The Classical Review

<http://journals.cambridge.org/CAR>

Additional services for *The Classical Review*:

Email alerts: [Click here](#)

Subscriptions: [Click here](#)

Commercial reprints: [Click here](#)

Terms of use : [Click here](#)

Three Questions as to Livius Drusus

E. G. Hardy

The Classical Review / Volume 27 / Issue 08 / December 2013, pp 261 - 263

DOI: 10.1017/S0009840X00006090, Published online: 27 October 2009

Link to this article: http://journals.cambridge.org/abstract_S0009840X00006090

How to cite this article:

E. G. Hardy (1913). Three Questions as to Livius Drusus. The Classical Review, 27, pp 261-263 doi:10.1017/S0009840X00006090

Request Permissions : [Click here](#)

had a charge laid against me, but now I am unhappy because I suffer no accusation, all men knowing I have not the power to sin.'

Carm. Buc. Einsidlensi i. 5.

praemia si cessant artis fiducia nulla est.

sic Hagen and Ribbeck muta cod.

Nemes. Cyn. 75.

Parthorum laxosque arcus et spicula nulla.

sic codd. muta ed. vet.

Might both verses be improved by writing *nuda*? In the pastoral it would = 'barren'; in the other, 'unbarbed.'

Anth. Lat. 7, 1.

ipsa manu patiens immensa uolumina uersat
adtollitque globos.

Perhaps correct to *quatiens* Verg. *Aen.* vii. 143. But the subject of the cento is obscure.

Pentadius A. L. 234, 17

hostia †saepe fuit diri Busiridis hospes
Busirisque aris hostia †saepe fuit.

For *saepe*; *sacua, et ipse, sacra, lege* have been proposed. Perhaps *foeda* in the sense of 'shameful, disgraceful' is better. Ovid (*Met.* ix. 182) talks of *Busirin foedantem peregrino templa cruore*.

Anth. Lat. 742, 10.

nam decuit Mariam sapientem fundere natam
Calliopenque simul iuuenem proferre to
<gatum>.

So Riese supplies, but something seems to be required which suggests a personal characteristic. Perhaps *torosum*. The author of the epithalamium has a fondness for rarer words.

Anth. Lat. 839, 2.

†uir fuit egregius et bello clarus et armis.

uir fuit being also the beginning of *u. i* is condemned by Riese, Baehrens and Ziehen. We should perhaps read *uirtute*, but I am not at all sure that the repetition is not genuine.

R. T. CLARK.

Munich.

THREE QUESTIONS AS TO LIVIUS DRUSUS.

I. WHILE adhering to Appian's version of the judiciary law, I am inclined to meet Mr. Seymour's criticism with regard to his account of the *ἐγκλημα δωροδοκίας* in a manner rather different from the tentative suggestion made in this *Review* last November. I then suggested that the law dealing with judicial corruption against which the equites protested may have been the first proposal of Drusus, withdrawn as too displeasing to the order. A passage of Diodorus (xxxvii. 10) suggests a different view. According to this, Drusus, when his laws had been cancelled, after refusing to use his veto, and declaring that the Senate would repent of its action, goes on, *ἀκυρουμένων δὲ τῶν ὑφ' αὐτοῦ γραφέντων νόμων ἄκυρον ἔσεσθαι καὶ τὸν περὶ τῶν κριτηρίων νόμον, οὗ συντελεσθέντος τὸν μὲν ἀδωροδοκῆτως βεβιωκότα μηδεμιᾶς τεύξεσθαι κατηγορίας, τοὺς δὲ τὰς ἐπαρχίας σεσυληκότας ἀχθήσεσθαι πρὸς τὰς τῆς δωροδοκίας*

εὐθύνας. It seems to me clear that this last-mentioned law was (1) not included under *τῶν ὑφ' αὐτοῦ γραφέντων νόμων*, and (2) that it refers to the corruption law, and not to the judiciary law. Diodorus has not indeed fully understood his authorities as to what the *δωροδοκίας εὐθύναι* were. He thinks that governors and not judges were liable to them. What he should have said was that if the law were passed, and judges made liable for corrupt verdicts, there would be no inducement to accuse good governors, while bad ones were likely to be punished. I believe, therefore, that after his judiciary law was passed, Drusus, instead of being content to allow the Gracchan law '*ne quis iudicio circumveniretur*' to come again automatically into operation, thought it best to pass a new law on the subject, perhaps more stringent, and, at any rate, in view of possible political changes in the future, so formed as to bind

equites as well as the immediate senatorial judices. The proposal would, of course, be strongly resisted by the equestrian order, as Appian and Cicero say that it was, and after the cancelling of his other laws, would naturally be withdrawn (*ἀκυρον ἔσσεσθαι*).

II. How can we explain the fact that Drusus, 'perbonus ille vir, M. Scauro et L. Crasso consiliariis' deliberately violated the *lex Caecilia-Didia*, passed only seven years before, and in what did the violation consist? It is from Cicero alone that we know of this violation, but his evidence is precise and emphatic. 'Judicavit senatus M. Drusi legibus, quae contra legem Caeciliam et Didiam latae essent, populum non teneri' (*De Dom.* 16. 41).

We associate this law with the prohibition against passing *per saturam* measures with different objects under one law (*Cic. De Dom.* 20. 51). But the law must have had a wider scope than this. This provision is shown by verse 72 of the *lex Acil.* to have been merely the re-enactment of an existing rule, as was also that concerned with the necessary interval after promulgatio. When we remember the date of the law, just after the violent legislation of Saturninus, we can hardly doubt that it was a law dealing generally with legislative procedure in the comitia, and in particular with violence and neglect of auspices. If so, Drusus had certainly passed his measures contrary to this law. No doubt he was driven to it, as others were before and after him, by the unscrupulous action of his opponents. According to Crassus, Philippus 'had dashed the republic to the ground.' He had to be arrested by Drusus, while his coadjutor, Caepio, was threatened with the Tarpeian rock. Still, on the evidence of the epitomator the Livian laws were carried 'per vim et adjuvantibus Italicis.' On that of Asconius they were passed 'contra auspacia.'

But there is one passage where Cicero seems to imply that Drusus did actually violate the 'ne per saturam' rule. 'Quid si etiam; pluribus de rebus uno sortitore tulisti, quod M. Drusus . . . in legibus suis plerisque?' (*De Dom.* 20. 51). Can we, however, on the strength of

this, believe, as Mr. Heitland does, that the agrarian, colonial, corn and judiciary laws were all passed together as one composite measure? It seems to me absolutely incredible either that laws so disparate as a judiciary and a corn law could under any circumstances have been passed together, or that Drusus and Crassus and Scaurus, representing the party which only seven years before had passed the *lex Caecilia-Didia*, would have violated it in so extreme and barefaced a way. It is worth adding that the epitomator on a point where he is not likely to have misunderstood his author, distinctly states that the judiciary law was passed later than the agrarian and corn laws.

But the judiciary measure itself, if we accept Appian's version of it, would necessitate either two laws or an obviously composite bill. The re-establishment of senatorial courts was a judiciary measure, the reconstitution of the Senate was a political reform. It was not unnatural, and it was probably politic to combine these two changes in one law,¹ but technically it might be represented as contrary to the *lex Caecilia-Didia*, and Philippus would not be slow to use the opportunity. In this way, perhaps, all the *leges Liviae* were passed 'contra legem Caeciliam et Didiam,' but did not all necessarily violate the same provisions of that law.

III. Is the picture given by Cicero in *De Oratore* iii. 1-5 of the situation as between Drusus and the Senate on the one hand, and Philippus and the equestrian opposition on the other, inconsistent with Appian's version of the judiciary law? L. Crassus hurried to Rome early in September, much excited by a speech which Philippus had made in a contio. He had declared, 'Videndum sibi esse aliud consilium, illo senatu rempublicam se gerere non posse.' Drusus called a full meeting of the Senate on the Ides,

¹ If we assume, what is quite possible, that the law making all jurors, present and future, punishable for corruption was actually passed, and that Diodorus is referring to the whole change in the judicial system, no doubt this third law would be passed *per saturam* with the other two. This at least would satisfy Cicero's words, 'in legibus suis plerisque.'

and after complaining generally of the consul's conduct, called the attention of the house to his recent utterance. Crassus made an impassioned and defiant speech against Philippus, and finally a resolution was carried, 'ut populo Romano satis fieret nunquam senatus neque consilium reipublicae neque fidem defuisse.'

Two things are clear at once. Drusus was playing the part of 'senatus propugnator,' and the Senate had refused to follow Philippus in taking some steps against the tribune. But, however zealous a champion of the Senate Drusus may have been, it was simply impossible for him to do more for that order in the matter of the courts than, according to Appian, he was doing. Appian says that he was *σαφῶς οὐ δυνάμενος ἐς τὴν βουλὴν ἐπανενεγκεῖν τὰ δικαστήρια*, and this was literally true. The Senate only numbered 300. By the *lex Acilia* 450 judges were required each year for the Court of *Repetundae* alone, and there were probably at least one or two more courts in existence by 91 B.C. If, then, the courts were to be restored to the Senate, that body was bound to have its numbers substantially increased. Sulla's similar action must have been at least partly caused by the same obvious necessity. Velleius makes precisely the same statement about Drusus that he makes about Sulla, and both are true in the same sense.

Drusus, therefore, had no want of confidence in the 'Senate as it was,' He was its recognized champion, and his action in moving a vote of censure on Philippus for his disrespect to it was perfectly natural. It is equally natural that Philippus should attack the 'Senate as it was' for not following his lead. Probably the *leges Liviae* had just been

passed, and Philippus would at once raise his objection to their validity, and urge the Senate to cancel them. The Senate, having gained all that was practicable, refused, and Philippus issued his manifesto against the order in a public meeting.

It has been suggested that this attack and defence of the 'Senate as it was' is inconsistent with the supposition that a radical change in its constitution had been proposed by Drusus. It seems to me, on the contrary, that the wording of the consul's attack implies that the idea of a new Senate was in the air. Philippus may well have argued in his annoyance, 'The only part of the tribune's scheme for which anything can be said is the reconstitution of the Senate, for with the present Senate government is impossible.' On the other hand, Drusus would naturally defend the present Senate, because his scheme of reconstruction implied not qualitative but quantitative incapacity. The vote of confidence in itself was a quite appropriate manifesto of the old Senate at what might be one of its last meetings. The fact that later on Philippus was more successful in inducing the Senate to cancel the *Livian* laws was, I imagine, partly due to the compromising position into which Drusus allowed himself to drift in his relations with the Italians, partly to the agitation against his proposed law dealing with judicial corruption, with which it was only natural that the Senate, as immediately affected, would have considerable sympathy. It is needless to add that the cancelling would take place before the 300 new senators were actually elected.

E. G. HARDY.

Jesus College, Oxford.