

87;³⁹ and L. Flavius Silva Nonius Bassus, who was *tribunus plebis* in about 70, was adlected into the senate and among the patricians by Vespasian, and became consul in 81.⁴⁰ Given the common *nomen*, tribe, and geographical origins of these three men, it is not inconceivable that Flaccus was related to the others either by blood or, perhaps more likely, by marriage; and it does not seem impossible that Flaccus, like Salvius Liberalis and Flavius Silva, should be numbered among the equestrian supporters of Vespasian.

Appendix

"Flamines" of Single Deified Emperors Attested in Italian Municipalities, Including "Flamines Romae et Divi Alicuius"

Flamines divi Iuli. CIL 3. 386; 5. 4384 and 4459; 8. 7986; 12. 370. AE 1927. 2. IG 3. 612. I know also of two *flamines divi Caesaris*: CIL 5. 7478. AE 1954. 104.

Flamines divi Augusti. CIL 5. 3936, 4386, 5266, 5267, 7007, 7605; 6. 29717, 32929; 9. 3384, 3385, 5375?; 10. 131, 945, 946, 1262, 1806, 4641, 5393; 14. 2922, 2972, 2989, 2995, 3014. AE 1961. 109.

Flamines divi Claudii. CIL 5. 534; cf. 5. 535, 875, 6431; 11. 417, 1349a, 6010.

Flamines divi Vespasiani. CIL 5. 7021; 9. 2600, 2855; 10. 413; 11. 1447a; 14. 292, 298, 4641, 4664. AE 1910. 197; 1913. 190; 1934. 232.

Flamines divi Titi. CIL 5. 5239, 5667; 14. 400, 4142, 4622. AE 1916. 117.

Flamen divi Nervae. CIL 11. 385.

Flamines divi Traiani. CIL 5. 4368, 5312, 5908, 6513, 6520, 7375; 9. 2600, 2649; 10. 4873, 5067.

Flamines divi Hadriani. CIL 14. 353, 390, 391, 4642. AE 1910. 181.

Flamen divi Marci. CIL 14. 4671.

Flamen divi Pertinacis. CIL 14. 4648.

Flamen divi Severi. CIL 14. 373 (senatorial).

Flamen divi Magni Antonini. CIL 11. 1230.

GEORGE W. HOUSTON
University of North Carolina,
Chapel Hill

39. For Salvius' career, see Groag, s.v. "Salvius (15)," RE 1A (1920): 2026–29.

40. On Silva, see most recently W. Eck, *Senatoren von Vespasian bis Hadrian* (Munich, 1970), pp. 93–111; and C. P. Jones, rev. Eck, *AJP* 95 (1974): 89–90.

TWO NOTES ON ARISTOPHON OF AZENIA

1. THE SEVENTY-FIVE "GRAPHAI PARANOMON"

Even most undergraduate students of fourth-century Athenian history have learned that Aristophon was attacked in the courts by *graphe paranomon* some seventy-five times—unsuccessfully. The point is regularly brought up to show the extreme litigiousness of fourth-century Athenians, as well as the perils to which Athenian politicians were subject in their *Advokatenrepublik*. The more one contemplates the implications of this datum, however, the more difficulty one finds in accepting it as it stands. Many scholars who touch upon the subject show some

note of caution,¹ but on occasion the information is simply repeated as a fact.² The source of it is Aeschines' statement (3 [*In Ctes.*]. 194): "Aristophon . . . dared say in your presence [jurymen] that he had been a successful defendant against seventy-five charges of making illegal proposals [*graphai paranomon*]." On general grounds this number seems hard to accept. Aristophon lived for close to a century (schol. Aeschin. 1 [*In Tim.*]. 64). If we assume that he became politically active, in the sense of proposing laws,³ at about the age of twenty-five, he must have been accused, unsuccessfully, on an average of once a year during his entire adult life, even when he was a very old man. It will be suggested in the second part of this paper that Aristophon was politically inactive, at least relatively, for some forty years of his adult life. If this is true, then the average number of accusations made and repelled on this one charge and no other is somewhat more than two a year. When one considers the large number of other accusations which could be brought against a politician's private and public life, and which are not included in this total, the datum becomes almost completely unacceptable. Whatever the outer limit of Athenian litigiousness may have been, it can hardly have encompassed so many incidents involving a single man, however long-lived or active, whether in public life or private.

But then what is the basis for the assertion of Aeschines? One might suggest a textual corruption, which would here involve a number reproduced along the chain of scribes, sometimes by alphabetic numerals, sometimes by words written out. It seems more important that Aeschines was an orator, who was anxious to win his case, and who, like all Greek and Roman orators in court or out, pursued that aim rather than the truth. His purpose in the passage cited seems to be to emphasize miscarriages of justice, and the boasted facility of Aristophon in escaping its toils is cited as a fact, or nonfact, in support of the thesis. Jurors were usually fairly old men,⁴ and when Aeschines refers to what he says Aristophon said "in your presence," he can rely on the fact that many of the individual jurors present at the trial of Ctesiphon will not have been present to hear what Aristophon, now safely dead (Aeschin. 3 [*In Ctes.*]. 139; Dem. 18 [*De cor.*]. 162), said or did not say before another jury in another case, which was probably tried at least a few years before he died.

Yet there must be some precedent fact that allowed Aeschines to make this remark. Apparently Aristophon had successfully defended himself before Athenian

1. E.g., "is said," in English; "soll" in German; cf. H. J. Wolff, "'Normenkontrolle' und Gesetzsbegriff in der attischen Demokratie," *AHAW*, 1970, Abh. 2, p. 13; F. Kiechle, s.v. "Aristophon (2)," *Kl. Pauly*, 1: 581; G. Calhoun, *Athenian Clubs in Politics and Litigation* (Austin, 1913), pp. 102-3; N. G. L. Hammond, *A History of Greece to 322 B.C.* (Oxford, 1967), p. 530; P. Cloché, "Les hommes politiques et la justice populaire dans l'Athènes du IV^e siècle," *Historia* 9 (1960): 80-95, at 81, 93, and n. 135; H. Dombrowski, *Die politischen Prozesse in Athen vom Archontat des Eukleides bis zum Ausgang des Bundesgenossenkrieges* (Diss. Greifswald, 1934), p. 63. P. Girard, "Aristophon d'Azénia," *Annuaire de l'Association pour l'Encouragement des Études Grecques en France* 18 (1883): 179-221, at 218, n. 2, suggests exaggeration in the number seventy-five.

2. G. Cawkwell, s.v. "Aristophon," *OCD*², p. 114; M. N. Tod, *GHI*, 2. 128.

3. It seems proper here to make no distinction between the *graphe paranomon* and the *graphe* against making a useless law: on the two writs see H. Wolff, "'Normenkontrolle,'" esp. p. 41. The two were closely related and sometimes indistinguishable in practice as far as we can tell. An orator might well with some appearance or degree of legitimacy lump them together.

4. R. J. Bonner and G. Smith, *The Administration of Justice from Homer to Aristotle*, vol. 1 (Chicago, 1930), pp. 231-33.

courts of justice many times.⁵ Furthermore, his judicial record (especially, one may presume, for *graphai paranomon*) must have been generally known to Athenians, for it was apparently the subject of jokes (schol. Aeschin. 1 [*In Tim.*]. 64). It is possible that seventy-five was a favorite round number with Aeschines when he wanted merely to indicate a certain order of magnitude; in another place (2 [*De fals. leg.*]. 70) he refers to Chares' loss of seventy-five cities which Timotheus had won over to the Second Athenian Confederacy.⁶ It emerges, then, that the safest thing to say about Aristophon's record before the Athenian courts may be that he was many times a defendant, but was never found guilty. In turn this record of acquittal is excellent evidence of the orator's popularity among his fellow citizens, who must have been convinced of the honesty of his efforts on behalf of the city and the democracy.

2. THE CHRONOLOGY OF ARISTOPHON'S POLITICAL CAREER

Aristophon's political activity is first attested at the very end of the fifth century. At some time not long after the restoration of the democracy he was honored by a grant of privileges of which the most important part was apparently *ateleia*, exemption from Athenian taxes and contributions except for the trierarchic liturgy and the *eisphora*, or capital levy.⁷ In 403/402, the archonship of Eucleides, Aristophon proposed and passed a law on Athenian citizenship, shortly thereafter amended (Carystius frag. 11 [*FHG*, 4:358 = Athen. 13. 577B-C]; schol. Aeschin. 1 [*In Tim.*]. 39). But with these reports concerning Aristophon our knowledge of his career abruptly breaks off. With one possible exception the hiatus in our information covers approximately the next forty years. The possible exception does not refer, in any case, to Aristophon himself. Xenophon tells us (*Hell.* 6. 3. 2) that (a certain) Demostratus, son of (a certain) Aristophon, went to Sparta to try to arrange a peace between Athens and Lacedaemon in 371 B.C.⁸ But without any information about the demotic of these two men, there can be no certainty that the Aristophon concerned is the subject of this paper. In any case, we cannot deduce from the embassy what our Aristophon's political activities or attitudes were at the time. Since Athenian embassies not uncommonly included members who were not in sympathy with the general purpose of the embassy, we cannot know, without direct evidence, for what reason Demostratus was sent on this embassy at this time. Moreover, since it is perilous to deduce a father's political position from the son's, we cannot infer the political stance of this Aristophon toward Sparta, in 371 or any other time, from the presumed attitude of Demostratus.⁹ Caution seems doubly indicated here. Yet, largely on the basis of this passage of Xenophon,

5. So the scholia to Dem. 248, 8, 436, 13 (= 8:278. 21-22, 446. 6-7 Dindorf), without specifying either the number of times in the first instance (seventy in the second), or the nature of the charges.

6. This sort of thing may constitute a sort of *topos*: Plut. *Cat. Mai.* 15. 4 says that the Censor successfully repelled almost fifty accusations in court. Dem. 18 (*De cor.*). 249 says that at one time he was accused every day by his political enemies; cf. Calhoun, *Athenian Clubs*, p. 103.

7. Dem. 20 (*In Lept.*). 148; cf. 18, 26-28, 129. The grant is undated, but it fits only here: see A. Schaefer, *Demosthenes und seine Zeit*², vol. 1 (Leipzig, 1885), p. 141.

8. On Demostratus see J. K. Davies, *Athenian Propertied Families, 600-300 B.C.* (Oxford, 1971), p. 64.

9. Cf. C. Pecorella Longo, "Eterie" e gruppi politici nell' Atene del IV sec. a. C. (Florence, 1971), pp. 69-70: a tie of blood kinship is not sufficient reason to conclude that two individuals must have followed the same political goals.

scholars of the last century jumped to the conclusion not only that Aristophon of Azenia was meant, but that his father's name was also Demostratus; that the elder Demostratus was the famous Bouzyges of the later fifth century; and that therefore Aristophon of Azenia was himself a noble. Further inferences were pyramided on these. All of this was dissipated as pure imagination by the discovery that the father of Aristophon of Azenia was named Aristophanes. Even if it might some day become possible to prove that Xenophon's Aristophon is actually the politician of Azenia, it would mean very little, for the identification would tell us nothing about what the politician himself was doing or thinking. Apart from this highly dubious passage, there is no evidence for the common assumption that Aristophon was politically active during these four decades. But in any case, the following argument is hardly affected in any way by the passage.

The most obvious explanation of the forty-year hiatus is that it is unreal, that is, that it is a hiatus in the documentation of Aristophon's career, rather than in the career itself. And this seems to be the prevailing view today.¹⁰ To hold this view means to argue implicitly that, despite Aristophon's presumably continuing political activity in an important and initiating sense during these forty years, all the inscriptions so far known, all the extant historians and orators, and all the sources preserved only in fragments are silent about him purely by accident. To hold otherwise is, of course, to advocate an argument from silence, yet at least the possibility of actual political inactivity ought to be considered. It seems relevant to note that after the mid-350s, when Aristophon ceased to be a leading guide of Athens' political direction, the available sources, particularly inscriptions, do from time to time give us information about his activities. To prove a negative is difficult or impossible, yet the little evidence we have, which is certainly not compelling, seems to suggest political inactivity on Aristophon's part, and to point away from the prevailing view.

The most noticed general political characteristic of Aristophon was his pro-Theban or pro-Boeotian stance in foreign policy; this is attested both by Aeschines (3 [*In Ctes.*]. 138–39) and by Demosthenes (18 [*De cor.*]. 162). Presumably the origins of this attitude were connected with Theban assistance given to the pro-democratic restoration at Athens after the Great Peloponnesian War. Pro-Thebanism at Athens was quite respectable for about a generation thereafter, for it tended to be associated with the fear which Athens (as well as Thebes) felt of Sparta's prepotency in the first decades of the fourth century.¹¹ This general situation lasted into the 360s; Theban aggressiveness during that decade changed the attitude of most Athenians, and enthusiasm for Thebes did not become fashionable again at Athens until the eve of Chaeronea. Yet in lists of pro-Theban politicians active during the first decades after the democratic restoration, we do not find the name of the ardently pro-Theban Aristophon.

10. So Schaefer, *Demosthenes*², 1:138, 142, 147, 185; Girard, "Aristophon d'Azenia," pp. 197, 218, 221; K. Beloch, *Die attische Politik seit Perikles* (Leipzig, 1884), p. 167 (at the time of the Social War A. could look back "on a half-century of political activity"); Tod, *GHI*, 2. 128; Cawkwell, *OCD*², p. 114.

11. Cf. the remark of R. Sealey, "Callistratos of Aphidna and his Contemporaries," *Essays in Greek Politics* (New York, 1967), pp. 133–63, at 150, that A. suffered from the "odium" of pro-Thebanism or pro-Boeotianism after about 370. Cf. P. Cloché, "La politique de l'Athénien Callistratos, 391–61 avant J.-C.," *REA* 25 (1923): 5–32, at 9, among others. Especially after Leuctra Athens tended to favor Sparta: Xen. *Hell.* 6. 5. 49; Diod. 15. 63. 2.

As of about 380–379, Plutarch (*De gen.* 375E–F) gives a list of pro-Theban Athenians; they are supposed to be present at a dialogue in which the pro-Theban Athenian Archidamus (Archidemus) is the principal speaker. Aristophon is not listed. One assumes that Plutarch's sources, far richer than ours, had no knowledge of Aristophon's active pro-Thebanism at the dramatic date of the dialogue. The conclusion seems obvious that this man, whose public policies were supposed to be hallmarked by pro-Thebanism, may not have been active in politics around 380. And if Aristophon was not active in foreign politics at the delicate juncture when Thebes obtained her freedom from Sparta, it seems possible that he was not engaged in politics at all.

Aristophon does appear in another list of leading pro-Thebans of the fourth century, in a passage of Aeschines already cited (3 [*In Ctes.*] 138–39). The list is not in perfect chronological order, but Aristophon is named just before Pyrrhander of Anaphlystus, “who is still living” (unlike the others) as of 330 B.C. The impression given is that Aristophon's pro-Thebanism (i.e., his public career) dates from recent decades. If he had been actively pro-Theban since the democratic restoration, during the forty-year “hiatus” when it was politically fashionable to share such sentiments, one would expect him to be mentioned earlier in the list. This interpretation seems to have some further support from the passage of Demosthenes (18 [*De cor.*] 162) which mentions Aristophon together with Eubulus, whose leadership in Athenian politics apparently followed that of Aristophon. Surely it would have been natural for Demosthenes to stress that Aristophon had pursued a pro-Theban policy for some sixty years, if Demosthenes had been able to offer that precedent for his own recent policy without fear of contradiction. Again, we are left with the impression that Aristophon, who had undeniably been politically active at the end of the fifth century, had been inactive for an intervening period—which must be, more or less, our hiatus of forty years.

Perhaps one may add that, if any further evidence should be discovered about Aristophon's private activities during this period, it would have no bearing on the possibility of a retirement. For this argument to be overthrown, on the other hand, evidence would seem to be required which documented at least, say, three occasions of active political participation by Aristophon in the course of the four decades. The two parts of Aristophon's attested career show a thoroughly political man; nothing said here should be construed as a denial that he took a significant passive interest in politics during this long period, whatever may be the reason for the hiatus. The present writer thinks that Aristophon may well have been engaged in repairing his economic position (this would be consistent with the grant of *ateleia*), but it has been pointed out to him that there are other possibilities.

The argument presented in this section is admittedly far from proof. The contention raised here is merely that this slim, indirect evidence should give some pause to those who explicitly or implicitly believe in a continuous active political role for Aristophon from the end of the fifth century until his death in the 330s.

STEWART IRVIN OOST
University of Chicago