

M. ANTONIUS AND THE TRIAL OF THE VESTAL VIRGINS

Valerius Maximus on two occasions records a trial of the orator M. Antonius under the grave charge of *incestum* (3.7.9; 6.8.1). In the past this event has always been associated with the celebrated trials of the Vestal Virgins and their paramours in 114 and 113 BC¹). But recently the *communis opinio* has been challenged by T.F. Carney in an illuminating article on Valerius²). Carney transfers the prosecution to 111 and regards it as part of an attack upon the supporters of Marius. The case for the earlier date has never been put with precision and, in view of Carney's criticism, now merits restatement. Despite his arguments, it will be seen, that case must continue to stand.

The key passage is Val. Max. 3.7.9. It requires quotation in full:

Contra M. Antonius ille disertus – non enim respuendo, sed amplectendo causae dictionem quam innocens esset testatus est – quaestor proficiscens in Asiam, Brundisium iam pervenerat, ubi litteris certior incesti se postulatam apud L. Cassium praetorem, cuius tribunal propter nimiam severitatem scopulus reorum dicebatur, cum id vitare beneficio legis Memmiae liceret, quae eorum, qui rei publicae causa abessent, recipi nomina vetabat, in urbem tamen recurrit, quo tam pleno fiduciae bonae consilio cum absolutionem celerem tum profectionem honestiorem consecutus est. This is the only literary reference to Antonius' quaestorship. A Delian inscription attests to his service as *quaestor pro praetore*, apparently in Asia³). Antonius reached the praetor-

1) Cf. e.g. A. W. Zumpt, *Criminalrecht der Römischen Republik* (Berlin, 1868) I. 2. 218–221; T. Mommsen, *Römisches Staatsrecht* (Leipzig, 1887) II^a. 664, n. 2; A. H. J. Greenidge, *Legal Procedure of Cicero's Time* (Oxford, 1901) 379–380; Klebs, *RE* I. 2590 "Antonius" n. 28; H. Malcovati, *Oratorum Romanorum Fragmenta* (Torino, 1955) 224–225.

2) "The Picture of Marius in Valerius Maximus" *Rh. Mus.* CV (1962) 303–304.

3) *BCH* XVI (1892) 155. n. 7: *ταμῶν ἀντιστράτηγον*; cf. M. Holleaux, *REA* XIX (1917) 91–92.

ship in 102⁴), so that a quaestorship about a decade earlier is reasonable.

Two items in the Valerius passage suggest an association with the Vestal Virgin affair: the charge of *incestum* and the mention of the presiding judge L. Cassius. The Vestal cause célèbre opened in December of 114. No fewer than three priestesses of the most distinguished families in Rome were accused of *incestum*⁵). As was customary, the case was heard before the college of pontiffs, but only one of the offending Vestals was condemned, the other two were absolved. This led to more drastic measures. A tribune of 113, Sex. Peducaeus, introduced a bill to censure the *pontifex maximus* and the whole priestly college for faulty judgment. A special tribunal was set up under L. Cassius Longinus Ravilla, the consul of 127, to retry the case, with the result that all three Vestals were condemned⁶). It is a natural inference then that Antonius too was charged in connection with this affair, perhaps as an alleged paramour.

Carney, however, points to the fact that L. Cassius is described as *praetor*. Obviously the consul of 127 will not have held a praetorship in 113. Moreover, the mention of a *lex Memmia*, otherwise unattested, is also suggestive. Since we know of a L. Cassius Longinus who was praetor in 111 (Sallust *Iug.* 32-33), and since the *popularis* agitator C. Memmius was tribune in 111 (Sallust *Iug.* 27; 30-34), Carney places Antonius' prosecution in that year as well. But his analysis will not hold up under close scrutiny.

The *lex Memmia* granted judicial immunity to men serving abroad on state commissions. Carney's assertion that the bill must be ascribed to C. Memmius for "he is the only member of his family to have interested himself prominently in these matters" is a strange twisting of the evidence. In fact, C. Memmius is the last person likely to have passed such a measure. His

4) T. R. S. Broughton, *The Magistrates of the Roman Republic* (New York, 1951-1952) I. 568; 569, n. 2.

5) A Licinia, an Aemilia, and a Marcia: Asconius 45-46 Clark; Cic. *Nat. Deor.* 3. 74; Livy *Per.* 63; *Obseq.* 37; Dio 26. fr. 87. The exact date of the first hearings is provided by Fenestella, cited in Macrobius *Sat.* 1. 10. 5-6.

6) The year 113 is fixed by Cicero, *Brutus* 160, who states that L. Crassus was twenty seven when he appeared as defense counsel in this case. Crassus was born in 140, for he was thirty four when he spoke for the *lex Servilia* in 106 (Cic. *Brutus* 161). Cf. also Livy *Per.* 63; *Obseq.* 37; and G. Niccolini, *I Fasti dei Tribuni della Plebe* (Milano, 1934) 175-177.

whole tribunate was spent in attacking men who had allegedly betrayed their country while serving abroad⁷). It is the very height of paradox to assign to Memmius in this very year a measure granting exemption to public officials on overseas missions. There is no lack of Memmii in this period (cf. Broughton *MRR* II. 590) and the law may have been passed at any time prior to 113.

That Valerius refers to Cassius as *praetor* should not provide serious difficulty. Praetors regularly sat on *quaestiones* in the post-Sullan period, so that a slip here on Valerius' part is readily explicable. A similar error seems to have been made by Plutarch in another context. The presiding officer in Pompey's trial of 86 is also described as a praetor⁸). That man is almost certainly P. Antistius, a tribune in 88 who was only *aedilicius* at the time of his death in 82⁹). Thus, it is much easier to assume a minor oversight on Valerius' part here than to imagine two separate *incestum* trials in two separate years before two separate L. Cassii. Nothing stands in the way of dating Antonius' prosecution to 113.

A word should be added on the office of Antonius. He was quaestor in the year of the trial, according to Valerius. Yet the exemption he waived was that afforded to men absent *rei publicae causa*. Would not the quaestorship itself be sufficient protection against a judicial proceeding? We know that the *lex Acilia* gave immunity to magistrates in office for *repetundae* cases¹⁰). It is possible, of course, that the serious charge of *incestum*, an offense against the gods, allowed of no exceptions¹¹). The alternative is to suppose that when Antonius returned for the hearing he was already *quaestor pro praetore* rather than simply *quaestor*. In that event his quaestorship may well be in 114, not 113¹²).

Carney's analysis of the political implications of the trial is

7) Sallust *Iug.* 27; 30-34. This, of course, was in connection with the preliminary embassies and negotiations with Jugurtha.

8) Plut. *Pomp.* 4. 2.

9) Vell. Pat. 2. 26; cf. Klebs, *RE* 2. 2547 "Antistius" n. 18.

10) C. G. Bruns, *Fontes Iuris Romani Antiqui* (Tubingen, 1909) n. 10. 8-9 (p. 60). The inscription gives *Dic., cos., pr., mag. eq.*, followed by a lengthy lacuna. Quaestors were surely included.

11) This does seem to have been the case in the Ciceronian age. Clodius' quaestorship in 61 did not exempt him from an *incestum* charge. On that trial, cf. Greenidge, *Legal Procedure* 386-389.

12) Broughton, *MRR* I. 536, who puts it in 113, ought perhaps to insert a query.

similarly misguided. He views Antonius as a "prominent Marian brought to trial before another Marian". The prosecution was allegedly arranged by M. Scaurus, the *princeps senatus*, and the Metellan *factio* to embarrass Memmius and the Marian group. But there is no mention of Scaurus in this connection. Moreover, that Marius was strong enough to control a faction of his own as early as 111, not to mention 113, is very unlikely and unwarranted by the evidence. He had barely reached the praetorship for 115 and then missed conviction on an *ambitus* charge by only a single vote¹³). Description of Antonius as a "Marian" is, at best, anachronistic. Evidence on his cooperation with Marius dates only to the 90's and even then it was not directed against the Metelli¹⁴).

By taking the Antonius case in isolation, Carney has failed to note some of the other personages under attack in the Vestals affair. One of the accused was a Licinia, defended by young L. Licinius Crassus, probably her first cousin and the son-in-law of Q. Mucius Scaevola¹⁵). These were individuals closely connected with M. Scaurus and the Metellan group¹⁶). Even more revealing is the fact that the *pontifex maximus* did his best to minimize the effects of this scandal by acquitting two of the three Vestals; he was himself a Metellus, L. Metellus Delmaticus. The trials which followed under Cassius' *quaestio extraordinaria* were overtly a repudiation of Delmaticus' judgment and an attack on his integrity¹⁷).

13) Plut. *Mar.* 5; Val. Max. 6. 9. 14.

14) Cf. my articles "Political Prosecutions in the 90's BC" *Historia* XV (1966) and "The Lex Varia" *JRS* LV (1965).

15) Cic. *Brutus* 160; cf. Malcovati *ORF* 242.

16) See E. Badian, *Studies in Greek and Roman History* (New York, 1964) 34-70, and the articles cited in n. 14.

17) Asconius 45-46 Clark: *Sex. Peducaeus tribunus plebis criminatus est L. Metellum pontificem max. totumque collegium pontificum male indicasse de incesto virginum Vestalium*. For a political analysis of the *incestum* trials, cf. Münzer, *Römische Adelsparteien und Adelsfamilien* (Stuttgart, 1920) 243-244. The legal questions are discussed by Zumpt, *Criminalrecht* II. 1. 216-221. It might be noted in addition that a certain *eques*, Betutius Barrus, had damaging information brought against the Vestals; Plut. *Rom. Quaest.* 83; Porphyrio *Ad Hor. Sat.* 1. 6. 30. Orosius 5. 15. 22, with a slightly different story, gives "L. Veturius". The name calls to mind T. Betutius Barrus of Asculum whom Cicero calls the most accomplished of non-Roman orators; *Brutus* 169. This man, in a trial of the 90's, delivered the prosecution's case against Q. Caepio who was defended by L. Crassus, also a defense counsel in the Vestal Virgins' case; Cic. *loc. cit.*

In general, this affair ought not to be seen in an exclusively political light. The infidelity of the Vestals had been preceded by other dire religious omens and the populace was stirred by a grave disquiet which perhaps demanded victims to placate the gods¹⁸). But, insofar as politics were involved, the situation points in a direction exactly opposite from that of Carney's reconstruction. The men who took advantage of the religious hysteria were enemies of the *pontifex maximus* and his clan. The least likely individual to fit that description would be M. Scaurus who, two years before, was named *princeps senatus* by a Metellus himself (Broughton *MRR* I. 531-533).

Delmaticus, the chief pontiff, saw his decision reversed and Licinia, together with her two sinning compatriots, was condemned, but M. Antonius spoke on his own behalf and secured acquittal¹⁹). The young orator had made a powerful impression by voluntarily waiving his immunity and appearing before the *scopulus reorum*. It was the first step in a brilliant oratorical career.

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18) Orosius 5. 15. 20-21; Obseq. 37; Plut. *Rom. Quaest.* 83.

19) Val. Max. 3. 7. 9. A loyal slave endured torture but refused to implicate his master; 6. 8. 1. Although no definite evidence is available, the court, composed of *iudices* (6. 8. 1) was probably staffed by *equites*; cf. Zumpt, *Criminalrecht* II. 1. 221; Greenidge, *Legal Procedure* 379. If so, this is sufficient to invalidate the thesis of Bloch-Carcopino, *Histoire Romaine* (Paris, 1940) II. 295-296, followed by L. Pareti, *Storia di Roma* (Torino, 1953) III. 408-409, that the trials of the Vestals represent an effort on the part of the "optimates" to discredit the "friends of the *equites*". Some *equites* were involved as paramours (Obseq. 37) but so were prominent members of the aristocracy like Antonius, the three Vestals themselves, and possibly Ser. Fulvius; Cic. *Brutus* 122; *De Invent.* 1. 80; Schol. Bob. 85 Stangl; cf. Malcovati *ORF* 173-174. There is no reason to see this affair as evidence for a clash between the senatorial and equestrian orders.