

less for (*paulo*) *ante* than, as everywhere else in Suetonius, for *praeter*, *sine*, or here better, *extra*: 'not in connection with the days of *spectacula*', 'on days when there were no *spectacula*'.<sup>3</sup> *Spectacula* certainly would follow in the due course of the year, but that is not the biographer's point: it is the exhibits' separation from them that matters. In short, there is no evidence that Suetonius ever uses *citra* with reference specifically to a (shortly) coming event.

And *circa*? Suetonius is fond of the word (fifty occurrences in the *Vitae Caesarum*),<sup>4</sup> but by no means does it always imply 'on either side of something'. Often it simply signifies 'near', 'nearby', 'at', as in *Aug.* 43.1: 'navale proelium (*sc.* edidit) *circa* Tiberim cavato solo, in quo nunc Caesarum nemus est.' Evidently, *circa* here does not imply 'either to the right or to the left of the Tiber'; a Roman reader would know, as do we, on what side of the river the place was located.<sup>5</sup> Temporally, *circa* is well attested for 'in the vicinity of an *approaching* event': 'puto fortiozem esse eum, qui *circa* mortem est quam qui in ipsa morte' (Seneca, *Ep.* 30.8). No question here of time after death. Which brings us back to the Kalends of January in *Nero* 15.2.

Shaw-Smith points out that a consul dying soon after the Kalends of January obviously would have to be replaced, while only a consul dying before that date could go without a *suffectus*. Just so. What is obvious to us would have been obvious, presumably, to Roman readers of Suetonius, especially if prompted by 'exemplum Canini Rebili uno die consulis'. 'Circa Kal. Ian.' means 'around January 1', but not necessarily on either side of it. At *Nero* 15.2, the logic of the situation excludes any possibility of the consul's death occurring on or after the Kalends. It does not exclude *circa*.

An exquisite parallel in Suetonius exists. At *Claud.* 7, we read: 'sub Gaio demum fratris filio secundam existimationem *circa* initia imperii omnibus lenociniis colligente honores auspicatus consulatum gessit una per duos menses.' Few will suffer torment in deciding whether *circa initia imperii* really may imply before as well as after the beginnings of Caligula's rule. The text of *Claud.* 7 is sound. So it is in the *Nero*: *circa*, not *citra*.

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<sup>3</sup> Cf. Shuckburgh, p. 96: 'though not during the days fixed for a spectacle', and Baumgarten-Crusius, p. 110: 'praeter sp. dies, ubi illi nondum adessent'. See also Gell. 12.13.20, 'nam *citra* quod est, id *extra* est'.

<sup>4</sup> See A. A. Howard and C. N. Jackson, *Index verborum C. Suetoni Tranquilli* (Cambridge, Mass., 1922), p. 41.

<sup>5</sup> Cf. Caesar's *horti* 'circa Tiberim' (*DJ* 83.2), and *Aug.* 17.3, 'circa montes Ceraunios utrobique parte liburnicarum demersa': the rocks, being close to the shore, could be only on one side of the ships. For the site of the 'naumachia Augusti', we have the Princeps' own account: 'navalis proeli spectaculum populo dedi trans Tiberim, in quo loco nunc nemus est Caesarum' (*Res gestae* 23).

#### ANACHARSIS IN A LETTER OF APOLLONIUS OF TYANA

Philostratus remarks on the terseness of the letters of Apollonius of Tyana (*Vita Apoll.* 7.35, cf. 4.27), and letter 61 is a good example of that stylistic feature. Addressed to a Lesbionax, it says: 'Ἀνάχαρσις ὁ Σκύθης ἦν σοφός· εἰ δὲ Σκύθης, ὅτι καὶ Σκύθης' ('Anacharsis the Scythian was a sage. And if he was a Scythian, then it was because he was a Scythian that he was a sage'). In my commentary to the letters, I observed that Apollonius is drawing here on the tradition of the Scythians as an

idealized race, unspoiled by the cultivations of Greek city life, and is implicitly criticizing his contemporaries in the Greek world for not living up to the high ideals of Hellenism. I compared a critical remark in letter 34 that alludes to Euripides, *Orestes* 485: “ἐβαρβαρώτην” οὐ “χρόνιος ὢν ἀφ’ Ἑλλάδος”, ἀλλὰ χρόνιος ὢν ἐν Ἑλλάδι.<sup>1</sup> More can now be said.

The ancient sources commonly allude simultaneously to Anacharsis’ Scythian origin and to his wisdom. Lucian makes Solon say that Anacharsis Σκύθης μὲν ἐστὶ, σοφὸς δὲ ὢν μετεπαιδευσέ με (*Anacharsis* 17). In his *Protrepticus* 13–14, Galen makes the point that Anacharsis’ Scythian origin did not prevent him from being a sage (οὐδὲν κωλύει τὸν Σκύθην Ἀνάχαρσιν καὶ θαυμάζεσθαι τε καὶ σοφὸν ὀνομάζεσθαι, καίτοι βάρβαρος ἦν τὸ γένος). Themistius makes the same point in his *Oratio* 27.334c: Ἀνάχαρσιν δὲ τὸν Σκύθην πάντως ἀκούεις ὅτι καὶ σοφὸς ἦν καὶ Σκύθης. Apuleius, *Apologia* 24.33, notes that Anacharsis the *sapiens* was born among the *socordissimos Scythas*. The *Historia Augusta* names Anacharsis *Scytha* as one of a number of distinguished philosophers who were born *in minimis viculis* (*Aurel.* 3.5). It was a commonplace, then, to say that Anacharsis’ barbarian origin did not exclude him from being numbered among the wise (cf. Menander, frag. 612 [533 K]; *Epp. Anachars.* 2). He was a sage *despite* the fact that he was a Scythian. This is precisely how F. C. Conybeare understood Apollonius’ letter 61; he translated ‘Anacharsis the Scythian was a sage, but, if he was a Scythian, then even though he was a Scythian’.<sup>2</sup> But ὅτι καὶ is not equivalent to εἰ καὶ and cannot have a concessive force. Apollonius is transforming the commonplace: Anacharsis was a sage, not *despite* his Scythian origin, but *because of* it. Anacharsis, Apollonius is implying, could not have been a Greek, because there is no *sophia* among his fellow Greeks.<sup>3</sup> To say simply, as I did in my commentary, that letter 61 is informed by a tradition that idealized the Scythians as unspoiled northern barbarians is to miss its subtlety.

In letter 34, too, Apollonius levels criticism against the Greeks by transforming an inherited formulation – in this case, line 485 of Euripides’ *Orestes*. In Euripides’ drama, Tyndareus says to Menelaus: βεβαρβάρωσαι, χρόνιος ὢν ἐν βαρβάροις.<sup>4</sup> Apollonius, in effect, takes issue with Euripides, writing that ‘I have become barbarous, not by being away from Greece for a long time, but by being in Greece for a long time’.

Finally, I would now propose to emend εἰ δὲ Σκύθης in Apollonius’ letter 61 to εἰ δὲ σοφός. A false iteration of Σκύθης would have been an easy corruption. In the emended version of letter 61, the protasis of the conditional sentence would reaffirm

<sup>1</sup> *The Letters of Apollonius of Tyana: a Critical Text with Prolegomena, Translation and Commentary* (1979), 70–1, 121.

<sup>2</sup> In the Loeb *Philostratus, The Life of Apollonius of Tyana, The Epistles of Apollonius, and The Treatise of Eusebius* (1912) ii. 463. Against Conybeare and in agreement with my translation: R. Hercher, *Epistolographi graeci* (1873), 122; J. F. Kindstrand, *Anacharsis: The Legend and the Apophthegmata* (1981), 26n; F. Lo Cascio, *Apollonio Tiano, Epistole e frammenti* (1984), 67.

<sup>3</sup> Apollonius is not being a good historian in assuming that the current condition of Hellenism is what it was at the time of Anacharsis. The criticism of the Greeks here and in letter 34 is obviously hyperbolically stated. In his comments on letter 61 Kindstrand, *Anacharsis*, 26n, needlessly worries about this criticism as ‘surprising, as Apollonius is well known for his pro-Hellenic attitude’. But criticism of contemporary Greek degeneracy is not inconsistent with the championing of Hellenic ideals; see E. L. Bowie, ‘Apollonius of Tyana: Tradition and Reality’, *ANRW* II 16.2, 1680–82.

<sup>4</sup> For Byzantine echoes of this line, see M. Mullett, ‘The Classical Tradition in the Byzantine Letter’, in M. Mullett and R. Scott (edd.), *Byzantium and the Classical Tradition* (1981), 91–2; note also *Jul. Epp.* 8.441c Bidez.

the main assertion of the first sentence, underscoring Anacharsis' wisdom before providing an explanation for it.

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# A MISUNDERSTANDING ABOUT ROMAN DIVORCE LAW: THE MEANING OF 'PRAETER' IN *DIGEST* 24.2.9

The extract from Paul's second book *de adulteriis* which is quoted at *Digest* 24.2.9 has been the source of much discussion about its implications for Roman divorce procedure. The text reads:

nullum divortium ratum est nisi septem civibus Romanis puberibus adhibitis praeter libertum eius qui divortium faciet. libertum accipimus etiam eum, qui a patre avo proavo et ceteris susum verum manumissus sit.

The debate about divorce procedure has tended to obscure the difficulties created by the phrase *praeter libertum*. In the most recent translation, by G. McLeod in the edition of the *Digest* edited by A. Watson,<sup>1</sup> the whole passage is rendered:

A divorce is invalid unless it takes place in the presence of seven Roman citizens of full age as well as the freedman of the person seeking divorce. We take a 'freedman' here to include a person who was manumitted by the father, grandfather or great-grandfather or other relatives.

It will be argued here, on grounds both of language and of sense, that *praeter* should not be translated by 'as well as the...' but by 'excluding any...'. The correct translation was proposed over a century ago, but the arguments seem to have been overlooked and need to be restated.

*Praeter* can be used as a preposition with the accusative to include or exclude the noun it governs. Used inclusively, it means 'as well as' or 'in addition to'; used exclusively, it means 'other than', 'apart from', 'except', 'excluding'. More generally, it can often be translated by 'beyond' or 'beside'.

*Praeter* is used by Paul in ten other passages in the *Digest*.<sup>2</sup> In none of them does the Watson edition translate it by 'as well as'. In a number of cases, it clearly excludes the noun it governs, e.g. *D.* 2.11.7:

praeter hanc autem exceptionem ceterae, quia communes sunt, tam in libero homine quam in servo locum habent.

But the other defences, apart from this, being common, are available equally in the case of free man and slave.<sup>3</sup>

In four passages in which it is used 'inclusively', it is part of a negative expression such as *nihil praeter*.<sup>4</sup> In the two remaining passages, the Watson edition translates it as 'after' and 'beyond' respectively,<sup>5</sup> and in neither case would 'as well as' be a natural translation.

The passage closest to *D.* 24.2.9 is 38.1.37.pr, from Paul's commentary on the *lex*

<sup>1</sup> T. Mommsen, P. Krueger and A. Watson (edd.), *The Digest of Justinian* (Philadelphia, 1985).

<sup>2</sup> 2.11.7, 3.1.10, 18.2.14.4, 24.3.25.4, 25.5.2.1, 32.46, 32.78.4, 33.9.4.6, 38.1.37.pr, 44.7.29.

<sup>3</sup> Tr. D. McCormick (in the Watson edition). At 3.1.10, the Watson edition translates it as 'not in cases of', at 33.9.4.6 'other than' and 'except', at 38.1.37.pr 'apart from'.

<sup>4</sup> It is used with *nihil* in 18.2.14.4 and 32.78.4, with *non* in 44.7.29, and with *inutilis erit* in 25.5.2.1.

<sup>5</sup> 24.3.25.4 and 32.46.