

## THE TRIAL OF RUTILIUS RUFUS

R. KALLET-MARX

THE TRIAL OF P. RUTILIUS RUFUS, traditionally dated 92 B.C., has long been thought to usher in a new stage of political confrontation and upheaval. The outrage of optimate sentiment at this unscrupulous arrogation of power by the *equites*,<sup>1</sup> the shock of a successful attack by a coalition of Marius and *equites* on a central figure of the so-called "Metellan group" to which Rutilius is often supposed to have belonged, or some combination of these responses, called forth immediately the proposal of the tribune M. Livius Drusus to transfer the courts to senatorial juries.<sup>2</sup> The conviction thus leads in what seems to be a direct line to the crisis of 91, and through it to the calamitous decade of wars which followed against Italians and even between citizens. The purpose of this paper is to provide a critical re-examination of the causal connection assumed between these events which has long been wanting and a new assessment of the significance of Rutilius' trial. The

I thank E. S. Gruen, A. M. Ward, and two anonymous referees for salutary criticism and suggestions for improvement. The faults that remain are of course due to my obstinacy. A version of this paper was read at the 120th meeting of the American Philological Association in January 1989, and I wish to thank M. C. Alexander for his helpful comments on that occasion. Despite the multitude of disagreements with the views of E. Badian and E. S. Gruen which follow, it will be obvious how much my discussion owes to their ground-breaking and fundamental work.

The following works will be referred to by author's name alone or in an abbreviated form: M. C. Alexander, "The *Legatio Asiatica* of Scaurus: Did It Take Place?," *TAPA* 111 (1981) 1-9; E. Badian, *Studies in Greek and Roman History* (Oxford 1964) (= Badian, *Studies*), *Publicans and Sinners*, rev. ed. (Ithaca and London 1983) (= Badian, *Publicans*), and "The Death of Saturninus," *Chiron* 14 (1984) 101-147 (= Badian, "Saturninus"); R. A. Bauman, *Lawyers in Roman Republican Politics* (Munich 1983); P. A. Brunt, *The Fall of the Roman Republic* (Oxford 1988); E. S. Gruen, *Roman Politics and the Criminal Courts, 149-78 B.C.* (Cambridge, Mass. 1968) (= Gruen, *Roman Politics*), and "Political Prosecutions in the 90's B.C.," *Historia* 15 (1966) 32-64 (= Gruen, "Political Prosecutions"); C. Meier, *Res Publica Amissa* (Wiesbaden 1966); T. N. Mitchell, *Cicero: The Ascending Years* (New Haven and London 1979).

<sup>1</sup>Cf., e.g., H. H. Scullard, *From the Gracchi to Nero*<sup>5</sup> (London and New York 1982) 62; Meier 77, 212-213; Badian, *Publicans* 91-92. Cf. Brunt 131, 152, 155, 201, 459; Mitchell 34-35.

<sup>2</sup>See esp. Badian, *Studies* 57-58, 108-109; Gruen, *Roman Politics* 204-209, and "Political Prosecutions," 52-55, 60, 64, who, however, rightly stresses as well frustration with the equestrian juries' record of acquittals. See also R. F. Rossi, *Storia di Roma IV: Dai Gracchi a Silla* (Bologna 1980) 305-308, and T. F. Carney, *A Biography of C. Marius*<sup>2</sup> (Chicago 1970) 49-51, who follow the main lines of interpretation set down by Badian and Gruen.

result, I hope, will be a somewhat new perspective on the immediate background of Drusus' judiciary law and the political climate of the late 90s.

## I

According to Cicero (*Brutus* 115), the unjust condemnation of Rutilius Rufus shook the very foundations of the state. It is awkward to argue with Cicero, but the historian is sometimes forced to do so. The careful reader will note that this pious remark was penned more than four decades after the trial, by which time Cicero had gained through bitter personal experience a special sympathy for the unjustly exiled. Most important, it is clear that Cicero's own view will have been shaped by Rutilius himself, whom he visited in Smyrna in 78, and by his own mentors, the Scaevola cousins, of whom the Pontifex (*cos.* 95) was a close associate of Rutilius and his only conspicuous supporter at his trial.<sup>3</sup> It has long been recognized, though to no real effect in the weighing of the evidence, that the entire tradition about Rutilius' condemnation was powerfully shaped not only through his personal connections to men such as the Scaevolae and Cicero but also by his own memoirs.<sup>4</sup> These seem to have been a source much used by later authors, who eagerly portrayed the trial as a classic example of an outrageous miscarriage of justice perpetrated upon an innocent man too proud to abase himself.<sup>5</sup> Thus it became perhaps the most famous trial in Roman political history (see the list of sources at *MRR* 2.8), not for its political significance, but for its ethical point. But the picture of Rutilius presented by tradition is, of course, too good to be true, and since it is no doubt directly traceable to the man himself, some caution in assessing it is demanded. Another tradition, sharply divergent and by no means encomiastic, may be glimpsed in an episode in Tacitus' *Annals*. In A.D. 22, Mam. Aemilius

<sup>3</sup>For the interview with Rutilius, cf. *Rep.* 1.13, 17, *Brutus* 85–89. For Cicero's apprenticeship under the Scaevolae, cf. *Amic.* 1, *Leg.* 1.13, 2.47, 2.49, *Phil.* 8.31, *De or.* 3.45, and M. Gelzer, *Cicero: Ein biographischer Versuch* (Wiesbaden 1969) 5; Mitchell 44–45. (Cf. also Badian, rev. Gelzer, *Kleine Schriften*, *JRS* 57 [1967] 228–229.) For Rutilius and Scaevola, see below, n. 22, and 135, 136.

<sup>4</sup>"Im ganzen hat Rutilius wohl sein Ziel erreicht, indem er das Urteil der Folgezeit über sich selbst, seine Freunde und Feinde nachhaltig beeinflusste . . ." (F. Münzer, "P. Rutilius Rufus [34]," *RE* 1A [1920] 1280); cf. J. P. V. D. Balsdon, "Q. Mucius Scaevola the Pontifex and *Ornatio Provinciae*," *CR* 51 (1937) 8–10, at 10; Badian, *Studies* 108 and "The Early Historians" in T. Dorey, ed., *Latin Historians* (London 1966) 1–38, at 23–25.

<sup>5</sup>Cf., e.g., Vell. Pat. 2.13.2 (quoted below, 126); Livy *Per.* 70; Val. Max. 2.10.5; Oros. 5.17.12; Dio F 97. Cf. Cic. *Font.* 38, *Pis.* 95, and *Scaur.* apud Asc. 21c (quoted below, 124). On the influence of Rutilius' memoirs upon the historical tradition, see further E. Pais, *Dalle guerre puniche a Cesare Augusto* 1 (Rome 1918) 81–83; G. L. Hendrickson, "The Memoirs of Rutilius Rufus," *CP* 28 (1933) 153–175, at 173–175.

Scaurus justified his departure from senatorial etiquette in bringing a grave charge against a fellow consular by citing historical *exempla*, among them the prosecution of Rutilius.<sup>6</sup> He would have hardly have done so if the view that Rutilius' condemnation was absurd and frivolous, so prevalent in our preserved sources, had been universal in A.D. 22; and Tacitus does not appear to have shared that view.<sup>7</sup>

If we reserve judgment, therefore, on the literary *topos* of Rutilius' unquestionable innocence and martyrdom, and on the integrity of the tradition, Cicero's assertion loses much authority. Such must be the fate as well of the one other comment of Cicero—this time from a speech—that might also seem to suggest that Rutilius' condemnation was of decisive political significance. In his defense of the younger M. Aemilius Scaurus in 54, Cicero refers to the atmosphere after the famous trial with the following words: *reus est factus a Q. Servilio Caepione lege Servilia, cum iudicia penes equestrem ordinem essent et P. Rutilio damnato nemo tam innocens videretur ut non timeret illa* (Scaur. apud Asc. 21c). Whether we should think that this point was intended to help Cicero's client by showing that even the great Scaurus, like his son now, had had to face a groundless charge of extortion despite his "obvious" innocence, or to "diminish the harmful effect which the prosecution of the elder Scaurus would have on his client,"<sup>8</sup> the result is in any case the same. Cicero's acceptance of Rutilius' version of his trial aside, the value of this remark as historical evidence is clearly vitiated by its tendentiousness as well as its blatant rhetorical exaggeration.<sup>9</sup>

The credibility of this witness is therefore questionable, although we have not proved his view false. Do the sources for Drusus' tribunate have anything to offer? Remarkably, in view of the firm conviction held by moderns, the ancient sources have little to say about a connection between Rutilius' condemnation and Drusus' bill for judicial reform. Our fullest source for the events of 91, Appian, takes no notice whatever of Rutilius' trial. For him, the reform bill was a result of tension between the equestrian and senatorial orders which was at a peak at that time "because of the courts" (BCiv. 1.35.157), but he does not specify further. It would be easy to jump

<sup>6</sup>Tac. Ann. 3.66. Scaurus clearly had in mind the *repetundae* case of the 90s rather than Rutilius' trial for *ambitus* of 116: see below, n. 44. We shall return to this important and problematic passage below (134–135).

<sup>7</sup>*Ibid.*: *videlicet Scipio et Cato talia ulciscabantur aut ille Scaurus, quem proavum suum obprobrium maiorum Mamercus infami opera dehonestabat*. Tacitus thus draws a contrast between the character of the offenses allegedly committed by Silanus and the weighty and notorious crimes for which Cotta and Galba (for these, see Badian, *Studies* 105–106)—and thus, by association, Rutilius—were charged.

<sup>8</sup>Alexander 7. The elder Scaurus, however, was not after all condemned.

<sup>9</sup>Conceded by Alexander (7–8), who is of course arguing the opposite of my broader point. No conviction is known in the rash of trials between that of Rutilius and the *lex Varia*; see below, n. 10.

to the conclusion that he, or his source, was thinking of the conviction of Rutilius; but in fact we have good evidence that it was another judicial event, or rather series of events, that had the closest causal connection with the proposal of 91 to transfer the juries to the senate. For between Rutilius' trial and Drusus' tribunate occurred the highly divisive duel in the courts between M. Aemilius Scaurus and Q. Servilius Caepio to which Cicero alludes in the passage from the *Pro Scauro* quoted already (above, 124).<sup>10</sup> Given the prominence in the historical tradition otherwise of the conviction of Rutilius, Florus' rhetorical passage on this clash is more worthy of attention than usual, for (using military imagery to stress the vehemence of the confrontation) he makes Drusus' legislation a response not to Rutilius' fate, which he only briefly mentions, but to Caepio's indictment of Scaurus (and of Marcus Philippus).<sup>11</sup> Furthermore, he specifically puts this in the context of hostility between the senate and the *equites*, which returns us to Appian's notice of just such a flareup of tensions over the courts. As it happens, Florus' evidence of a direct connection between these trials and the plan to reform the courts is corroborated by a source with much greater authority. Asconius writes (21c), *Q. Servilius Caepio Scaurum . . . reum fecit repetundarum lege quam tulit Servilius Glaucia. Scaurus tanta fuit continentia animi et magnitudine ut Caepionem contra reum detulerit et breviori die inquisitionis accepta effecerit ut ille prior causam diceret; M. quoque Drusum tribunum plebis cohortatus sit ut iudicia commutaret.* He strongly implies, therefore, that it was this clash that inspired the reform proposal of 91, and explicitly assigns the initiative to Scaurus. (See also Cic. *Dom.* 50 for Scaurus as Drusus' *consiliarius*.)

Not that Rutilius' condemnation is to be detached entirely from the events of Drusus' tribunate. Livy's epitomator is, to be sure, little help (*Per.* 70). He merely cites the conviction in his cursory list of the important events between 99 and 91 covered in the seventieth book without drawing any explicit connection between it and Drusus' tribunate; and without

<sup>10</sup>On these trials, see esp. Gruen, "Political Prosecutions," 55–59, and R. A. Bauman, *The Crimen maiestatis in the Roman Republic and Augustan Principate* (Johannesberg 1967) 60–63. Alexander is more convincing in his refutation of the view that Scaurus was charged with extortion committed while an envoy in Asia than in his conclusion that the *legatio Asiatica* of Asc. 21c refers, quite elliptically and without explanation of its relevance to the indictment of Scaurus, to Rutilius' service as legate to Scaevola. The affair, whose first stage is usually dated in 92 or early in 91 (Gruen, "Political Prosecutions," 57, and *Roman Politics* 206), may belong slightly earlier in view of the uncertainty of the date of Rutilius' trial (below, section II). It continued into 90.

<sup>11</sup>2.5.4–6: *signa aquilae et vexilla deerant: ceterum sic urbe in una quasi in binis castris dissidebatur. prior Caepio in senatum impetu facto reos ambitus Scaurum et Philippum principes nobilitatis elegit. his ut motibus resisteret Drusus, plebem ad se Gracchanis legibus isdemque socios ad plebem spe civitatis erexit. Florus' designation of the charge (ambitus) is clearly mistaken: Gruen, "Political Prosecutions," 59.*

the text of Livy, we should not jump to the conclusion that the reference in the summary to senatorial dissatisfaction with the equestrian courts is an allusion to Rutilius' fate. But Florus sees the exile of Metellus Numidicus and the conviction of Rutilius as grievous blows to the prestige of the senate which set the stage for the clash between it and the *equites* led in his view respectively by Drusus and Caepio (2.5.3-4). Velleius goes farther, giving Rutilius' conviction special stress in explaining Drusus' motives (2.13.2); he is, however, alone in this, and we must be careful. A writer at Velleius' (or Florus') distance from the events, influenced by the developed tradition of Rutilius' complete innocence in the face of a corrupt jury (Vell. *ibid.*: *P. Rutilium, virum non saeculi sui sed omnis aevi optimum*), and interpreting the trial from hindsight in the light of the crisis of 91, will have found it only too easy to exaggerate the import of the trial.

This analysis of the pronouncements of our sources on the significance of Rutilius' trial, and of the prelude to Drusus' tribunate does not, in isolation, impose definite conclusions. It does, however, yield a preliminary line of interpretation which remains to be corroborated and filled out by adducing supplementary evidence of a more specific, factual nature. There is good reason to question Cicero's attachment of great political significance to the condemnation of Rutilius. The trial would seem to have been an event in the recent background to the crisis of 91, but of uncertain relevance to it. On the other hand, the "proximate cause" of Drusus' proposal was clearly the judicial duel between Scaurus and Caepio.<sup>12</sup> In this struggle only acquittals were forthcoming, and thus it would seem that Scaurus desired to put a decisive end to this distasteful and demeaning squabble, and preclude similar outbursts in the future, by arranging for a jury that would be more stern—with his opponent.<sup>13</sup>

## II

Even so, if the date of Rutilius' trial is indeed 92, as has always been supposed, temporal proximity alone might be thought an argument, if tenuous, for associating it with the events of 91. But does it belong in 92? Surprisingly—perhaps because of the "obvious" causal connection with the judicial bill—the traditional date for the trial has never seriously been queried, although it depends solely on the trial's place in the sequence of events given in the summary of contents of Livy's lost seventieth book,

<sup>12</sup>As E. J. Weinrib noted in passing, in "The Judiciary Law of M. Livius Drusus (tr. pl. 91 B.C.)," *Historia* 19 (1970) 414-443, at 434, despite his giving primary emphasis to Rutilius' trial (see also 435).

<sup>13</sup>See Gruen, "Political Prosecutions," 52, 60, and *Roman Politics* 204, 206, for the view that the clash aggravated frustration with the equestrian juries' tendency to acquit. In the mass of trials since 98, only one conviction (Rutilius') had been scored.

where it appears between Sulla's expedition to Cappadocia and C. Sentius' defeat in Macedonia (Livy *Per.* 70).<sup>14</sup> Sentius' defeat is reliably dated to 92 (Jul. Obs. 53); but more than thirty years have now passed since E. Badian showed that Sulla's Cappadocian expedition belonged not in 92, as previously thought, but towards the middle of the decade. Badian argued for 96; more recently 94 has been proposed, I think unsuccessfully; but without delving too deeply into that rather taxing controversy, let us suppose that roughly the middle of the decade is about right.<sup>15</sup> The effect of this chronological revision is to open up considerably the interval of time in which Rutilius' trial may have occurred. A new *terminus post quem* is provided by Cicero's testimony that L. Licinius Crassus, the orator, was a consul at the time of Rutilius' trial.<sup>16</sup> Since Crassus was consul in 95, Rutilius came to trial no earlier than 94 and no later than 92 (observing Livy's sequence in *Per.* 70).

It may be possible to narrow the gap somewhat. First, nothing suggests a date late in the permissible interval. The highly compressed accounts of Velleius (2.13.2) and Florus (2.5.3-4), which merely mention Rutilius' trial in setting the stage for Drusus' tribunate, certainly need not imply an

<sup>14</sup>Cf., e.g., Pais (above, n. 5) 81, n. 1, without discussion. T. R. S. Broughton (*MRR*, 2.8-9, n. 6), Badian (*Studies* 158), and C. Nicolet (*L'ordre équestre* 1 [Paris 1974] 544) all consider the question momentarily, but accept the traditional date without demur. For Bauman (387), the date of the trial is "not in doubt."

<sup>15</sup>Badian, *Studies* 157-178, is surely right in the essential point that Sulla's expedition is to be identified with Ariobarzanes' original installation on the throne, thus obviating the need quite artificially to postulate a further expulsion and restoration, both conveniently missed by Justin. For 94, see A. N. Sherwin-White, "Ariobarzanes, Mithridates, and Sulla," *CQ* NS 27 (1977) 173-183, and G. V. Sumner, "Sulla's Career in the 90's," *Athenaeum* 56 (1978) 395-396. A. Keaveney, "Deux dates contestées de la carrière de Sylla," *EtCl* 48 (1980) 149-159, defends Badian's date against some of Sherwin-White's objections; see esp. 156-157 on the presence of Armenians, Sherwin-White's strongest point. (The expedition might also be placed slightly later in absolute terms, i.e. 95, to allow time for Tigranes to occupy Sophene.) Sherwin-White's argument from regnal years on the Cappadocian coinage is most speculative and vitiated by a new find (see B. C. McGing, *The Foreign Policy of Mithridates VI Eupator King of Pontus* [Leiden 1986, *Mnemosyne* Supp. 89] 79, n. 47). Even Sherwin-White's date of 94, however, does not require us to place Rutilius' trial later on the assumption that domestic events precede foreign affairs of the same year: see Sherwin-White 178-179. R. K. Bulin returns to the oldest candidate of all, 92 (*Untersuchungen zur Politik und Kriegsführung Roms im Osten von 100-68 v. Chr.* (Frankfurt 1983) 35-44, esp. 41, n. 33, but this is clearly too late on any account: quite apart from Badian's arguments on where Sulla's expedition is to be inserted in Justin's narrative, the chronology is much too dense, for Ariobarzanes must be expelled yet again in time for the senate to send out another mission, this time headed by M'. Aquillius, which arrived ca 91 (for the date, see Sherwin-White, *Roman Foreign Policy in the East*, 168 B.C. to A.D. 1 [Norman, Okla. 1981] 111-112). The year 93 too is impossible: Sulla had held the city praetorship before coming to Cilicia, but this was occupied by C. Sentius in 94 (*IG* IX.2 613 = *SIG*<sup>3</sup> 732).

<sup>16</sup>Cic. *Brutus* 115. My thanks to E. S. Gruen for bringing this point to my attention.

immediate chronological association. Nor does the reference in the perfect tense to Rutilius' exile in a Ciceronian dialogue set in 91 (*De or.* 1.230: *nunc talis vir amissus est*) imply that the event had only just occurred.

But two points can be made in favor of a date at the early end of the possible range. At *Brutus* 115, Cicero describes L. Crassus at the time of Rutilius' trial not as *censor*, as he was in 92, but simply as *consularis*. This could be significant, since Cicero is here clearly stressing Crassus' and Antonius' *dignitas*; but, of course, since censors did not take office at the beginning of the year, it would not in any case exclude a date very early in 92. Another approach is more fruitful. Rutilius was, of course, prosecuted for his actions in Asia as the legate and deputy of Q. Mucius Scaevola the Pontifex. The date of Scaevola's Asian command is an old controversy, but I hope that now the earlier of the two possibilities, ca 98/97, can be regarded securely as much the more probable.<sup>17</sup> If, then, Rutilius returned from Asia about 96 (surely not later than 95), a date for his trial as early as possible in the interval 94 to 92 is rather more likely than later. *A priori*, an extortion trial should, other things being equal, follow the return of an official from his province by not too great a length of time. Although Broughton has pointed out cases in which prosecutors wait a surprisingly long time for an atmosphere conducive to conviction, they are of dubious relevance to Rutilius' case, since they are instances in which timely prosecution was strongly discouraged for some time by external factors.<sup>18</sup> Precisely the reverse applies to Rutilius. The ancient tradition stresses the magnitude of the equestrian jurors' resentment towards Rutilius and Scaevola for their

<sup>17</sup>See my "Asconius 14-15 Clark and the Date of Q. Mucius Scaevola's Command in Asia," *CP* 84 (1989) 305-312, building on the earlier work of Balsdon (above, n. 4) and, more recently, B. A. Marshall, "The Date of Q. Mucius Scaevola's Governorship of Asia," *Athenaeum* 54 (1976) 117-130.

<sup>18</sup>*MRR* 2.5, n. 2, citing the extreme examples of Norbanus (a delay of perhaps eight years, ?103-?95) and Antonius (eight years, 84-76). (The further examples cited by Marshall [above, n. 17] 122, n. 21, are not compelling.) Closer examination has changed my mind on this point (cf. *art. cit.*, previous note, 311). In Norbanus' case, the strength of Saturninus and his friends in the last years of the century and Norbanus' service abroad (see below, n. 52) will clearly have made bringing him to book a difficult prospect before his return to Rome. By the time he was securely available, then, prosecution had been delayed for years already, and the ideal time having passed, it obviously had to wait until some supervening cause made it attractive again (see Badian, *Studies* 50, for one view). Similarly, Antonius Hibrida's alleged crime occurred when Rome was in the midst of civil war; again, the otherwise most appropriate time for a prosecution was impossible, and it had to await the return of settled conditions, and then a changed climate after Sulla's death. These charges had therefore lain dormant for years, and what is surprising and demands explanation in these cases is not that prosecution was so long delayed but that it eventually occurred at all. These exceptions therefore only illustrate the rule that it was most effective to strike while the iron was hot.

unsporting severity toward the *publicani* in their province,<sup>19</sup> and a potential prosecutor must have exploited this advantage as soon as possible before it could ease with the passage of time. The year 95, however, was inauspicious for prosecution because Rutilius' friend and formal superior at the very time of the alleged offense, Scaevola, then held the consulship. The indictment will have come immediately thereafter.

This does not prove that the date of the trial was ca 94, but little in this obscure decade is proved according to the standards that apply in other periods. It is clear, however, that the traditional date of 92, with all that it implies about the immediate antecedents to Drusus' reforms, not only cannot be relied upon, but is indeed less likely than an earlier date. This should give us pause in view of what has already been established about the likelihood of exaggeration of the event's significance in the historical tradition, and the lack of clear testimony to a close association between Rutilius' conviction and the judicial reform bill of 91.

But there remains a further line of defense for the traditional view: Was Rutilius not at the center of the *factio nobilitatis* which wielded so much power in the 90s? And if so, was his condemnation not above all a factional attack, answered precisely by Drusus, another "Metellan" after all (so the account goes), in 91?

### III

Badian, in a masterly and highly influential article of 1957, first postulated the existence of what he called the *factio nobilitatis* in the 90s, whose major figures, clustered around the family of the Metelli which had been so prominent in the last decades, included the *princeps senatus* M. Aemilius Scaurus, the orator L. Crassus, the *triumphator* Q. Lutatius Catulus, Scaevola the Pontifex, and Rutilius Rufus, as well as various minor, that is younger, figures such as Servilius Caepio the younger and Livius Drusus (*Studies* 34-70). The underlying nature of politics in the 90s was revealed as the sparring between "Metelli," as this group is often called, and another group clustered around Marius. Rutilius, according to Badian (*Studies* 43 [cf. 40], 57-58), stood "at the very heart" of this group, and thus his conviction was seen as a major blow against it, the opening salvo of a factional struggle that broke out in earnest in the tribunate of Drusus in 91. Badian's picture of a strongly cohesive "Metellan faction" was embraced by E. S. Gruen in his important study of Roman politics and the criminal courts, and despite objections by scholars of the stature of C. Meier and

<sup>19</sup>Livy *Per.* 70; Vell. *Pat.* 2.13.2; Val. *Max.* 2.10.5, 6.4.4; Dio *F* 97.1; cf. Cic. *Fam.* 1.9.26. This point in the tradition is, I think, unshakeable, and is not vitiated by the tendency to exaggerate the significance of the trial.



P. A. Brunt, its appearance without comment in some recent works suggests that it remains fundamental to prevailing current views.<sup>20</sup> Let us review the evidence thought to associate Rutilius with a "Metellan group."

Rutilius was for all practical purposes a *novus homo*, as the only plausible ancestor attested in public office in Rome, perhaps his father or grandfather, is not known to have advanced beyond the tribunate, which he held in 169, and indeed was disenfranchized after a sharp clash with the censors of that year (Livy 43.16, 44.16.8).<sup>21</sup> Rutilius stands out most clearly toward the end of the second century as a loyal supporter of his commander in the Jugurthine War, Q. Metellus Numidicus. Hence the explicitly attested hatred of Marius (Plut. *Mar.* 28.5), probably exacerbated when Marius took over the army Rutilius had painstakingly trained as consul in 105 for use against the Cimbri (Frontinus *Str.* 4.2.2). Rutilius was conspicuous in the suppression of Saturninus in 100 (Cic. *Rab. perd.* 21), as was to be expected of a follower of Metellus, banished for his refusal to swear to Saturninus' agrarian law. The other close association for which we have evidence was to Scaevola the Pontifex, his friend and commander in Asia, and Scaevola's father.<sup>22</sup> Links by marriage to the Livii Drusi and the Aurelii Cottae exhaust our knowledge of Rutilius' connections.<sup>23</sup>

Close association with Numidicus and hostility toward Marius are clear enough. But does this place Rutilius squarely in the center of the "Metellan group"? The very existence of a "Metellan group" at this time seems doubtful. It needs to be stressed yet again that there was no prominent

<sup>20</sup>Gruen, *Roman Politics* 185–214, and "Political Prosecutions," *passim*; Meier, review of Badian's *Foreign Clientelae*, *BonnJbb* 161 (1961) 508–509, and Meier 220, n. 86, and 264, n. 359; Brunt 445–446 (cf. 458–460); I. Shatzman, "Scaurus, Marius and the Metelli," *AncSoc* 5 (1974) 197–222, is more concerned to dissociate Scaurus from the "Metelli" than to dismantle the notion of a "Metellan group," but cf. his remarks at 198–199 on the evidence of personal rather than family-factional aims. T. J. Luce, "Marius and the Mithridatic Command," *Historia* 19 (1970) 161–194, at 177–179, takes a position in between, but it is not clear that his concept of "political splinter groups" satisfactorily resolves the difficulties. See also Mitchell 16–21. For recent references to "Metellans" in the 90s, see, e.g., Rossi (above, note 2) 297–320 *passim*; Bauman 374; B. A. Marshall, *A Historical Commentary on Asconius* (Columbia, MO 1985) 137. The use of the word *factio*, however, passed from fashion after R. Seager, "*Factio*," *JRS* 62 (1972) 53–58.

<sup>21</sup>For this and a survey of Rutilius' career, see Münzer, *RE* 1A (1920) 1269–80. For a broad definition of *novitas*, see esp. P. J. J. Vanderbroek, "*Homo novus* Again," *Chiron* 16 (1986) 239–242.

<sup>22</sup>For friendship with the Pontifex, see esp. Diod. 37.5.1. Rutilius in his youth attended the Pontifex's father P. Scaevola (cos. 133), from whom he learned the civil law (Cic. *Off.* 2.47; cf. Pomp. *apud Dig.* 1.2.2.40).

<sup>23</sup>Rutilius' wife was a Livia, probably a sister of the consul of 112 who had opposed C. Gracchus in his tribunate and aunt of the tribune of 91: see Badian, *Studies* 40; Pliny *HN* 7.158, Val. Max. 8.13.6. Rutilius' sister married a M. Aurelius Cotta (Cic. *Brutus* 115, *De or.* 1.229; Asc. 67c; cf. Badian, *Studies* 38–39).

Metellus in the mid-90s.<sup>24</sup> The great Numidicus returned from exile to Rome in 98, and immediately disappears from our evidence; he was said to have been a broken man<sup>25</sup> and probably either died soon thereafter or retired from political life.<sup>26</sup> The dominance of the Metellan family was, in fact, in abeyance: Numidicus' son Pius (*cos.* 80) was still too young to take up the reins his father had let fall, and the only consular Metellus active in this period, Nepos (*cos.* 98), a cousin of Numidicus, appears to have been a virtual nonentity, leaving little trace in our evidence.<sup>27</sup> The problem, therefore, in continuing to speak of a "Metellan group" after 98, usually conceded as a matter of convenience, is more than one of mere nomenclature. At the very least, Meier and Brunt have taught us not to assume that Roman political groups had virtually a life of their own, above and beyond the personal and other, perhaps even ideological, affinities of the individuals that made them up.<sup>28</sup> With the exit of Numidicus from the political stage ca 98 and without another Metellus of distinction to carry on the family's tradition of leadership, we must expect significant shifts and adjustments among the men who had clustered around him in the crises of the end of the last century.

Numidicus' mantle as the *optimatus* figurehead will necessarily have fallen on M. Aemilius Scaurus. Consul in 115, censor in 109, *princeps senatus* for the last two decades, and, in Cicero's opinion second only to Metellus Numidicus in those sacred qualities of *constantia* and *gravitas* (*Fam.* 1.9.16), Scaurus was a figure of immense authority and power who "nearly controlled the world," as Cicero once put it, "with a nod of his head."<sup>29</sup> Scaurus' name emerges regularly in connection with *optimatus* causes of the 90s, confirming our impression of his prominence at this time. He had recently joined in the attack on Norbanus, he may have inspired the *lex Licinia Mucia*, he later drew the fire of Q. Servilius Caepio in 92 and 91, and was a prominent supporter of Drusus' proposal for the reform of the juries.<sup>30</sup>

<sup>24</sup>Meier (above, n. 20) 508; Brunt 445, n. 3.

<sup>25</sup>Cic. *Fam.* 1.9.16: *fracto animo et demisso*. Cicero, however, has personal reasons to disagree with this general view.

<sup>26</sup>Badian has recently suggested that he retired from politics in 98 and died around 90 ("Saturninus," 140, n. 90).

<sup>27</sup>Cf. Münzer, "Q. Caecilius Metellus Nepos (no. 95)," *RE* 3 (1899) 1216, where his life is treated in one short paragraph.

<sup>28</sup>In addition to their criticism of the notion of the "Metelli," cited above, n. 20, see esp. Meier (above, n. 20) 510–513 and Meier 162–190; Brunt, review of Meier's *Res Publica Amissa*, *JRS* 58 (1968) 230–232, and Brunt 351–381, 443–502—going too far in the opposite direction, but salutary nonetheless.

<sup>29</sup>Font. 24. Cf. *De or.* 1.214: *vir regendae rei publicae scientissimus*.

<sup>30</sup>Norbanus: Val. Max. 8.5.2; Caepio: Asc. 21–22c (cf. Val. Max. 3.7.8, Pliny *HN* 36.116, *Vir. Ill.* 72); Drusus: Cic. *Dom.* 50, Asc. 21c. For Scaurus and the *lex Licinia Mucia*, cf. Cic. *De or.* 2.257 with P. Fraccaro, *Opuscula* 2 (Pavia 1957) 132–135, accepted

The change at the top must have brought with it certain dislocations in political associations. Possibilities for accommodation with former rivals, and for striking out on an independent path, presented themselves; an important example is provided by L. Crassus, normally regarded as a "Metellan," who, significantly, had forged a marriage-connection with Marius by 95.<sup>31</sup> Rather than signalling a truce between "Metellans" and Marius, this event suggests that Crassus, having reached the consulship in 95, was able to take an independent line and forge a connection with a man from whom he had previously been estranged.<sup>32</sup> Certainly, the veto by his colleague Scaevola of his claim to an eagerly sought triumph in 95 hardly implies "Metellan" solidarity! Indeed on the face of it we should infer some friction at this time between the two men, who otherwise are supposed to have enjoyed a noteworthy friendship.<sup>33</sup> Nor does Crassus' joining with Scaevola in proposing the *lex Licinia Mucia* against illegal usurpation of Roman citizenship suggest adherence to a "Metellan" party line, as it were, against Marius. The motivation for this law need not have been anti-Marian animus, for Marius' grants of citizenship were in fact immune, as an attempt shortly afterwards to use the law to attack one of their beneficiaries showed.<sup>34</sup> Crassus was at the peak of his powers in the courts, and having reached the consulship in 95, he was ready to assume his place among the *principes civitatis* alongside, not behind, Scaurus.

---

cautiously by Badian, *Studies* 43 (cf. 68, n. 39), more confidently by Gruen, *Roman Politics* 202.

<sup>31</sup>Cic. *De or.* 1.66, 3.8; *Att.* 12.49.1, 14.8.1. For the date of the betrothal, see Gruen, "Political Prosecutions," 43, n. 67, on Cic. *Balb.* 49. Badian had previously urged 94 or 93 ("Q. Mucius Scaevola and the Province of Asia," *Athenaeum* 34 [1956] 104-123, at 112, n. 4).

<sup>32</sup>Truce: Badian, *Studies* 57, 170. His chronology was, of course, different (see previous note), and he accepts that Crassus "seems less closely tied to the *factio*" than others (43). At some time during Marius' wars against the Germans Crassus was believed by Cicero to have been *alienus* towards the general (*Prov. Cons.* 19). This is not to be assumed of the later 90s (so Bauman 346, n. 36), nor should the sense of *alienus* be weakened (so Shatzman [above, n. 20] 199-200, and Brunt 369, n. 63, and elsewhere, failing to note that at *Prov. Cons.* 19 Marius' *alieni* are brought very close to *inimici*; see *OLD* s.v. *alienus*, 7a).

<sup>33</sup>For Crassus' determination to win a triumph, see Cic. *Inv. rhet.* 2.111, *Pis.* 62; *Asc.* 14c. Friction is noted too by Bauman 346-347. Their friendship is inferred by the respectful remarks given Crassus in the *De Or.* (1.180) and their holding all magistracies together except the tribunate and censorship (*Brutus* 161); this need not imply close political cooperation.

<sup>34</sup>The trial of T. Matrinius: Cic. *Balb.* 49. For anti-Marian motivation for the law, see Badian, *Studies* 48-49, and *Foreign Clientelae* (Oxford 1958) 212-214; *contra*, Brunt 131; see now too A. Keaveney, *Rome and the Unification of Italy* (London and Sydney 1987) 80-83. Cf. Gruen, "Political Prosecutions," 47-48, and *Roman Politics* 201-203 for a more complex view of the political implications of the law. For Scaevola's part in the law, see Bauman's recent, lengthy exploration (366-370).

Others too will have declined to fall in behind Scaurus, who was known for a harsh disposition,<sup>35</sup> and whose integrity was not above suspicion.<sup>36</sup> A clear case in point, I think, is provided by the younger Q. Servilius Caepio, whose sudden break with members of the supposed Metellan group early in the 90s has caused puzzlement.<sup>37</sup> But his turnabout, probably to be dated ca 97,<sup>38</sup> coincides neatly with the date of Metellus Numidicus' retirement or death, while we know that Caepio had been a personal enemy of Scaurus for some time before 91.<sup>39</sup> A redefinition of his political position after 98 is only to be expected, therefore, and the break with Drusus ca 97 may be an important sign of such a realignment.<sup>40</sup> Caepio has been regarded as the "weak point" of the Metellan *factio* in 95, but this depends simply on his having been defended by L. Crassus (Badian, *Studies* 43). As we have seen, Crassus himself defies simple classification, and was at this time the father-in-law of Marius' son. Caepio's change of course is probably the result of the effective disappearance of Numidicus as a galvanizing force for optimum sentiment, combined with personal antagonism towards Scaurus himself.

With these examples in mind, it seems probable that the underlying political current in the mid- to late 90s was not the continuing skirmishing between "Metelli" and "Mariani," but the dissolution and fragmentation of the old circle which had focused on Numidicus and the establishment of a complex array of new alliances—an important "sea-change" which has been obscured by adherence to a overly rigid model of Roman political groups and which may well help explain the volatility of politics in the latter half of the decade.

<sup>35</sup>He and Rutilius are characterized by Cicero as *uterque natura vehemens et acer*: *Brutus* 113. Cf. also *Off.* 1.108 for his *singularis severitas*.

<sup>36</sup>Sallust, notoriously, judged him a *homo nobilis inpiger factiosus, avidus potentiae honoris divitiarum, ceterum vitia sua callide occultans* (*Iug.* 15.4). R. L. Bates, "Rex in Senatu: A Political Biography of M. Aurelius Scaurus," *ProcPhilSoc* 130 (1986) 251–288, attempts without great success to rehabilitate Scaurus' reputation. Pliny the Elder refers to him as *Mariani sodalicii rapinarum provincialium sinus* (*HN* 36.116). For discussion of the phrase, and in particular the question whether it suggests political cooperation with Marius, cf. E. Frank, "Marius and the Roman Nobility," *CJ* 50 (1955), 149–152, at 150; Badian (above, n. 31) 120, n. 3, and *Roman Imperialism in the Late Republic*<sup>2</sup> (Oxford 1968) 41–42, 101, n. 39; Gruen, "Political Prosecutions," 58–59; Shatzman (above, n. 20) 202; Mitchell 14, n. 45. For Scaurus' rapacity cf. also Asc. 19c, with Marshall (above, n. 20) 124–125.

<sup>37</sup>See Badian, *Studies* 39–44, and Gruen, "Political Prosecutions," 44–45, for details and sources.

<sup>38</sup>Cf. Badian, *Studies* 42; Marshall (above, n. 20) 137.

<sup>39</sup>A *vetus inimicus* (Asc. 22c)—despite Scaurus' support for his father in 103 (Cic. *De or.* 2.197).

<sup>40</sup>The precipitant of the quarrel was, we are told, a ring (Pliny *HN* 33.1.20). Badian conjectures that Drusus had divorced Caepio's dissolute sister (*Studies* 41).

This shift must have considerably weakened the position of P. Rutilius Rufus. His old patron, Numidicus, was off the political scene, and there is no sign of cooperation or friendship with Scaurus, now the leading personality in optimate circles. Indeed, the two men had clashed bitterly in their prime: in 116 Scaurus survived an *ambitus* charge brought by Rutilius and went on not only to beat him in the consular elections, but to charge his former accuser with the same crime.<sup>41</sup> Rutilius was acquitted, but it was a full decade before he finally reached the consulship in 105, a protracted delay that can only have aggravated his resentment. For Badian, all was forgiven and forgotten by the 90s,<sup>42</sup> but there is no reason to assume this in the utter absence of evidence for *amicitia* between the two men, especially when we recall Cicero's joint characterization of Rutilius and Scaurus as *natura vehemens et acer* (*Brutus* 113). These were difficult men; neither will have found cooperation easy even in the best of times, and their memory of injuries was doubtless long. Nor is it likely that Scaurus had much sympathy with Rutilius' and Scaevola's self-righteous stand for scrupulous governance of provincials if his reputation for highly questionable financial activities in the provinces had any substance.<sup>43</sup>

Where did Scaurus stand when Rutilius' crisis came? We have only one piece of evidence: in A.D. 22 Scaurus' great-grandson Mam. Aemilius Scaurus believed that he had joined in the prosecution.<sup>44</sup> Was Mamercus muddled? Of the arguments Badian gives for thinking so, only one is strong: despite all the publicity Rutilius' conviction received, Scaurus' presence on the prosecution bench is recorded or suggested by no other source, even where the context would be most suitable.<sup>45</sup> On the other hand, if, as

<sup>41</sup>Cic. *Brutus* 113, *De or.* 2.280. See Badian, *Studies* 106–107; Gruen, *Roman Politics* 120–122.

<sup>42</sup>Badian, *Studies* 40 (cf. 109), and "From the Gracchi to Sulla (1940–59)," *Historia* 11 (1962) 197–245, at 220. But see Badian (above, n. 4) 24.

<sup>43</sup>Pliny *HN* 36.116, quoted above, n. 36. The view that Scaurus had called for the restoration of clean government in Asia would be paradoxical, to say the least, were it not also a insubstantial hypothesis: see my article cited above, n. 17, 310.

<sup>44</sup>Tac. *Ann.* 3.66. Badian, *Studies* 105–111, argues convincingly that Mam. Scaurus at least had in mind Rutilius' trial in the 90s—the famous one, after all—rather than the quite obscure prosecution in 116 for *ambitus*, mentioned above. Badian notes that the other two trials cited by Scaurus were both extortion cases, nominally in behalf of the allies (like the case of A.D. 22, participation in which he was now attempting to justify), undertaken by leading statesmen; they were also *causes célèbres*. One may add what was surely most to the point of Mam. Scaurus, that like his attack on Silanus, these were all historical examples of consulars prosecuting consulars—a most unusual type of behavior, appropriate only for the most grievous crimes.

<sup>45</sup>Badian, *Studies* 108, with 111, n. 13. Scaurus, though afflicted with gout (*Asc.* 22c), shows no lack of energy in these years, as we have seen. Nor need our knowledge of the name of a person whom Athenaeus refers to as "the one responsible for Rutilius' exile" (*Apicius*: 4.66) preclude the possibility that Scaurus cooperated with the prosecution. *Apicius*' "responsibility" did not prevent Marius from sharing in it (*Dio F* 97.3).

Badian urges, Mam. Scaurus was simply wrong, due to his notorious laziness (Sen. *Controv.* 10, *praef.* 2-3), this gross error about what was clearly one of the best-known cases of the not-so-distant past would not have gone unnoticed, and Tacitus would have gleefully derided the confusion of this *obprobrium maiorum* about his own family's history. The absence of reference to Scaurus' service to the prosecution in our fullest source, Cicero, may therefore be due only to piety to the memory of the great man. But it is clear that we cannot press this point. For our purposes it is enough to note that a judicial confrontation between Scaurus and Rutilius stood out in Mamercus' perhaps vague memory. It is thus probably not a mere accident of our evidence that there is no sign that the *princeps senatus* threw his support behind Rutilius at the critical moment—a significant point, in view of the tendency for senators to close ranks behind influential defendants under serious threat.<sup>46</sup>

At Rutilius' trial, indeed, only two men spoke in his behalf: Scaevola, under whose nominal command Rutilius had allegedly committed the crimes of which he was accused, and who spoke rather less stirringly than was required for this kind of case, and Rutilius' nephew C. Cotta, still relatively young at thirty and distinctly lacking in *auctoritas*.<sup>47</sup> Cicero believed that Rutilius could have called for assistance upon the current masters of the courtroom, M. Antonius and L. Crassus, but did not want their help (*eorum adhibere neutrum voluit*, *Brut.* 115); although Cicero implies that the reason was Rutilius' insistence upon a "Socratic" defense, we have had reason to doubt the integrity of the historiographical tradition. (If he merely wanted to play the martyr<sup>48</sup> why share the spotlight with Scaevola—and risk his friend's embarrassment?) Even if we accept the tradition of a "Socratic" stance, this may only have been making a virtue of a necessity.

The key probably lies in the association of Antonius and Crassus with Marius in the mid-90s. Badian has argued persuasively that Antonius was cooperating conspicuously with Marius around mid-decade, and it seems likely that this goes back to Antonius' consulship in 99 at least, when he had failed to bring before the senate the question of Numidicus' restoration.<sup>49</sup> He had given a spectacular performance in defense of Marius' friend

<sup>46</sup>Cf. Brunt 372-376. Scaurus, as we noted above (n. 39), had conspicuously supported the elder Q. Servilius Caepio in his *gravis miserabilis casus* of 103. Bates (above, n. 36) 273 assumes without evidence that Scaurus gave testimony for the defense.

<sup>47</sup>Cic. *Brutus* 115; *De or.* 1.229. Cotta was *admodum adulescens* (*Brutus* 115); on the phrase, see now Badian, "Three Non-Trials in Cicero," *Klio* 66 (1984) 291-309, at 302-303, with n. 50.

<sup>48</sup>So Gruen, "Political Prosecutions," 53; Badian, *Publicans* 91.

<sup>49</sup>Badian, *Studies* 46-51, and esp. now "Saturninus," 122-124, 137-147; *contra*, Gruen, "The *Lex Varia*," *JRS* 55 (1965) 59-73, at 67-68, and "Political Prosecutions," 47; Brunt 376; Mitchell 23-26. Gruen however accepts that Antonius was one of Marius' first allies in his attempt from 97 to regain his former *dignitas* ("Political Prosecutions," 39-40).

M'. Aquilius which was still fresh in men's memory,<sup>50</sup> and recently he had gained acquittal for the disreputable *popularis* C. Norbanus.<sup>51</sup> Antonius, of course, is represented by Cicero as explaining to Crassus and others that in the latter case he acted purely out of loyalty to an ex-quaestor.<sup>52</sup> This may be no more than Ciceronian pious fiction, but in any case Antonius is likely enough to have explained himself in such terms to the *boni viri*, who clearly did not approve.<sup>53</sup> A better explanation of Antonius' readiness to value *pietas* to a former subordinate higher than his reputation with the *boni* may lie in his cooperation with Marius at this time.<sup>54</sup> Crassus, on the other hand, had, as we have seen, become by 95 a relative of Marius, and had been severely embarrassed in 95 by his consular colleague Scaevola's obstruction of his request for a triumph (above, note 33).<sup>55</sup> This evidence alone would suggest that Rutilius and Crassus were not on the best of terms ca 94; but there is more. Rutilius' known criticism of Crassus' oratory clearly implies more than rhetorical disagreement, for it reveals strong disapproval of appeals to popular sentiment and of the entire notion that a senate ought to serve the people.<sup>56</sup> The pattern is consistent: Rutilius' friend and sole supporter at his trial from the ranks of the *principes*, Scaevola the Pontifex, can be cleared of imputations of Marian associations.<sup>57</sup>

Antonius and Crassus are not to be considered "Mariani" in the later 90s—the ex-censor and consular, great orators both, could stand well enough on their own—but their association with Marius will have compromised them in the eyes of his enemy Rutilius and made them dubious choices as allies in the crisis, in which Marius himself was thought, probably rightly,

<sup>50</sup>Livy Per. 70; Cic. Verr. 5.3; for Marius' part in the defense, see *De or.* 2.196. For the date, see Gruen, "Political Prosecutions," 39 (ca 97); Badian, *Studies* 45–46, and now "Saturninus," 123, with n. 50, and 142 (ca 95).

<sup>51</sup>Cic. *De or.* 2.107, 124, 197–203; *Off.* 2.49; Val. Max. 8.5.2. For the date of Norbanus' trial (95?), see Badian, *Studies* 35–36.

<sup>52</sup>*De or.* 2.198, 200; accepted at face value by Gruen, "Political Prosecutions," 47, Brunt 376, and (apparently) Mitchell 31–32. For varying dates of Norbanus' quaestorship under Antonius, see Gruen, "The Quaestorship of Norbanus," *CP* 61 (1966) 105–107 (99), and Badian, "The Silence of Norbanus," *AJP* 104 (1983) 156–171 (101 and 100).

<sup>53</sup>Cf. Luce (above, n. 20) 176–177, n. 67.

<sup>54</sup>As Badian has long argued: *Studies* 46–51, and esp. now "Saturninus," 122–124. Mitchell 31–32, however, denies any association.

<sup>55</sup>Cf. Bauman (347), also noting Crassus' absence from Rutilius' defense.

<sup>56</sup>Cic. *De or.* 1.225–227; note *turpiter et flagitiose dicta*—not mild criticism! Badian (*Studies* 43–44) speaks of Rutilius' "distrust" of Crassus; Bauman (347), perhaps less attached to the idea of a cohesive Metellan faction, seems more on the mark: Rutilius "did not like Crassus."

<sup>57</sup>He is hardly to be imagined as an *adfinis* of Marius (so Badian, *Studies* 44, 58 [still preferred in *Publicans* 148, n. 39], accepted by Gruen, "Political Prosecutions," 40, 48, 54) through the marriage of his second cousin's granddaughter, the daughter of Crassus (above, n. 31) to Marius' son: see Bauman 368–369, 397–398. For *adfinitas*, see below, n. 65.

to have had a hand (Dio F 97.3). Even if we cannot conclude with certainty that Marius engineered the prosecution of Rutilius, he must have been pleased with the outcome, and we are told that he was held partially responsible.<sup>58</sup>

Far from being at the center of a powerful faction, it appears then that Rutilius was left after the decline or death of Numidicus and the subsequent rearrangement of political associations without powerful support at the time of his trial. That, more than his austere oratory,<sup>59</sup> cost him dearly. Likely enough, he was prosecuted rather than his nominal superior Scaevola because he was politically more vulnerable and the chances of conviction were correspondingly greater—although of course the possibility that a better case could be built against him than against Scaevola should not be ignored, in view of Rutilius' control over the tradition that advertized him as indubitably innocent.<sup>60</sup> Rutilius may well have been in the province of Asia after Scaevola's departure longer than Scaevola himself, who had spent only nine months there (Cic. Att. 5.17.5), and explicit senatorial approval of Scaevola's provincial edict (Val. Max. 8.15.6) may have made the proconsul, at least, untouchable. But while Rutilius was an easier target, the condemnation of a consular, regardless of his political position, was of high symbolic value if the *equites* wished to serve notice of their displeasure at overly stern supervision of the activities of the *publicani* in Asia.<sup>61</sup>

The condemnation of Rutilius, then, though doubtless mourned by some (as Antonius is made to do at Cic. De or. 1.230), was not a serious blow to any of the leaders of the state except perhaps Scaevola the Pontifex. Certainly Scaurus, who perhaps mattered most, had little reason to grieve—or to retaliate. The lack of senatorial solidarity behind Rutilius—indeed, his striking isolation—makes clear that the trial was not seen at the time as a

<sup>58</sup>However Gruen ("Political Prosecutions," 54) is right to object to overemphasizing Marius' role in the trial, attested only in Dio, and that indirectly, in the face of the strong tradition that blames equestrian hatred (for which see sources cited above, n. 19).

<sup>59</sup>For which see esp. Cic. Brutus 114–115; De or. 1.229.

<sup>60</sup>Above, 123; see Gruen, "Political Prosecutions," 55. See however Bauman 396–400 for the argument that Scaevola's priesthood saved him from prosecution. For Badian's view that Scaevola was saved because of *adfinitas* with Marius, see above, n. 57.

<sup>61</sup>See above, nn. 19 and 58, with Gruen, "Political Prosecutions," 54, and indeed Badian, *Publicans* 90–91, against Nicolet ([above, note 14] 546–549) and Badian, (*Studies* 57–58), who stress Marian inspiration. See also now Bauman (390–396), who argues that Rutilius was condemned above all for accepting bribes (from Mithridates) rather than extortion, and thus that the underlying issue was Roman foreign policy in the east, not the protection of equestrian interests. His conclusion cannot be accepted in the face of explicit testimony that Rutilius was condemned under the law against extortion (cf., e.g., Vell. Pat. 2.13.2; Livy Per. 70). Bauman's best evidence, Dio's corrupt ὡς δωροδοκῆς . . . >, is probably only a rough Greek approximation of *repetundarum*, particularly since the penalty Dio mentions, involving a *litis aestimatio*, is, as Bauman himself argues, appropriate only to an extortion charge.



crucial test of the senate's position in the state.<sup>62</sup> The real issue of Rutilius' trial, regardless of his guilt or innocence, was surely the obvious one: whether the strict stance he had taken in Asia on control of the *publicani* (and incidentally, on the restriction of their opportunities to share the profits of empire with the senatorial order)<sup>63</sup> was to be accepted politically. It was not. We need only compare the overwhelming evidence of equestrian hostility to Rutilius and Scaevola (above, note 19) with the complete absence of corresponding evidence of strong senatorial backing for Rutilius to see that few senators saw their interests intimately bound up with Rutilius' fate. Scaevola, Rutilius, and the obscure L. (Sempronius?) Asellio might choose to make a point of preferring the rights of the allies to the interests of the *publicani*,<sup>64</sup> but few senators will have wished to take that risk if they did not merely think it an odd inversion of priorities. We have seen already that Scaurus will not have cared to fight this battle in behalf of scrupulosity. Rutilius was thus sacrificed to placate the *equites*, who, once appeased, returned to old habits of leniency in the judicial battles of the senators. As noted already (above, 126), further trials before the *lex Varia* of 90 do not reveal the dawning of a new age of judicial severity—quite the contrary: they end in acquittal without exception.

M. Livius Drusus himself—nephew of Rutilius' wife (see above, note 23, for the connection)—may not have been indifferent to Rutilius' fate. If so, that is perhaps why he was chosen to put Scaurus' plan into effect in his tribunate of 91. But we should not stress the connection unduly. Drusus' relationship to Rutilius was not one recognized formally in Roman law or custom,<sup>65</sup> and not one ancient source so much as mentions it, even of those, surveyed above, which draw some connection between the trial of Rutilius and Drusus' activity as tribune. And, in any case, the initiative for the judicial proposal came from above; Drusus was an agent, however obliging. Still, it would be surprising if he refrained from exploiting the case for his own purposes and presenting it as the most recent and blatant example of equestrian injustice. Perhaps the trial became a *cause célèbre* already in 91.

<sup>62</sup> *Contra* Badian, *Publicans* 91–92, who surely exaggerates in asserting that the conviction meant to contemporaries that “the Senate had lost the power of governing,” indeed more, that “Rome had become ungovernable.”

<sup>63</sup> Which, of course, gives special point to the charge of extortion.

<sup>64</sup> Note Diodorus' stress on these special examples of upstanding provincial administration in the 90s, presumably drawing on Posidonius: 37.4–8. See also my article (above, n. 17) 310–311.

<sup>65</sup> See esp. Paulus *apud* Dig. 38.10.10.14 for uncles and aunts, who are not recognized across blood lines, and Modestinus *apud* Dig. 38.10.4 for *adfinitas*, which does not extend beyond the immediate family of the married couple and direct lines of ascent and descent therefrom. There is no example before Seneca of *avunculus* or *patruus* to describe the husband of *matertera* or *amita*. The common habit of referring to Rutilius and Drusus as “uncle” and “nephew” respectively is therefore rather misleading.

## IV

Revision of the date and a reassessment of the political circumstances of Rutilius' trial reveal a rather more complex picture of the immediate prelude to the crisis at the end of the decade than has hitherto obtained. Rutilius' conviction, to be dated ca 94, was merely an episode of Roman politics in the 90s, in which the attempt of a few individuals to subject the activities of the *publicani* to particularly strict scrutiny was effectively halted by a strong equestrian reaction, encouraged, if anything, by the complete failure of the senatorial order to close ranks behind the old consular. There is no good evidence (if the encomiastic tradition, focusing above all on the ethical dimension of the trial, be properly evaluated) to support the view that the event was the opening move in civil dissension or a virtual declaration of war between *equites* and senate. Rutilius stood almost alone, isolated by the fragmentation of the group once led by Metellus Numidicus. Thus the truer antecedents of the proposal for judicial reform of 91 come into clearer focus: the battle in the courts between Servilius Caepio and Scaurus, and the hostility between the orders which it stirred up.

*Fortuna* handsomely compensated Rutilius, who departed into glorious exile at Mytilene, then Smyrna, adored, we are told, by his alleged victims, the inhabitants of the cities of Asia Minor.<sup>66</sup> It is an irony of history that Rutilius' exile not only saved him from the Marian massacre of 87, but also offered the pleasure of revenge and ensured the immortality of his fame. He spent his remaining years writing an apologia which traduced the memory of Marius<sup>67</sup> and is no doubt responsible for the overwhelmingly favorable verdict on himself that has come down to us from antiquity. Rome he left entirely behind: he even rejected Sulla's personal invitation to return and crown the *victoria nobilitatis*.<sup>68</sup> Puzzling behaviour—unless we suppose that, like another parvenu of the next generation, Rutilius keenly felt his betrayal by the very men for whose primacy he had stood. Perhaps he did not care to share their triumph.<sup>69</sup>

DEPARTMENT OF CLASSICS  
UNIVERSITY OF TORONTO  
TORONTO, ONT., M5S 1A1

<sup>66</sup>Val. Max. 2.10.5; Dio F 97.4. See Münzer, *RE* 1A (1920) 1275–76, for sources and known details of the remainder of Rutilius' life.

<sup>67</sup>For a taste of Rutilius' acerbity, see Plut. *Mar.* 28.5, *Pomp.* 37.3.

<sup>68</sup>Quint. 11.1.12; Dio F 97.4. For the phrase, see Cic. *Rosc. Am.* 135.

<sup>69</sup>Only when this article was in page proofs did I discover that J.-L. Ferrary has anticipated the chronological point I make about the sequence of Livy *Per.* 70 (above, 127), while still holding to 92 as the most probable date for Rutilius' trial: see "Les débuts oratoires d'Hortensius," in *Mélanges P. Wuilleumier* (Paris 1980) 107–112, at 112, with n. 21.