

## THE QUAESTORSHIP OF MARCUS ANTONIUS

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ACCORDING TO T. R. S. Broughton,<sup>1</sup> M. Antonius was quaestor in 52. However, in his commentary on Cicero *Att.* 6.6.4 D. R. Shackleton Bailey<sup>2</sup> has discarded Broughton's dating and assigned Antonius' tenure of that office to 51. In this way he has reverted to an old tradition, for Drumann-Groebe,<sup>3</sup> Mommsen,<sup>4</sup> Nipperdey,<sup>5</sup> and Büzl<sup>6</sup> were of the same opinion. Of course, Broughton was not the first to date Antonius' quaestorship in 52. This dating was advocated among others by Willems, Sobeck, and Niccolini.<sup>7</sup>

Neither Broughton nor Shackleton Bailey found it necessary to adduce arguments for their interpretation, but it may be interesting to look more closely into the question. Is there any discrepancy in the sources that allows one to draw such divergent conclusions?

Our main sources are Cicero, Caesar, and Hirtius.<sup>8</sup> Shackleton Bailey<sup>9</sup> adduces as evidence to reject Broughton's opinion only Hirtius *BGall.* 8.2.1.<sup>10</sup> This passage relates to events that occurred on or shortly before 29 December 52, and Antonius is in fact there termed quaestor, as he is

<sup>1</sup>T. R. S. Broughton, *The Magistrates of the Roman Republic* 2 (New York 1952) 236, 238 and *Suppl.* (1960) 6.

<sup>2</sup>D. R. Shackleton Bailey, *Cicero's Letters to Atticus* 3 (Cambridge 1968) 272.

<sup>3</sup>W. Drumann and P. Groebe, *Geschichte Roms* 1 (Berlin 1899) 48 (quoting Mommsen); 3 (Leipzig 1906) 698 (additions of Groebe).

<sup>4</sup>Th. Mommsen, *Römisches Staatsrecht* 1<sup>3</sup> (Leipzig 1887) 534 note 1. Mommsen cites with approval the study of Nipperdey.

<sup>5</sup>K. Nipperdey, "Die leges annales der römischen Republik," *AbhLeipzig* 5, 1 (1865) 31.

<sup>6</sup>M. Büzl, *De provinciarum Romanarum quaestoribus* (Diss. Leipzig, Chemnitii 1893) 23–25.

<sup>7</sup>P. Willems, *Le sénat de la république romaine* 1 (Louvain 1878) 568; F. Sobeck, *Die Quaestoren der römischen Republik* (Diss. Breslau, Trebnitz 1909) 61 (he mentions Büzl but does not discuss his dating); G. Niccolini, *I fasti dei tribuni della plebe* (Milan 1934) 334. This was also the original opinion of Drumann, see Drumann-Groebe 1. 48 text as compared with the note in the margin.

<sup>8</sup>Cic. *Att.* 6.6.4; 7.8.5; *Fam.* 2.15.4; *Phil.* 2.49–50, 71; *Mil.* 40. Caesar. *BGall.* 7.81.6. Hirtius, *BGall.* 8.2.1; 8.24.2; 8.38.1; 8.46.4; 8.47.2; 8.48.1, 8, 9; 8.50.1–3. See also Asc. 41 C; Schol. Bob. 123 Stangl. Cass. Dio 45.40.3 mistakenly attributes the quaestorship of Antonius to 61 or 60 when Caesar was governor in Spain.

<sup>9</sup>*Loc. cit.* (above, note 2).

<sup>10</sup>Caesar *M. Antonium quaestorem suis praefecit hibernis. ipse . . . pridie Kalendas Ianuarias . . . proficiscitur ad legionem XIII.*

also further on in 8.24.2 and 8.38.1.<sup>11</sup> On this basis it may seem possible to maintain that Antonius was quaestor from 5 December 52 to 4 December 51, but the evidence is not quite conclusive. It may well have been that he came to Gaul as quaestor in 52 and continued in 51 as proquaestor, as suggested by Broughton who lists him in 51 among the promagistrates.<sup>12</sup> On the other hand earlier in 52 Caesar calls Antonius a legate,<sup>13</sup> and he reappears in that capacity in 8.46.4<sup>14</sup> at the end of 51. These passages are certainly not in favor of Broughton's dating, and they cannot be explained away on the theory of Antonius' promagistracy.

It may be worthwhile to examine this evidence more closely. Was it Caesar's usual practice to omit the title of his quaestor or to describe it inaccurately? Caesar had with him in Gaul in 54 another quaestor, M. Licinius Crassus. When he introduces Crassus in 5.24.3 he emphasizes his office and clearly distinguishes between him and the legates: *his* (scil. *legionibus*) *M. Crassum quaestorem et L. Munatium Plancum et C. Trebonium legatos praefecit*. Crassus appears again in 5.46.1, and Caesar again underlines his quaestorship, and only a few lines below (5.47.1, 2) mentions Crassus without any title. Even when Crassus had become proquaestor in 53 Caesar continued to write (6.6.1) *Caesar partitis copiis cum C. Fabio legato et M. Crasso quaestore*.<sup>15</sup> The same practice is also

<sup>11</sup>Campaign against the Eburones and the events contemporary with the siege of Uxellodunum in 51, cf. T. R. Holmes, *Caesar's Conquest of Gaul*<sup>2</sup> (Oxford 1911) 188–191. In 8.24.2 Hirtius juxtaposes *M. Antonium quaestorem* and *C. Fabium legatum* and *C. Caninium Rebilum legatum*.

<sup>12</sup>MRR 2.242.

<sup>13</sup>7.81.6: *M. Antonius et C. Trebonius legati* (siege of Alesia).

<sup>14</sup>(*Caesar*) *exercitum per legatos in hibernam deduxit: quattuor legiones in Belgio conlocavit cum M. Antonio et C. Trebonio et P. Vatinio legatis*. Cf. Drumann-Groebe 3.333.

<sup>15</sup>It is interesting to observe that of all his quaestors (some of whom certainly remained with him in the following year as proquaestors) Caesar mentions by name only Crassus and Antonius. This is easily explicable. Most of his quaestors were undoubtedly assigned to him by lot (cf. below, note 33 on the appointment of quaestors) and may have been militarily relatively inexperienced. Caesar did not entrust important commands to them, and in consequence he had few opportunities to mention them (cf. *BGall.* 1.52.1 *singulis legionibus singulos legatos et quaestorem praefecit*; 4.13.3 *consilio cum legatis et quaestore communicato*; 4.22.3 *id quaestori legatis praefectisque tribuit*. We are nowhere told who these quaestors were).

The case of L. Roscius introduces a complication. In late 54 and early 53 he commanded the XIII legion (*BGall.* 5.53.6). The manuscripts of class  $\alpha$  designate him as quaestor, those of class  $\beta$  call him a *legatus* (see O. Seel in *app. crit. ad loc.* in his edition of the *BGall.* [Teubner, Leipzig 1961]). Earlier, however, he appears twice without any title: *BGall.* 5.24.2 and 5.24.7. In 5.25.5 we read (according to the consensus of the manuscripts): *interim ab omnibus legatis quaestoribusque quibus legiones tradiderat, certior factus est in hiberna perventum*. If the reading of the mss is retained, it would follow that in 54 Caesar had two quaestors, M. Crassus and L. Roscius, and that when mentioning Roscius in 5.24.2 Caesar omitted his title (it should, however, be noted that in the case of Antonius Caesar would have not only omitted his presumed title of quaestor but also termed him incorrectly a legate). But there are grave doubts as to the reliability of the

followed by Caesar in the *Bellum Civile*. He there mentions three quaestors, and when he introduces them he never fails to call attention to their office.<sup>16</sup> In view of these examples it seems highly unlikely that Caesar should have omitted in 7.81.6 Antonius' title of quaestor and termed him *legatus* if he had really been quaestor at that time. Hirtius continues Caesar's usage. Throughout 51 Antonius appears as quaestor<sup>17</sup> and only at the end of this year, when he of course laid down his office, is he mentioned again as a legate.<sup>18</sup>

manuscript tradition (cf. on modern conjectures, Seel *ad loc.* and H. Meusel, *Lexicon Caesarianum* [Berlin 1893] s.v. *quaestor*). In 58 and 55 Caesar had with him only one quaestor (cf. *BGall.* 1.52.1 and 4.13.3, quoted above; on 4.22.3 see below), and it is doubtful if we should attribute to him two quaestors in 54 (cf. Groebe in Drummann-Groebe 3.697–698; Holmes' criticism of Groebe [(above, note 11) 565] is not convincing). Most probably the mss reading *quaestoribus* is due to the attraction by the following *quibus* and the preceding *legatis* strengthened by *omnibus* (cf. 4.22.3 where *a* mss have the reading *quaestori*, *β* mss *quaestoribus*, this latter reading rightly discarded by most editors). We may conclude that Roscius was probably a legate in 54 and in early 53 (the title of *legatus* being occasionally omitted by Caesar, cf. Holmes [above, note 11] 564–565) or that in 54 he received the legionary command without any specific title and formally became a legate only in 53. Broughton (*MRR* 2.226) lists him in 54 (with a query) among legates and lieutenants.

<sup>16</sup>Sex. Quinctilius Varus, quaestor in 49: *BCiv.* 1.23.2; 2.28.1–2. Marcius Rufus, quaestor in 49: 2.23.5 (no title a few lines below in 2.24.1); 2.43.1. P. Cornelius Lentulus Marcellinus, quaestor in 48: 3.62.4 (the title is omitted in the immediately following narrative, 3.64.1 and 3.65.1).

<sup>17</sup>See above, notes 10 and 11.

<sup>18</sup>*BGall.* 8.46.4 (quoted above, note 14). He appears without any title in the immediately following passages 8.47.2; 8.48.1, 8–9. The passage 8.50.1 concerning Antonius' *petitio* for the augurate in 50 presents no difficulty here. We read that Caesar *hibernis peractis . . . in Italiam . . . est profectus, ut municipia et colonias appellaret, quibus M. Antoni, quaestoris sui, commendaverat sacerdotii petitionem*. At the time of his *petitio* and Caesar's intended personal support for him Antonius was neither quaestor nor legate. But if in this context a title should have been mentioned, it certainly had to be the quaestorship as it recalled not only the personal favour of Caesar but also that of the people. Cf. Nipperdey (above, note 5) 31.

It may, however, seem unusual that Caesar should have appointed as a legate his quaestor designate, and that Antonius did not continue in 50 as proquaestor, but appears again as a legate. These considerations do not, however, immediately affect the dating of Antonius' quaestorship. It is of course possible to conjecture that the term *legatus* was used here by Caesar and Hirtius only loosely to denote a higher military charge, but it must be pointed out that this does not seem to have been Caesar's usual practice. In all other cases there is no doubt that the man termed *legatus* held a regular appointment. For a list of Caesar's *legati*, see Willems (above, note 7) 2.612–615; Groebe in Drummann-Groebe 3.696–701; Holmes (above, note 11) 563–565. Willems (2.608, note 4) asserts that only a senator (i.e., at least a *quaestorius*) could be a *legatus*, and there is no doubt that this was normal practice in the late republican period (cf. Mommsen, *Staatsrecht* 2.<sup>3</sup> 682). There is, however, no compelling reason to assume that the *lex Vatinia* must have contained the same provision as the *lex Gabinia*, which limited in 67 Pompey's choice of his legates to senators. It is also possible that the quaestor designate could be treated as practically a member of the senate. Holmes (*loc. cit.*) points out that

The attribution (on the basis of Caesar and Hirtius) of Antonius' quaestorship to 51 may seem, however, to be inconsistent with Cicero's remarks about Antonius which appear to be rather in favour of Broughton's dating. Cicero mentions the quaestorship of Antonius in two letters to Atticus, a letter to Caelius,<sup>19</sup> and above all in the Philippics. The letters, interesting though they are, are only of indirect value for our present purpose. On the other hand the Philippics seem to furnish a full account of the events surrounding Antonius' *petitio* for the quaestorship.<sup>20</sup> We do not know exactly when Antonius left Gaul and returned to Rome *ad quaesturam petendam* but it was in the period of armed clashes between Milo and Clodius who were canvassing respectively for the consulship and the praetorship. As the consuls for 53 were elected only in July or August of that year,<sup>21</sup> the electoral *comitia* for 52 could only have been summoned, at the earliest, late in August or in September, and Antonius cannot have come to Rome long before that date.<sup>22</sup> At any rate Antonius, whose candidature (at Caesar's request) was supported by Cicero, took an active part in the street fighting, and on one occasion he allegedly almost succeeded in killing Clodius.<sup>23</sup> It would follow from the narrative

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Caesar may have had at least two other legates, not yet senators, and Broughton (*TAPA* 79 [1948] 63–67) accepts that Caesar himself held a legateship before his quaestorship.

<sup>19</sup>On *Att.* 6.6.4 and *Fam.* 2.15.4 see below, 219. *Att.* 7.8.5 is amusing: Cicero quotes Pompey's indignant exclamation after a *contio* of Antonius: *quid censes . . . facturum esse ipsum, si in possessionem rei publicae venerit, cum haec quaestor eius infirmus et inops audeat dicere?* The letter was written on 25 or 26 December 50, and Antonius was at that time already tribune of the plebs, but Pompey had chosen to call him quaestor in order to underline his personal connection with Caesar. Unfortunately Pompey's abuse of Antonius offers no help for establishing when this "feckless nobody of a quaestor" (as Shackleton Bailey renders *quaestor infirmus et inops*) held his office.

<sup>20</sup>*Cic. Phil.* 2.49–50: *Venis e Gallia ad quaesturam petendam . . . Acceperam iam ante Caesaris litteras ut mihi satis fieri paterer a te: itaque ne loqui quidem sum te passus de gratia. Postea sum cultus a te, tu a me observatus in petitione quaesturae; quo quidem tempore P. Clodium approbante populo Romano in foro es conatus occidere . . .* (50) *Quaestor es factus: deinde continuo sine senatus consulto, sine sorte, sine lege ad Caesarem cucurristi. Id enim unum in terris egestatis, aeris alieni, nequitiae perditis vitae rationibus perfugium esse ducebas.* Cf. *Phil.* 2.21.

<sup>21</sup>Cass. Dio 40.45.1; App. *BCiv.* 2.71.

<sup>22</sup>Antonius allegedly originally wanted to stand at that time for the augurate also (*Cic. Phil.* 2.4); see on this question J. Linderski, "The Aedileship of Favonius, Curio the Younger and Cicero's Election to the Augurate," *HSCP* 76 (1972) 190–191.

<sup>23</sup>Most probably this event occurred no later than 53. Cicero refers to it also in *Mil.* 40 and in 41 he continues: *Quid? comitiis in campo quotiens potestas fuit! cum ille (scil. Clodius) in saepta irrupisset, gladios destringendos, lapides iaciendos curasset . . .* If Cicero adopts here the chronological order of events it would follow that the disruption of the consular *comitia* was subsequent to Antonius' clash with Clodius. Now, in 52 (between 1 January and the death of Clodius on 18 January) no attempt could be made to convene the assembly as there were no regular magistrates and also no interrex was appointed (Asc. 30–31 C).

of Cicero that Antonius' goal was the quaestorship of 52. This inference is corroborated by the fact that in all probability Antonius reached the age of thirty in 53,<sup>24</sup> and so according to the *leges annales* this was *suus annus* for the *petitio quaesturae*.

The source situation has been lucidly characterized by J. D. Denniston in his commentary on the first two Philippics.<sup>25</sup> He agreed that on the basis of Caesar and Hirtius the only acceptable date for Antonius' quaestorship was 51 but ruefully conceded that he could not reconcile the evidence of the *Bellum Gallicum* with Cicero's statement in the Philippics. "Surprisingly enough," he wrote, "the discrepancy has not, as far as I know, been noticed." The discrepancy had, however, been noticed by Nipperdey, whose explanation won Mommsen's praise.<sup>26</sup> According to Nipperdey, although Antonius came to Rome around the end of 53 or during the first few days of 52, he intended from the very beginning to stand for the quaestorship of 51 "da sich Cicero schon im Juli 65 um das Consultat für 63 bewarb." Consequently Cicero's narrative in the Philippics is "durchaus nicht im Widerspruch" with the testimony of Caesar and Hirtius. Büzl<sup>27</sup> also found it necessary to explain why Antonius, who came to Rome with the clear purpose of obtaining the quaestorship, was finally elected not for 52 but for 51. In his opinion Antonius canvassed originally for the quaestorship of 52, but when the elections were delayed and did not take place until 52 he changed his mind and decided to stand for 51 mainly because the year 52 already *aliqua ex parte praeterierat*.

Neither the theory of Nipperdey nor that of Büzl may be regarded as convincing. It is hard to believe that Antonius, a scion of a noble family, enjoying moreover the favour of Caesar that secured him also Cicero's support, would have needed to canvass as long for his quaestorship as Cicero for his consulate. One is also reluctant to accept Büzl's supposition that Antonius did not want to be elected for 52 because as part of this year had already passed he would not have been able to serve his full term of office. Would it have been so important to him not to lose any month of his quaestorship that he would have preferred to postpone his election and so hold his office one year later? In any event he intended to return to Gaul to Caesar, and it was certainly of no great importance how long he commanded the soldiers as quaestor and how long as legate.

<sup>24</sup>See G. V. Sumner, "The Lex Annalis under Caesar," *Phoenix* 25 (1971) 363. Antonius had his birthday on 14 January (A. Degraffi, *Inscr. It.* 13.2.397-398) and so, as the elections for 53 were delayed, he could theoretically be elected even to the quaestorship of 53.

<sup>25</sup>J. D. Denniston, *M. Tulli Ciceronis Orationes Philippicae* 1, 2 (Oxford 1926) 128-129.

<sup>26</sup>See above, notes 4 and 5.

<sup>27</sup>*Op. cit.* (above, note 6) 24-25.

The question obviously requires a different approach. Let us turn again to our sources and consider the sequence of events. There took place in 52 two sets of elections: the delayed *comitia* for 52 and the regular elections for 51. The dates of these elections can be established only approximately. Pompey was chosen as sole consul on the 24th day of the intercalary month; it has often been tacitly assumed that he immediately held the elections for other magistracies, but no positive proof has ever been offered. Asconius (37 C) mentions, however, still before the beginning of Milo's trial on 4 April, a *triumvir capitalis*; as the elections were held in the descending order, by that time all the other magistrates, including the quaestors, must have already been chosen.<sup>28</sup> This important evidence for the date of the elections for 52 seems to have been completely overlooked in the modern literature. We may conclude that if the elections of the other magistrates began on the earliest available comitial day the quaestors for 52 may have been chosen already early in March.

As far as the *comitia* for 51 are concerned we should expect that they were preceded by the election of Scipio Nasica as Pompey's colleague in the consulship. Scipio entered office between 10 July and 11 September,<sup>29</sup> and this will also establish approximately the date of the *comitia* for 51. At which of these elections did Antonius become quaestor?

After Cicero had with much delight described the unfortunately abortive assault of Antonius on Clodius, he continues: *quaestor es factus*. This presentation conveys the impression that Antonius' election was a well merited reward for that glorious attack in the Forum. But despite the persuasiveness of Cicero his words cannot be taken as a conclusive proof that Antonius was in fact elected for 52. Not to mention the fact that the orator treats the career of Antonius very summarily and with many omissions and distortions, Cicero himself may be quoted to call in doubt the correctness of the inference he would like his readers to make.

The last we hear of Antonius' candidacy is in connection with his attempt on Clodius' life; when we meet him again after the turmoil following the death of Clodius he appears in the role of Clodius' avenger, as a *subscriber* to the accusation levelled against Milo. On 7 April 52, when Cicero delivered his speech *pro Milone*,<sup>30</sup> Antonius, his recent protégé for the quaestorship, charged Milo with the same crime he himself had almost committed. No orator could fail to deride this amusing

<sup>28</sup>For a more detailed discussion, see Linderski (above, note 22) 195–197.

<sup>29</sup>On 6 July Pompey appears as sole consul (*AEpigr.* 1959, 146; July 7–9 are *dies nefasti*), on 13 September together with Metellus [Scipio Nasica] (*CIL* 1<sup>2</sup>. 933; Sept. 12 is N.).

<sup>30</sup>For the date, see T. R. Holmes, *The Roman Republic 2* (Oxford 1923) 315–316, but cf. A. W. Lintott, "Nundinae and the Chronology of the Late Roman Republic," *CQ* 18 (1968) 191 note 4.

situation, and so Cicero, by heaping praise on Antonius for his noble and courageous assault on that beast Clodius, showed him at the same time a despicable weathercock: *Nuper vero, cum M. Antonius summam spem salutis bonis omnibus attulisset gravissimamque adulescens nobilissimus rei publicae partem fortissime suscepisset atque illam beluam iudici laqueos declinantem iam irretitam teneret, qui locus, quod tempus illud, di immortales, fuit!* (Mil. 40).<sup>31</sup> Many lofty words but no mention of Antonius' quaestorship, and yet, on the theory assigning to him the quaestorship of 52, he must already have been elected. It is hardly likely that Cicero purposely omitted the office of Antonius. Quite on the contrary, it would have served his purpose well to point out that the man who had come close to killing Clodius received a signal favor from the Roman People, and later betrayed them, whereas Milo, the true defender of the *boni*, was facing exile. But if the Philippics offer no conclusive proof that Antonius was quaestor in 52, the *pro Milone* falls short of disproving it.

Paradoxically enough, it is only the Philippics that can help us here. We read: *Quaestor es factus: deinde continuo sine senatus consulto, sine sorte, sine lege ad Caesarem cucurristi* (Phil. 2.50). Cicero refers to the same event in two letters written in 50, six years before his speeches against Antonius. He apologizes to Atticus and Caelius Rufus for having left in command of Cilicia his quaestor C. Coelius Caldus, a relatively young and inexperienced man. His explanation is socially and politically very illuminating:<sup>32</sup> *Att. 6.6.4: adde illud. Pompeius, eo robore vir, iis radicibus, Q. Cassium sine sorte delegit, Caesar Antonium: ego sorte datum offenderem . . . ? Fam. 2.15.4: Postremo non tam mea sponte quam potentissimorum duorum exemplo, qui omnes Cassios Antoniosque complexi sunt, hominem adolescentem non tam allicere volui, quam alienare nolui.* The phrase *sine sorte* has been much discussed and much misused. The quaestorian provinces were normally assigned by lot, but the appointment of quaestors *sine sorte* but *ex senatus consulto* was a perfectly legal administrative procedure which may even have been applied much more fre-

<sup>31</sup>According to ancient authorities the text of the *pro Milone* as published by Cicero differed considerably from the speech actually delivered by him in the court (Asc. 42 C; Schol. Bob. 112 Stangl; Cass. Dio 40.54. See also J. Humbert, *Les plaidoyers écrits et les plaidoiries réelles de Cicéron* [Paris 1925] 189–197. Contra: J. N. Settle, "The Trial of Milo and the other *Pro Milone*," *TAPA* 94 [1963] 268–280). This must not militate against our argument: there is no conceivable reason why Cicero should have omitted the office of Antonius either in the speech actually delivered or in its later literary elaboration.

<sup>32</sup>Cicero's succession problems in Cilicia have been discussed by L. A. Thompson, "Cicero's Succession-problem in Cilicia," *AJP* 86 (1965) 375–386, and recently they have been elucidated in a broader context by A. J. Marshall, "The Lex Pompeia de Provinciis and Cicero's Imperium in 51–50 B.C.: Constitutional Aspects," *Aufstieg und Niedergang der römischen Welt* 1. 1 (Berlin–New York 1972) 887–921.

quently than it would seem at first sight.<sup>33</sup> Willems was therefore of the opinion that in 44 Cicero must have been *mal servi par sa mémoire*, for in any other case he would not have alluded to the same event in 50 as *la chose la plus légale au monde*.<sup>34</sup> But Cicero, when he wanted, had an excellent memory, and we had better look for another explanation of his words.

In Cicero's phrase the rhetorical stress is on *sine senatus consulto, sine sorte, sine lege*, but the real meaning of the whole sentence is hidden in "*continuo*," as rightly suggested by A. R. Hands.<sup>35</sup> The word is commonly rendered as "immediately"; Cicero, however, (as is easily seen from the examples in Merguet's dictionary) uses it often to indicate that between two closely connected events no other event occurred bearing upon them.<sup>36</sup> Thus the length of time indicated by *continuo* may vary considerably, as is also true of other similar expressions like *mox* and *nuper*. The exact meaning of the passage would be that in the period of time between Antonius' election and his departure from Rome no decree of the senate was passed concerning the quaestorian provinces and no *sortitio provinciarum* took place.<sup>37</sup> Cicero does not say that such a decree was not passed

<sup>33</sup>Drumann-Groebe 2.130 and V. Ehrenberg, *RE* 13 (1926) 1504 interpret the appointment of Cassius and Antonius as an example of the triumvirs' "Willkür;" so also Tyrrell-Purser, *The Correspondence of M. Tullius Cicero* 3<sup>2</sup> (Dublin 1914) 256-257. These interpretations are completely mistaken. See the excellent analysis by L. A. Thompson, "The Appointment of Quaestors *extra sortem*," *PACA* 5 (1962) 17-25, esp. 19-20. Cf. also Mommsen, *Staatsrecht* 2.<sup>3</sup> 532-534; Willems (above, note 7) 2.599 ff., esp. 607-608.

<sup>34</sup>*Op. cit.* (above, note 7) 2.607, note 3.

<sup>35</sup>Quoted by Thompson (above, note 33) 21, note 23.

<sup>36</sup>Cf. esp. *Cael.* 9; *Vat.* 36: *quis legatos umquam audivit sine senatus consulto? Ante te nemo: post* (i.e., after 59) *continuo* (i.e., in 58) *fecit idem . . . Clodius*.

<sup>37</sup>The interpreters are, however, at a loss when it comes to explain the phrase *sine lege*. Denniston ([above, note 25] 129) remarks that he could not find any instance of a quaestor being assigned *lege* to a province; Thompson ([above, note 33] 20) comments: "if there had been a *lex*, it would certainly have been mentioned by Cicero or someone else" for "it is impossible to believe that Cicero would have omitted from his contemporary correspondence such a *popularis* measure." The translators are either evasive (e.g., "*sans loi*": A. Boulanger and P. Wuilleumier in *Collection Budé*) or unduly interpretative (e.g., "without procuring any law to be passed" in the old translation by C. D. Yonge). Cf. also Drumann-Groebe 1.48: Antonius returned to Gaul "ohne eine Bestimmung des Senats, des Volkes oder des Loses zu erwarten." All these interpretations are obviously going in the wrong direction. It was an exclusive prerogative of the senate to assign the quaestorian provinces, and there is no reason why Cicero should have criticized Antonius for not procuring a law concerning his assignment. Not to mention the fact that Antonius as only a quaestor (designate) was not in a position to sponsor any law, the mere allusion to such a *lex* would have implied the possibility of transferring the provincial appointments from the senate to the popular assembly, hardly a thing one would ascribe to Cicero. *Sine lege* clearly does not mean here without the *lex comitalis*, but stands generally for "without any legal justification," cf. the expressions *nulla lege, nullo pacto*. See Forcellini-De Vit, *Totius Latinitatis Lexicon*, s.v. *lex*, page 743 no. 15: *sine lege est sine ratione, modo, ordine*.



at all; indeed the implication is that it was in fact carried out but only after Antonius had already left the city. This interpretation receives support from Cicero's remarks in the letters to Caelius and Atticus. Far from criticizing Caesar's selection of Antonius *sine sorte* Cicero uses it as an excuse for, and a parallel case to, the delegation of his *imperium* to Coelius Caldus. The procedure governing the assignment of quaestorian provinces is of importance here. It consisted of two stages. The first was the *senatus consultum de provinciis quaestorum* and the other the *sortitio provinciarum*. Some provinces were assigned *sine sorte* directly by the senate, and the others were marked out to be distributed by lot among the remaining quaestors on 5 December, the date of their entry into the office.<sup>38</sup> There can be no doubt that Antonius was assigned to Caesar at the latter's request in the regular way by a *senatus consultum*. As the passing of the decree was a matter of administrative routine, he had left Rome without waiting for it—certainly a minor constitutional impropriety, but misrepresented by Cicero in a masterly way.

These considerations are of immediate importance for the dating of Antonius' quaestorship. The connection has been normally overlooked, but it was seen clearly by Thompson.<sup>39</sup> His conclusion is, however, startling. He maintains that even on this interpretation of *continuo* the statement that Antonius rushed off to Gaul *sine senatus consulto* and *sine sorte* "would nevertheless be a lie on Cicero's part: Antonius did not leave for Gaul until April 52 (Ascon. in *Mil.* 36)." This conclusion is based on two assumptions: a) that the *S.C. de provinciis quaestorum* was passed before 7 April; b) that Antonius was quaestor in 52.

Thompson takes it for granted that the *S.C.* was voted on before 7 April, but he offers no evidence. He cannot, however, be criticized on that account, since it is possible to establish beyond any doubt that the quaestorian provinces were in fact assigned or allotted before or around 7 April. It was a duty of the urban quaestors to allot from the general *album iudicum* the panels of jurors to single *quaestiones* (or at least to the *quaestio de vi* for which this procedure is directly attested).<sup>40</sup> Now, for the trials of 52 there existed two distinct lists of jurors: the list of 360 jurors for the trials under the *leges Pompeiae de vi* and *de ambitu* drawn up by Pompey and the list of jurors composed as normally at the end of the previous year by the urban praetor.<sup>41</sup> From this list were provided

<sup>38</sup>See Mommsen, Willems, and Thompson cited in note 33. The mechanism of provincial appointments was in 52 substantially changed by the *lex Pompeia de provinciis*, but there is no indication that the law of Pompey had affected the appointment of provincial quaestors. Cf. Marshall (above, note 32) 912, note 97.

<sup>39</sup>*Op. cit.* (above, note 33) 21, note 23.

<sup>40</sup>Cass. Dio 39.7; Cic. *QFr.* 2.12 (on the text, cf. W. Sternkopf, *Hermes* 39 [1904] 395–396). See Mommsen, *Staatsrecht* 2.<sup>3</sup> 561, and esp. J. Lengle, "Die Auswahl der Richter im römischen Quästionsprozess," *ZSav* 53 (1933) 290–292.

<sup>41</sup>C. Nicolet, *L'ordre équestre à l'époque républicaine* (Paris 1966) 620–623.

the jurors for the trials *lege Plautia de vi*, and here the cooperation of the urban quaestors was indispensable. As the trials under the *lex Plautia* began immediately after the condemnation of Milo,<sup>42</sup> the inference seems justified that around that time the quaestorian provinces must have already been assigned.

Is it not true that if the *S.C.* was passed before the trial of Milo, and if Antonius was quaestor in 52 it was a lie on Cicero's part to imply that he left for Gaul without the authorization of the senate? But let us look closer at this rather peculiar argument. That Antonius was quaestor in 52 is inferred from what Cicero seems to say in the Philippics, and this inference is not only tacitly treated as a firmly established fact but also immediately turned against Cicero to brand his statement concerning Antonius' departure as a lie. This is hardly fair. Thompson quotes with approval R. Syme's acid remark that the Philippics are an eternal monument of misrepresentation, but it is a pity that in this case he has not followed it. Why should we rather not construct a completely opposite line of argument: as a starting point we must take the fact explicitly attested by Cicero that Antonius departed from Rome *sine senatus consulto* (a misrepresentation but not a lie). Now, if in 52 the *S.C. de provinciis quaestorum* was passed (as established above) when Antonius was still in Rome, the conclusion is inescapable that he was not quaestor in 52. If Antonius was elected for 51, not only does the discrepancy between Cicero and Caesar/Hirtius disappear, but Cicero also provides the answer why he hastened to Gaul without waiting for the necessary constitutional formalities: he was hard pressed by his creditors and as soon as possible he fled from Rome, the *terra egestatis*.<sup>43</sup>

One question still remains unanswered: why Antonius, who undoubtedly desired to become quaestor in 52, postponed his election till summer (or autumn) 52? An *obtrektor* of Antonius would have an answer ready at hand: *vinolentia et meretrices*. This explanation would have pleased Cicero, and perhaps would not be completely devoid of truth. At least A. C. Clark<sup>44</sup> came close to this idea when he suggested that Antonius may have established a liaison with Fulvia (in the eyes of Cicero undoubtedly a *meretrix*) by that time, and that this may have been the ultimate reason for his appearance before the jury as Milo's accuser and Clodius' avenger. Antonius' connection with Fulvia in 52 is only a guess and not a fact, but if we examine more attentively Cicero's narrative we can discern two different periods of Antonius' *petitio*. At first there was a period when he cultivated Cicero (*sum cultus a te*), but later (still

<sup>42</sup>Asc. 55 C.

<sup>43</sup>*Phil.* 2.50. On Antonius' debts, see Drumann-Groebe 1.47-48.

<sup>44</sup>A. C. Clark, *M. Tulli Ciceronis Pro T. Annio Milone Oratio* (Oxford 1895) 37. So also Ch. L. Babcock, "The Early Career of Fulvia," *AJP* 86 (1965) 5-6, 13-14.

before the *comitia* as he left Rome shortly after his election) he reverted to his old style of life, to his *nequitia*. When did this sudden transformation occur? No doubt it must be connected with the death of Clodius and the changed political situation in Rome after Pompey's intervention. The murder of Clodius, far from being committed with "the approbation of the Roman People," aroused the indignation of the city plebs not only against Milo but also against other enemies of Clodius, as Cicero knew so painfully well from his own experience. In view of Pompey's professed enmity toward Milo, Antonius had to reconsider his position. The chances for his election were not bright: it was imperative to break off immediately his unnatural alliance with Cicero and to return to his old friends—if no longer to Clodius, then at least to the Clodiani. But it was already too late to think of the election for 52—Antonius preferred not to take any chances, but to wait a few months and be safely elected for 51. It is in this context that we must view his accusation of Milo: it was a shrewd political move meant to appease Pompey and the Clodiani and to pave the way for his election to the quaestorship of 51.

Now all the pieces of our source-mosaic fit well together: Antonius came to Rome in 53 with a clear plan to obtain the quaestorship of 52. The Clodius affair caused him to withdraw his candidature for 52 and to stand for 51. On his election in the summer or autumn 52 he hurried to Caesar without waiting for an appropriate *senatus consultum*. Consequently when he emerges in Gaul Caesar introduces him as a legate, but at the end of December, as is to be expected, he appears as quaestor and is so termed regularly throughout 51.<sup>45</sup>

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<sup>45</sup>We are grateful to our friend, Professor C. P. Jones, for his kind help in matters of style.