Naevius and Free Speech
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NAEVIUS AND FREE SPEECH.

The famous senarius of Naevius Fato Metelli Romae fiunt consules was preserved only by Pseudo-Asconius 1 in commenting upon Cicero’s thrust at Metellus Creticus in the first Verrine oration, but it is clearly assumed as known by Caesius Bassus 2 who quotes the answer of Metellus. Wissowa 3 following Zumpt attempted to prove the line much later than Naevius, on the ground that fato in the sense of “fatal necessity” could apply to the Metelli only in the post-Gracchan period when several Metelli became consuls in close succession. Marx 4 rightly rejected Wissowa’s argument, pointing out that the Stoic use of the word fato was unnecessary and unlikely in this passage. Marx in turn understood fato in the sense of oracular prediction, referring to Plautus, Bacch. 953 ff. (Ilio tria fuisse audivi fata), and argued that the friends of Metellus had probably secured the aid of an oracle in order to procure his election to the consulship.

That the line is authentic I think few will doubt despite the


3 Genethliakon für C. Robert, 1910, 51 ff.

authority of Wissowa and Leo. However, Marx's interpretation of it is not compelling. The sense of oracular prediction does not seem to fit the circumstances, and that meaning for fatum, though common in classical Latin, is found in early Latin only in translations from the Greek, which do not necessarily reveal the earlier native tone of the word. In point of fact the old Romans had no respectable oracles. They knew of Etruscan and Greek soothsayers, sortes, and haruspices, but they hardly took them seriously except in times of great nervous anxiety. I doubt whether we have a right to interpret fatum in a line of Naevius with meanings that grew up later in connection with Stoic ideas and after Greek respect for oracular divination had become prevalent.

In searching for the real meaning of the Naevian line I believe that we may get some aid from another passage in Cicero which—so far as I can find—has not yet been brought into the discussion. In the year 62 B. C. when Cicero had his clash of wits with Metellus Celer (a relative of Metellus Ceticus), in a very carefully phrased letter which steers guardedly between formal courtesy and half-concealed sarcasm he says: Had I not resisted your brother, men would have concluded that during my consulship I had been courageous casu potiusquam consilio. I believe that this phrase was meant to remind Metellus Celer of the line which Cicero had brought to the memory of Metellus Ceticus, a line which no Metellus was ever allowed to forget. Cicero knew the setting of the original, its context and its occasion. His interpretation of it is therefore a safer guide than the few early instances of fato that have survived to us with Greek connotations. If the phrase in this letter to Metellus Celer is a reference to the old epigram, fato originally suggested a meaning akin to casu. And this meaning will fit into the line of Naevius as well as into Cicero's allusion to it in the Verrine passage.

It will be remembered that Q. Metellus had actually reached

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\(^5\) Plaut. Bacch. 951-59 (where it is an obvious makeshift); Enn. Scæn. 58; Acc. 451, 481.

\(^6\) Cic. Ad Fam. V, 2, 9, si virtute et animo non restitissem, quis esset qui me in consulatu non casu potius existimaret quam consilio fortem fusisse?

\(^7\) Wende, De Caeciliis Metellis (1875) p. 32, without knowledge of the allusion in Cicero's letter, interpreted fato as fortuito.
the consulship by a happy chance. He had been fortunate enough to be chosen as one of the three messengers to carry to Rome the news of the brilliant victory at Metaurus in 207. It was in the autumn and shortly before the elections. The people were so elated over the good news that they elected to the next consulship two of the three messengers. Metellus was one of these, though he had not yet held the praetorship. There is not the slightest reason to suppose that he would even have been considered for the high office if he had not been the fortunate herald of a startling victory. In fact he had no success in the field as consul and proconsul in the following years, and was later known chiefly for his support of Scipio—a course which probably accounts for the enmity of Naevius. What Naevius meant therefore was apparently that Metellus had become consul by mere chance. This meaning also fits well into the passage of the Verrine orations in which Cicero attacked Metellus Creticus in the year 70. There, turning upon Metellus who was supporting Verres, he says: Verres has been saying that you became consul non fato ut ceteros ex vestra familia sed opera sua. In all the passages I believe that the contrast between casu and consilio were intended.

It is of course apparent to anyone who reads Cicero and Vergil that the word fatum is used with all deference by them and not as a synonym of casu. Stoic philosophy was then in vogue and Latin had no other term with which to convey the doctrine of determinism; and since the Stoics also defended orderly divination, fatum in the sense of oracular responses also won respect. But if the word (fari is evidently a very old word) was used in the pre-Greek period for predictions obtained by use of sortes and haruspicina it must have been as humble in its connotations as those words were. When Cicero (De Div. II, 52) repeats Cato’s saying that the haruspices must have smiled knowingly when they met, he adds: Quota enim quaeque res evenit prae dicta ab istis? Aut si evenit quippiam quid adferri potest cur non casu id evenerit? He had the same scorn for sortes (ibid. II, 85); quibus in rebus temeritas et casus, non ratio nec consilium valet. And in these utterances he was reflecting the attitude of the earlier Rome. More than once the senate had ordered the books of soothsayers burned and the fortune-

*Livy XXVII, 50, 9-11, and 51, XXVIII, 10.
tellers banished. Only at old Etruscan sites like Veii, Caere, Falerii and Praeneste were such things respected. If indeed *fatum* was once used for predictions the word must have had about the same standing as *hariolatio*, and like the equally sordid word *vates* gained respect only by a literary accident. Some term had to supply the need occasioned by the invasion of new ideas.

It is probable, therefore, that Naevius used the word in the sense of *fortuito*. However, the line probably had a double sting, for it was meant to convey not only the idea that Metellus had become consul by chance (taking *fato* as an ablative) but also that his consulship was a misfortune to Rome (a double dative). The mind was invited to hesitate between two possible constructions and to accept both. The use of *fatum* = *malum* is not actually vouched for before Pacuvius (*Trag.* 377?), but the answer of Metellus—*Malum dabunt Metelli Naevio poetae*—would seem rather pointless unless we assume that this meaning was also contained in the attack.

Those who have rejected these lines as spurious or late have also been prone to reject the story of Naevius' imprisonment and exile. In fact they have argued against the authenticity of the lines on the ground that early Roman law could not have recognized libel as a capital offense. The question leads further than we can go here, but a few words are necessary for the sake of the preceding argument. The large question which we need not discuss in detail is whether Naevius could have been punished by imprisonment and exile for inserting caustic criticism of magistrates in his comedies. The chief point at issue is whether the twelve tables contained both of the clauses which St. Augustine claims to cite from Cicero: *si quis occentavisset* and *sive carmen condidisset quod infamiam faceret flagitiumve alteri*. The first clause probably refers to incantation, but the latter seems to refer to libel. Mommsen thought both belonged to the twelve tables and that Naevius had incurred the death penalty ⁹ (i.e., loss of civil rights) under the latter. Huvelin ¹⁰ and others, including Beckmann,¹¹ hold that Cicero


¹⁰ *La notion de l'iniurie* (Lyons, 1903).
or some one before him misunderstood the first clause and explained it by the second in order to define the crime as libel. Fränkel has unfortunately reverted to Mommsen’s view. Fränkel is right in holding that the language of the second clause is pre-Ciceronian, but that does not prove it a part of the decemviral code. It is difficult to see how any recent historian who has read deeply into Roman institutions can believe that libel or slander was included among capital offenses in the early code, especially as the code allowed settlements on the basis of talion for corporal injuries. We cannot afford to forget that liberty to criticize was very highly valued during the republic. Lucilius for many years ridiculed men high and low,

Primores populi arripuit, populumque tributim,

without fear. Catullus, Calvus, Furius and Memmius published unquotable epigrams mentioning Caesar and Pompey by name, and the political pamphlets in prose of Cicero’s day were sparing neither in names nor epithets. We have mention of only two cases during the republic in which suits for damages were brought on charges of verbal injury, and in both cases the culprit was a mimus, doubtless a slave. Both these instances seem to belong to the post-Gracchan period, and Huvelin is doubtless right in holding that the law which included verbal abuse in the scope of injuria was then recent. There is no instance on record except that of Naevius of a citizen brought to punishment because of criticism of political personages.

How, then, are we to explain the misfortune of Naevius if the accounts of his penalties are to be accepted? It would hardly have been under the revised laws regarding injuria because these laws specified fines as damages; they did not recognize loss of civil rights. I think we must assume that the penalties of the twelve tables were invoked in his case, and that the most reasonable explanation is that under the severe strain of war-nervousness during the last years of the Punic war some praetor of the Scipionic party deliberately stretched the meaning of the decemviral prohibition against “carmina,” adding an interpretative clause, and thus found a plausible basis

11 Zauberei und Recht, Diss. 1923.
12 In Gnomon, 1925, pp. 180 ff.
for a judgment. Every war will provide parallels in which overzealous judges have strengthened the machinery of war-censorship by questionable interpretations. I cannot point to an exact parallel in early Rome, but a review of the legislation passed during the stress of the Punic war will show that restrictive measures, meant chiefly for war-times, were carried to the extreme. For example, in order to save resources for public purposes a number of drastic sumptuary laws were passed.\textsuperscript{14} Women were forbidden to wear jewelry by the Oppian law (repealed after the war), the lex Metilia regulated the fabric that could be used in clothing (disregarded later if not repealed), expensive gifts were forbidden at the Saturnalia (later a dead letter), lawyers' fees were forbidden (apparently observed afterwards), games of chance were outlawed, and finally expenditures at festivals were regulated.

My suggestion is that a strict censorship was also applied temporarily by some praetor in the same spirit. The Metelli were supporting Scipio's invasion of Africa to end the war. Scipio was vigorously opposed by the older conservative nobles and Naevius was writing in the interest of the latter. The younger group were ready to resort to extreme measures to remove the offensive satirist. It is probable that the praetor, finding no law to cover the case, knowingly stretched the interpretation of the phrase \textit{si quis occentavisset} for the purpose and in his edict added as an interpretative gloss the second phrase \textit{sive carmen condidisset}, etc., and on that basis pronounced his sentence and ordered the III viri to proceed. Since the twelve tables were commented by Aelius Paetus a few years later in a book which Cicero knew well, we may suppose that that book was the source of Cicero's citation. After the war the praetors must have omitted this interpretation from their edicts since we hear of no more judgments of the kind.

We may, therefore, accept the stories of Naevius' punishment as we do the authenticity of the lines that passed between him and Metellus, even if we find it impossible to believe that the twelve tables imposed the death penalty for libellous verses.

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\textsuperscript{14} See Botsford, \textit{Roman Assemblies}, ch. XV.