

NOTES ON THE TRIAL OF POMPEIUS AT PLUTARCH, POMP. 4.1–6

Of the trial of Cn. Pompeius reported at Plut. Pomp. 4.1–6, one may so far say with certainty only that it demonstrates Pompeius' political relations to the regime of Cinna¹. For Pompeius' advocates were all prominent *Cinnani*: Cn. Papius Carbo, cos. 85, 84, 82, L. Marcius Philippus, the censor of 86, and Q. Hortensius Hortalus, who dominated the lawcourts in the middle 80s². Presiding over the court as *iudex quaestionis*, moreover, was P. Antistius, tr. pl. 88, who showed conspicuous favor to Pompeius during the trial and married his daughter to him once the trial ended, and who remained in Rome and loyal to the *Cinnani* until they betrayed and murdered him in 82³. Aside from this certainty about Pompeius' relations, the other details we would know – the precise date of the trial, the source of the public money, the nature of the charges against Pompeius, the nature of the court and of Plutarch's source – have remained the uncertain subjects of unresolved arguments, dispersed among the texts and footnotes of scholars whose attention to the trial itself has been minimal or secondary to a larger purpose⁴. This article will take those uncer-

1) On the date of the trial, see below, 177–80. Pompeius' relations with Cinna likely began with Pompeius Strabo's treacherous private negotiations with Cinna in the civil war of 87. For sources see MRR 2.48–49; cf. M. Gelzer, Pompeius (Munich ²1949) 32. It also appears that shortly after Strabo's death his army and Pompeius defected to Cinna: see below 191 with n. 50.

2) Carbo: Val. Max. 5.3.5, 6.2.8; Philippus: Cic. Brut. 230; and Hortensius: Cic. Brut. 230; Sen. Con. 7.2.6.

3) In 88 Antistius had joined his colleague P. Sulpicius in opposing the candidacy of Julius Caesar Strabo for the consulship (Cic. Brut. 226–27). This just might, though it need not, imply Antistius' support for Sulpicius' other activities as well. Such support at any rate would readily explain his presence here. In 82, Antistius' connection to Pompeius cost him his life: κατεσφάγη γὰρ ὁ Ἀντιστίος ἐν τῷ βουλευτηρίῳ, δοκῶν τὰ Σύλλα φρονεῖν διὰ Πομπήμιον (Plut. Pomp. 9.4); cf. Vell. Pat. 2.26.2–3; App. BC 1.80.

4) See, e.g., Gelzer (above, n. 1) 31–32; and idem, Kleine Schriften (Wiesbaden 1962–64) II 125–26; J. Van Ooteghem, Pompée le Grand. Bâilleur d'Empire (Brussels 1954) 51–52; R. Seager, Pompey: A Political Biography (Berkeley and Los Angeles 1979) 7; J. Leach, Pompey the Great (London 1978) 21–22; P. Greenhalgh, Pompey, the Roman Alexander (London 1980) 21–22; A. Keaveney, The Young Pompey: 106–79 B.C., AC 51 (1982) 113–14; F. Miltner,

tain details of the trial as its sole focus. Such an examination will in turn help both to illuminate the most obscure part of Pompeius' career, and to foster the efforts of other scholars for whom attention to the trial subserves a larger purpose.

I

Until recently scholars universally dated this trial to the year 86, largely on the basis of Plutarch's placing it in close proximity to the death of Strabo in late 87, and of dating the aedileship of P. Antistius to 86, the earliest possible year he could have held that office after his tribunate in 88⁵. G. V. Sumner, however, has argued that the trial should be placed in 85, and in this he has been followed by Broughton⁶. Sumner bases his argument, presumably (he is not explicit on this point), on what seems to have been the normal late-Republican practice of selecting former aediles to be *iudices quaestionum* in the year after their tenure as aedile⁷. Hence P. Antistius must have been aedile in 86 and *index quaestionis* for this trial in 85.

While this looks quite a persuasive argument at first glance, we cannot regard it as conclusive for a number of reasons. First, we must question the validity of arguments from standard procedure for times of civil strife, especially since we know that in the Rome of Cinna and Carbo the traditional and legally required intervals between offices, and the minimum age requirements as well, were disregarded for the consulship and praetorship. However much Cinna tried to conciliate the Senate in the years 87 to 84, his four consulships (87–84), Carbo's three consulships (85–84,

RE XXI 2 (1952) 2064–65; E. Gruen, Roman Politics and the Criminal Courts, 149–78 B.C. (Cambridge 1968) 177, 244–46, 262–63; I. Shatzman, The Roman general's authority over booty, *Historia* 21 (1972) 194–95; J. Lengle, Untersuchungen über die Sullanische Verfassung (Freiburg 1899) 40–42; G. V. Sumner, Orators in Cicero's Brutus: Prosopography and Chronology, *Phoenix Supplement* 11 (Toronto 1973) 111; MRR II 54, 57 n. 3, III 17 (suppl.); E. Badian, Waiting for Sulla, *JRS* 52 (1962) 57; Th. Mommsen, *Römisches Staatsrecht* (Leipzig 31887/88) II 584; M. C. Alexander, Trials in the Late Roman Republic, 149 B.C. to 50 B.C. (Toronto 1990) 62–63.

5) See the scholars cited above, n. 4, with the exception of Sumner.

6) Sumner (above, n. 4) 111; Broughton, MRR III 17 (suppl.), modifying his position from II 54, 57 n. 3.

7) The evidence for this practice is collected by A. H. M. Jones, *The Criminal Courts of the Roman Republic and Principate* (Totowa, NJ, 1972) 58 with nn. 86–87.

82), the consulship of the twenty-seven year old C. Marius (82), and the two praetorships of M. Marius Gratidianus (85 and 84 or 82) sufficiently justify doubts about the regime's punctiliousness regarding the normal procedures for *iudices* and aediles⁸. Why should they have been different? On this view, Sumner's dating of the trial does not seem so secure. Second, Cic. Brut. 226–27 offers direct evidence against the persistence of normal procedures in the law courts:

Itaque post tribunatum primo multae ad eum (sc. Antistium) causae, deinde omnes maximae quaecumque erant deferebantur ... Hic temporibus floruit eis quibus inter profectorem redditumque L. Sullae sine iure fuit et sine ulla dignitate res publica; hoc etiam magis probabatur, quod erat ab oratoribus quaedam in foro solitudo.

In the context of Antistius' prominence in the lawcourts, the phrase *sine iure* must surely signify, inter alia, irregularities in the administration of justice; and Cicero's assertion that Antistius flourished under these circumstances in particular implicates him in these irregularities⁹. Considering, moreover, the apparent rarity of criminal trials in the time of Cinna, the fact that all the most important cases, as Cicero says, came to Antistius, and that he was chosen *iudex* for the trial of Pompeius, further indicates his extensive personal involvement in the way things were done *sine iure* under Cinna¹⁰. So again doubts about Sumner's reconstruction must abide. In light of these first two points, we cannot rule out the possibility that Antistius was *iudex* in 86 and aedile in 85 – the

8) For discussion and sources on Gratidianus, see MRR II 57 and 60, III 140–41 (suppl.). He might also have been tribune in 86, directly preceding his first praetorship in 85. As Broughton (III 141 [suppl.]) points out, “[a] tribunate and praetorship in successive years (86, 85) would be quite irregular, but it was a stormy period.” Gratidianus' immediate succession from one office to the next, if true, would further argue the point made in the text about the irregularity of offices. While Badian (above, n. 4, 47–61) is surely right to argue that Cinna was hardly the tyrant he has been portrayed to be, I fear I cannot agree that “*mos* and *ius* conspicuously flourished” (57).

9) Cicero's reference to the courts at Brut. 311 might corroborate the existence of the irregularities referred to above in the text: *Tumultus interim (in) recuperanda re publica et crudelis interitus oratorum trium Scaevolae Carbonis Antisti, redditus Cottae Curionis Crassi Lentulorum Pompei, leges et iudicia constituta, recuperata res publica.*

10) Cf. Cic. Brut. 308; Rosc. Amer. 11, 28. See also the remarks of Gruen (above, n. 4) 236: “Can it be an accident that, apart from the case of Pompey in 86, not a single criminal trial is recorded between the death of Marius and the prosecution of Sex. Roscius in 80?”; and “Lack of activity at the bar, long the heart of Roman politics, should arouse suspicion that tranquility did not come easily. It was presumably an enforced policy of the regime.”

latter office perhaps being compensation for his part in Pompeius' trial – or even aedile and *index* in 86.

Third, Gruen has persuasively argued that in 86 and 85 the Cinnan government undertook measures to improve both public and private financial conditions at Rome; and that the prosecution of Pompeius for the return of embezzled public funds was quite likely another such measure¹¹. Since replenishing the needy treasury must have been a high priority, and since we know of a number of other politically motivated trials between the fall of Rome to Cinna and Marius in late 87 and the death of Marius in January 86, the beginning of 86 seems a far more likely date for Pompeius' trial than any date in 85¹². Fourth, the evidence of Plutarch is decidedly against a date in 85, a point which Sumner acknowledges but dismisses without argument¹³. Plutarch's assertion that Pompeius was accused ἅμα δὲ τῷ τελευτῆσαι τὸν Στράβωνα is quite explicit about the temporal relationship of events, and it is perverse, as Badian says of another passage early in the *Pompeius*, to reject Plutarch's indication of chronology in favor of an a priori reconstruction, as Sumner does¹⁴. Were Plutarch merely saying that Pompeius' trial followed Strabo's death, τελευτήσαντος δὲ τοῦ Στράβωνος or a similar phrase would have done; ἅμα is much more forceful and immediate, and cannot admit the passage of more than a year between Strabo's decease in late 87 and a trial at some point in 85. One might object that the biographer is compressing events. To a small extent he is, since he is aware that the trial took place only after Rome fell to Cinna and Marius (cf. Pomp. 4.3). Greater compression than this, however, is most improbable. For Plutarch tends to compress events only when the details and the passage of time are irrelevant to his purpose¹⁵. This explains his omission of the fall of Rome, which is immaterial to his demonstration of Pompeius' character and career. Strabo and the timing of his death,

11) Gruen (above, n. 4) 245–46, following H. Bennett, Cinna and his Times (Menasha, WI, 1923) 40–43. These financial measures included a law of 86 that cancelled three quarters of the principal on existing debts, and a praetorian edict in 86 or 85 establishing a process by which debased coinage could be recalled: MRR II 53, 57, 60, III 140–41 (suppl.).

12) For discussion and sources, see Gruen (above, n. 4) 233–36.

13) Sumner (above, n. 4) 111.

14) See E. Badian, The date of Pompey's first triumph, *Hermes* 83 (1955) 114, where he is discussing the chronology of Pompeius' African campaign.

15) On compression, see C. B. R. Pelling, Plutarch's adaptation of his source material, *JHS* 100 (1980) 127–28; T. P. Hillman, When did Lucullus retire?, *Historia* 42 (1992) 214.

however, are quite relevant to the point Plutarch is making about Pompeius in the account of his trial. For since the beginning of the *Life* the biographer has shown Pompeius and his father in stark contrast in order that he may better reveal Pompeius' character. While the common people loved Pompeius right from the beginning, Strabo was feared during his lifetime because he was so warlike, and hated because of his greed for money; at his funeral the people pulled his body from its bier and abused it¹⁶. To be sure, Plutarch's portrait of Strabo is simplistic, a rhetorical construct designed to emphasize Pompeius' good points. Nevertheless, in the context of this *Life* no detail could be more relevant to the tale of this trial – in which young Pompeius is prosecuted for his hated father's crime and acquits himself so magnificently that the judge loves him, betrothes his daughter to him, and οἱ πολλοί escort him home crying 'Talasio' – than that the trial followed quite soon after Strabo's death. We must, therefore, reject any compression on a large scale, accept Plutarch's chronology as it stands, and date the trial to 86.

II

We must next inquire into the δημόσια χρήματα to which Plutarch refers at 4.1. Settlement of this question will help to establish the nature of the court and the charges against Pompeius in 86. Scholars have commonly assumed that the public money was the booty of Asculum itself or the money derived from the sale of that booty *sub hasta*, which Strabo had not deposited in the treasury after his triumph in 89, much to the disappointment of the Senate's hopes that he would do so¹⁷. Plutarch's mention at 4.2–3 of λίνα θηρατικά καὶ βιβλία τῶν ἐν Ἄσκιῳ ληφθέντων, which Pompeius had received παρὰ τοῦ πατρὸς ἐλόντος τὸ Ἄσκιον, seems to offer corroboration. *Prima facie*, then, this assumption is a fair one. I. Shatzman, however, has rather convincingly shown that the Roman general in this era was under no legal compunction to hand

16) Pomp. 1.1–4; cf. 3.1–5. For Strabo's funeral, see also Vell. 2.21.1–4; Gran. Licin. 35.42–45; Obseq. 56a.

17) See Oros. 5.18.26: *Pompeius Asculum ingressus ... servos praedamque omnem sub hasta vendidit ... et cum de hac praeda opitulationem aliquam in usum stipendii publici senatus fore speraret, nihil tamen ... ex ea egenti aerario contulit*. For the scholarship, see above, n. 4.

booty or the proceeds of its sale over to the treasury¹⁸. One cannot then construe the booty of Asculum or the money realized by its sale to have been the public money. Rather, as Shatzman argues, the money which Strabo had embezzled, and for the return of which Pompeius was prosecuted, was *pecunia ex aerario attributa*, money that had been allotted to Strabo when consul in 89, and never subsequently repaid or accounted for in full: hence the charge of *peculatus* (κλοπή)¹⁹.

For all the excellence of Shatzman's points about generals, booty, and *pecunia ex aerario attributa*, his argument fails in some important respects as an explanation of this trial. First, although he carefully and rightly points out that Plutarch draws a distinction between δημόσια χρήματα and λίνια θησαυρικά και βιβλία, he then rationalizes that "it is not at all clear that the formal charge of *peculatus* included the nets and books; they may merely have been mentioned in the speech of the prosecutor."²⁰ Yet Plutarch's wording at 4.2 surely indicates that Pompeius was accused of illegally possessing these items²¹. This is hardly the "mention" that Shatzman would have it be. It is difficult to accept that Plutarch, though drawing so careful a distinction between the public money and the nets and books, carelessly mistook so minor a detail, mentioned only in passing by the prosecutor, for a formal charge. Shatzman, moreover, takes no account of the other evidence, spare though it is, for this trial. For at Brut. 230 Cicero says that Q. Hortensius and L. Marcius Philippus spoke in this case *pro Cn. Pompei bonis*; and Valerius Maximus confirms the testimony of Cicero when he tells us at 5.3.5 that Cn. Papirius Carbo spoke for Pompeius *de paternis bonis*, and when later at 6.2.8 he refers to Carbo, in a quotation addressed to Pompeius, as being *acerrimum pueritiae tuae bonorumque patris tui defensorem*. How then do we square a prosecution for the embezzlement of public funds, as Plutarch

18) Shatzman (above, n. 4) 177–205. For his discussion of Pompeius' trial, see 194–95. Though Shatzman states (195) that the Senate's hopes, as related by Orosius (quoted above, n. 17), "do not concern [Strabo's] handling of the booty in any way at all," I would argue that the Senate's expression of hope supports his thesis about the general's freedom to dispose of his booty as he saw fit, that no law compelled him to hand it over.

19) Shatzman (above, n. 4) 195.

20) Shatzman (above, n. 4) 195.

21) This is true even though the accusation was unsupported by law. For, since Pompeius had been in his father's army at Asculum, he actually had every legal right to a share of the booty: Shatzman (above, n. 4) 195.

has it, with the information in Cicero and Valerius Maximus about a prosecution regarding property, i.e., *bona*?

Careful scrutiny of Plutarch's account will allow us to reconcile his testimony with that of Cicero and Valerius Maximus, and to approach a more satisfactory explanation of this aspect of the trial. At 4.2 Plutarch says that Pompeius discovered a certain Alexander, one of his freedmen, to have purloined most of the money (τὰ μὲν πλεῖστα), and turned him over to the authorities. Given the order of events in Plutarch's account, it seems a safe assumption that this occurred, not at the trial itself, but at the pre-trial hearings (προάγωνες) after the initial charges were filed. Whether or not Alexander was merely a scapegoat for the charge of embezzlement, his arrest and (presumably) conviction will at best have recovered most of the money. Some of it remained unaccounted for, and the trial itself, therefore, must have concerned this remainder. Plutarch's report of the accusation about books and hunting nets shows that property, and whether it was legally or illegally obtained, was also at issue. The response to this charge also attests the centrality of questions of property to the charges: Pompeius had received the nets and books παρὰ τοῦ πατρὸς ἑλόντος τὸ Ἄσκλον, a fact that established his rightful ownership. This attention to property harmonizes with the testimony of Cicero and Valerius Maximus which indicates that the property of Pompeius and his father was the central concern of the trial itself. The prosecutor then, it would seem, held it likely that the remainder of the public funds had been converted into property²². On this evidence we may fairly conclude that the trial inquired into whether any property then in Pompeius' possession had been purchased with any or all of the remainder of the embezzled funds, and so whether Pompeius would be subject to any penalties for *peculatus*²³.

22) Even if the prosecution was staged, as Gruen posits (see above, p. 179 with n. 11) as part of the government's plan to help stabilize the state financially, nothing hinders this reconstruction. In fact, one might well argue that the accusation of illegal possession of books and hunting gear, so easily refuted, had been specifically and prominently introduced to cast a reasonable doubt upon the rest of the prosecution's case, and thus to render Pompeius' eventual acquittal legally specious.

23) Gelzer (above, n. 4, II 125 n. 132) and Miltner (above, n. 4, 2064–65) have both to some degree anticipated this verdict, but they see the process *pro Cn. Pompei bonis* as involving the booty of Asculum, rather than embezzled *pecunia ex aerario attributa*.

III

With the charges and the process of the trial established, the nature of the court will now receive scrutiny. Was the court a *quaestio de peculatu* especially convened for this trial, or a session of a permanent *quaestio* already established, like the *quaestio de repetundis* which had existed since 149, and the *quaestio de maiestate* created in 103²⁴? Surely no standing court *de peculatu* was operating in 104, when a special *quaestio* for this crime was convened to try Q. Servilius Caepio, cos. 106, for his embezzlement of the gold of Tolosa²⁵. Now Gruen has argued that the court which tried Pompeius in 86 was a permanent *quaestio de peculatu*²⁶. His argument merits close examination. He begins by suggesting (176–177) that the trial of L. Licinius Lucullus, pr. 104, for κλοπή, as Plut. Luc. 1.1 puts it, was in fact a trial *de peculatu*. Since no permanent court of this kind existed in 104 when Caepio was tried, the trial of Lucullus, according to Gruen (177), “indicates that a standing court for peculation had recently been set up;” and he would credit the popular leaders who established the *quaestio de maiestate* in 103 with the enabling legislation for the peculation court. In discussing Plutarch’s account of Pompeius’ trial in 86, he states (244) “There is no suggestion here of a special *quaestio*, a fact which implies that a permanent *peculatus* court did exist in the pre-Sullan period.”²⁷ Finally, in summing up on the possible connection between such a court and Sulla’s reforms, he points out (262–63) that “... no record survives of a *lex Cornelia de peculatu*. Nothing bars the assumption that a standing court on the theft of public funds existed before the Sullan rogations.” As if in confirmation, he then reverts (263) to his arguments on the trials of Caepio, Lucullus, and Pompeius.

However meritorious this argument might seem, a number of factors urge its rejection. First, Plutarch’s κλοπή at Luc. 1.1 is

24) For sources on the standing courts *de rebus repetundis* and *de maiestate*, see MRR I 459, 563 and 565 n. 4; Greenidge and Clay, *Sources for Roman History 133–70 B.C.* (Oxford 1986) 91–92.

25) For sources, see Greenidge and Clay (above, n. 24) 85.

26) Gruen (above, n. 4) 244–45; cf. 176–77 with n. 95, and 262–63. To avoid tedious repetition of footnotes on Gruen’s argument, I shall cite him parenthetically in the text.

27) Gruen here follows Lengle (above, n. 4) 40–42. Lengle’s conclusion, however, is based upon the unlikely and unproved hypothesis that the Antistius who presided over this trial as praetor and the Antistius who was murdered in 82 were two different people. See below, 185–86.

either carelessly vague or simply inaccurate, a possibility that Gruen himself concedes, though in a footnote²⁸. For, as Keaveney has pointed out, the testimony of Diod. 36.8.5 clearly indicates that the prosecution of Lucullus had nothing to do with embezzlement: ἦνυε δὲ τῶν δεόντων ὁ στρατηγὸς (sc. ὁ Λούκιλλος) εἴτε διὰ ῥαστώνην εἴτε διὰ δωροδοκίαν οὐδέν· ἀνθ' ὧν καὶ δίκην ὕστερον κριθεῖς Ῥωμαίοις ἔδωκε²⁹. Second, it is by no means clear how, even if Lucullus had stood trial in 102 on a *peculatus* charge, that fact would necessarily “indicate” the establishment of a permanent court for this crime in 103. For all we know, the court that tried him could have been just as extraordinary as the one that had tried Caepio two years earlier. Third, Plut. Luc. 1.1 certainly gives no indication whatsoever of the court’s status, a matter in which Plutarch will have had no interest, since it in no way illuminated the character of the Lucullus who is the subject of that *Life*. So this trial cannot be held to support the existence of a permanent court on peculation before 86.

Fourth, because Plutarch fails to identify the court that tried Pompeius in 86 as an extraordinary court, Gruen argues that this trial, therefore, implies the existence of a permanent *quaestio de peculatu* before the Sullan reforms. This “implication” is of course open to the same objection I have raised above about what the trial of Lucullus might “indicate.” Fifth, an argument from Plutarch’s silence on a matter irrelevant to his purpose need not compel our assent. As we have seen above, Plutarch’s concern in narrating this trial is the illumination of Pompeius’ character³⁰. Strabo’s peculation matters to Plutarch only in so far as it motivates the trial of his son, and allows the reader to descry the character of Pompeius, and to differentiate him from his father. Similarly the conviction of Lucullus, the father, at Luc. 1.1 serves only to introduce Lucullus, the son, whose character is revealed in the proper vengeance he takes on his father’s prosecutor (Luc. 1.2–3). The legal and chronological niceties that so exercise us were nothing to Plutarch. As it is, Plutarch’s evidence in Pomp. 4.1–6 is insufficient to establish whether the court that tried Pompeius in 86 was permanent or extraordinary. Finally, Gruen’s

28) Gruen (above, n.4) 177 n.95: “It may be, of course, that Plutarch is employing loose language. It would not be his first offense of that sort. κλοπῆς may simply be an error for *repetundae*.”

29) Keaveney (above, n.4) 113–4 n.8. Lucullus’ behavior would certainly suggest that the charge was more likely *res repetundae*, as Keaveney argues.

30) See above, pp.179–80, and below, pp.185–86, 189–90, 192–93.

point about there being no record of a *lex Cornelia de peculatu* is his strongest evidence for the pre-existence of such a court, and the only one that might justify the assumption that such a court did exist³¹. Yet this, too, is an argument from silence, and is much undermined by the refutation of his arguments about the trials of Lucullus in 102 and of Pompeius in 86. On balance, then, we must conclude that, while a permanent court might possibly have existed before Sulla, no positive evidence supports its existence, and that it is, therefore, best to regard the court that tried Pompeius in 86 as extraordinary.

IV

According to Plutarch (4.4), P. Antistius was a praetor (σπρατηγοῦντα) at the time of the trial. Most scholars, however, have long and rightly rejected a praetorship of Antistius, since Velleius Paterculus 2.26.2 describes Antistius at the time of his murder in 82 as *aedilicius*³². As Velleius is correct about the ranks of the others who died along with Antistius at the hands of L. Iunius Brutus Damasippus, there is no reason to doubt his accuracy for Antistius³³. There is clearly then some confusion and error here on the part of Plutarch (or his source). Lengle believes that Plutarch has confused two different men named Antistius, the one the otherwise unattested praetor of 86 who presided over Pompeius' trial and became his father-in-law, and the other the

31) M. Griffin, *The Leges Indiciariae* of the pre-Sullan era, CQ n.s. 23 (1973) 111 n. 1, following W. Kunkel, *quaestio* (1), RE XXIV (1963) 739, suggests that the trial affords a *terminus ante quem* for a *peculatus* court, since this trial included *iudices* and a *iudex quaestionis*. This may be right – the establishment by Cinna of a permanent *quaestio de peculatu* certainly shows an interest in the finances of the state that fits in with other financial measures taken during this period – but the irregularities of the courts in the 80s (Cic. Brut. 226–27, 311) warn against firm conclusions based on normal procedures. Cic. ND 3.74, however, seems to offer evidence of a *lex Cornelia de peculatu*, but whether Sulla constituted or reconstituted a *peculatus* court is still uncertain: see D. Cloud, CAH² (1994) IX 515 n. 115.

32) Thus, as cited above, n. 4, Seager 7 n. 4, MRR II 54, Gruen 245 n. 133, Lengle 40–42, Sumner 111. See also Klebs, Antistius (18), RE I 2 (1894) 2547.

33) Damasippus, either on the instructions of the young consul, C. Marius (App. BC 1.80), or on his own initiative (Vell. Pat. 2.26.2–3), killed C. Papirius Carbo Arvina, pr. by 83, Q. Mucius Scaevola, cos. 95 and Pontifex Maximus, and L. Domitius Ahenobarbus, cos. 94. Velleius is, however, wrong when he states that Carbo Arvina was brother of Cn. Papirius Carbo, the consul of 82. His genealogical error need not compromise his accuracy about their offices, since other evidence shows that he was correct about these. See MRR II 11–12, 63, 65 n. 3, 73.

aedilician Antistius whom Damasippus had killed in 82³⁴. Yet rather than adjudge Plutarch guilty of a gross prosopographical error without independent evidence of the existence of a second Antistius, we should choose the simpler explanation, namely that there was only one Antistius, the report of whose murder Plutarch found in his sources on Pompeius, and whose status in 86 Plutarch got wrong by confusing the praetor who supervised the *προάγωνες* with the *index quaestionis* of the trial itself. This view, essentially that of Mommsen, has the virtue, as will emerge below, of being consistent with the evidence of Plutarch's text³⁵. We must also consider the suggestion of Gruen, that Plutarch is guilty of anachronism, of retrojecting the praetor's normal role in the post-Sullan courts into an earlier time³⁶. Let us now turn to the text.

Plutarch seems quite clear and insistent on the role of Antistius in the trial, as well as very well informed about the judicial process from the time the charges were filed, through the pre-trial hearings (*προάγωνες*), to the actual trial itself. In a telling contrast to his inattention to the (for him) irrelevant question of the court's status, Plutarch's interest in the charges, the *προάγωνες*, the trial proper, and the identity of the judge, stems from the relevance of these details to the portrayal of Pompeius' character: the contrast between his character and that of Strabo; his persuasive response to the charges; his acumen and self-possession despite his youth; the favor of Antistius that these qualities win for him; and his popularity with the common people who hymn their ironical approval of his obviously partial acquittal. So on the basis of his interest in, and knowledge of, this particular trial it seems little likely that the biographer is here guilty of anachronism, or, more seriously, of confusing two different men named Antistius. The solution to Plutarch's confusion, I would argue, again lies in closer attention to his account, in particular to the *προάγωνες* in which Pompeius so distinguished himself. Here we may indeed find a praetor. For under Roman law the accusers and the accused appeared in just such preliminary hearings before a praetor whose task was to "... settle ... the exact nature of the dispute between them and of their claims and counter-claims, to appoint someone to try the action, and to issue to him a 'formula' containing a precise and unequivocal statement of the question he had to try."³⁷

34) Lenge (above, n. 4) 42.

35) Mommsen (above, n. 4) II³ 584.

36) Gruen (above, n. 4) 245 n. 133.

37) J. A. Crook, *Law and Life of Rome*, 90 B.C.–A.D. 212 (Ithaca 1967) 74.

If, as certainly seems to be the case, Plutarch's source contained some account of these preliminary hearings, it is not unreasonable that this account mentioned the praetor's appointment of Antistius to try the action, though it did not necessarily also name that praetor, considering his subsequent unimportance to the trial. Plutarch's account further suggests that his source focussed in some detail on Pompeius' behavior at the προάγωνες, and on Antistius' remarkable favoritism at the trial as well as the marriage of his daughter to Pompeius immediately thereafter. The biographer, naturally enough, fixed his attention on Antistius' reaction to Pompeius since it so clearly reflected Pompeius' character. In these circumstances, Plutarch could have easily conflated Antistius and the praetor, especially if his source glided as easily and rapidly from the pre-trial hearings to the trial as he does, with only ὥστε to mark the transition: ἐν οἷς (sc. προάγωνσι) . . . δόξαν ἔσχε (sc. ὁ Πομπήσιος) μεγάλην καὶ χάριν, ὥστ' Ἀντίστιον στρατηγοῦντα καὶ βραβεύοντα τὴν δίκην ἐκείνην ἐρασθῆναι τοῦ Πομπηίου. . . . On this showing, it seems far more likely that Plutarch assimilated the praetor in charge of the pre-trial hearings to Antistius, whose role was so much more prominent and more suitable for Plutarch's purposes, than that he has confused two different men named Antistius, as Lengle would have it. If Plutarch knew of the (later) judicial role of praetors, that knowledge, of course, could have led Plutarch into anachronism, as Gruen argues, and so facilitated his conflation of the praetor and Antistius. Plutarch, however, distinguishes between Antistius as praetor and Antistius as judge, which indicates that he perceived a difference in function between the two. This perception seems more consistent with conflation than anachronism. Plutarch's detailed knowledge of this particular trial, moreover, is no argument for a broader knowledge of the Roman courts on his part. Rather it suggests that the source of his error lies closer to home, i.e., in the combination of his own interests with the account found in his source.

Discussion of Antistius and the anonymous praetor gives rise to the related questions of the identity of Plutarch's source and the identity of the prosecutor and Pompeius' advocates. The anonymity of the prosecutor may be compared to that of the praetor. Their names, if given at all, were of little consequence to an account that appears to have emphasized the behavior of Pompeius and Antistius, an emphasis that Plutarch found congenial and adopted. While one might argue that the praetor and prosecutor were not named simply because they were individuals of little personal im-

portance, Plutarch's equal silence about Pompeius' advocates – Carbo, Philippus, and Hortensius –, who were men of the greatest importance, belies so simple an explanation. Did Plutarch know of their connection to the trial?

Pomp. 2.4 indeed suggests that Plutarch might have known of Philippus' involvement. For there in a discussion of Pompeius' supposed likeness to Alexander the Great he relates a pertinent witticism made by Philippus συνηγορῶν αὐτῷ (sc. τῷ Πομπηίῳ), which, as far as we know, can only refer to this trial³⁸. Yet Plutarch's knowledge of Philippus seems meager and entirely anecdotal: in the *Lives* he is named only twice, both times in the *Pompeius*; and in each instance it is his witty references to Pompeius that merit his inclusion³⁹. Even if Plutarch does know Philippus' bon mot from his source on the trial, he clearly considers that whatever else (if anything) he might know of Philippus' participation is unimportant to his account of the trial, and that the quip is far more revealing for contemporary opinion on the Pompeius-Alexander comparison than for the trial. The biographer's general knowledge of Hortensius is more extensive, but still sketchy⁴⁰. Only twice does he refer to Hortensius before the year 70, once to note that Hortensius was the uncle of Valeria Messalla, Sulla's last wife (Sull. 35.6), and once in an anecdote attesting to L. Lucullus' proficiency in Greek (Luc. 1.7–8)⁴¹. This tends to suggest that Plutarch was generally ignorant about Hortensius before 70, and in turn that he knew little or nothing of Hortensius' role in 86. Of course, as with Philippus, Plutarch might have known of Hortensius' involvement, but found it irrelevant to his purposes in Pomp. 4.1–6. As suggestive as the biographer's dearth of information on Philippus and Hortensius may be, any conclusion on this basis alone would be uncertain. So far we must suspend judgement.

38) διὸ καὶ Λευκίος Φίλιππος ἀνὴρ ὑπατικὸς συνηγορῶν αὐτῷ μηδὲν ἔφη ποιεῖν παράλογον, εἰ Φίλιππος ὢν φιλαλέξανδρός ἐστι.

39) Pomp. 17.3–4: καὶ Κάτλου κελεύοντος οὐ διέλιεν (sc. ὁ Πομπήιος), ἀλλ' ἐν τοῖς ὄπλοις ἦν περὶ τὴν πόλιν, ἀεὶ τινας ποιούμενος προφάσεις, ἕως ἔδωκαν αὐτῷ τὴν ἀρχήν, Λευκίου Φιλίππου γνώμην εἰπόντος, ὅτε καὶ φασὶν ἐν συγγλήτῳ πυθομένου τινὸς καὶ θαυμάσαντος, εἰ Πομπήιον ἀνθύπατον οἶεται δεῖν ἐκπεμφθῆναι Φίλιππος: “οὐκ ἔγωγε” φάναι τὸν Φίλιππον “ἀλλ' ἀνθ' ὑπάτων”, ὡς ἀμφοτέρους τοὺς τόθ' ὑπατεύοντας οὐδενὸς ἀξίους ὄντας.

40) Plut. Luc. 1.7; Cic. 7.8, 35.4; Sull. 35.6; Cato min. 25, 52.5–7.

41) Plutarch actually says that Valeria was Hortensius' sister, but this is wrong. See Münzer, Valeria (389), RE VIII A1 (1955) 243, and Ziegler's apparatus ad loc.

Plutarch, however, does have a fair bit of information on Carbo, to whom he pays more heed in the *Pompeius* than in any other *Life*⁴². It is in fact Pompeius who hunts Carbo down in Sicily on Sulla's orders, then inhumanely (οὐκ ἀνθρώπινως) humiliates and kills him (Pomp. 10.1,4–6). Nor does Plutarch excuse Pompeius' cruelty to Carbo, but rather emphasizes it by his citation of the reaction of witnesses (10.5), by his portrayal of Carbo as not undignified in the face of death (10.6), and by his own prefatory statement that Pompeius should have killed Carbo immediately, without humiliating him, for then "it would be the deed of him who gave the order," i.e., of Sulla (10.4)⁴³. In addition to the ugly treatment of Carbo, Plutarch also emphasizes Pompeius' 'inhumanity' both to the Mamertines in Messana and to Q. Valerius, a learned man whom he asks scholarly questions, then has killed (10.2–3,7–9)⁴⁴. Nowhere else in this *Life* does Plutarch call Pompeius' actions inhumane, as he does in these three instances; so the biographer's sense of outrage here is clearly strong⁴⁵. To be sure, some of Pompeius' actions in Sicily are praiseworthy

42) Sull. 22.1, 28.6,17, 29.8; Brut. 29.6; Sert. 6.1, 7.1, 22.4; Pomp. 5.4,6, 6.3, 7.6, 10.1,4–6.

43) We must take care here not to read our knowledge of other sources on Carbo's behavior in the face of death into Plutarch's account. Livy, Per. 89 says: *Cn. Pompeius ... Cn. Carbonem, qui flens muliebriter mortem tulit, captum occidit*; and Sallust in a passage thought to refer to Carbo says of him: *simulans sibi alvum purgari* (Hist. 1.52 Maurenbrecher). Plutarch has clearly eschewed the hostile tradition of Livy, and if Sallust is his source here, as he seems to be, Plutarch has considerably softened the impact of the cynical *simulans* by his use of ὡς, which disclaims the certainty about Carbo that Sallust avers. Plutarch merely indicates that this was the reason Carbo gave, a reason he neither affirms nor denies. If we consider Plutarch's portrayal of Carbo here in combination with his censure of Pompeius in this chapter and his habit of using explicit and implicit contrasts with others in the text to illustrate his subject's character, we shall see that Plutarch most probably wishes us to see Carbo as somewhat dignified in the face of death. Plutarch's remarks on Pompeius' humiliation of Carbo, "a man who was consul three times" (10.5), further argues that he is contrasting the dignity of Carbo with the inhumanity of Pompeius.

44) While it is true enough that Plutarch says of C. Oppius, his source for the story of Pompeius and Valerius, that it is necessary to trust him with extreme caution because he is a friend of Caesar, he nevertheless includes Oppius' information. This indicates that he does trust him in this instance, presumably because his portrayal of Pompeius here harmonizes with Plutarch's other information. Cf. n. 43.

45) Three times in Pomp. 10 Plutarch characterizes Pompeius' behavior as inhumane. At 10.2 he says that Pompeius treated all the cities of Sicily φιλανθρώπως except for Messana; at 10.4 Carbo is treated οὐκ ἀνθρώπινως; at 10.7 he records that, according to C. Oppius, Pompeius used Q. Valerius ἀπανθρώπως.

(10.2,10,14), but, with the exception of his clemency towards Sthenis of Himera (10.11–13), none receives the detailed attention given to behavior Plutarch condemns, and one serves only to introduce his harshness to the Mamertines (10.2). Plutarch's refusal to palliate Pompeius' cruelty here is significant because it shows his willingness to contend with and condemn the unsavory side of his subject's actions and, therefore, of his character. In view of this, the absence from Plutarch's account of any reference to the previous relation between Carbo and Pompeius provides an important clue for our investigation of whether or not Plutarch knew of the involvement of Hortensius, Philippus, and especially of Carbo in Pompeius' trial in 86. For by defending Pompeius in 86 Carbo had imposed on him a debt of gratitude that he repaid like a thankless child. Men remembered Pompeius' ingratitude, hostile sources preserved that memory, and Plutarch's report of the reaction of the witnesses to Pompeius' humiliation of Carbo probably bears witness to it as well⁴⁶. Had Plutarch's source for the trial been hostile or even objective, it would have recorded the advocacy of Carbo, Philippus, and Hortensius; and, given Plutarch's openness to negative information on Pompeius' character, and his willingness to condemn him when wrong, it is not at all unreasonable to suppose that he would have then passed that information on to his reader in his account of Carbo's death, if not in his account of the trial.

This analysis is consistent with those above on Philippus and Hortensius, and allows us to offer the conclusion that Plutarch quite probably found in his source no mention of Pompeius' advocates in 86, with the possible exception of Philippus, whose wit contributed to the Alexander-Pompeius comparison so dear to the hearts of Pompeius and his supporters⁴⁷. Rather, that (obviously) pro-Pompeian source focussed on the behavior of Antistius and Pompeius, and suppressed any details, such as the identity of his advocates, that would have clearly demonstrated Pompeius' early links to the 'tyrannical' regime of Cinna, links of which Plutarch

46) Val. Max. 5.3.5, 6.2.8; [Sall.] 1.4.1; Cic. Att. 9.14.2 (Caesar's memory). Doubtless the witnesses to whom Plutarch refers at 10.5 were as aggrieved by Pompeius' ingratitude as by his humiliation of a man who had been consul three times.

47) For discussion and bibliography, see D. R. Cunningham, *The Influence of the Alexander Legend on Some Roman Political Figures* (Diss., U. Washington 1971) 41–52.

seems entirely ignorant⁴⁸. As a final point, we should also do well to recall the haphazard nature of our own acquaintance with the involvement of Carbo, Philippus, and Hortensius in Pompeius' trial: a tangential reference to the trial in Cicero (*Brut.* 230; cf. *Sen. Con.* 7.2.6), and a pair of bitter anecdotes in Valerius Maximus (5.3.5, 6.2.8). Direct evidence of their role in the trial seems to have been scarce even in antiquity. As to the identity of the source, we can unfortunately do little more than round up the usual suspects: Theophanes of Mytilene, M. Terentius Varro, Poseidonius of Apamea, and L. Voltacilius. The source's attention, however, to the stages of the judicial process and his apparently detailed acquaintance with Pompeius' early years might suggest a Roman source, such as Varro or Voltacilius, who were close to Pompeius early in his life, or at least quite interested in this period⁴⁹.

V

After close scrutiny of Plutarch's text, of the other ancient evidence, and of scholarly opinion, a summary of conclusions now seems in order. Given the evidence, the trial is best dated to 86. Antistius' prominence in the courts of the Cinnan era further emphasizes Pompeius' ties to that regime, ties which the identity of Pompeius' advocates attest, and which later pro-Pompeian sources, like the one for this trial, wished consigned to oblivion. Their efforts to do so suggest that these ties were perhaps even closer and more damning than the surviving evidence indicates⁵⁰.

48) In addition to the hostility to this regime evidenced by the passages on Pompeius and Carbo (above, n. 42), the enmity that Plutarch discovers in Pompeius' relations with Cinna argue his ignorance of Pompeius' connections to the Cinnan government: *Pomp.* 3.1–5, 4.1–6, esp. 4.3, 5.1–5.

49) On the obscurity of the sources for this period in the *Pompeius*, see B. Scardigli, *Die Römerbiographien Plutarchs* (Munich 1979) 120, and H. Peter, *Die Quellen Plutarchs in den Biographien der Römer* (Halle 1865) 112–13; H. Strasburger, *Caesars Eintritt in die Geschichte* (Munich 1938) 40–41; Gelzer (above, n. 4) II 110. Peter, however, overemphasizes Plutarch's adoption of a tradition hostile to Pompeius. The *Pompeius* certainly has negative aspects that deserve more notice than they have received, but Peter ignores much of the favorable information in this part (chapters 1–16) of the *Life*.

50) Some passages, however, are quite suggestive. If we combine the information in *Pl. Mar.* 42.5–6 with that in *Gran. Licin.* 35.42–47 (cf. *App. BC* 1.68), it suggests that those *Octaviani* who first attempted to transfer their standards to Metellus Pius, but then defected to Cinna when Pius rejected them, included the soldiers of Strabo as well, presumably, as Pompeius. Since Pius apparently became

The trial itself concerned not the booty of Asculum, but the unaccounted for remainder of the money allotted to Strabo as consul in 89, and whether any of the property then in Pompeius' possession had been purchased with that remainder. The evidence on the court points only to the probable conclusion that it was extraordinary; and scholars may, therefore, approach the history of the *peculatus* court on firmer ground than previously possible. This probability might well argue that it was in fact Sulla who established a permanent *quaestio de peculatu*, despite the lack of positive evidence for such legislation.

Plutarch's source, which I have tentatively suggested was an early Roman source close to Pompeius, appears to have suppressed, consistently with his pro-Pompeian bias, all but perhaps the most insubstantial mention of Pompeius' advocates, i.e., the bon mot of Philippus, and to have minimized their role as well as that of the prosecutor and of the praetor who sat *in iure* at the preliminary hearings. On the other hand, Plutarch's source stressed the behavior of Pompeius and of the comparatively little known Antistius; and included prejudicial references to the plundering of Pompeius' house in Rome by Cinna's soldiers, or, as Plutarch at least has it, by Cinna's bodyguards, ever the creatures of tyrants⁵¹. In this way Plutarch's source drew attention away from Pompeius' relations with the *Cinnani*, and suggested to him an antipathy between Cinna and Pompeius that eulogized Pompeius and portrayed him as the enemy of the tyrant⁵². To be sure, the antipathy to Cinna and later to Carbo, Cinna's successor, found in the early chapters of the *Pompeius* suggests Plutarch's use of this, or another, similar source throughout. It is, however, best to allow that, whereas the biographer found the antipathy between them in this source or others, he himself elaborated the rhetorical contrast that reduced first Cinna and then Carbo to foils serving only to

involved in the defense of Rome only after Strabo's death (Gran. Licin. 35.22–23, 47–48; App. BC 1.68–70; Dio 30–35 fr. 102.6–7; Diod. 38–39, 2.1–2), this suggestion seems probable. On this evidence, Pompeius was already in Cinna's camp when Rome fell. Dio 30–35 fr. 107, to judge by its internal logic, further suggests that Pompeius remained involved with the *Cinnani* until just before he defected to Sulla in 83, and only joined him out of anger because they had refused him a military position he thought worthy of himself. For further discussion, see my 'Cinna, Strabo's army, and Strabo's death in 87 B.C.,' AC 65 (1996) 81–89.

51) Pomp. 4.3. On the association of bodyguards (δορυφόροι) with tyrants, see Plut. Caes. 57.7; Sol. 30.1–5; Hdt. 1.59.5; Arist. fr. 521 Gigon = 516 Rose³.

52) On the eulogizing of the young Pompeius by Plutarch and others, cf. Gelzer (above, n. 4) II 110, 122–23, 136–37.

illuminate Pompeius' character. For this simplification, in which the historical Cinna and Carbo become mere rhetorical constructs, also occurs in Plutarch's portrayal of Pompeius Strabo, a portrayal whose very negativity argues that the biographer used different sources for Strabo, since it seems quite unlikely that a pro-Pompeian source, especially a contemporary one, would have been simultaneously hostile to his father, about whom Pompeius appears to have been touchy⁵³. Finally, it is clear how Plutarch's biographical aims and methods influence every aspect of his presentation of evidence he considered revealing of Pompeius' character. It is equally clear what care is necessary to a useful historical reconstruction based on his evidence.

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53) On the probability of different sources, see B. R. Katz, *The siege of Rome in 87 B.C.*, CP 71 (1976) 332 n. 19. On Pompeius' apparent sensitivity about his father's memory, see Pomp. 37.4 (= Peter HRR² I 188) and E. Badian, *Quaestiones Variae*, *Historia* 18 (1969) 473–74.