

Politics and the Courts in 104 B.C.

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A glance at the consular *fasti* for the years 123–109 B.C. will show swiftly and conveniently that the Caecilii Metelli controlled the most powerful senatorial faction of the period. Consulships and censorships alike were dominated by members of the clan or their in-laws.¹ So striking is the list of distinguished Metelli and their political supporters that a wholesale change in the traditional pattern of senatorial politics has even been suggested. The old pattern of several small factions with relatively equal influence and a shifting, fluid balance of power now gave way, it is alleged, to a strangle-hold by the Metelli.² The first serious blow at Metellan supremacy was struck by the election of Marius to the consulship of 107 and the ostentatious replacement of Metellus Numidicus in the command against Jugurtha.³ The disaster at Arausio in 105 further demonstrated incompetence in the field; among the consequences was the disgrace of Q. Caepio, an ally of the Metellan faction.^{3a} Marius' stock rose rapidly in the succeeding years, but there is little to indicate widespread support

¹ Six consulships alone in this period were held by members of the Metellan family. Of the three censorial colleges, two included a Metellus and the third had M. Aemilius Scaurus who married into the family. On the magistrates for these years, see T. R. S. Broughton, *The Magistrates of the Roman Republic* (New York 1951–52) 1.512–48 (**MRR**). Cf. the brief analysis of G. Bloch and J. Carcopino, *Histoire Romaine* (Paris 1940) 2.276–78.

² T. F. Carney, *A Biography of Marius, Proc. Afr. Class. Ass.*, Supp. 1 (Assen 1961) 20–21, note 102.

³ Sallust, *Jug.* 73.7, 82.2, 84.1, 85.10; Plutarch, *Marius* 7–9. On Marius' campaign for the consulship, cf. A. Passerini, *Athenaeum* 12 (1934) 22–32; Weyand, *RE* 6 Suppl. [1935], s.v. "Marius," 1376–79; E. Valgiglio, *Plutarco: Vita di Mario* (Firenze 1956) 32–44; Carney, *A Biog. of Marius* 26–28; J. Van Ooteghem, *Les Étud. Class.* 32 (1964) 154–61.

^{3a} For the sources on Arausio, see Broughton, *MRR* 1.555, 557. For Caepio's disgrace, see esp. Asconius 78, Clark. Trial and conviction for *perduellio* were to come in 103; cf. J. Lengle, *Hermes* 66 (1931) 302–16.

among the senatorial nobility.⁴ One might well ask whether enemies of the Metelli in the senate took the opportunity to re-group an opposition to the dominant *factio* along the traditional lines of aristocratic politics.

Preoccupied as the sources are with foreign affairs, the Jugurthine scandals, and the rise of Marius and Saturninus, they give short shrift to senatorial in-fighting in the period between the Jugurthine Wars and 100 B.C. Yet the evidence from criminal trials, so frequently employed for political purposes in Rome, may provide some leads. Testimony is scanty, but four prosecutions are attested in or around the year 104. This arouses suspicion of political maneuvering, and the four may not be unconnected.

At some unspecified time, a certain T. Albucius had served as *propraetor* in Sardinia, largely, it seems, to satisfy a desire for a triumph. Triumphs were not unheard of over Sardinians; M. Metellus, consul in 115, had gained one in 111.⁵ But Albucius had to resort to desperate measures. According to Cicero, a battle with one auxiliary cohort against a crew of bandits clad in sheepskins was all that he could muster. This may be an exaggeration, but the senate allowed no triumph, not even a *supplicatio*. Albucius had to be content with a triumph rigged by himself in Sardinia.⁶ It was to cost him dearly. He afforded a perfect opportunity for a young man to gain an easy conviction and establish himself at the bar.

Among those desiring to prosecute was Albucius' own quaestor, Cn. Pompeius Strabo, the future consul of 89 and father of Pompey the Great. The prosecution of a governor by his quaestor was perhaps not as offensive to public morality as has often been thought.⁷ However, Cn. Pompeius was rejected at the *divinatio* because the provincials themselves preferred another young man at the inception of his career, C. Julius Caesar Strabo, later aedile in 90. Ambition rather than justice inspired these

⁴ His marriage to Julia ca. 110 might be cited; Plutarch, *Marius* 35.6; cf. E. Badian, *Historia* 6 (1957) 323 (now reprinted with additions in Badian, *Studies in Greek and Roman History* [Oxford 1964] 38); Carney, *A Biog. of Marius* 24. But the Julii Caesares, patricians though they were, had suffered generations of obscurity. They had much more to gain from a link with Marius than he from them. Cicero, *De off.* 3.79, suggests that Marius had profited but little from the relationship.

⁵ A. Degraffi, *Fasti Capitolini* (Torino 1954) 106.

⁶ Cicero, *De prov. cons.* 15.

⁷ See L. A. Thompson, *Historia* 11 (1962) 339–55.

applications.⁸ The ambition of Pompeius Strabo hardly needs demonstration. His cold blooded double-dealing in the civil war in 88 and 87 is an adequate index to his character.⁹ He would not have been less self-interested in his youth. C. Caesar Strabo was little better. As an *aedilicius* in 88 he was to seek a consulship for the following year without having held the praetorship, a plan thwarted by the tribunes P. Antistius and P. Sulpicius Rufus.¹⁰ Albucius was duly condemned and Caesar Strabo's career as an advocate was launched.¹¹ But Pompeius Strabo must have been looking for another opportunity.

There is no mention in the sources as to the date of Albucius' trial, nor is his year as praetor and governor of Sardinia known. Nonetheless, the governorship was dated in 104 and the trial in 103 by Drumann-Groebe and by Klein, now followed by Broughton and Malcovati.¹² These dates rest, however, on conjectural reckonings back from Cn. Pompeius Strabo's consulship in 89. That Strabo was praetor by 92 is clear, and, on the assumption that the normal gap between quaestorship and praetorship was ten years, it has been argued that he was quaestor in or before 102.¹³ The exact date of Strabo's quaestorship (and with it

⁸ Cicero, *Div. in Caec.* 63; *De off.* 2.50; Suetonius, *Julius* 55.2; Apuleius, *Apol.* 66.4; the identification of Cn. Pompeius Strabo is made by Ps.-Asconius 203, Stangl. See also Klebs, *RE* 1 (1) [1894] 1330-31, s.v. "Albucius," No. 2.

⁹ Vell. Pat. 2.21.2; H. Bennett, *Cinna and His Times* (Menasha [Wis.] 1923) 10-15; M. Gelzer, *Vom römischen Staat* 2.74-80.

¹⁰ Cicero, *Phil.* 11.11; *Brutus* 226; Asconius 25, Clark; Cicero, *Har. resp.* 43.

¹¹ Cicero, *Pro Scauro* 40; *Tusc. disp.* 5.108; *In Pis.* 92. Carney, *Acta juridica* (1958) 243, believes that Albucius went into voluntary exile as the result of a senatorial *nota*, rather than being banished for extortion. Cicero, *De prov. cons.* 15, does say that Albucius was censured by the senate for celebrating an illegal triumph, but there is no evidence to link his exile with this censure. Albucius was the victim of a judicial condemnation, according to the express testimony of Cicero, *In Pis.* 92: Albucius, cum in Sardinia triumphasset, Romae damnatus est; cf. *Pro Scauro* 40. This is also strongly implied in *Tusc. disp.*, 5.108, which refers to Albucius' exile in Athens. It is unlikely that a senatorial censure would have been spoken of as a "condemnation" and would have resulted in exile. The censure was probably followed by the formal extortion charge. This does not, of course, entail exile as a legal penalty for *repetundae*. The exile may still have been "voluntary"; cf. M. I. Henderson, *JRS* 41 (1951) 71-75.

¹² W. Drumann, *Geschichte Roms* (2nd ed. by P. Groebe; Berlin 1899-1929) 4.325; J. Klein, *Die Verwaltungsbeamten von Sicilien und Sardinien* (Bonn 1878) 236-37; Broughton, *MRR* 1.456, 560, 562, note 6; H. Malcovati, *Oratorum Romanorum fragmenta*² (Torino 1955) 273.

¹³ There is, in any case, hardly any warrant for speaking of a "normal gap," since the sources provide few secure dates for quaestorship and praetorship in this period. On Broughton's own datings, the interval for C. Sempronius Tuditanus, quaestor in

Albucius' propraetorship) probably cannot be fixed with certainty; but of all the possibilities, 104, which has received acceptance, is the one date which can perhaps be ruled out.

Another trial, ignored by modern historians, seems to have taken place in 104.¹⁴ Q. Fabius Maximus Eburnus, the consul of 116, executed his son for alleged unchastity. He was then prosecuted by a Cn. Pompeius and convicted.¹⁵ No effort has been made to identify this Cn. Pompeius. There are only two candidates. The so-called *senatus consultum de agro Pergameno*, dated to 129, names a Cn. Pompeius Cn. f.¹⁶ This is probably the elder brother of a Sex. Pompeius, governor of Macedon ca. 119, who was, in turn, presumably the father of Cn. Pompeius Strabo.¹⁷ By 104, he would have been around sixty years of age, and probably not anxious for a killing at the bar. In any event, he does not appear in the pages of history outside the *s.c. de agro Pergameno*. The prosecutor of Fabius Maximus Eburnus was therefore very probably Cn. Pompeius Strabo himself.

145 and praetor in 132, is thirteen years; for Q. Fabius Maximus Eburnus, quaestor in 132 and praetor in 119, it is also thirteen; and for M. Antonius, quaestor in 113 and praetor in 102, it is eleven. See *MRR* 2.531, 563, 616. Thanks are due to Prof. Badian for calling this to my attention.

¹⁴ The date 104 cannot, unfortunately, be established with certainty. Orosius 5.16.8, excerpting from Livy, gives the trial of Fabius between the battles of Arausio in 105 and Aquae Sextiae in 102. That it was closer to the earlier date is clear from Orosius' introductory phrase *isdem temporibus*. Three parallel instances may be cited for Orosius' use of *isdem temporibus*: 5.10.8; 5.13.1; 5.18.30. In all of these cases, the event noted in connection with this phrase took place within the same year or the next from the immediately preceding event. The battle of Arausio occurred in October, 105. The story of the trial of Fabius is recounted by Orosius after a description of the effects of the battle and the reaction in Rome. 104 is, therefore, the most plausible date.

¹⁵ Val. Max. 6.1.5: Q. Fabius Maximus . . . exegit poenas a filio dubiae castitatis et punito pendit voluntario secessu conspectum patriae vitando; Orosius 5.16.8: Q. Fabius Maximus filium . . . rus relegatum . . . inter fecit . . . die dicta Cn. Pompeio accusante damnatus est. Cf. also Ps.-Quintilian, *Declamationes maiores* 3.17. It is clear from Orosius that Eburnus was convicted. The remark of Valerius that he went off into voluntary exile means, of course, that he adopted the usual course to avoid capital punishment.

¹⁶ The *s.c. de agro Pergameno* is known from two copies, one found at Adramyttium, published in 1874 and now in *IGRRP* 4.262, and another found at Smyrna, published in 1934 and commented on by Passerini, *Athenaeum* 15 (1937) 252-83. For recent discussions, see Broughton, *MRR* 1.496-97, note 1, and L. R. Taylor, *The Voting Districts of the Roman Republic* (Roma 1960) 170-75, with bibliographical notes.

¹⁷ See C. Cichorius, *Römische Studien* (Leipzig-Berlin 1922) 165-66; Broughton, *MRR* 1.526,527, No. 3; Miltner, *RE* 42 [1952], 2054, s.v. "Pompeius," No. 6; *RE* 42 [1952] 2059, s.v. "Pompeius," No. 17; Taylor, *Voting Districts* 245-46.

This means, of course, that Strabo was in Rome in 104 and not in Sardinia. Albucius' propraetorship was thus not in 104. It may have been later but this is highly unlikely. Strabo was a *novus homo*. A Q. Pompeius had held the consulship in 141, but he was not a direct ancestor of Strabo.¹⁸ The latter, therefore, would not have had a meteoric career, and it is unlikely that he held a praetorship three or four years before his consulship; the quaestorship consequently should be dated earlier than 104.

To obtain a date for the trial of Albucius, it may be useful to employ the evidence from the case of Fabius Maximus Eburnus. The ambitious Strabo, thwarted in his efforts to prosecute Albucius, will have been anxious to display his merits in another criminal case.¹⁹ Eburnus' rash action with regard to his son offered an opportunity, and Strabo was ready to step in. If this is true, then the trial of Albucius preceded that of Eburnus and probably by not too long an interval. An impressive appearance in court was an important step for a young man, almost an essential one for a *novus homo*. Albucius' service in Sardinia (and Strabo's) must be earlier than 104, and the trial itself in 104 or 105.

The details of neither trial are reported. Albucius was clearly charged with *repetundae*,²⁰ but the charges against Eburnus remain a mystery. Pseudo-Quintilian indicates that Eburnus executed his son after a domestic hearing.²¹ A domestic tribunal had no legal standing, and could not substitute for a public court.²² Yet by virtue of his *patria potestas*, a father could certainly condemn his son for an offense not falling under the purview of public law. L. Gellius, consul in 72, later tried his son for illicit intercourse with his step-mother.²³ That Gellius called in

¹⁸ Broughton, *MRR* 1.477. The *praenomina*, *Aulus* and *Quintus*, are typical of the branch of the Pompeii stemming from the consul of 141 and including Q. Pompeius Rufus, the consul of 88. By contrast, *Gnaeus* and *Sextius* seem to belong to the alternate branch, including, of course, Pompey the Great.

¹⁹ Breaking of the normal *pietas* of quaestor towards commander is more readily understood if the trial of Albucius was Strabo's first opportunity to make a name at the bar. It is much more difficult to understand if Strabo already had a successful prosecution under his belt. This supports the sequence of trials set up in the text.

²⁰ Cicero, *Div. in Caec.* 63; *De off.* 2.50. Both references place the trial in a context of *patroni* assisting provincials.

²¹ Ps.-Quintilian, *Declam. mai.* 3.17.

²² T. Mommsen, *Römisches Strafrecht* (Leipzig 1899) 16-26; E. Volterra, *Riv. Ital. Scienze Giur.* 2 (1948) 103-53.

²³ Val. Max. 5.9.1.

almost the whole senate as a *consilium* does not alter the situation, for the senate had no standing as a court anyway. Eburnus' offense then remains uncertain.²⁴ Perhaps execution was regarded as too harsh a penalty for unchastity, though the *patria potestas* was in theory unlimited down to the end of the Republic. The facts remain obscure, but Strabo would not have hesitated to take advantage of a dubious situation.

Although these two trials must be seen essentially as springboards to power for the young advocates, it is not impossible that political implications were also involved. This was not Albucius' first appearance in the courts. In 119 he had prosecuted Q. Mucius Scaevola for extortion committed as governor of Asia, but failed to convict him.²⁵ It is noteworthy that Scaevola's daughter had recently married the orator L. Licinius Crassus and that the Scaevolae and Crassi both appear later as allies of the Metellan *factio*.²⁶ Failure in this prosecution apparently entailed a serious setback for Albucius, while the Metelli dominated the curule offices. The praetorship finally came, and it is tempting to date it to 107 when the Metelli no longer had things their own way. This was the year in which Marius gained his first consulship, against the wishes of Q. Metellus Numidicus. It is interesting that his colleague was L. Cassius Longinus; the Cassii were not friends of the Metellan group.²⁷ If Albucius reached the praetor-

²⁴ According to Orosius 5.16.8 (*die dicta*) it seems that the trial took place before the assembly. The phrase, *diem dicere*, refers invariably to popular trials; cf. Mommsen, *Strafrecht* 163–64. If the charge was murder, this indicates that no permanent murder court existed at that time. But W. Kunkel, *Abh. Bay. Akad. Wiss* 56 (1962) 47, note 179, has argued that Orosius' *die dicta* ought not to be pressed in a technical sense. The question must remain open.

²⁵ Cicero, *De orat.* 1.72, 2.281, 3.171; *Orator* 149; *De fin.* 1.9; *Brutus* 102; Persius, *Sat.* 1.115; Juvenal, *Sat.* 1.15.4; Apuleius, *Apol.* 66. Almost all, if not all, this information derived from Lucilius' satire on this trial; 2.53–93 (E. H. Warmington, *Remains of Old Latin* [London 1958], 3.18–31). For the date of Scaevola's praetorship, see Cichorius, *Untersuchungen zu Lucilius* (Berlin 1908) 88–89.

²⁶ For the marriage, see Lucilius 2.86 (Warmington, *ROL* 3.28); cf. F. Marx, *Lucilii carminum reliquiae* (Leipzig 1904) 40. For the Metellan connections, see Badian, *Studies* 43–44. The prosecution in 119 stemmed partly from personal motives. A self-styled Hellenist, Albucius had apparently been mocked by Scaevola for his Hellenic affectation; Cicero, *De fin.* 1.9.

²⁷ L. Cassius Longinus Ravilla, consul in 127 and probably father of the consul of 107, introduced a measure for secret ballot in popular trials in 137, with the active support of Scipio Aemilianus; Cicero, *Brutus* 97. The opposition between Scipio and the Metelli is clear for those years; cf. especially the trials of Q. Pompeius and L. Cotta, in which Scipio and the Metelli were on opposite sides; Cicero, *Pro. Font.* 23;

ship in 107, it would be logical to put the pro-praetorship of Sardinia in 106 and his trial in 105 or 104, as earlier argued. Albucius' old enemies probably welcomed the opportunity to dispose of him once for all. That C. Julius Caesar Strabo was selected to prosecute him may also be no coincidence. His step-brother was Q. Lutatius Catulus,²⁸ whose marriage into the Servilii Caepiones and *amicitia* with the Aurelii Cottae demonstrate his connection with the Metellan *factio*.²⁹

The trial of Q. Fabius Maximus Eburnus may warrant similar analysis. Eburnus' associations had all been Scipionic. As quaestor in 132 he served under his father-in-law P. Rupilius, who owed his election to Scipio Aemilianus.³⁰ The Fabii and the Scipiones, traditional enemies, had buried the hatchet in the mid-second century. As a consequence of well-engineered adoptions, Eburnus was, in fact, Scipio's nephew.³¹ Like several others who had had Scipionic connections, Eburnus apparently suffered a delay in his magisterial career during the 120's and probably reached the praetorship only in 119.³² The Metelli were not without rivals in the succeeding years. The consular elections for 116 saw the victory of Eburnus over the chief

Val. Max. 8.5.1; Cicero, *Brutus* 81; *Pro Mur.* 58; *Div. in Caec.* 69; Val. Max. 8.1.11; Livy, *Oxyr. Per.* 55. Evidence for enmity between Aemilianus and Metellus Macedonicus, head of the Metellan clan, is plentiful; Cicero, *De amicit.* 77; *De off.* 1.87; Val. Max. 4.1.12; Pliny, *NH* 7.144; Plutarch, *Apophth. Caec.* 3. It is no accident that Macedonicus was the object of attack by the poet Lucilius, a friend and client of Scipio; schol. on Horace, *Sat.* 2.1.63 ff; Lucilius 26.637 (Warmington, *ROL* 3.204). For the factional struggles of this period generally, see F. Münzer, *Römische Adelsparteien und Adelsfamilien* (Stuttgart 1920) 225–81; H. H. Scullard, *JRS* 50 (1960) 59 ff.

²⁸ Cicero, *De orat.* 2.12.

²⁹ On the marriage, see Münzer, *RE* 26 [1927] 2073, s.v. "Lutatius," No. 7; Badian, *JRS* 52 (1962) 53, note 7. For the *amicitia*, see Cicero, *De orat.* 3.42 ff. On the political connections, cf. Badian, *Studies* 37–39.

³⁰ For the quaestorship, see Val. Max. 2.7.3. For the influence of Scipio in Rupilius' election, see Cicero, *De amicit.* 73; cf. 69.

³¹ Scipio's brother, Q. Fabius Aemilianus, had been adopted by the Fabii Maximi and remained close to Scipio throughout his life; Cicero, *De amicit.* 69: Q. vero Maximus fratrem, egregium virum omnino, sibi nequaquam parem, quod is anteibat aetate, tamquam superiorem colebat. Eburnus was, in all probability, the son of a Q. Fabius Maximus Servilianus, adopted from the Servilii Caepiones and also part of the Scipionic *factio*; cf. Münzer, *RE* 12 [1909] 1797, s.v. "Fabius," No. 111.

³² Cicero, *De orat.* 1.121. The Fabius Maximus who sat on a case when L. Crassus was *adolescentulus* was probably Eburnus. See Broughton, *MRR* 1.526, 527, note 2. But there is no reason to identify this case as Crassus' prosecution of Carbo. Cicero may be referring here to a civil case.

Metellan ally M. Aemilius Scaurus.³³ Another product of the older Scipionic group, P. Rutilius Rufus, utilized both the *comitia* and the courts in a bitter, though unsuccessful struggle to keep Scaurus out of the consulship in the succeeding year as well.³⁴ Eburnus' colleague in the consulship, C. Licinius Geta, is little more than a name. But an alliance with Eburnus is strongly indicated not only by their victory over Scaurus in 117, but their joint censorship of 108. This is confirmed by the action of the censors of 115, one of whom was a Metellus, who expelled Geta from the senate, and in an extraordinary move, appointed Scaurus, the consul, as *princeps senatus*.³⁵ That the Metelli were behind the trials of Albucius and Fabius Maximus in 104 does not admit of verification, but an opportunity to redress old grievances will probably not have been passed over. Success in the conviction of Albucius may well have spurred the attack on Eburnus. After 104, both defendants spent their remaining days in exile, Fabius in Nuceria and Albucius in Athens.³⁶

Two other trials of 104 may represent counter-attacks. It is possible that opposition to Metellan supremacy was now being organized and centered upon the Fabii Maximi and the Domitii Ahenobarbi. The first Ahenobarbus to gain the consulship had been Cn. Domitius Ahenobarbus, consul in 192,³⁷ almost certainly under the influence of Scipio Africanus. In any event, when Africanus became ill in 190, he had Domitius posted as a supporter for his brother L. Scipio's campaign against Antiochus.³⁸ Little is known of his son Cn. Domitius Ahenobarbus except that he reached the consulship as suffect in 162.³⁹ The next generation may have seen the formation of an alliance with the Fabii Maximi. Cn. Domitius Ahenobarbus, consul in 122, and Q. Fabius Maximus Allobrogicus, consul in 121, campaigned together in Gaul against the Arverni and the Allobroges. The

³³ Cicero, *Pro Mur.* 36. For references on the consulship, see Broughton, *MRR* 1.530.

³⁴ Cicero, *Brutus* 113; *De orat.* 2.280; Tacitus, *Annals* 3.66.

³⁵ Sallust, *Jug.* 25.4; Broughton, *MRR* 1.531–32, 533, note 2.

³⁶ For Fabius, see Cicero, *Pro Balbo* 28; for Albucius, see Cicero, *Tusc. disp.* 5.108.

³⁷ Münzer, *RE* 9 [1903] 1320–21, s.v. "Domitius," No. 18; Drumann-Groebe, *Geschichte Roms* 3.14.

³⁸ Plutarch, *Apophth.* Cn. Domitii, 197D; Appian, *Syr.* 30; Livy 37.39.5; cf. Scullard, *Roman Politics, 220–150 B.C.* (Oxford 1950) 116, 123.

³⁹ Broughton, *MRR* 1.442. That the Scipionic connections were maintained is conjectured by Scullard, *Rom. Pol.* 208, 212, 227.

evidence indicates full cooperation,⁴⁰ strikingly unusual in an era of intense military rivalry which saw even brothers feud over military glory.⁴¹ Both seem to have triumphed in 120, probably within a short time of one another.⁴² Allobrogicus was a blood nephew of Scipio Aemilianus and had served under him at Numantia in 134.⁴³ After Scipio's death in 129, he helped organize the funeral and delivered the eulogy.⁴⁴

It is not surprising therefore that 104 also saw a prosecution of M. Aemilius Scaurus by Cn. Domitius Ahenobarbus, son of the consul of 122 and himself future consul of 96.⁴⁵ Bloch's view that this trial was a mere pretext and really part of the anti-senatorial reaction after the disaster at Arausio does not do justice to the personal clash between Domitius and Scaurus.⁴⁶ On the other hand, personal bitterness may not be the whole story.⁴⁷ Domitius was not willing to use the information of one of Scaurus' slaves against him.⁴⁸ An attack on Scaurus and the Metelli in retaliation for the trials of Albucius and Eburnus cannot be ruled out as a consideration. Domitius later gained a consulship in 96 with C. Cassius Longinus, whose family had been hostile to the Metelli in the second century.⁴⁹ In 92 Domitius' censorship was marred

⁴⁰ See C. H. Benedict, *AJP* 63 (1942) 44-49. For the sources, see Broughton, *MRR* 1.516, 520, 522.

⁴¹ As in the case of Q. Fabius Servilianus and Q. Servilius Caepio in Spain in 140; Appian, *Iber.* 69.

⁴² Degrassi, *Fast. Capit.* 106; Broughton, *MRR* 1.524. The conjecture of P.-M. Duval, *Comp. Rend. Acad. Inscr. Bell. Lettr.* (1951) 161-66, that Domitius remained in Gaul until 118 is not convincing; see Badian, *Foreign Clientelae 264-70 B.C.* (Oxford 1958) 313; E. Gabba, *Riv. di Filol.* 87 (1959) 198.

⁴³ Val. Max. 8.15.4; Appian, *Iber.* 84.

⁴⁴ Schol. Bob. 118.11-12, Stangl; Cicero, *Pro. Mur.* 75; Malcovati, *ORF* 121-22. The divergent account (Cicero, *De orat.* 2.341), that the speech was delivered by Q. Aelius Tubero, another nephew of Scipio, is probably an error; cf. P. Fraccaro, *Studi Storici* 5 (1912) 357-58; Malcovati, *ORF* 121.

⁴⁵ Asconius 21, Clark; Suetonius, *Nero* 2.1; Cicero, *Pro Deiot.* 31; Val. Max. 6.5.5; Dio 27, Fr. 92; Plutarch, *Ex inim. util.* 9. For the date, see G. Niccolini, *I Fasti dei Tribuni della Plebe* (Milano 1934) 191.

⁴⁶ G. Bloch, *Mélanges D'Histoire Ancienne* 25 (1909) 38-39.

⁴⁷ As Fraccaro, *Opuscula* 2 (Pavia 1957) 137-38.

⁴⁸ Cicero, *Pro Deiot.* 31: Scaurique servus ad eum clam domum venisset . . . prehendi hominem iussit ad Scaurumque deduci. Val. Max. 6.5.5: iustitia vicit odium . . . duci eum ad Scaurum iussit; cf. Dio 27, Fr. 92; Plutarch, *Ex inim. util.* 9. Of course, it would not be in the interest of a candidate for the priesthood to utilize the evidence of a *servus*; cf. Carney, *Rh. Mus.* 105 (1962) 302.

⁴⁹ See above. It might be mentioned that yet another Cassius Longinus, L. Cassius Longinus, was tribune in 104 with Domitius and passed a measure aimed at Q. Servilius Caepio, the consul of 106; Asconius, 78, Clark. The Caepiones had

by constant quarrels with his colleague L. Licinius Crassus, an ally of Scaurus.⁵⁰ The trial in 104 was provoked by Scaurus' earlier refusal to coopt Domitius into either the college of augurs or the college of pontiffs.⁵¹ The charge against Scaurus is obscure, but apparently dealt with improper celebrations of sacred rites, which may indicate that it is the pontifical college which is involved.⁵² The case was a tribunician prosecution before the people, and resulted in Scaurus' acquittal.⁵³ As is well known, Domitius' rebuff inspired his law transferring the selection of new pontiffs to the vote of 17 tribes selected by lot.⁵⁴

A fourth trial took place in 104, also involving Cn. Domitius Ahenobarbus. On this occasion Domitius brought charges against M. Junius Silanus, consul in 109, for stirring up war with the Cimbri without sanction of the people.⁵⁵ The prosecution

long-standing connections with the Metelli; cf. Badian, *Studies* 35–43. These two Cassii may well have been brothers, and probably sons of L. Cassius Longinus, the consul of 127. See Münzer, *RE* 6 [1899] 1726, s.v. "Cassius," No. 57; *RE* 6 [1899] 1738, s.v. "Cassius," No. 63.

⁵⁰ Broughton, *MRR* 2.17. For the connections between Scaurus and Crassus, see Badian, *Studies* 43–44. That Crassus was earlier an enemy of Domitius' father, consul in 122, is suggested by an anecdote in Suetonius, *Nero* 2.1: In hunc dixit Licinius Crassus orator, "non esse mirandum, quod aeneam barbam haberet, cui os ferreum, cor plumbeum esset."

⁵¹ Asconius 21, Clark, indicates that the augural college is involved: quod eum in augurum collegium non cooptaverat. This is accepted by Fraccaro, *Opuscula* 2.136. Suetonius, *Nero* 2.1, speaks of the pontifical college: Cn. Domitius in tribunatu pontificibus offensior quod alium quam se in patris sui locum cooptasset. His account is followed by R. M. Geer, *CP* 24 (1929) 292–94, and Broughton, *MRR* 1.562, note 7.

⁵² Asconius 21, Clark: quod eius opera sacra populi Romani deminuta esse diceret. Geer's argument, *CP* 24 (1929) 292–94, however, that the charges cannot have been directed at offenses committed in Scaurus' consulship or before setting out as legate in 111 is weakened by the fact that Domitius accused Junius Silanus in that very year of 104 for offenses committed five years earlier. Thus, whether the augural or pontifical college is the subject of dispute still remains uncertain. The pontifical college is probably somewhat more likely in so far as Domitius was elected to it soon after the passage of his bill; Livy, *Per.* 67; Cicero, *Pro Deiot.* 31; Val. Max. 6.6.6. Geer's arguments, it should be noted, were anticipated by E. Pais, *Dalle Guerre Puniche a Cesare Augusto* 1–2 (Roma 1918) 154–56, who, rightly, adopted a more cautious stand. He points out that senators were sometimes obliged to sleep in the temple at Lavinium and take care of the sacred rites of the *Penates*, and that Scaurus may have been accused of offenses in this capacity; cf. Lucan 7.392.

⁵³ Asconius, 21, Clark: diem ei dixit apud populum et multam irrogavit . . . Quo crimine absolutus est Scaurus.

⁵⁴ Broughton, *MRR* 1.545.

⁵⁵ Asconius 80, Clark: adversus Cimbros rem male gesserat; quam ob causam Domitius eum apud populum accusavit.

was allegedly undertaken on behalf of complaints by a certain Aegritomarus, a friend of the Domitii from Gallia Transalpina.⁵⁶ Nothing specific, unfortunately, is known of Silanus' political connections. His father, it seems, was D. Junius Silanus Manlianus, praetor in 141, who was prosecuted on a *repetundae* charge in 140 and committed suicide when banished by his own father.⁵⁷ It is likely that M. Silanus was the M. Junius D.f. who was responsible for the *lex Junia repetundarum* passed between the trial of his father and the *lex Acilia*.⁵⁸ But since the nature of this law is unknown, little can be built upon this. The only established fact regarding Silanus is his consulship in 109. That year followed sweeping Metellan victories at the polls. Q. Metellus Numidicus was Silanus' colleague in the consulship, and the censorships were held by M. Aemilius Scaurus and M. Livius Drusus the elder.⁵⁹ It is not unlikely that Silanus profited from this Metellan sweep.⁶⁰ If so, this would, of course, fit with a prosecution of him by Domitius Ahenobarbus in 104.

The trial was not a normal one. Silanus had suffered a severe defeat at the hands of the Cimbri in either 109 or 108.⁶¹ This usually entailed immediate prosecution upon return, as in the recent case of Popillius Laenas in 107.⁶² But four years elapsed before Silanus was put on trial. The Metelli were perhaps vulnerable now that Marius had ended the Jugurthine War successfully. Domitius, having failed against Scaurus, sought an easier mark by raking up old charges against Silanus. A striking similarity between the outcomes of these two trials has gone unnoticed but indicates the strengths and weaknesses of the Metelli with the people in 104. Both Silanus and Scaurus were prosecuted before the tribal assembly and both were acquitted. Silanus received adverse votes from only two tribes, Sergia and Quirina; Scaurus from three. It may be conjectured that two of the three opposing Scaurus were also Sergia and Quirina.

⁵⁶ Cicero, *Div. in Caec.* 67; *Verr.* 2.2.118.

⁵⁷ Cicero, *De fin.* 1.24; Livy, *Per.* 54; Val. Max. 5.8.3.

⁵⁸ Münzer, *RE* 19 [1917] 1094, s.v. "Junius," No. 169; A. H. M. Jones, *Proc. Cambr. Phil. Soc.* 186 (1960) 39-42.

⁵⁹ Broughton, *MRR* 1.545.

⁶⁰ Cooperation between Silanus and Metellus Numidicus is clearly indicated by Cicero, *Brutus* 135: Q. Metellus Numidicus et eius collega M. Silanus dicebant de re publica quod esset illis viris et consulari dignitati satis.

⁶¹ Sources in Broughton, *MRR* 1.545.

⁶² *Ad Herennium* 1.25; 4.34; Cicero, *De invent.* 2.72-73; *De leg.* 3.36; Orosius 5.15.24.

Asconius adds the detail in Scaurus' case that the votes for acquittal in the other 32 tribes came only by narrow margins.⁶³ The Metelli were shaken but still had sufficient strategically located *clientelae*.⁶⁴

An effort has thus been made to connect four relatively obscure trials in or around the year 104. The political implications ought perhaps not to be overstressed. Two of them provided opportunities for young and ambitious quaestorians to make a name at the bar, and another may have been largely dictated by desire for personal vengeance. Nonetheless, there are sufficient hints to indicate that political involvement was not altogether absent. Factional politics, obscured by the sources which are interested primarily in the rise of Marius and the clash of senate, populace, and *equites*, remained very much alive. "Metellan supremacy" may still be a valid designation, but the Metelli were not without their challengers. No faction could claim monolithic control of the Roman senate.⁶⁵

⁶³ For Silanus, Asconius 80, Clark; for Scaurus, Asconius 21, Clark.

⁶⁴ Objection to this reconstruction could be raised on the basis of Gellius 15.13.6, 17.2.7, who indicates that Metellus Numidicus corresponded with Cn. Domitius and his brother L. Domitius during his exile in 99. But it is well to remember that the situation had changed considerably during the past five years. Senatorial ranks had closed in answer to the menace of Saturninus and Glaucia. As factional lines became blurred in the tribunates of Ti. and C. Gracchus, so they did in 100. Both Domitii are among the muster of senators who took up arms against the demagogues in that year; Cicero, *Pro Rab. Perd.* 7.21. But this need not be taken to reflect Domitius' attitude towards friends of the Metelli in 104. For possible Marian connections of the Domitii in the 90's, see Badian, *Studies* 93-94. There is no warrant, however, for regarding Domitius as a "Marian" in 104, as Carney, *Rh. Mus.* 105 (1962) 331, note 91.

⁶⁵ This paper profited on several points from enlightenment provided by Prof. Mason Hammond of Harvard and Prof. E. Badian of Leeds. That enlightenment is here gratefully acknowledged.