

TWO ROMAN NON-ENTITIES

I. A NON-FRAGMENT OF A NON-ORATOR

M. DURONIUS, tribune of the plebs in 97 or perhaps 96 B.C.,¹ was expelled from the Senate by the censors of those years, M. Antonius and L. Crassus, for having abrogated a *lex sumptuaria*. No doubt Antonius was chiefly responsible, for it was him that Duronius chose to prosecute for *ambitus* while he was still censor. Nothing else is known about Duronius, who quite obviously played no major part in Roman politics or at the Roman bar.²

Valerius Maximus tells the story of his expulsion, with the reason for it. The passage must be quoted in full (2. 9. 5):

M. autem Antonius et L. Flaccus censores Duronium senatu mouerunt quod legem de coercendis conuiuorum sumptibus latam tribunus plebi abrogauerat. mirifica notae causa. quam enim impudenter Duronium rostra conscendit illa dicturus: 'freni sunt inieci uobis, Quirites, nullo modo perpetiendi. alligati et constricti estis amaro uinculo seruitutis. lex enim lata est quae uos esse frugi iubet. abrogemus igitur istud horridae uetustatis rubigine obsitum imperium. etenim quid opus libertate, si uolentibus luxu perire non licet?'

This quoted speech is given by Malcovati (*ORF*³ 263) as a fragment of Duronius, who thus gains entry as an orator to a work that will not admit such outstanding orators (on Cicero's own testimony) as L. Saturninus and such important minor figures as L. Cotta, representative of a *recherché* rhetorical fashion;³ and Münzer, in his *R.E.* entry (s.v. 'Duronius' 3) actually places the fragment, without argument: 'den Anfang seiner Rede'.

Surely caution is indicated. We could overlook the odd heroic clausula (*perpetiendi*) and the absence of truly rhetorical ones, except for one that is clearly accidental: we are dealing with a contemporary of L. Crassus, and we know that in those days Cicero's standards had not yet been adopted.⁴ It is

¹ See *MRR* ii. 7 and 8, n. 3. Since he prosecuted M. Antonius in the latter's censorship (Cic. *de or.* 2. 274), he must have been a tribune at the time. (See Mommsen, *Staatsr.* ii³. 357.) He must therefore have either proposed his law in this tribunate or held another tribunate at an earlier time when he did so. Since iteration of the tribunate is not at all common and, even though by this time apparently legal, appears to be attempted only by major political figures like Saturninus and perhaps Glaucia, the latter alternative should be discarded. And since the drawing up of the *album senatorium* was traditionally one of the censors' first duties, Duronius' tribunate should probably be put in 97. But we cannot be quite certain that the censors always succeeded in finishing the *album* before the end of the calendar year in which they were elected, and 96 must remain open.

² He is not mentioned in any other connection (not even by Cicero in the *Brutus*, where the *populare genus dicendi* is well represented—see below); indeed, apart from this anecdote he appears only once in the surviving record, in an incidental mention by Cicero (*de or.* 2. 274).

³ See my review of Malcovati, *ORF*², reprinted in my *Studies in Greek and Roman History*, 244 f. *ORF*³, which has now appeared, makes no essential changes except for the admission of Glaucia.

⁴ L. Crassus himself, whom Cicero constantly praises for his style and language, seems to like a heavy disjunctive ending; see *ORF*³ 66, fragments 14 (*dissedisti*); 19 (cola: *propulsare, commiscebis, confirmabis*); 24 (the *magistra oratio*; cola end *potest expleri, quoiquam seruire, uobis uniuersis, cadence possumus et debemus*).

the tenor of the whole speech, the argument advanced, that arouses suspicion. The exaggeration is patent: a law that orders citizens to be *frugi*—a word with entirely honourable connotations, appropriate even to a famous L. Piso (Cic. *Font.* 39)—is described in highly inappropriate rhetorical colouring as imposing bitter chains of servitude (itself a phrase hard to imagine in serious use); and the whole point of liberty (it is alleged) lies in being able to kill oneself by luxury. Surely this is that very disparagement of virtue which rhetoricians thought not only faulty but inconceivable: ‘*nemo erit qui censeat a uirtute recedendum*’ (*ad Her.* 3. 6). One could hardly find a more straightforward example of the kind of rhetorical development that, if meant seriously, was bound to produce *frigus*.

Of course, the speaker seriously attacking the puritanical would do it differently: he would distinguish between vice and mere pleasure, stress that the latter was acceptable if it did not lead to the former, and, above all, make sure that he did not use words with favourable associations (such as *frugi*) for what he was attacking, and words with unfavourable associations (such as *luxus* and *perire*) for what he was defending. We can see Cicero doing this kind of thing in *pro Caelio* 25 f. (especially 27 f.), where his client’s way of life in his youth has to be made acceptable against attack: on one side is the acceptance of *conuiuia, horti, unguenta* and *Baiae, aliqui ludus* granted to youth, passions that are *faciles et tolerabiles*; on the other *pertristis patruus, censor, magister*. Later (40 f.) he becomes more eloquent: austerity is now old-fashioned (this in common with Duronius!), Nature has provided many charms, and ‘*si quem forte inueneritis qui aspernetur oculis pulchritudinem rerum, non odore ullo, non tactu, non sapore capiatur, excludat auribus omnem suauitatem, huic homini ego fortasse et pauci deos propitios, plerique autem iratos putabunt.*’

It is difficult not to conclude that the speech of Duronius is ironical: a pointed version by Valerius of what he thinks a speech opposing a sumptuary law must amount to. Of course, Valerius, who enlivens many of his anecdotes with direct speech, often does quote sayings that seem to have been genuinely transmitted (whether true or not): thus, e.g., that of Theramenes to Critias (3. 2, *ext.* 6) or that of M. Scaurus against Varius of Sucro (3. 7. 8). In these and a few other cases we can check the general credibility of the sayings by other sources giving a similar tradition. In some others (e.g. 3. 8. 5: Q. Scaevola Augur on C. Marius—see Münzer, *R.E.* s.v. Mucius, col. 435), though we lack a parallel, we have every reason to believe that Valerius has a reputable source. Once or twice we can even see what that source was (e.g. 4. 7. 1: Blossius to Laelius; cf. Cic. *Lael.* 37).

Yet there are passages where authenticity is not even claimed. Thus the reflections of the jurors after Scipio Aemilianus’ speech against Cotta (8. 1. 11, *abs.* 11) are explicitly introduced by ‘*haec secum locutos crediderim*’; Camillus and Postumius speak (2. 9. 1) ‘*in hunc modum*’. This shows that Valerius was not above inventing, like many highly reputable historians. But it might be thought that where he invents he always warns us—which might be deemed to save Duronius. One counter-example (2. 6. 6) should suffice. The Classical Athenian law re-enslaving the ungrateful freedman is defended in a fine passage of rhetorical speech:

supersedeo te, *inquit*, habere ciuem tanti muneris impium aestimatorem, nec adduci possum ut credam urbi utilem quem domui scelestum cerno. abi igitur et esto seruus, quoniam liber esse nescisti.

No one will assert that this fine flower of oratory was culled from the memoirs of an Athenian master or the formulary of an Athenian legal code. The rhetorical training that made Valerius collect his *exempla* in the first place naturally encouraged him to improve on his sources and sometimes incidentally to misrepresent them (compare, e.g., 3. 7. 8 (Scaurus and Varius) with Asc. 22 Cl.), and, where there was no source for the words spoken, occasionally to supply them himself. Duronius, not even mentioned in the *Brutus*,¹ surely had left no specimen of his oratory: if Cicero, who dredged up the dregs, even unto a Staienus and an Autronius (*Br.* 244),² did not know this speech, we can confidently assert that neither Valerius Maximus nor anyone else in his generation did.

Valerius' purple patch deserves due admiration. But it, and with it the 'orator' Duronius, should be deleted from the history of Roman oratory.³

II. A NON-TRIBUNE OF 58 B.C.

After the end of Caesar's violent and stormy consulship of 59 B.C. the first whimpers of reaction were not slow in coming. Two praetors of 58 at once attacked him, and he offered to let the Senate judge his *acta*. Naturally, the Senate was unwilling to do this, and after three days of wrangling Caesar left for his *prouincia*.⁴ Suetonius tells this story and gives a sequel (*Jul.* 23):

Functus consulatu Gaio Memmio Lucioque Domitio [cf. Cic. *Q. fr.* 1. 2, *ad fin.*] praetoribus de superioris anni actis referentibus cognitionem senatui detulit; nec illo suscipiente triduoque per irritas altercationes absumpto in prouinciam abiit. et statim quaestor eius in praeiudicium aliquot criminibus arreptus est. mox et ipse a Lucio Antistio tr. pl. postulatium appellato demum collegio obtinuit, cum rei publicae causa abesset reus ne fieret.

The tribune of 58 L. Antistius has found an unquestioned place in most of the standard works.⁵ Any doubts that might have been felt owing to the silence

¹ Nor in the *de oratore* for this speech or any other: he is merely brought in as providing an occasion (apparently the first in M. Antonius' maturity) when the orator had to *suam rem agere*.

² Cf. also *Br.* 176 (Cicero lists *dicentes*, not *oratores*; Atticus wants *eloquentes*, non *sedulos*); 269 (*omnis . . . qui ausi aliquando sunt stantes loqui*); 297 (*concessisti operarios omnes, ut mihi uideantur mori uoluisse nonnulli ut a te in oratorum numerum referrentur*). It is a large part of the function of 'Atticus' in the dialogue to draw attention to the comprehensiveness of Cicero's survey at various stages in his chronological progress. We ought to take his word for it.

³ Of course, as I pointed out in my review of *ORF*² (p. 198, n. 3), anyone who held office was, in a sense, an orator, in that he had to speak in public. In that sense Duronius, who must have spoken on his law, was an orator too. I am merely concerned to delete him from the history of Roman oratory in the sense that Cicero and Atticus gave to it.

⁴ i.e., he solemnly crossed the *pomoerium*. It is known that he stayed *ad urbem* for some weeks (Plut. *Caes.* 14, *fin.*; Dio 38. 17; Cicero, *passim*) and only reached Gaul near the end of March (*Caes. B.G.* 1. 7-8).

⁵ *MRR* 2. 195; Gelzer, *Caesar*⁶ 87; Niccolini, *FTP* 285 f. There is no discussion, even in the edition of the *Divus Julius* by Butler and Cary (70 f.). Klebs (*R.E.*, 'Antistius' 13) is properly non-committal about the date. Some of the difficulties caused by taking Antistius for a tribune of 58 are illustrated by the complications thus introduced into E. J. Weinrib's careful and otherwise valid analysis of the attempts to prosecute Caesar (*Phoenix* xxii [1968], 45 f.). Weinrib also erroneously takes the 'quaestor' of this passage for a quaestor of 58, again causing himself unnecessary difficulty (44 f.). The quaestor is clearly Caesar's *ex-quaestor* of 59 (a common use of such titles): whether he by then still held (prorogued) office, we do not know; but we have no reason to assume it. This not only removes Weinrib's difficulty over the prosecution (there is none, if

of the sources about his other activities were ignored—not altogether unjustly, in view of the wretched nature of our tradition, which gives us only seven or eight of the tribunes even of 59, only five (excluding this man) of those of 58, years as agitated as any in times of peace. Yet one might expect a man who proclaimed an intention of impeaching the proconsul encamped outside the city, the ally of the consuls of the year and of Pompey and Crassus, to show some other sign of activity in the year of the tribunate and legislation of P. Clodius Pulcher. We should at least scrutinize our evidence.

The accepted date is by no means necessary. The belief that *mox* means ‘soon’ is one still fostered by the occasional schoolmaster, but generally known to be absurd, especially in Latin of the Empire. The word normally means ‘in due course’ or ‘later’, which may or may not be soon after. This is clearly the way in which Suetonius, like others, uses it.¹ Even on purely linguistic grounds, it is not likely that the abortive prosecution followed at once: indeed, the prosecution of Caesar’s ex-quaestor was launched *statim* after his departure, and this is contrasted (and contrast must be intended) with the *mox* of Antistius’ move. At the very least, the interval must have been considerably longer than the first one. It might be later in 58, but could be after that year.

As far as chronological arrangement around this passage goes, the same conclusion follows. The next dated event is L. Domitius’ consular candidature; then comes the conference of Luca (ch. 24). These are events of 56, and Antistius’ action might come anywhere down to the early part of that year. But it could be argued that strict chronological criteria do not apply in any case. In ch. 23 Suetonius is writing ‘eidologically’, as biographers often do,

the man was *priuatus*), but also gives the most satisfactory meaning for ‘*praeiudicium*’ (not here a preliminary kind of action—rightly Weinrib, against Butler and Cary). The conviction of Caesar’s quaestor of 59 for carrying out Caesar’s instructions would indeed create a grave *praeiudicium* (in the most usual sense of the term) for any future prosecution of Caesar himself on charges arising out of his consulate.

¹ To confine ourselves to the *Julius*, the word appears 1. 1; 9. 1; 20. 2; 22. 1; 23. 1 (our passage); 28. 3; 44. 3; 71; 73; 81. 1 and 4. In only one case (81. 4) is the actual reference to an event following ‘soon’. Here also, this cannot be the actual meaning: as elsewhere, ‘later on’, without scrutiny of the interval, is basically intended. In 44. 3 it means ‘next’ (in a series: a fairly common meaning; cf. *Aug.* 19. 1). In some instances the interval is demonstrably long, varying from months to years. Some of these have also commonly been misunderstood, no doubt for the same reason. Thus in 1. 1, the date of Julia’s birth (on which see Gelzer, *Caesar*⁶ 19: ‘about 76 B.C.’—perhaps still too early) is often put straight after Caesar’s marriage to Cornelia, even though Pompey seems to have been Julia’s first husband. In 71, *mox* has again misled scholars, who appear unanimously to put Caesar’s defence

of Masintha against the claims of Juba (i.e. Hiempsal) in his praetorship in 62 (see, e.g., *MRR* ii. 173), presumably because we are told that Caesar *mox* took his protégé with him to Spain. It might be noted that a man who is praetor is not usually called *iuuenis* (though technically even a consul, at 43 or so, might be—it is simply not done). Moreover, we happen to know that Juba was in Rome when Cicero delivered his second speech against the bill of Rullus (*l. agr.* 2. 59), early in January 63. It is surely most unlikely that he stayed in Rome for a year or more, for no reason we know of. (The length of Masintha’s stay was due to the fact that he had to hide in Caesar’s house until he could be smuggled out in the way related by Suetonius.) The incident should be put not too far from Juba’s attested presence, in late 64 or early 63. For the lengthy stay of Masintha, in need of protection, compare that of Ptolemy Auletes in Pompey’s house (Dio 39. 14. 3; 16. 3). For *mox* denoting other long intervals, see 9. 1 (from Caesar’s return from his Spanish quaestorship, probably late 68 or early 67, to ‘a few days before his aedileship’ of 65); 29. 2 (the couplet on the ‘consulship of Caesar, not of Bibulus’, shown by internal evidence to have been written after 59); and 73.

and is led on by his subject-matter, from the theme of the early threats of attacks on the legality of Caesar's measures to Antistius' prosecution. There follows a general comment that 'for the future' Caesar took care to secure some reliable magistrates and candidates every year. No clear date of departure for this assertion can be made out: Suetonius knew as well as anyone that Caesar had done precisely this for that very year of 58, and the statement can in no way be intended to deny this. Suetonius is merely using the instances of Caesar's uncertain position and legal threats to him as illustrating Caesar's care in securing his future.

Thus analysis of the text shows that nothing supplies a clue as to the date of Antistius' prosecution or of his tribunate. The former could be at any time between 58 (not too early in that year, as we have seen) and early 56, the latter therefore any one of the three years 58–56. Once this is realized, it becomes apparent that 58 is the least likely of these years. Of course, an odd niche could be found for such a move. But in a year when Clodius' gangs were dominating the streets of Rome, it is unlikely that a threatened prosecution of Caesar would get far enough to force him to appeal to the college as a whole. 57 (the year when Clodius lost control of the streets) and 56 remain possible: with Cicero's return and Pompey's active support for it, the Optimates gained new courage.

Unfortunately we do not know Antistius' *cognomen*. The *praenomen* Lucius, of course, appears among the Antistii Regini: a L. Antistius Reginus accompanied his friend Q. Caepio (*cos.* 106) into exile at Smyrna,¹ and it was perhaps this very man who later prosecuted T. Matrinus of Spoletium.² A C. Antistius Reginus is found as an officer of Caesar in Gaul.³ This makes it highly unlikely that Caesar's enemy in Rome belonged to that same family. Not that men did not change their allegiance, in those disturbed years, or that civil dissension did not cut across families—quite the contrary. But it is going too far to imagine a L. Reginus trying actually to prosecute Caesar at the very time when a C. Reginus (his brother, as he would probably be) was fighting for him. The tribune can hardly be a Reginus.

Another family suggests itself: the Antistii Veteres. In their case, the *praenomen* Lucius is not known under the Republic, but, of course, is well known in some eminent representatives under the early Empire.⁴ Unfortunately they also appear on Caesar's side. An Antistius Vetus had been Caesar's commander in Spain when Caesar was quaestor, and the link of clientela duly formed was remembered by Caesar later: the son of this Antistius became Caesar's own quaestor, probably during Caesar's own proconsulship in Ulterior.⁵ Yet in the case of this family we must not be premature in judgement. Here there is no demonstrable connection with Caesar at the actual time. And that the Antistii Veteres could change sides can be demonstrated. A member of

¹ Val. Max. 4. 7. 3.

² Cic. *Balb.* 48 ('L. Antistius': for the suggested identification, see my *Studies*, 48 f.).

³ *MRR* ii. 231.

⁴ *PIR*² A 775–6: note that each appears to be the second son of a Gaius: obviously, 'Lucius' was the traditional *praenomen* for a second son.

⁵ That seems to be the implication of

Plutarch's story (*Caes.* 5. 3). The intricacies of the Antistii Veteres cannot be discussed here: we must hope that Dr. Cadoux will before long give us the results of his researches on these and other prosopographical puzzles. But the identification of the son of Caesar's commander with the commander against Caecilius Bassus (see text) seems possible only if we put the occasion on which Caesar paid his debt considerably earlier.

that family (whether or not Caesar's ex-quaestor) served in Syria against Caecilius Bassus and, on his way back, entered Brutus' service, bringing him a welcome accession of money.¹ We know nothing certain about this man's past record. If old enough (which he probably was), he may well, like many who flocked to Brutus, have been a Pompeian in the Civil War.

Continuing loyalty in the Antistii Veteres need not be assumed. There was no immediate bond with Caesar in 58–56, and they might feel free to follow the cause that looked the better, or the stronger. Now, we do catch a glimpse of an Antistius Vetus (*praenomen* unfortunately not given) precisely at that time, acting in a way of which Caesar cannot have approved. This man was tribune in 56 and appears in an important letter in which Cicero informs his brother Quintus of a Senate meeting in December 57. At this meeting, there was a debate (or absence of debate) on an attempt by the tribune P. Rutilius Lupus to attack Caesar's agrarian laws.² As is well known, this attack marked the beginning of some months of intrigues to undermine Caesar's position—a period culminating in Cicero's proposal to submit a *relatio* on the *ager Campanus* on the Ides of May 56.³ The details of the moves in those months are obscure in the sources, often discussed by moderns, and not really relevant here. But it is clear that it was worry over the shape of events in Rome that forced Caesar, at the cost of temporary neglect of his province, to meet Crassus and Pompey at Ravenna and Luca and tighten his alliance with them.⁴

Antistius Vetus, we hear, was present at that meeting. After an inconclusive end to the question of discussing the *ager Campanus*, another tribune, L. Racilius, took over and brought up the question of the *iudicia*: what was at stake was the trial of P. Clodius, its date (Clodius was trying to have himself elected aedile in order to escape trial), and the method of selecting the jury. Racilius elicited from the consul elect Lentulus Marcellinus the opinion that there should be a sortition of jurors for the trial (the details are obscured by textual confusion) and that the election should be held after the jury had been selected. Various opinions were expressed, with Clodius' friends wanting to have the election before the trial. Cicero, naturally, made a major speech attacking Clodius. Next to speak was Antistius Vetus: he eloquently praised Cicero's speech and proclaimed that he would make it his most important business to see that the *iudicia* were held.⁵ The meeting was then broken up by gangs.

Cicero, summing up, feels sure that he can count on Antistius Vetus: he had clearly not been certain of this before, as he apparently was in the cases of Racilius and Plancius.⁶ After this, we do not hear any more about the tribune Antistius Vetus, as we do about L. Racilius. This need not surprise us: Cicero's friend Cn. Plancius also kept fairly quiet, as his prosecutor, in due course, was not slow to point out.⁷ Within a few months (certainly by the end of April), it was clear that the attack on the dynasts and their allies had to be

¹ *MRR* ii. 308, 327, 342, 352.

² *Cic. Q. fr.* 2. 1.

³ See *Cic. fam.* 1. 9. 8. On the importance of this step, I see no reason to depart from the traditional interpretation (e.g. *CAH* ix. 533).

⁴ See, again, the standard works, e.g. *CAH*, loc. cit., Drumann-Groebe iii. 239 f. Note, in particular, Domitius' renewed threats (*Suet. Jul.* 24. 1).

⁵ *Cic., Q. fr.* 2. 1. 3: 'iudiciorum causam suscepit antiquissimamque se habiturum dixit.'

⁶ *Ibid.*: 'de tribunis pl. longe optimum Racilium habemus; uidetur etiam Antistius amicus nobis fore; nam Plancius totus noster est.'

⁷ *Cic. Planc.* 77.

called off: Cicero had to compose his palinode. Long before that, the attempt to prosecute Clodius had ended in failure, with Clodius' election to the aedileship.¹ But the fact is that, at a time when the attack on Caesar's position was gaining momentum, Antistius supported the Optimate tribune Racilius, as well as Cicero himself (who was to take a leading part in the intrigues against Caesar), in a fierce attack on Clodius, who—for reasons of his own²—was Caesar's ally. What is more, he shows particular interest in the *iudicia*. It is an obvious conjecture that this was the man who threatened to prosecute Caesar a little later: perhaps his concern for the *iudicia* shows him already meditating this step, which was no doubt taken as Caesar's position appeared to deteriorate: it was on the Nones of April that Cicero himself thought the time had come to proclaim an attack on Caesar's agrarian law.³ Clodius' prosecution was to be *de ui*: Marcellinus' comments make it clear. Had it succeeded (or indeed even come about), other possibilities were obvious enough: the charge on which Caesar could be prosecuted for his actions in 59 was most obviously *uis*. Indeed, it was in 59 that the precedent had been set for the irrepressible violence that had been plaguing the city ever since and of which Clodius was but a symptom.

As we saw, Cicero did not expect support from Antistius. It is to be presumed that his past had not suggested it. We have seen that the Antistii Veteres were linked to Caesar, and that later, after Caesar's victory, an Antistius Vetus is again found serving under him until Caesar's death persuades him to change his allegiance. The tribune L. Racilius, colleague of the Antistius of 56, offers an instructive parallel. Nearly nine years later, we find him serving in one of Caesar's armies in Spain under Q. Cassius and, when Cassius made himself unpopular, joining in an unsuccessful conspiracy against him, in which he lost his life.⁴ Allegiances were indeed transitory. It is far more likely than not that the tribune in Suetonius is L. Antistius Vetus (as this would show him to be), embracing the Optimate cause (briefly) to Cicero's surprise, when Caesar's fortunes appeared to be declining.⁵

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¹ In January 56 (see *MRR* ii. 208). For the palinode, see Balsdon, *JRS* lvi (1962), 137.

² For the aims of Clodius see Gruen, *Phoenix* xx (1966), 120 f. (not denying alliance at this point).

³ Cic., *fam.* i. 9. 8.

⁴ *R.E.*, 'Racilius' 1; *MRR Supplement* 53 (where, for 'L. Cassius Longinus (65)', read 'Q. Cassius Longinus (70)').

⁵ I should like to thank Professor G. V. Sumner for criticizing a first draft of this article.