

NOTES AND DISCUSSIONS

SCAURUS AND THE MAMILIAN INQUISITION

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CICERO, in the *De Oratore*, mentions that when Bestia was being prosecuted by C. Memmius, Scaurus attended the trial as *advocatus reo Bestiae*, and became the target of a jibe from Memmius.¹ Scaurus, it is clear from the context,² is meant to be M. Aemilius Scaurus, consul 115, censor 109, Princeps Senatus. It is usually and reasonably assumed that the reference is to the prosecution of L. Calpurnius Bestia (cos. 111) in the *quaestio Mamilia* of 109.³ Bestia's trial and conviction in this court are recorded by Cicero in *Brutus* 127–128, though without mention of Scaurus or of C. Memmius as *accusator*.

Sallust, in discussing the Mamilian *quaestio*, states that M. Scaurus, former legate of Bestia, was elected one of the three *quaesitores* for the commission:

ceteris metu percussis M. Scaurus, quem legatum Bestiae fuisse supra docuimus, inter laetitiam plebis et suorum fugam, trepida etiam tum civitate, quom ex Mamilia rogatione tres quaesitores rogarentur, effecerat ut ipse in eo numero crearetur (Iug. 40.4)

Sallust goes on to say (40.5) that the inquisition was *exercita aspere violenterque ex rumore et lubidine plebis*. A chain of cross-references establishes beyond doubt that Sallust assumes the *quaesitor* M. Scaurus to have been M. Aemilius Scaurus, cos. 115, Princeps Senatus, ambassador 112, legate of Bestia 111 (*ibid.* 15.4–5; 25.4, 10; 28.4; 29.2–5; 30.2; 32.1).

It is odd that Scaurus, after being legate to Bestia and deeply involved in his activities in Africa and Numidia (29.2–5), should have been elected a *quaesitor* to preside over the Mamilian inquisition, with Bestia one of the principal targets of prosecution before that court. It is even odder that Scaurus, being a Mamilian *quaesitor*, should have appeared as *advocatus*⁴ for the accused Bestia in the Mamilian *quaestio*. It is slightly

¹*De Or.* 2.283: *ut cum Scaurus non nullam haberet invidiam ex eo quod Phrygionis Pompei locupletis hominis bona sine testamento possederat, sederetque advocatus reo Bestiae, cum funus quoddam duceretur, accusator C. Memmius "vide" inquit "Scaure, mortuus rapitur, si potes esse possessor."*

²*Cf. De Or.* 2.280: *"quid ergo?" inquit Scaurus. "Aemilius fecit, plectitur Rutilius."*

³See E. S. Gruen, *Roman Politics and the Criminal Courts, 149–78 B.C.* (Cambridge 1968) 145, 148 f. (hereafter *RPCC*).

⁴*Advocatus* here probably means "character witness," rather than "defence counsel" as implied by Gruen, *RPCC* 145.

surprising, too, that Scaurus should have functioned as a Mamilian *quaesitor* in the same year and probably at the same time as he was holding the office of censor (*MRR* 1.545, 547); it is unlikely that the *quaestio* had completed its work before the censorship began.

For the problem presented by Scaurus' dual rôle as *quaesitor* and *advocatus*, two solutions have been proposed. According to G. Bloch,⁵ three separate courts were instituted, and so Scaurus, while president of one court, could still appear as *advocatus* in another. Fraccaro,⁶ on the other hand, held that there was but a single court, with the three *quaesitores* taking turns to preside. Both these solutions seem rather contrived and artificial. Gruen correctly observes that neither has any known precedent;⁷ this, admittedly, constitutes no objection in itself, the situation being unprecedented. A third possibility was fleetingly floated by Wilkins in his note on *De Oratore* 2.283,⁸ that the prosecution of Bestia by C. Memmius, at which Scaurus was an *advocatus*, was distinct from the prosecution of Bestia before the Mamilian court, at which Scaurus was one of the three *quaesitores*. This idea has not gained favour, but cannot be formally refuted. One can only say that the evidence for a prosecution of Bestia by Memmius in the Mamilian court (which Memmius had done so much to bring into being),⁹ with Scaurus appearing in support of the man whose chief legate he had been, fits together so exactly that it would be uneconomic to dismantle it by the hypothesis of another prosecution. None of the three proposals, it may be added, removes the political improbability of Scaurus' election as a president of this court.

There is a different line of approach possible, more drastic, but one which would get rid of all the oddities noted above. It is that Sallust may have made a mistake in assuming that M. Scaurus, the *quaesitor* of the Mamilian court, was M. Aemilius Scaurus. Given Sallust's preoccupation with Scaurus, the mistake would be understandable. There was, by unlucky coincidence, another M. Scaurus prominent in the politics of this same period, *viz.*, M. Aurelius Scaurus,¹⁰ who was elected

⁵G. Bloch, "M. Aemilius Scaurus. . .," *Mélanges d'Histoire Ancienne* (Univ. de Paris, Bibl. de la Fac. des Lettres) 25 (1909) 64-69.

⁶P. Fraccaro, *Opuscula* 2 (Pavia 1956/7) 129 n. 10. His citation of "Mommsen, *Staatsrecht* 2³.584" is not to the point; *ibid.* 2³.664 f. refers to these *quaesitores* (but does not help with our problem).

⁷Gruen, *RPCC* 148 n. 60.

⁸A. S. Wilkins, *M. Tulli Ciceronis De Oratore Libri Tres* 2 (Oxford 1890) 150.

⁹Cf. Sallust, *Iug.* 30.3, 32.1, 34.2.

¹⁰On this man cf. G. V. Sumner, *The Orators in Cicero's Brutus: Prosopography and Chronology* (Toronto 1973) 19, 79-82, 96 f. Sallust shows little interest in details of domestic politics of the period, especially after the passage of the Mamilian law, and has no other occasion to notice Aurelius Scaurus.

suffect consul for 108, replacing a Hortensius (*MRR* 1.548, 550 n. 2). He was legate to the *novus homo* Cn. Mallius Maximus in 105, when he met death at the hands of the Cimbri (*Ivly Per.* 67; *Gran. Licin.* 11 F; *Orosius* 5.16.2 [naming him "Aemilius"!]; cf. *MRR* 1.557). Earlier in his career, when he was a moneyer in 118, he had been associated with L. Crassus in the latter's "*popularis*" phase (*Cic. Brut.* 160).¹¹ This evidence at least renders plausible the idea that M. Aurelius Scaurus tended towards the "popular" side in politics and, being now an ex-praetor, was a suitable candidate for election to the post of *quaesitor* under the Mamilian law. The three *quaesitores* had to preside over a court of *Gracchani iudices*, according to Cicero's description (*Brut.* 128).¹² It was, in fact, a political inquisition of Gracchan inspiration, which probably explains the unusual phenomenon of a triumvirate of presidents.

One further conjecture may be worth hazarding. The Hortensius, to whose place as consul M. Aurelius Scaurus succeeded, is revealed by the *Fasti Capitolini* to have lost the consulship as a result of a condemnation: [...*da*]mn. est, in e.l.f.e. [...]. *Scaurus*.¹³ Instead of conjecturing a conviction for *ambitus*, we should perhaps entertain the possibility that Hortensius was a victim of the *quaestio Mamilia*.¹⁴ Thus M. Aurelius Scaurus, having presided over the trial of his rival, would have neatly stepped into the vacancy left by his condemnation.

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¹¹Sumner, *ibid.* 96; cf. M. H. Crawford, *Roman Republican Coin Hoards* (London 1969) 5, and Table XI. In *Roman Republican Coinage* 1 (Cambridge 1974) 298 f., Crawford would identify the moneyer of 118 as the son of the consul of 108, supposedly quaestor ca 103. I have argued for the non-existence of the quaestor of ca 103 (*op.cit.* 79–82).

¹²Cf. Gruen, *RPCC* 142 f.; A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Oxford 1972) 53.

¹³I.e., *damnatus est. in eius locum factus est . . . Scaurus*. Cf. A. Degraasi, *Inscriptiones Italiae* 13.1.54 f., 127, 162 f., 476 f.; *MRR* 1.548. The condemnation must have occurred in 109, before Hortensius could take office and gain magistratal immunity (cf. Gruen, *RPCC* 149; and in general E. J. Weinrib, "The Prosecution of Roman Magistrates," *Phoenix* 22 [1968] 32–56).

¹⁴Sallust omits to list any victims of the *quaestio*; Cicero mentions only five, C. Galba and four *consulares*, L. Bestia, C. Cato, Sp. Albinus, and L. Opimius (*Brut.* 127–128). It is probable that the unfortunate Hortensius (the first of the family to reach the highest rank, apart from the dictator of 287) was the father of the great Optimatus orator, Q. Hortensius, who is featured so prominently in the *Brutus*. All mention of the orator's father is suppressed by Cicero, so that it would not be surprising that his name should be omitted from the list of victims. It is not unlikely, in general, that Cicero's list is incomplete.