. Licinius Crassus Mucianus, Scaevola's brother, was clearly in league with what remained of the Gracchan group, as witnessed by his service on the agrarian commission in place of Tiberius himself. The sources will not allow of assigning Scaevola himself to any faction,¹⁹ but Gruen considers their conflicting information against the background of the earlier alliances he has claimed, and sees the conflict as due to Scaevola's self-seeking caution in ascertaining which way the winds of fortune were blowing before committing himself anew.²⁰ But just as those earlier alliances are not securely established, so a re-examination of the contradictory sources casts a different light on Scaevola's behavior at this stage of

his career. In two passages, one in the *De domo sua* and the other in the *Pro Plancio*,²¹ Cicero claims that Scaevola praised the actions of Nasica, which had clearly been instrumental in bringing about Tiberius' death and the summary execution without trial of some of his followers. In a passage in the *De oratore*, the same author provides information which seems to accord ill with that of the speeches.²² He tells how Nasica, when brought before a court on the formal accusation of taking the lives of these Roman citizens without trial, challenged Scaevola, who had been called by M. Fulvius Flaccus as a member of the jury, on the ground that he was prejudiced. After this challenge caused something of a stir, Nasica felt constrained to continue, "I do not challenge him as prejudiced against myself, but as prejudiced against everybody." The report of the first two passages is odd, for we know that Scaevola, as consul, refused to respond to Tiberius' methods in the manner that Nasica urged, and the *De oratore* passage is strange, for there is no obvious reason for Nasica's objecting to having on his jury the man who, as Cicero himself says, had lately sponsored resolutions formally praising the action for which Nasica was being tried. It is stranger still that M. Fulvius Flaccus, a devoted Gracchan who warned Tiberius of the debate going on in the senate on the last day of his life and who was also to serve on the agrarian commission, should have called upon the jurist in the first place.

A. E. Astin has questioned the truth of Cicero's assertion that Scaevola praised Nasica, although he has not made a case for doubting Cicero's reliability in this instance.²³ Such a case can be made. In 133 B.C., Nasica had urged the consul Scaevola to declare what would have amounted to a *senatus consultum*

17. Gruen, *Criminal Courts*, pp. 4–5.

18. See Gruen, *Criminal Courts*, pp. 67, 107, 113–14. It is not at all clear why Gruen thinks Scaevola did not pay the same price for his treachery as Carbo did.

19. On Gruen's view, the years immediately following Tiberius' murder saw the two brothers taking opposing political stands. Since there is no word of any rift between the two in the sources, one would have expected that such an opposition would call for a special explanation from one who postulates political allegiances on the basis of marriage alliances between first cousins.

20. Gruen, *Criminal Courts*, pp. 67–68.

21. *Dom.* 91: "non quo mihi P. Scipionis, fortissimi viri, vis in Ti. Graccho privati hominis displiceret, sed Scipionis factum statim P. Mucius consul, qui in gerenda re putabatur fuisse signior, gesta multis senatus consultis non modo defendit, sed etiam ornavit." *Planc.* 88: "aut, si minus fortes, attamen tam iusti, quam P. Mucius, qui arma, quae privatus P. Scipio sumpserat, ea, Ti. Graccho interempto, iure optimo sumpta esse defendit?"

22. *De or.* 2. 285. Cf. *Plut. Ti. Gracc.* 21.

23. Astin, *op. cit.*, pp. 228, 350.

ultimum.²⁴ Scaevola refused, saying that "he would resort to no violence and would put no citizen to death without a trial: if, however, the people, under persuasion or compulsion from Tiberius, should vote anything that was unlawful, he would not regard this vote as binding."²⁵ Despite this, Tiberius was killed and some of his followers were exiled or put to death without a trial. So the results of Nasica's actions were similar to those of two notorious uses of the *senatus consultum ultimum*: the killings of Gaius Gracchus and of Catiline, together with some of their followers. Cicero was himself, of course, personally and deeply involved in the Catilinarian conspiracy, and his actions then provided the grounds for his enemies to have him exiled in 58 B.C. In this regard, the passage in the *De domo sua* is especially revealing, for the speech was delivered in the very next year, immediately after the orator's return to Rome, at which time he was arguing that Clodius had no right to call him an exile, for he had done nothing to forfeit his citizenship.²⁶ Obviously, there was a good deal of legal, as well as political, point to claiming that the eminent jurist Scaevola had, on an earlier occasion, praised the analogous action of Nasica: by implication, Cicero as well had done nothing to deserve his exile. In fact, elsewhere Cicero himself compares his actions in 63 B.C. with those of the *consul languens* of 133 B.C.²⁷ It seems fair to conclude, therefore, that the claims of Cicero in his two orations should not be relied upon.

Finally, the reasons for placing Scaevola in the Metellan faction in the years after his

consulship are not compelling. The argument is based on Scaevola's succession to the office of the Pontifex Maximus in 130 B.C. and on a passage in Cicero's *De republica* which reads as follows: "For, as you observe, the death of Tiberius Gracchus, and even before his death, the whole character of his tribunate, divided one people into two factions. And in fact, Scipio's slanderers and enemies, at first led by Publius Crassus and Appius, even now that those men are dead, keep a part of the senate in opposition to you under the leadership of Metellus and Publius Mucius."²⁸ This passage need not mean that Metellus and Scaevola were united in anything save their enmity toward Scipio,²⁹ and it is surely conceivable that Scaevola could have succeeded his brother as Pontifex Maximus without Metellan support.³⁰

The actions of Scaevola do not adapt easily to a prosopographical interpretation. The evidence suggests rather that he acted independently of the cliques of his day, and this must have been what Nasica meant when he claimed Scaevola was "prejudiced against everybody." Such a phrase does not describe a fence-sitter, but rather one who has, through his actions, made known that his commitments are not to people or parties but to principles, and that his sympathies will be determined by those principles. The sources frequently praise Scaevola as a legal expert,³¹ and his actions appear to be characteristic of a conservative statesman wedded to the law. He brought charges against a flagrantly guilty praetor, and even handed down a decision against his own niece, Licinia, the wife of

24. Plut. *Ti. Gracc.* 19. 2; Val. Max. 3. 2. 17. See G. Plaumann, "Das sogenannte Senatus Consultum Ultimum, die Quasidiktatur der späteren römischen Republik," *Klio*, XIII (1913), 359 f. *Contra*, see J. Ungern-Sternberg von Pürkel, *Untersuchungen zum spätrepublikanischen Notstandsrecht: Senatusconsultum und hostis-Erklärung* (Munich, 1970), pp. 10–14. The latter suggests persuasively that no *senatus consultum ultimum* was passed in 133 B.C., but less persuasively that Nasica was not advocating one.

25. Plut. *Ti. Gracc.* 19. 3.

26. Cic. *Dom.* 72–92, esp. 77: "esto, non fuit in me poena ulla peccati."

27. Cic. *Tusc.* 4. 51: "mihi ne Scipio quidem ille pontifex maximus, qui hoc Stoicorum verum esse declaravit, numquam privatum esse sapientem, iratus videtur fuisse Ti. Graccho tum, cum consulem languentem reliquit atque ipse privatus,

ut si consul esset, qui rem publicam salvam esse vellent, se sequi iussit. nescio equid ipsi nos fortiter in re publica fecerimus: si quid fecimus, certe irati non fecimus."

28. Cic. *Rep.* 1. 31. Cf. E. Kornemann, "Zur Geschichte der Gracchenzeit," *Klio*, I (1903), 32; F. Münzer, *Römische Adelsparteien* (Stuttgart, 1920), p. 257.

29. See Gruen, *Criminal Courts*, p. 23, who makes this same point about Metellus and Appius Claudius. Although the first pair did collaborate, this need not mean that the second pair did as well.

30. See F. Münzer, *op. cit.*, p. 263, who believes that the Roman plebs and Scaevola's popularity with them were responsible for his succeeding his brother as Pontifex Maximus. See also Cic. *Leg.* 2. 47.

31. Cic. *Verr.* 1. 52; *Brut.* 108, 239; *Fin.* 1. 12; *Off.* 2. 47; *Leg.* 2. 47–57; *De or.* 1. 212.

Gaius Gracchus, after her husband's death.³² Whatever his attitude toward the radical Gracchans, he refused, as a strict constructionist, to be rushed into precipitate action on that day in 133 B.C. when Roman politics took a fateful turning in the wrong direction.

32. Cic. *Dom.* 136; *Dig.* 24. 3. 66.

33. T. P. Wiseman's "Note on Mucius Scaevola," *Athenaeum*, XLVIII (1970), 152–53, did not come to my attention in time to incorporate it into this essay. It was heartening to see that

Can anyone doubt that the Republic would have benefited had the precedent followed later been Scaevola's rather than Nasica's?³³

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his views generally accord with my own; however, his conclusion that a man who did not engage in factional politics was therefore not a "political activist" misses the point.

AESCHYLUS SUPPLIANTS 673

In a recent discussion of the phrase *πολιῶ νόμῳ* in *Suppliants* 673, Martin Ostwald raises a question about the translation.¹ Is the dative to be taken as a dative of cause, which yields "by virtue of a hoary ordinance," or as dative of means, "with hoary ordinance"? Is Aeschylus referring to an ordinance antedating Zeus and surpassing him in power, or is he referring to Zeus' governance itself as an establishment of great antiquity? Ostwald chooses, probably rightly, the latter alternative. Aeschylus wished the Danaids to attribute a rather vague antiquity to Zeus' control of *aisa*.

Closer study of the context, however, shows that Aeschylus chose the adjective, which occurs only here in his preserved plays, with additional considerations in mind. The phrase is part of the Danaids' blessing of Argos, a prayer that they announce and begin in the strophe (656–65), where their main concern is the safety of the young men from plague and war. The antistrophe (667–77) turns to the older, noncombatant men and then to the city taken as a whole. May the *πόλις* be well regulated, they pray, because it demonstrates *sebas* toward Zeus and in particular toward

Zeus Xenios. These lines contain a remarkable assonance: *πόλις εὖ νέμοιτο* (670) and *πολιῶ νόμῳ* (673). Ostwald remarks, "There is universal agreement, as far as I know, that [*νόμος*] is derived from the same root as *νέμω*. . . ."² The assonance between lines 670 and 673 could possibly reflect this root connection.³ The assonance of *πόλις* and *πολιῶ* blends two of the Danaids' obsessions: first, that Zeus Xenios will help to retrieve them from their situation because of his long-past affair with Io; second, that Pelasgos and the city of Argos owe them protection because of Io's Argive origin. Zeus they constantly picture as exalted and all powerful; Pelasgos they identify with the *polis* itself (370: *σύ τοι πόλις*). The word *πολιῶ*, therefore, has a double justification: it mentions the antiquity of the *nomos* by which Zeus directs *aisa*; it also strongly suggests that the welfare of cities, Argos in this case, is bound up with that *nomos*. Pelasgos may fear for his city (*πόλις*) if the Argives do not respect Zeus Xenios and his ancient (*πολιῶ*) regulation.

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1. *Nomos and the Beginnings of the Athenian Democracy* (Oxford, 1969), p. 28.

2. *Ibid.*, p. 9. E. Laroche, *Histoire de la racine nem- en grec ancien* (Paris, 1949), p. 163, summarizes the ancient consensus about *νομος*: "Déjà les Anciens, tout en admettant sa parenté avec *νέμω* étaient impuissants à définir le sens primitif et à expliquer, en partant de là, les dérivations ultérieures. Ils ne considéraient guère que le sens classique 'loi', qui est en réalité secondaire, et leurs étymologies se réduisent souvent à des jeux de mots ou à des rapprochements fantaisistes."

Laroche is not concerned to record "jeux de mots"; the earliest "etymology" that he cites is Plato *Laws* 714A.

3. In lines 402–6, where the chorus also reminds the Argive king that Zeus holds the balance and surveys everything, the words also occur close together: *νέμων εικότως / ἄδικα μὲν κακοῖς, δῆλα δ' ἐννόμοις*. Cf. also the adjective *πολισσονόμος* (*Pers.* 852) that describes the good life that Persians enjoyed under Darius; *Sept.* 233–35, where the only use by Aeschylus of *νέμεις* in the plays occurs soon after the phrase *πόλιν νεμόμεθα*; and the blessing on Athens in *Eum.* 916–20.